

A-11349  
~~A-11370~~

4MC-04-00024 CR

TRANSCRIPTS

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

2007 NOV 14 AM 11:16

CLERK, APPELLATE COURTS  
BY: \_\_\_\_\_  
DEPUTY CLERK

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF ALASKA,	)
	)
Plaintiff,	)
	)
vs.	)
	)
DAVID HAEG,	)
	)
Defendant.	)
	)

A09455

Case No. 4MC-04-24 CR

VOLUME I

TRANSCRIPT OF PROCEEDINGS

May 17, 2005 - Page 02 through Page 34  
 May 18, 2005 - Page 35 through Page 74  
 July 26, 2005 - Page 75 through Page 95  
 July 27, 2005 - Page 96 through Page 297  
 July 28, 2005 - Page 298 through Page 738

DISCLAIMER

Transcripts prepared for the Alaska Court System

The Alaska Court System accepted this transcript based on either review of a random sample or without review because the transcriber's prior work has consistently met court system standards. Because it is possible that this transcript may contain some errors, the court system encourages parties to listen to the recordings of critical portions of the proceedings and to bring any significant errors to the ACS Transcript Coordinator's attention immediately.

AURORA COURT REPORTING

TABLE OF CONTENTS

1						
2	TRIAL BY JURY (EXCERPT):				PAGE	02
3	OPENING STATEMENT BY PLAINTIFF:				PAGE	97
4	OPENING STATEMENT BY DEFENDANT:				PAGE	109
5	<u>WITNESSES:</u>	<u>VOL</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>REXCROSS</u>
6	<u>FOR THE PLAINTIFF:</u>					
7	Glenn Godfrey	I	118	154	--	--
8	James Todd Mountain	I	156	--	--	--
9	Kevin Hacken	I	165	178	--	--
10	Burke Waldron	I	181	--	--	--
11	Alan Root	I	199	213	--	--
12	Toby Boudreau	I	217	249	275	291
13	Brett Scott					
14	Gibbens	I	299	452	479/522	508/523
15	Tony Russell Zellers	I	525	630	637	643
16	<u>FOR THE DEFENDANT:</u>					
17	Peter Buist	I	648	658	684/688	687
18	Ted Spraker	I	691	703	720/734	725/734
19	David Scott					
20	Haeg	II	741	788	896	--
21	OPENING ARGUMENT BY PLAINTIFF:				PAGE	974
22	ARGUMENT BY DEFENDANT:				PAGE	1001
23	CLOSING ARGUMENT BY PLAINTIFF:				PAGE	1020
24	VERDICT:				PAGE	1033
25	SENTENCING:				PAGE	1037

	<u>WITNESSES:</u>	<u>VOL</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1	<u>FOR THE PLAINTIFF:</u>					
2						
3	Mark Ellnor (Telephonic)	III	1047	1061	--	--
4						
5	Pete Rivera (Telephonic)	III	1098	1106	--	--
6	Mitch Doerr (Telephonic)	III	1119	1131	1148	1151
7	<u>FOR THE DEFENDANT:</u>					
8						
9	John Jedlicki (Telephonic)	III	1164	1179	1184/1186	1185
10	Drew Hilterbrand	III	1187	1202	1206	--
11						
12	Thomas J. Stepnosky	III	1208	1225	--	--
13	Tony Zellers	III	1228	1253	1260	1261
14	Wendell L. Jones	III	1263	1271	--	--
15						
16	David Haeg	III	1277	1298	1304	--
17	<u>REBUTTAL WITNESSES:</u>					
18	<u>FOR THE PLAINTIFF:</u>					
19	Brett Scott Gibbens	III	1307	1311	1317/1324/1367	1320/1338 1372
20	<u>EXHIBITS:</u>					<u>ADMITTED</u>
21	<u>FOR THE PLAINTIFF:</u>					
22	1		Benelli shotgun			145
23	2		Mini 14 .223 Ruger gun			149
24	3		Magazines			149
25	4		.223 remington casing - spent			150

1	5	Receipt from Kenny Jones	165
2	6	Receipt from Alpha Fur Dressers	180
3	7	Receipt from Alpha for Tony Zellers	180
4	8	Photo - black and white	190
5	9	Photos - colored	190
6	10	Photo of ID's/CDL/MI	190
7	11-19	Wolf hide	196
8	20	Permit for pilot David Haeg	216
9	21	Permit for gunner Mr. Zellers	216
10	22	Map of area	216
11	23	Application of David Haeg	249
12	24	Sealing form by David Haeg	249
13	25	Sectional map for McGrath area	641/914
14	26	Photo of airplane N4011 M	316
15	27	Photo of airplane - Batcub	316
16	28	photo of airplane N4011M	316
17	29	Copy of verification of guide license	318
18	30	Photo of ski tracks	349
19	31-33	Photo	349
20	34	buckshot pellets	353
21	35	.223 shell casing	357
22	36	Photo of buckshot pellets # 3	363
23	37	Buckshot pellets from kill site #3	365
24	38	Pellets from kill site #4	367
25	39	Photo of building at lodge	377

1	40	Photo of Ruger magazines	377
2	41	Photo of carcasses - aerial photo	377
3	42	Photo of some carcasses	377
4	43	Photo of Gibbens holding trap	384
5	44	Photo of live wolverine	388
6	45	Photo of trap	388
7	46	Trap - leg hold	390
8	47	Cooper plated buckshot -wolf #1	401
9	48	One double-ought buckshot - wolfe # 2	401
10	49	3 #4 buckshot pellets wolf 1-lodge	401
11	50	#4 buckshot pellets from intact	401
12	51	2 flattended out buckshot pellets-Wolf 2	401
13	52	Winchester fired hull from wolfe 1	401
14	53	Photo back half wolf carcass	406
15	54	Photo same carcass opened	406
16	55	Photo of double-ought buckshot pellet	406
17	56	Photo of wolf stomach	405
18	57-65	Photos of wolfhides	409
19	66	One buckshot pellet from wolf 703	416
20	67	Two #4 copper plated pellets - wolf 705	416
21	68	Fur bearing sealing certificate	426
22	69	Photo of Gibbens with wolf head	433
23	70	Photo of gray wolf in snare intact	433
24	71	Photo of foot of wolf chewed up	433
25	72	Photo one of 19 set active snares	433

1	73	Wolf snare from moose kill site	438
2	74	Snare - lighter and newer	438
3	75	Advertisement off Internet-Haeg	501
4	76	Photo - raven in trap	506
5	77	Photo - leg hold trap set	506
6	78	Photo - MB75 trap set	506
7	79	Photo - MB75 trap set	506
8	80	Photo - MB75 trap set	506
9	81	Photo - MB75 trap set	506
10	82	Photo - MB75 trap set	506
11	83	Photo - MB75 trap set	506
12	84	Photo of hangar in Soldotna	819/821
13	85	Photo of Supercub	821
14	86	Photo of hangar wall	877
15	87	Photo closeup of guns	877
16	88	Photo 12 gauge shotgun	877
17	89	Photo of snares	877

18  
19  
20  
21  
22  
23  
24  
25

FOR THE DEFENDANT:

A	Addendum to permit to take wolf using aircraft - David Haeg	636
B	Addendum to permit to take wolf using aircraft - Tony Zellers	636
FF	CD interview	1380

1  
2  
3  
4  
5 TRIAL BY JURY (EXCERPT)  
6  
7 BEFORE THE HONORABLE MARGARET L. MURPHY  
8 District Court Judge  
9  
10 McGrath, Alaska  
11 May 17, 2005  
12 11:00 a.m.  
13  
14 APPEARANCES:  
15 FOR THE PLAINTIFF: SCOT HENRY LEADERS  
16 Assistant District Attorney  
17 120 Trading Bay Drive  
18 Suite 200  
19 Kenai, Alaska  
20  
21 FOR THE DEFENDANT: ARTHUR ROBINSON  
22 Attorney at Law  
23 35401 Kenai Spur Highway  
24 Soldotna, Alaska  
25

1 questions truthfully. Then I go through whether anybody  
2 knows any of the parties, any of the players, witnesses. Mr.  
3 Leaders wrote a list of witnesses. I don't know if you had  
4 any you wanted me to question people about, if they know....  
5 MR. LEADERS: Your Honor, I'll just -- if you don't mind  
6 can I kind of just (indiscernible)....  
7 MR. ROBINSON: Yeah, that's fine. Yeah. I'm  
8 (indiscernible)....  
9 THE COURT: Yeah, because I'll -- what I do is just -- I  
10 don't necessarily identify who the witnesses are, just for  
11 which side, but just....  
12 MR. LEADERS: Right.  
13 THE COURT: .....do you know any of these people.  
14 MR. LEADERS: Sure.  
15 THE COURT: Then whether anybody's been charged with a  
16 crime in the last two years, whether anybody knows anything  
17 about the case. And then I list basically what the crimes  
18 are -- what the offenses charged are, and kind of by the  
19 heading that it shows on the complaint. Not the specifics,  
20 but unlawful acts (indiscernible), same day airborne. And  
21 just not how many or anything else, just the major heading  
22 kind of -- and to ask if anybody has ever been involved with  
23 a case that involves that and I'll probably expand it to like  
24 hunting offenses in general kind of thing. Just because it  
25 is kind of a broad thing.

1 PROCEEDINGS  
2 4MC-05-03/Side A  
3 520  
4 THE COURT: All right, we're on record in the District  
5 Court for the State of Alaska at McGrath, Magistrate Murphy  
6 presiding. Today is Tuesday, May 17th at 11:00 a.m. We're  
7 here in case number 4MC-04-024 CR, State of Alaska versus  
8 David Haeg. Mr. Haeg is present along with counsel, Mr.  
9 Robinson. and Mr. Leaders is present for the state.  
10 All right, gentlemen, I just wanted to go over a few  
11 things, see if there were any pretrial issues. The jury pool  
12 is absent, we're in the office, just for the record. Go over  
13 a few things on how I do things.  
14 Normally I do like some instructions, a brief  
15 introduction, introduce all the parties involved, and then I  
16 have a list of questions that I ask jurors besides the ones  
17 that are posted. The -- you know, married, family, those  
18 kind of things. Normally what I do after the introduction of  
19 everybody is go through what the explanation is. We'll have  
20 to qualify these people as jurors because they haven't been  
21 in before, and that's the -- you know, are you a citizen, 18,  
22 that kind of stuff.  
23 And then go through an explanation of what kind of  
24 people look for in impaneling a jury, the fundamental  
25 fairness and right to -- you know, their obligation to answer

1 And then if the case goes to tomorrow or after 5:00 in  
2 the evening will that be an issue for anybody. And normally  
3 if we get any of those, those are things that people end up  
4 getting excused for cause. If there's any need to question  
5 people individually I usually do it at that point. And what  
6 we'll do is we'll have the second tape recorder set up in  
7 here, we'll come up here, question people individually.  
8 I don't number anybody until after we've gone through  
9 that, and then I number them at that point. If there's  
10 anybody that's been excused, because I can tell you right now  
11 I know if the state's going to challenge people for having  
12 been prosecuted in the last two years there's several that  
13 will probably leave. So I don't see any point in numbering  
14 them before we get rid of the ones for challenge for cause.  
15 So I number them at that point, and then I go through  
16 the 10 questions kind of thing. And have each juror address  
17 those. And usually as the sample I'll go through and answer  
18 them myself which doesn't take very long, but that way it --  
19 I've noticed in Aniak, at least, it seems to kind of bring up  
20 the comfort level that if they know everybody is going to do  
21 it, but we'll seat them in order, go through them. And then  
22 we usually use the struck method, so basically you'll do voir  
23 dire to everybody. I usually give about half an hour. If  
24 you think you need more time than that, there are more  
25 charges than normally we have. If you think you need more



1 time than that you can let me know, but I'm not -- I can tell  
 2 you, you know, I'm not inclined to let it go for days. I  
 3 mean that's just -- it's -- once we finish all the  
 4 questioning that I do I think you should have somewhat of an  
 5 idea of the kind of people that are here for jury pool. If  
 6 you need more than half an hour, when we get to that point,  
 7 then let me know before we start. I mean each side will get  
 8 the same amount of time.

9 And then with the struck method what we do is the first  
 10 -- we will go with -- I'm thinking if we have enough people I  
 11 may try to take two alternates, just to be on the safe side.  
 12 Which would mean the first 17 people basically. And then if  
 13 ~~you strike anybody in that first 17 then it goes to the next~~  
 14 number. We don't pull one up and replace them or however.  
 15 It's just basically the whole pool is there, and you can kind  
 16 of tell that the first 17 would be the ones that -- or, you  
 17 know, the first eight, if nobody strikes anybody. If nobody  
 18 challenges anybody the first eight would be the ones that  
 19 would be selected. We'll select the alternate at the end  
 20 rather -- you know, before they deliberate rather than  
 21 assigning people to be the alternate from the beginning. I  
 22 find that it -- the ones I've seen where they select an  
 23 alternate to start with means the alternate tends not to pay  
 24 attention, so I like to make sure everybody is going to pay  
 25 attention throughout.

- 6 -

1 MR. ROBINSON: I have a question. Do you have any juror  
 2 questionnaires?  
 3 THE COURT: No. Because we -- I don't have them here  
 4 with me. The ones that the court system sends out we have,  
 5 but they're all in Aniak, and they actually are just the  
 6 basic, where do you live, phone numbers and stuff. I mean  
 7 the ones that they can fill out ahead of time that have like  
 8 their occupation and all that stuff. No, I don't, but I  
 9 don't have any objection. I think we can probably copy them  
 10 and have people fill them out now, in the next few  
 11 minutes....  
 12 MR. ROBINSON: Yeah, that would help. That would be very  
 13 helpful.  
 14 MR. LEADERS: That would be preferable.  
 15 THE COURT: Okay. Sure.  
 16 MR. LEADERS: I mean it speeds jury selection along.  
 17 THE COURT: Sure, we can do that, and then we won't use  
 18 your copier again. I didn't know you had one as bad as mine,  
 19 or we would have used the city's. But this is obviously, you  
 20 know, kind of one of those we have to make do with using  
 21 other people's equipment when possible because I just don't  
 22 have some of the best stuff here. But, yeah, we can ask them  
 23 to fill that out and then make copies for you. It shouldn't  
 24 take her long to do that. We can get it out of the forms  
 25 book. And have people filling them in while we're checking

- 7 -

1 in the rest of the jurors.  
 2 Everybody that's been flown in should be here by now.  
 3 and so we'll just wait for some of the city people. I did  
 4 excuse one gentleman already this morning that blew a .319.  
 5 He was -- he -- didn't need his participation. I will tell  
 6 you that there may be others that you think need that test  
 7 done. If you do, please let me know. I don't usually -- I  
 8 may not be close enough to tell, sometimes. I have to depend  
 9 on other people. Trooper Gibbens has a PBT and we can use  
 10 that if necessary. And if they're not under the legal limit  
 11 I don't really want them on the jury pool, so.

12 If there's anybody you guys can stipulate to that you  
 13 ~~know ahead of time you want to go ahead and release, we can~~  
 14 let them go while you're doing stuff, that's fine. I try to  
 15 be fairly flexible. My goal is to make sure the jurors are  
 16 very comfortable because I think that helps everybody. So  
 17 we'll kind of go by their schedule. I like to start as close  
 18 to on time as we can. I try to explain if we're going to  
 19 take a break, if anything happens, what is going on. I won't  
 20 tell them in detail. Sometimes I'll just tell them, you  
 21 know, like the attorneys and I need to talk over some  
 22 administrative matters, so you guys -- we're going to take a  
 23 little longer than I expected or something. I don't try to  
 24 assess blame for a long break to anybody, and make sure  
 25 that's not happening, to keep it as fair as we can.

- 8 -

1 MR. ROBINSON: When was the last time there was a trial  
 2 here?  
 3 THE COURT: The last time we actually started -- we had a  
 4 jury come in, the defendant showed up drunk, which brought  
 5 about a plea rather quickly. That was last fall, September.  
 6 And before that it was August of 2002. They had a -- it was  
 7 right before I took over in McGrath. They had a trial here.  
 8 But before that it was about I think six or eight, 10 years,  
 9 something like that. They don't have one here very often.  
 10 So it -- people were surprised. They said, we're really  
 11 going to have trial. Like, yeah. So there may be some that  
 12 will still be trying to get excused, but I'd -- my -- there  
 13 -- I try to excuse only those that really have qualified good  
 14 reasons, and some of them are going to come in and say one of  
 15 us needs to leave because both of us from my office are here.  
 16 And I told them to come in and let me know which one they  
 17 want and I'll -- I don't usually require both people from one  
 18 office to be here. There's still a few places like that that  
 19 they need to stay open. But they can pick one, you know,  
 20 between the two of them they can pick one. And I think  
 21 they've done that, so. I haven't seen them both here this  
 22 morning. Hopefully they are. If not, then that has made the  
 23 selection for them as I told them. The man that came in  
 24 blowing a little bit heavy this morning wanted -- he and his  
 25 wife wanted to have one of them be able to be home which --

- 9 -

1 for their kids coming home at lunch and after school, and I  
 2 had no problem with it, but he made the choice when he quit  
 3 drinking at 6:30 this morning. So his wife said that she  
 4 needs to be home, too, and we can address that if need be,  
 5 but, .  
 6 604  
 7 (Tape change)  
 8 4MC-05-03/Side B  
 9 605  
 10 THE COURT: .....there should be on those.....  
 11 MR. LEADERS: (Indiscernible) before that one.  
 12 THE COURT: They should.....  
 13 MR. ROBINSON: There are rules of the law and that went  
 14 (indiscernible) decide.....  
 15 THE COURT: Yeah.....  
 16 MR. LEADERS: The evidence (indiscernible).....  
 17 MR. ROBINSON: And the evidence will go after it?  
 18 MR. LEADERS: Yeah, and so -- I think you've got kind of  
 19 to think about that because that one there starts.....  
 20 THE COURT: Which was which one?  
 21 MR. LEADERS: Fourth from the back starts mid-sentence  
 22 and it's not a carryover.....  
 23 MR. ROBINSON: Oh, yeah.  
 24 MR. LEADERS: .....apparently.  
 25 THE COURT: Oh, I may have missed a page here.

- 10 -

1 Which.....  
 2 MR. ROBINSON: Yeah. It says remember that you are to  
 3 decide the case only on the evidence presented here in court,  
 4 and then the next page says, to help you better understand  
 5 how you should conduct yourselves, so there might be a page  
 6 missing.  
 7 THE COURT: It doesn't sound like the one that's supposed  
 8 to be in there. So (indiscernible) should be here.  
 9 MR. ROBINSON: No, maybe.....  
 10 THE CLERK: It should be the same.  
 11 MR. LEADERS: Yeah, Judge, I have that same order in  
 12 four.....  
 13 THE COURT: Okay.  
 14 MR. LEADERS: (Indiscernible).  
 15 MR. ROBINSON: Let's get -- does that make sense, would  
 16 you go like after the argument I will tell you about.....  
 17 THE COURT: You're missing a front page. We can fix that  
 18 real -- rather quickly. You're missing a front page.....  
 19 MR. ROBINSON: And the (indiscernible) you will meet  
 20 together to evaluate the evidence, and that's.....  
 21 MR. LEADERS: That makes sense.  
 22 MR. ROBINSON: And then you start the last sentence.....  
 23 MR. LEADERS: Disregard it, that makes sense.....  
 24 MR. ROBINSON: (Indiscernible) upon allowing testimony  
 25 and other evidence.....

- 11 -

1 THE COURT: Okay.  
 2 MR. ROBINSON: Oh, oh. (Indiscernible). Oh, wait a  
 3 minute, wait a minute.  
 4 MR. LEADERS: Yeah, upon allowing testimony or other  
 5 evidence to be introduced.....  
 6 THE COURT: That's the witness one. Where did the  
 7 (indiscernible).  
 8 MR. LEADERS: Do you have one more?  
 9 MR. ROBINSON: Oh, okay. (Indiscernible).  
 10 MR. LEADERS: So we're missing one here in front of the  
 11 packet.....  
 12 THE COURT: Yeah. No, it is. Thank you. I've got to  
 13 figure out what I did with each one of those.  
 14 MR. ROBINSON: Wait a minute, this doesn't make  
 15 (indiscernible).  
 16 THE COURT: They're out of order.  
 17 MR. LEADERS: If anything I do or say seems to indicate  
 18 so to you, you will disregard it and form your own opinion.  
 19 MR. ROBINSON: Oh, okay. All right.  
 20 THE COURT: Huh?  
 21 MR. ROBINSON: So we're just missing that one?  
 22 MR. LEADERS: We're missing that first page of these.  
 23 THE COURT: Okay. The pages that are out of order, the  
 24 ones that say to help you better understand, the first page  
 25 of that it's like six -- six pages of one instruction. The

- 12 -

1 first page of it starts with the six of you have been chosen  
 2 as jurors in this case. It's like the first.....  
 3 MR. LEADERS: Okay.  
 4 MR. ROBINSON: After the information stuff?  
 5 THE COURT: It's right after the complaint. Right, after  
 6 the information.  
 7 MR. ROBINSON: All right.  
 8 THE COURT: Then there's a page that says six of you have  
 9 been chosen.  
 10 MR. LEADERS: Okay, I.....  
 11 MR. ROBINSON: Right.  
 12 THE COURT: The second page of that is the one that says  
 13 to help -- I'll give you the ending of the first page. It  
 14 says I'll give you certain instructions to help you better  
 15 understand how you should conduct yourselves.....  
 16 MR. ROBINSON: Oh, okay, so that's where that should go.  
 17 THE COURT: Right. That's the first page of that one,  
 18 and that's the last one.....  
 19 MR. LEADERS: Uh-huh. Okay.  
 20 THE COURT: I.....  
 21 MR. ROBINSON: So six of you and then the next page  
 22 starts help you better?  
 23 THE COURT: Right. And then the pages that follow after  
 24 that.  
 25 MR. LEADERS: Yeah, I think that's wrong. That's one of

- 13 -

1 the early -- the first instructions you gave....  
 2 THE COURT: Right, that's the -- like the first one I  
 3 give after the information. It's easy to tell the original  
 4 though (indiscernible). Okay, now we've got it. Okay, and  
 5 we're still just for ex -- purposes, you're still thinking  
 6 you're going to go through this week at least and possibly  
 7 the next week?  
 8 MR. LEADERS: What I anticipate for my witnesses is that,  
 9 you know, we're going to do jury selection today and start  
 10 evidence tomorrow is the way I understand it. And I expect  
 11 to be approximately three days of evidence. You know,  
 12 hopefully -- maybe it will move faster, but that's what I  
 13 anticipate. Or two and a half days. I mean if -- Friday's  
 14 not -- I think I've got my last witness, I believe can take  
 15 the stand. Hopefully things will move faster.  
 16 THE COURT: Yeah, okay. Well I'm going to ask them if it  
 17 goes through the rest of this week and possibly the week or  
 18 the next week, if it will cause a problem for anybody, just  
 19 to get some timing. If there's any timing issues with  
 20 anybody.  
 21 MR. LEADERS: Do you have an idea -- I mean if Chuck  
 22 (indiscernible).....  
 23 MR. ROBINSON: Well, you know, I've got a couple of  
 24 witnesses who are crucial and their availability probably  
 25 won't be until Monday or Tuesday. I mean I anticipate it's

- 14 -

1 probably go maybe Friday and maybe some part of Saturday  
 2 (indiscernible). And then.....  
 3 MR. LEADERS: I -- hopefully I can be done Friday, so.  
 4 MR. ROBINSON: Right. So Kevin Saxby asked me -- stated  
 5 what he (indiscernible) and he won't be available until  
 6 Monday apparently. And then there's Ted Spraker, who, you  
 7 know, probably would be available Monday (indiscernible).....  
 8 MR. LEADERS: They're not available on Saturday?  
 9 MR. ROBINSON: No, I don't.....  
 10 THE COURT: We'll see how it's going. Where are they?  
 11 Are they from around here or are they.....  
 12 MR. ROBINSON: Spraker is from Soldotna and Saxby (ph) is  
 13 from Anchorage.  
 14 THE COURT: Okay. Well, I'll ask them about it, if it  
 15 goes into next week -- we'll see. Because I mean if we --  
 16 Mr. Leaders gets through his Monday or Tuesday -- or, you  
 17 know, by Thursday or something I'm going to want to keep  
 18 going. So they may need to be here sooner than Monday, if  
 19 possible.  
 20 MR. ROBINSON: Well, I'll tell them that, you know, the  
 21 problem with Mr. Saxby(ph) is that he's a lawyer, he works  
 22 for the A.G.'s office and he has -- he, himself, has a trial.  
 23 THE COURT: Where?  
 24 MR. ROBINSON: In Anchorage.  
 25 THE COURT: Okay. If need be, I'll -- I mean obviously

- 15 -

1 you all -- you both know that part of my timing issue is that  
 2 I need to get to a new.....  
 3 MR. ROBINSON: Right.  
 4 THE COURT: .....position and the presiding judges of  
 5 both the third and fourth have been pushing for me to finish  
 6 -- be able to finish this trial so if we need to spring  
 7 somebody from somewhere else for half a day or something to  
 8 get them up here, we'll see what we can do. Because they --  
 9 I know normally in Anchorage I think they do trials in the  
 10 morning.  
 11 MR. ROBINSON: Well, yeah, but the problem is is that  
 12 there's only one flight to McGrath.  
 13 THE COURT: Right. And that's what I'm thinking is that  
 14 there's only one flight a day, but it might be easier to  
 15 continue their's for a day than it would be for our's, just  
 16 because of the expenses and stuff.  
 17 MR. ROBINSON: Anyway, that's Mr. Saxby's(ph) problem.  
 18 THE COURT: So we'll see what we can come up with. Okay.  
 19 (Telephone ringing)  
 20 MR. LEADERS: Judge, a couple things. For the number of  
 21 pre-empts, are we going three plus one with the -- since  
 22 we've got two alternates?  
 23 THE COURT: Yeah, there will be -- actually you get one  
 24 for -- yeah.  
 25 MR. LEADERS: So we're getting four total pre-empts?

- 16 -

1 THE COURT: Right.  
 2 MR. LEADERS: Okay. And your method for using pre -- I  
 3 guess you said it's -- I mean out of the first 17. I  
 4 understand that part of it.....  
 5 THE COURT: Basically.  
 6 MR. LEADERS: So the first.....  
 7 THE COURT: You can pre-empt anybody you want, but the  
 8 first 17.....  
 9 MR. LEADERS: You want -- but.....  
 10 THE COURT: .....are the ones that are, you know,  
 11 anybody.....  
 12 MR. LEADERS: Right.  
 13 THE COURT: Higher numbers than that is.....  
 14 MR. LEADERS: You're going to number after your -- before  
 15 you advise them.....  
 16 THE COURT: After I do the -- right, and if we see having  
 17 any challenges for cause, and then we'll number them.  
 18 MR. LEADERS: Okay. And then it will be number one  
 19 through whatever to get the first eight is our jury.  
 20 THE COURT: Right, right.  
 21 MR. LEADERS: Okay. And how do you want us exercising  
 22 pre-empts?  
 23 THE COURT: What we'll probably do is come up here  
 24 and.....  
 25 MR. LEADERS: Oh. Discuss them up here?

- 17 -

1 THE COURT: Yeah. You guys will go back and forth. I  
 2 usually just -- I mean we -- it doesn't matter to me whether  
 3 they're on record. I've done them both on record and off  
 4 record. We've done them off record where you guys can come  
 5 up here and just write them down, back and forth on a sheet  
 6 of paper, you know, (indiscernible).....  
 7 MR. ROBINSON: I'd prefer we do it on record because.....  
 8 THE COURT: Or we can do it on record and.....  
 9 MR. ROBINSON: Right. Yeah, and also it doesn't seem to  
 10 be useful to have secret pre-emptories.  
 11 THE COURT: Well, I mean, -- no, I mean it's one sheet of  
 12 paper you.....  
 13 MR. LEADERS: I mean it doesn't matter to me if we split  
 14 it up and say, I.....  
 15 THE COURT: ..... pass back and forth.....  
 16 MR. LEADERS: .....excuse so and so.  
 17 THE COURT: Yeah.  
 18 THE COURT: Chuck says the same, and I  
 19 (indiscernible).....  
 20 THE COURT: Yeah. No, I just -- I prefer not to do it in  
 21 front of the panel. I just prefer to do it that way.  
 22 MR. ROBINSON: That's okay if we do it in front of jury,  
 23 but at least Scot and I know who is being pre-empted by who.  
 24 THE COURT: Sure, that's fine. And we'll -- then we'll  
 25 come up here and do it on the record after the questioning is

- 18 -

1 all done.  
 2 MR. LEADERS: And do you have a rough schedule how you're  
 3 going to -- I know you said you try and just kind of be  
 4 flexible with everybody, but anything.....  
 5 THE COURT: I usually.....  
 6 MR. LEADERS: As far as lunch breaks, that type of stuff,  
 7 or anything.....  
 8 THE COURT: Yeah, we won't break early for lunch today.  
 9 I'd like to see if we can't get through at least the pre-  
 10 empts if we have a lot of people that you want -- or not pre-  
 11 empts, if we can at least get through the challenge for cause  
 12 if there's a lot of people to be questioned individually.  
 13 Maybe let people go to lunch and have those stay to see or  
 14 something. I'm -- you know, I'm used to doing trials where  
 15 the defendant is related to 90 percent of the people here. I  
 16 don't think that's the case in this case, so it may not be as  
 17 many -- we may have quite a few that know some of the  
 18 witnesses, that we may need to question individually about  
 19 it, but I am hesitant to allow questions, too detailed of  
 20 questions in front of the panel because if people want to get  
 21 out of jury duty and they hear one excuse that works, all of  
 22 a sudden everybody knows that person. So that's why I tend  
 23 to do more of it in private just so that it doesn't become  
 24 the answer for everybody.  
 25 But I don't know that that's going to be that much of an

- 19 -

1 issue. If there's not that many we may go through and if you  
 2 guys want to take a lunch break to think over pre-emptis  
 3 before we do that, and allow that. But since we started at  
 4 11:00 I'm not planning on taking a lunch break probably until  
 5 about 1:00 or so.  
 6 MR. ROBINSON: So with regard to the questionnaires,  
 7 you're going to have them fill them out now?  
 8 THE COURT: Yeah. I'll do that while we're.....  
 9 MR. ROBINSON: And then get them copied so we know who's  
 10 on the panel and.....  
 11 THE COURT: Right, we'll do that definitely. And --  
 12 because I think those are something.....  
 13 MR. ROBINSON: Do you have a jury list?  
 14 THE COURT: Yes, they're sitting on the tables down  
 15 there. There are some that are not on that list anymore that  
 16 have been excused since the list was printed, but I can tell  
 17 you which one those are, and we'll go through -- we'll call  
 18 roll when we get there to make sure. And as we call roll I  
 19 can tell you which one's have been excused already that  
 20 wouldn't be here and who's just missing. But we do have that  
 21 list. We'll go make the copies and have them start working  
 22 on those and I can ask some of the individual questions and,  
 23 you know, swear people in and do some of that while they're  
 24 working on filling them in, so we can kind of do that without  
 25 -- because they're not that long of questionnaires to fill

- 20 -

1 out. So we'll.....  
 2 MR. ROBINSON: No, but it sort of gives us an  
 3 understanding who is (indiscernible).  
 4 THE COURT: No. Yeah, no, I'm -- but what I'm saying is  
 5 I can ask the questions.....  
 6 MR. ROBINSON: Rather than.....  
 7 THE COURT: .....about whether they're a citizen or not.  
 8 MR. ROBINSON: Oh, yeah.  
 9 THE COURT: And go through that stuff while they're  
 10 working on the questionnaires at the same time. I don't  
 11 think it will distract them too much to do that. Do you have  
 12 anything else I need to.....  
 13 MR. LEADERS: I guess I have a couple things I want to  
 14 ask for.....  
 15 THE COURT: Uh-huh.  
 16 MR. LEADERS: .....protective order type things. One,  
 17 I'd like a protective order that we not relitigate the legal  
 18 issues as far as the -- has the state charged the proper  
 19 charge. You know, that's -- we've charged it same day  
 20 airborne, unlawful act by a guide, same day airborne. We  
 21 went through the motion work on the defense's position it  
 22 should have been charged as a violation of a permit. That's  
 23 a legal issue, it's not a factual issue for the jury. So I'd  
 24 ask for a protective order on that, that we -- the defense  
 25 not be basically either through jury questioning, argument,

- 21 -

1 questioning to the witnesses. and certainly in argument the  
2 -- trying to relitigate that legal issue. Certainly it  
3 doesn't preclude him from the type of defense that he had a  
4 permit. Certainly that's going to -- that's an issue that's  
5 going to come out. And did that permit authorize him to take  
6 up in this area. That's a different -- you know, that's  
7 maybe a defense if he reasonably believed it did. And the  
8 jury believes that, but the re -- it's improper to litigate  
9 -- the jury's the trier of fact, not law.

10 You've already made the legal determination that  
11 charging decisions are up to the state. It's now the jury's  
12 determination to decide is there evidence to support the  
13 charges. So I'm asking for a protective order on that.  
14 The second thing is I'm asking for a protective order  
15 regarding jury nullification issues. One, testimony  
16 evidence, (indiscernible) of evidence that the conduct  
17 engaged in by Mr. Haeg was beneficial in any way to the  
18 program, or that his, you know, the intent was to kill  
19 wolves, that's what he did. Who cares if it's outside the  
20 boundaries, or that, you know, to get into a discussion  
21 basically open this up to a public policy forum on -- with  
22 evidence that this was the intent was to kill wolves. That,  
23 you know, it would be more effective if we increased the area  
24 such -- as Mr. Haeg did as the state's alleging on his own  
25 initiative. That type of thing.

1 conduct that's in question here, as well as the state of  
2 (indiscernible).  
3 And so those laws that apply to the control program,  
4 like those -- the board's regulations that says that this is  
5 not part of the normal hunting/trapping program. That's  
6 obviously relevant as to what his conduct was. And to the  
7 statute that says the board can set up independently rules  
8 and regulations regarding what this kind of conduct is.  
9 Obviously that's all relevant because it goes not only to his  
10 state of mind but also to his conduct. So we're not here to  
11 challenge the wisdom of whether or not there should be a  
12 54.15, or whatever, but we are entitled as a matter of right  
13 to have a jury determine what the conduct was, and whether  
14 the conduct was hunting with a sport (indiscernible) to it  
15 because hunting is only defined as recreational activity in  
16 the law, or whether it was controlled. And control outside  
17 of an area.

18 So it's obviously relevant. And it would be like saying  
19 if he was on trial for commercial fishing in closed waters  
20 you couldn't talk about the fact that he was actually  
21 commercial fishing, and instead he was doing something else  
22 like sport fishing. It's just....

23 THE COURT: Well, the first part of it as far as whether  
24 the charge is appropriate or not, it doesn't sound like  
25 you're planning on bringing that up again. And that's been

1 That's -- we have concerns -- I mean they indicated  
2 they're going to have Kevin Saxby(ph), Ted Spraker come in  
3 and testify, those are the types of issues that are going to  
4 be gone into that's really jury nullification issues. And  
5 they're not proper argument. It doesn't go to whether or not  
6 Mr. Haeg violated the law he's charged with. It goes to  
7 whether or not we should have this law, period, and this  
8 isn't the forum for that. The Legislature -- the board of  
9 Game had created these rules. A criminal trial for violation  
10 of those rules isn't the proper forum to contest or challenge  
11 the Legislature or the Game Board's enactments.

12 MR. ROBINSON: Well, we don't intend....

13 MR. LEADERS: And it goes to nullification.

14 MR. ROBINSON: We don't intend to challenge the law, but  
15 certainly the law controls -- is what's involved here. And  
16 so the -- I mean I guess the best way to put it is to give  
17 you an example. If this was a commercial fishing violation  
18 in closed waters. and he had a permit to go fishing in open  
19 water. but he fished in closed waters, it wouldn't be very  
20 likely that he would be charged with sport fishing in closed  
21 waters. Because the question is what was the intent. The  
22 intent was to catch fish and to sell them, then he was  
23 commercial fishing. So I don't agree with Mr. Leaders in  
24 terms of not being able to determine whether this was a  
25 hunting program or non-hunting program because it's the

1 decided....

2 MR. ROBINSON: From my understanding he's not being  
3 charged under -- for purposes of the shooting wolves same  
4 day, airborne; that he's being charged with hunting, same day  
5 airborne under (a)(15) of 8.54, whatever. Is that right?

6 MR. LEADERS: Correct.

7 MR. ROBINSON: We don't -- I'm not saying -- in other  
8 words whether or not the state has charged the crime won't be  
9 a repeat issue.

10 THE COURT: Okay.

11 MR. ROBINSON: But whether or not he's committed the  
12 crime of hunting, same day airborne, that is an issue.

13 THE COURT: Okay.

14 MR. ROBINSON: Because that goes to conduct.

15 THE COURT: All right, so that one I'll take under  
16 advisement. I need to look at the -- think about it. I may  
17 need to figure out what -- I just want to think about it some  
18 more. I'll take that issue under advisement. The first  
19 issue, that won't be addressed. That's not relevant.

20 MR. LEADERS: So -- okay. That won't be -- but I mean I  
21 guess here's my concern. It sounds like they're saying  
22 they're not going to challenge it but that's what they're  
23 doing if they're going to bring in Saxby and Spraker.

24 THE COURT: I understand the issue -- I understand both  
25 your arguments. What I'm saying is I want to think about it,

1 I want to take it under advisement.  
 2 MR. LEADERS: Okay.  
 3 MR. ROBINSON: All I'm saying is that as far -- and I  
 4 may, you know, even if I have to hand write out some jury  
 5 instructions when we get to that point, that the laws that  
 6 apply to this case the jury has to be instructed on. Those  
 7 laws concerning the Board of Game's regulations as to what  
 8 this program is and what the purpose of the permit is and all  
 9 that stuff. Those are relevant.  
 10 THE COURT: No, I understand. I understand the argument.  
 11 Like I say, it's not that I don't understand the arguments.  
 12 It's just that I'm not willing to rule right now on it.  
 13 MR. ROBINSON: Okay. Good.  
 14 THE COURT: I want to look them over and think about it,  
 15 and then I'll let you know. Okay?  
 16 MR. ROBINSON: So are we ready to.....  
 17 THE COURT: Yeah, we'll go make some copies of the  
 18 questionnaire and.....  
 19 MR. ROBINSON: It's got to be -- you know, it would just  
 20 be helpful to have them. And just.....  
 21 THE COURT: Yeah, no, I have no problem with that. I  
 22 didn't even think about doing that ahead of time or we would  
 23 have, but we will get them.....  
 24 MR. ROBINSON: I mean maybe what we could do is if you  
 25 could, you know, before we actually start up with, you know,

- 26 -

1 getting the questionnaires and your individual questionings  
 2 to the jurors about cause and (indiscernible), that you could  
 3 just get them sworn in generally and find out, you know, who  
 4 is qualified and then -- and then we can.....  
 5 THE COURT: Yeah, and then.....  
 6 MR. ROBINSON: Then you could have them fill them out and  
 7 give us the questionnaires and when we come back we can start  
 8 regular voir dire.  
 9 THE COURT: Yeah. Yep.  
 10 MR. ROBINSON: Is that all right?  
 11 MR. LEADERS: That's fine.  
 12 THE COURT: Yeah, we'll make the copies first before we  
 13 do anything else, because we need to switch the tape player  
 14 down there and get set up, too, so.....  
 15 MR. ROBINSON: Okay.  
 16 THE COURT: Okay. Let's go off record then.....  
 17 (Off record)  
 18 896  
 19 (Portion not requested)  
 20 1208  
 21 (Tape change)  
 22 4MC-05-03/Side C  
 23 0001  
 24 THE COURT: On record. (Indiscernible)is present, and  
 25 the jury is absent. Just as we're going to start with the

- 27 -

1 jury Mr. Leaders brought up the fact that Mr. Robinson had  
 2 mentioned that Mr. Haeg has not been arraigned on the second  
 3 amended information which was filed with the court on April  
 4 25th. And Mr. Haeg I assume you've seen a copy of that?  
 5 MR. HAEG: Yes, I have.  
 6 THE COURT: And Mr. Robinson, you have a copy?  
 7 MR. ROBINSON: Yes, I do. We would waive reading of the  
 8 information and advisement of rights and enter a plea of not  
 9 guilty to those charges.  
 10 THE COURT: Okay. Okay. I think that's all we need to  
 11 do on that then. Nothing else has changed, conditions of  
 12 release are the same as they were before. It's just  
 13 (indiscernible).  
 14 MR. LEADERS: Maybe to change the actual charges.....  
 15 THE COURT: Right.  
 16 MR. LEADERS: .....to clarify typographical errors  
 17 that.....  
 18 THE COURT: Yeah, the charges.....  
 19 MR. LEADERS: There's a subheading -- the subheading for  
 20 (indiscernible) 15 I believe in the previous but the charging  
 21 (indiscernible) in the charging language. They had the A 15  
 22 language but(indiscernible).....  
 23 THE COURT: Right. Is there an objection.....  
 24 MR. ROBINSON: What we would ask.....  
 25 MR. LEADERS: .....we verified that.

- 28 -

1 MR. ROBINSON: .....the court to do is (indiscernible)  
 2 move to strike -- we'd like the court to just strike all the  
 3 (indiscernible) pages which would include (indiscernible) and  
 4 that would leave pages -- pages -- starting with line nine  
 5 through the end, up to Mr. Leader's signature. The actual  
 6 information itself are the charges of intent.  
 7 THE COURT: Uh-huh.  
 8 MR. ROBINSON: But that doesn't mean (indiscernible).  
 9 MR. LEADERS: But as far as -- you mean the information  
 10 he's arraigned on will include everything but striking for  
 11 the purposes of information to the jury you mean?  
 12 MR. ROBINSON: Right.  
 13 MR. LEADERS: Oh, yeah, I understand that.  
 14 MR. ROBINSON: And striking for purposes of information  
 15 from line nine, page six.....  
 16 THE COURT: The -- I don't give them that. I don't give  
 17 them a copy of that at all.  
 18 MR. LEADERS: Okay.  
 19 MR. ROBINSON: On line -- starting on line nine, page  
 20 six.  
 21 MR. LEADERS: That -- right, would not go to the jury.  
 22 MR. ROBINSON: And then the.....  
 23 THE COURT: Yeah, they don't get -- I never give them a  
 24 copy of that anyhow.  
 25 MR. ROBINSON: And then this count right here doesn't go

- 29 -

1 to jury either  
 2 THE COURT: Well, what the jury is going to get is the  
 3 instruction that I gave you a copy of.  
 4 MR. ROBINSON: But anyway, I'm just asking under Rule 7  
 5 that this part be stricken, (indiscernible).  
 6 MR. LEADERS: Right. In fact I think even this stuff  
 7 here gets stricken when you go to the jury. All of which --  
 8 all they get is the actual charges.  
 9 MR. ROBINSON: But for certain the listing of counts.....  
 10 THE COURT: Yeah, like I said, they're not going to get  
 11 anything.....  
 12 MR. ROBINSON: And Mr. Leaders' statement of the backup  
 13 (indiscernible) information (indiscernible).  
 14 THE COURT: They're not going to get that.....  
 15 MR. LEADERS: For jury information purposes, right.....  
 16 THE COURT: For jury -- so the jury's going to get the  
 17 instruction that I gave you a copy of.  
 18 MR. ROBINSON: Oh.....  
 19 THE COURT: But they're not going to get a copy of the  
 20 information.  
 21 MR. ROBINSON: So for purposes of a motion you are  
 22 striking it?  
 23 THE COURT: Yeah, it's not going to go to the jury.  
 24 MR. LEADERS: But it's part of the information he's  
 25 arraigned on.

1 it out or else we do -- tell them to put it away, you do our  
 2 opening.....  
 3 THE COURT: Yeah. No, I -- yes, that's -- yeah, I'll --  
 4 if they haven't finished it I'm going to tell them, you know,  
 5 pay attention and you'll get a chance to finish filling it  
 6 out later.  
 7 MR. LEADERS: Okay.  
 8 THE COURT: I'm not going to have them filling out. If I  
 9 see them doing that I'll stop them.  
 10 MR. LEADERS: Okay. Then we can take a break, whether  
 11 it's a lunch break or something like that.....  
 12 THE COURT: Yeah.  
 13 MR. LEADERS: .....and let them finish, then come  
 14 back.....  
 15 MR. ROBINSON: We don't have any problem with you doing  
 16 the qualification part.  
 17 THE COURT: Right.  
 18 MR. ROBINSON: Get that over with. And then after.....  
 19 THE COURT: Right. And then whether they know the  
 20 witnesses before we go into explaining your background and  
 21 all that stuff.....  
 22 MR. ROBINSON: All right, just have them fill out those  
 23 questionnaires.  
 24 THE COURT: Yeah, we'll do that before then.  
 25 MR. ROBINSON: Somebody is going to have to also get them

1 THE COURT: It's going to -- right.  
 2 MR. LEADERS: Okay.  
 3 THE COURT: It's going to stay in the court file is the  
 4 way it is.....  
 5 MR. ROBINSON: Well, I understand, I just wanted to.....  
 6 THE COURT: It's just not going to.....  
 7 MR. ROBINSON: .....(indiscernible) stuff out  
 8 (indiscernible).  
 9 THE COURT: It's the -- the only thing that's going to go  
 10 to the jury is the thing that you've gotten a copy of  
 11 already.  
 12 MR. ROBINSON: All right.  
 13 THE COURT: That's the instruction. Okay. Then they're  
 14 starting to work on those questionnaires. We'll go down and  
 15 start.....  
 16 MR. ROBINSON: Now Mr. Leaders had a suggestion that  
 17 probably makes sense and that is maybe what we need to do  
 18 (indiscernible)and let them fill out all those  
 19 questionnaires.....  
 20 MR. LEADERS: I had this concern. I don't want them  
 21 (indiscernible) and they don't have a bunch of pens, they're  
 22 passing them around. I don't want them filling those out  
 23 while the questions are being asked.  
 24 MR. ROBINSON: While the questions are being asked.  
 25 MR. LEADERS: So either we take a break and let them fill

1 back from them and put them in alphabetical order.  
 2 THE COURT: Well, no, we're not going to do that. If you  
 3 want them in alphabetical order you can do that. We will  
 4 make copies for you.  
 5 MR. ROBINSON: All right, well.....  
 6 MR. LEADERS: Well, as long as we can get them and have  
 7 time to do that.  
 8 THE COURT: This is -- yeah, but that's.....  
 9 MR. ROBINSON: Right, because that's real important.  
 10 THE COURT: What I'll ask them to do is we'll go through  
 11 all my stuff and then we'll probably take a lunch break and  
 12 ask them before they go to lunch to turn in their  
 13 questionnaires.  
 14 MR. LEADERS: Okay, that's fine.  
 15 MR. ROBINSON: Okay, all right.  
 16 MR. LEADERS: You'll make copies, we can get them and  
 17 give them to 15 minutes before we start again or  
 18 something.....  
 19 THE COURT: We'll make copies and -- we'll stay here  
 20 during lunch and make copies and stuff, but.....  
 21 MR. ROBINSON: Okay, good.  
 22 THE COURT: This is my staff.  
 23 MR. LEADERS: I understand.  
 24 THE COURT: And it's the two of us, that's it. So we're  
 25 not going to.....

1 MR. ROBINSON: (Indiscernible).  
 2 MR. LEADERS: We understand.  
 3 THE COURT: .....alphabetize. You want them  
 4 alphabetized, you can do it.  
 5 MR. LEADERS: That's fine, as long as we have time to do  
 6 it, otherwise it's impossible to do it.  
 7 MR. ROBINSON: As long as (indiscernible).  
 8 THE COURT: Yes.  
 9 MR. ROBINSON: .....I can say is is trial -- it's a  
 10 nightmare not to have them, so.  
 11 THE COURT: I -- no, I understand, but.....  
 12 MR. ROBINSON: We can do them.  
 13 THE COURT: We don't have the personnel to do it, so --  
 14 but we're.....  
 15 (Off record)  
 16 0630  
 17 (Tape change)  
 18 4MC-05-04/Side B  
 19 0873  
 20 (Off record)  
 21  
 22  
 23  
 24  
 25

1 PROCEEDINGS  
 2 4MC-05-04/Side A  
 3 0873  
 4 (Portion not requested)  
 5 (Tape change)  
 6 4MC-05-06/Side A  
 7 0380  
 8 MR. ROBINSON: But I can understand her.....  
 9 MR. LEADERS: Right.  
 10 THE COURT: Yeah. No, and I appreciate.....  
 11 MR. ROBINSON: Because I'm going through it right now.  
 12 THE COURT: I appreciate it.....  
 13 MR. ROBINSON: I really seriously don't believe that I'm  
 14 going to be able to go much further. I'm really sick.  
 15 THE COURT: Well, let me add in one more thing before --  
 16 and see what this adds on it. Yesterday the state made a  
 17 motion for two protective orders. We talked about the first  
 18 one, I granted that yesterday. The other one I said I wanted  
 19 to take under advisement and that was the issue of whether or  
 20 not the defense could bring in anything saying that Mr. Haeg  
 21 could not be convicted because he had been charged with a  
 22 hunting offense, and that he had a permit and that meant that  
 23 he couldn't be charged with a -- or convicted of a hunting  
 24 offense.  
 25 I took the time last night, I went through all the

1  
 2  
 3  
 4  
 5 TRIAL BY JURY, CONTINUED (EXCERPT)  
 6  
 7 BEFORE THE HONORABLE MARGARET L. MURPHY  
 8 District Court Judge  
 9  
 10 McGrath, Alaska  
 11 May 18, 2005  
 12 8:15 a.m.  
 13  
 14 APPEARANCES:  
 15 FOR THE PLAINTIFF: SCOT HENRY LEADERS  
 16 Assistant District Attorney  
 17 120 Trading Bay Drive  
 18 Suite 200  
 19 Kenai, Alaska  
 20  
 21 FOR THE DEFENDANT: ARTHUR ROBINSON  
 22 Attorney at Law  
 23 35401 Kenai Spur Highway  
 24 Soldotna, Alaska  
 25

1 regulations and the law and statutes and everything that I  
 2 found about the program, about hunting, et cetera. And the  
 3 issue as it was phrased is a legal decision, whether or not  
 4 Mr. Haeg can be convicted. The jury is not to decide legal  
 5 issues, they decide factual issues.  
 6 The example that Mr. Robinson gave is the commercial  
 7 fishing that you can't be charged with sport fishing. If you  
 8 violated a sporting fishing law you most certainly can be  
 9 charged with it, even if it's -- it might be a violation of  
 10 both. And convicted of it. But I think probably the example  
 11 that I found when I was thinking about this last night that  
 12 is more in line with the argument that was brought up in the  
 13 motion to dismiss and also yesterday, was that I have a  
 14 liquor license to sell alcohol in McGrath. I'm selling  
 15 alcohol in Anchorage and I'm arguing that you can't charge me  
 16 with selling alcohol without a license because I have a  
 17 license to sell alcohol.  
 18 Obviously that's not correct, and that is a legal issue  
 19 as to whether or not it can be charged and convicted of  
 20 selling alcohol without a license. The fact that you have a  
 21 license to sell alcohol in McGrath doesn't mean that you  
 22 can't be convicted of selling alcohol somewhere else. And  
 23 that's the example that I found to be more appropriate and  
 24 more accurate as to reflect in the argument.  
 25 I also, in reviewing the regulations and the statute,



1 found that they consistently referred to the wolf predator  
2 control program as being independent of other means and  
3 methods and restrictions. Which means it equates not to an  
4 affirmative defense in the sense that notice was a  
5 requirement. I don't find that: but in the sense that the  
6 state has to prove that the permit did not authorize the  
7 actions taken. That is a factual issue. And there's kind of  
8 a fine line between arguing that the permit -- the wolves  
9 were taken in accordance with the permit, all the rules and  
10 regulations of the permit were followed.

11 But to say that because I was engaged in killing of  
12 wolves means that my conduct was appropriate and cannot be  
13 charged as a hunting offense is not accurate.

14 MR. ROBINSON: Well, that isn't really my argument. My  
15 argument isn't that it was appropriate, my argument is is  
16 that the permit program provides for violations of the  
17 permit. You may have missed those regulations, but they're  
18 there, and so there.....

19 THE COURT: No, I saw those, but it's.....

20 MR. ROBINSON: Okay. So what I'm saying is that the  
21 analogies of liquor is not appropriate because he's not  
22 saying that because he had a license to shoot and able to go  
23 take wolves out of the permitted area, that's not the point.  
24 If he's violated any of the conditions of the permit,  
25 even if he took wolves inside the permitted area it would be

1 and one is sport. So if some -- so if somebody violated a  
2 subsistence rule of hunting for, you know, consumption for  
3 traditional and customary uses, if the conduct was that and  
4 not sport hunting, then just because they did it outside of  
5 an area that was open for subsistence hunting doesn't turn it  
6 into sport hunting, and that's -- it's the conduct. It isn't  
7 anything else. You're looking at the conduct that was  
8 involved and the conduct is -- the purpose is  
9 (indiscernible), and that's how you make the distinction  
10 between sport hunting and subsistence hunting, et cetera, or  
11 commercial fishing or sport fishing or subsistence fishing.

12 So this idea that somehow if this was a commercial  
13 fishing situation that he could never be charged with  
14 commercial fishing in a closed area because he was not  
15 permitted to fish in that area so therefore he was doing  
16 something outside of his permit, we would never -- I mean a  
17 commercial fisherman would be glad to take the \$150 fine for  
18 -- you know, because I was outside -- I was in closed waters  
19 which is outside the area, fishing for salmon. He'd take  
20 those kind of fines every day, but we know that, no, you were  
21 permitted to fish in an area that was open, but you decided  
22 to fish in one that was not open, that's commercial fishing  
23 in closed waters. Because your intent was to catch the fish  
24 and sell them.

25 The intent in this case was to catch wolves and sell

1 a permit violation for control conduct, not for hunting.  
2 Because the program is not a hunting program. So it doesn't  
3 matter whether he was outside the area or inside the area  
4 it's a permit violation. Just like if I had a limited entry  
5 permit that said that I could operate a fish wheel on the  
6 Kuskokwim river for the purposes of catching commercial  
7 salmon, but I can't operate on the Kuskokwim river in those  
8 areas that are closed waters, and then I happen to go in  
9 closed waters with my permit and fish, I'm not engaged in  
10 subsistence fishing, I'm not engaged in sport fishing, I'm  
11 engaged in commercial fishing in closed waters. That's what  
12 I'm engaged in.

13 And no prosecutor would say, well, gee, we'll just  
14 charge him with sport fishing because then, you know, he'll  
15 say, well, great, go ahead and charge me with sports fishing  
16 because then I'll pay -- I'll gladly pay you the \$150 fine  
17 for sport fishing and avoid being convicted of commercial  
18 fishing in closed waters.

19 So the question is a fact question as to what the  
20 conduct was, not whether it-- where the area was, but what  
21 was the conduct. For instance, let's say that -- I mean we  
22 all know that there's barely a bright line between what  
23 subsistence hunting is and sport hunting is. Use the same  
24 key area, the same gun, all that kind of stuff. But it's the  
25 purpose behind it that determines whether one is subsistence

1 them, and you can't sell them with a hunting permit. You  
2 can't do that with a hunting permit. You can't do that with  
3 a sport's license. So the purpose of what he was doing is  
4 the question that goes to the foundation.

5 THE COURT: Mr. Leaders?

6 MR. LEADERS: Sure, Judge. I think kind of the -- one of  
7 the premises of this argument is that the permit program  
8 provides for violation of the permit, and therefore that then  
9 precludes the state from prosecuting under a violation of the  
10 hunting regulations, the means and methods statutes there;  
11 and that's not accurate. It -- certainly it does provide for  
12 violation of the permit, but it doesn't preclude the state  
13 from prosecuting if the facts as a violation of means and  
14 method which is what they do in this case, that's what  
15 applies. I kind of use Mr. Robinson's commercial fishing  
16 scenario. Even with the commercial fish wheel is, sure, if  
17 you've got a commercial fish permit to run a wheel in a  
18 certain area on the river, but you go up river and you run  
19 that wheel but you don't have the intent to sell those fish,  
20 but rather for subsistence purposes, we have to -- as a  
21 prosecutor I have to look at what's the intent.

22 Can I prove commercial fishing or did he just use a fish  
23 wheel for subsistence fishing, and so it's not correct that  
24 you wouldn't ever charge under sport fishing or subsistence  
25 or anything. You have to look at what's behind this. Mr.

1 Haeg's case, he takes -- he gets a permit and then takes nine  
 2 wolves out of a permit area. Three of which he falsely  
 3 registers as being taken within the permit zone. But the  
 4 other six he doesn't even register as taken under the permit.  
 5 So now to say that those six wolves were taken under the  
 6 predator control program and so -- and because he had this  
 7 permit and he took all these wolves under the predator  
 8 control program is absolutely inconsistent with his behavior  
 9 even. From his behavior he recognized that he knew he wasn't  
 10 supposed to take them down there and the permit didn't  
 11 authorize that, and so he falsely gave coordinates as to  
 12 where they were taken as to the three he reported as taken  
 13 under the program, and he didn't even register the other six  
 14 as under the program.

15 In fact, they falsified the means that they used to take  
 16 them. They said they took them by snowmachine and rifle out  
 17 of 16-D I believe it was, an area unrelated.....

18 UNIDENTIFIED SPEAKER: (Indiscernible) 16.

19 MR. LEADERS: So I think certainly the facts of this case  
 20 show.....

21 MR. ROBINSON: You didn't (indiscernible).

22 MR. LEADERS: .....this is not a case where Mr. Haeg took  
 23 wolves in.....

24 MR. ROBINSON: What did you say?

25 MR. LEADERS: .....violation -- simply in violation of a

1 can put on a defense that he believed what he was doing was  
 2 authorized by the permit, he reasonably believed that, but  
 3 it's different to say -- which is what I understand the  
 4 defense to be doing is he can't be charged under this hunting  
 5 violation because he had this permit and that authorized him  
 6 to be out there. And so -- and to shoot and take under the  
 7 permit and so any violation of the permit has to be charged  
 8 under the permit violation. That's inaccurate. That's the  
 9 state's discretion in charging decisions, based on the facts  
 10 that are presented.

11 MR. ROBINSON: All that's real interesting but he pretty  
 12 much stated our case in his first sentence, and that is what  
 13 is the intent, and intent is a factual question. I don't  
 14 know how you cut it, intent is a factual question. Like he  
 15 said, if there was somebody who had a limited entry permit to  
 16 operate a fish wheel commercially on the Kuskokwim river and  
 17 they instead took that wheel and put in an area that was  
 18 closed to commercial fishing.

19 The state is at liberty to charge, you know, with  
 20 anything they want to charge him with. We're not saying  
 21 that. But what we're saying is that as you said in your  
 22 decision, as Mr. Leaders said in his opposition, it's a fact  
 23 question as to what the intent was. And if his intent was to  
 24 be involved in control in this case, he still could be guilty  
 25 of something but the question is whether or not he was

1 permit and that's what the state has to look at. What does  
 2 -- what -- is -- does he take wolves, all these wolves, just  
 3 slightly over an area or an area that he believed was in the  
 4 permit zone but was mistaken. That's a permit violation.  
 5 Does he go and take wolves in this case between one to two  
 6 miles and up to 80 miles outside of permit zone when, you  
 7 know, he knows, in an area near his lodge, or closer to his  
 8 lodge than the permit zone. An area he knows is not in the  
 9 permit zone, and he intentionally flies that area,  
 10 intentionally actually sets traps and snares around a wolf --  
 11 or excuse me, a dead moose, that are well outside the permit  
 12 zone and then flies back and check -- to check the area and  
 13 takes wolves from the air that day again, after setting traps  
 14 and snares around that wolf[sic]. Is that just a permit  
 15 violation or is that a hunting violation, and that's what it  
 16 is. It's a hunting violation.

17 Because, yeah, maybe you can't sell -- you know, you  
 18 can't kill and sell the wolves under a hunt -- you know, with  
 19 a hunting permit, but the means and methods he used, he  
 20 didn't trap them. He shot them from the air. And then he  
 21 falsified how he got them as -- in order to try and sell  
 22 them. So when you look at all this, and certainly, you know,  
 23 in sense, this is a revisitation of the legal issues we  
 24 resolved originally that -- you know, how the state charges  
 25 was improper. And so I think he can certainly argue -- he

1 intending to sport hunt, which is what he's charged with now.  
 2 You know, and what I'm saying is.....

3 MR. LEADERS: You don't.....

4 MR. ROBINSON: What I'm saying is that it is -- that the  
 5 distinctions between subsistence, commercial and sport  
 6 activity goes to purposes and intent, and intent is a factual  
 7 question, and he should not be precluded from putting the  
 8 state to its burden of proving what his intent was. Now they  
 9 can prove it circumstantially, you know, through an argument  
 10 as to well if you do this, the intent was to be able to do  
 11 that; but by the same token the defendant should be able to  
 12 defend against it and say, wait a minute. The intent was to  
 13 catch wolves, sell them, which -- and they found wolves at  
 14 the tanners to be sold, and that was the intent and it wasn't  
 15 subsistence, it wasn't sport. That's a factual question.

16 MR. LEADERS: But he doesn't have to have an intent to  
 17 engage in hunting as opposed to this permit program.....

18 MR. ROBINSON: Yes, he does, because.....

19 MR. LEADERS: .....to actually be charged with conduct  
 20 under.....

21 THE COURT: Wait a second.....

22 MR. LEADERS: .....under a hunting violation if that's  
 23 what his conduct is. That's like a person who's -- you know,  
 24 you can draw on all kinds of parallels. A person that's  
 25 driving a vehicle intoxicated and gets in an accident, they

1 didn't have an intent to get in an accident. They may have  
2 had an intent to get in the car and drive, but when they do  
3 -- they drive, get in an accident and cause injury to someone  
4 else, they get charged with an assault, even though they had  
5 no intent to -- charge someone. There's no intent  
6 requirement as to any of these -- well, I won't say any, but  
7 as to most fish and wildlife offenses. I can't right now  
8 think of an intent requirement that actually applies in fish  
9 and game. But what he -- even what he thought or believed he  
10 was doing doesn't -- isn't determinative as to how the state  
11 charges.

12 He can -- like I say, I agree, he can present a defense  
13 that says he thought he believed he had authority to do this  
14 under the permit, or that he was acting under the permit, and  
15 it's the jury to decide whether or not he really did believe  
16 he had authority to take these wolves under the permit. And  
17 that therefore, you know, creates a defense or not, as to  
18 whether or not he was hunting the same day, airborne. But it  
19 doesn't dictate how we charge.

20 MR. ROBINSON: Mr. Leaders is trying to twist my  
21 argument. It's not about a question of whether he had reason  
22 to believe that what he did was under the authority of the  
23 permit, that's not the question. The question is what was  
24 the conduct he was doing, what was the intent of it. Those  
25 are the two things that the state always has to prove.

1 Conduct and mens rae. And there's a mens rae requirement  
2 here just like there is in any other case. It may not be  
3 specific intent but it requires some culpability. And what  
4 I'm saying is that when it comes to game and fishing, when it  
5 comes to those kind of conducts, that the only way you can  
6 basically tell the difference between whether somebody is  
7 involved in a commercial operation or a non-commercial  
8 operation is the intent and purpose of what they're doing.  
9 Otherwise if Mr. Leaders' argument is correct that in a  
10 commercial fishing violation situation every time somebody  
11 goes out of the permitted area where they're permitted to  
12 fish, they're no longer engaged in commercial fishing.  
13 Because they're out of the permitted area. With, you know,  
14 they had a permit to fish in this area with a fish wheel but  
15 they decided to go fish in closed waters, which is outside of  
16 the area that they're permitted to, that all of a sudden that  
17 conduct, even though the intent was to catch fish and sell  
18 them; that conduct is no longer commercial fishing but now  
19 it's something else. Now it's sport fishing, or now it's  
20 subsistence fishing.

21 MR. LEADERS: No, that's not the argument at all.  
22 THE COURT: Okay. I think I've heard plenty. The issue  
23 is whether or not you can argue that the permit, in essence,  
24 is the only way he could be charged is a violation of the  
25 permit if he's outside the permitted area. He's not

1 following the regulations.  
2 The statute he's been charged under requires that the  
3 state prove that he was a licensed person under this statute  
4 and he knowingly violated a statute or regulation....  
5 MR. ROBINSON: No, that's not what he's charged with any  
6 more. What he's charged with now under the one that he  
7 entered his not guilty to the plea to yesterday is hunting,  
8 under the -- if you look under (a)(54), 720 (a)(15), hunting  
9 or wasting food animals is what he's charged with now....

10 THE COURT: Or hunting on the same -- you talked before I  
11 finished....

12 MR. ROBINSON: That's right.  
13 THE COURT: ....reading it. But it's a knowing  
14 violation of a state statute or regulation prohibiting  
15 hunting on the same day, for (indiscernible) waste....

16 MR. ROBINSON: Right.

17 THE COURT: ....or hunting on the same day airborne.  
18 Hunting is described as the taking of game. You can argue  
19 that he didn't knowingly violate that. That's obviously an  
20 element the state has to prove, is that he knowingly was  
21 hunting on the same day airborne. But you're still talking  
22 about a charging discretion. There is a -- unless you have  
23 some authority telling me that the only statute or the only  
24 way that he can be charged if he holds a permit is a  
25 violation of the permit, which I didn't see in any of the

1 regulations and statutes I looked at, and have not seen any  
2 authority for....  
3 MR. ROBINSON: Well....  
4 THE COURT: ....then it's still a discretionary thing.  
5 The state is still required to prove all the elements, but  
6 you can't argue that as a matter of law he was not hunting.

7 MR. ROBINSON: I can argue as a matter of fact he wasn't  
8 hunting though, can't I? That's the point.

9 THE COURT: Well, I think that what you're arguing is  
10 that he did not knowingly violate a statute.

11 MR. ROBINSON: No, what I can argue is that his conduct  
12 was not hunting. I mean the -- otherwise it would make no  
13 sense, Magistrate Murphy, for the Legislature through 16.05  
14 and I believe it's 75, which sets up the ability for the  
15 Board of Game to do an independent control conduct. It would  
16 make absolutely no sense for the Legislature to say that you  
17 as the Board of Game can have a totally independent program  
18 that isn't even governed by A.S. 16, if you read that  
19 statute. That is the statute that I cited in the brief.

20 That isn't even covered under 16. That you have independent  
21 authority to set up a program that is not connected with  
22 hunting or trapping. The board then writes a regulation,  
23 which I've pointed out in the brief, that says that hunting  
24 and trapping rules under Section 92 don't apply to this  
25 program.

1 So he goes out, he gets a permit, he goes beyond the  
2 area. Then the question is, is his conduct hunting or is his  
3 conduct control. It isn't a question of whether it was in or  
4 out of the area, he could have violated another permit  
5 condition inside the area. And all of a sudden, under Mr.  
6 Leaders' argument that any permit violation takes it out of  
7 the control is a matter of conduct. And that just simply  
8 can't be true. Because you have to look at the intent and  
9 the conduct to determine what the conduct was.  
10 And hunting and trapping has specific definitions apart  
11 from the control program. Now that is the -- that's the  
12 statutory system that's set up, and that's the regulatory  
13 system that's set up. So that -- there is a statute when you  
14 ask me, there is a statute under Title 16 that deals with the  
15 board being able to set this up independently. The board  
16 then set it up independently and made a regulation that says  
17 hunting and trapping rules don't apply. This is control  
18 conduct.  
19 You know, Mr. Leaders can argue that his intent when he  
20 went outside the area was to sport hunt, fine. But we should  
21 be able to put on evidence and argue that it wasn't. If the  
22 intent and purpose of what he was doing, though it may have  
23 been a violation of the law, it was not hunting. Because  
24 hunting is defined as something different than what he was  
25 doing. And you can't get around that because the law says so

- 50 -

1 with that regulation. It says Title 16 doesn't apply, and  
2 the Legislature says you can set up an independent program  
3 that has nothing to do with hunting and trapping.  
4 And unless the state's going to say that he was out just  
5 having fun, which they can do that, they can try to put on  
6 evidence that it's just recreational, then we should be able  
7 to put on evidence that it isn't recreational, that it was  
8 controlling, and controlling is not hunting. By law it's not  
9 hunting. And so you apply that to the facts then the jury  
10 can make a factual determination as to whether this was  
11 controlling activity or hunting activity.  
12 MR. LEADERS: Judge, my comments to this is one. What  
13 the statutes and the regulations have done is created an  
14 exception to the hunting and trapping regulations specific  
15 for control programs. It doesn't specifically remove them  
16 from that, but it says unless conduct would otherwise be  
17 illegal, as in this case the aerial shooting or same day  
18 hunting is.....  
19 (Tape change)  
20 4MC-05-06/Side B  
21 0605  
22 THE COURT: We should do that on record.  
23 THE CLERK: Okay.  
24 THE COURT: Yes. I mean we -- say it again. We're going  
25 to have to do it on record, but we will discuss that as soon

- 51 -

1 as I get done with this. I have not forgotten. Mr. Robinson  
2 has indicated he's not feeling well, and I understand your  
3 concerns, Mr. Haeg. I haven't made a decision there. That's  
4 why I wanted to get through this issue first before we  
5 address that.

6 Are you concerned enough that you think we should stop?  
7 Just as to the issue?

8 MR. HAEG: Yeah, he's got blood coming out of his nose,  
9 green stuff on the ground. I'm concerned.

10 THE COURT: Okay. Well, I mean let's address that first  
11 then. Mr. Robinson, I know you indicated you don't feel  
12 well.

13 MR. ROBINSON: Yeah, I think I indicated to the judge  
14 when we had the last status conference -- I don't know, I  
15 guess Thursday of last week.

16 THE COURT: Friday.

17 MR. ROBINSON: Or Friday, or whatever, that I was under  
18 the weather then, and, of course, I was hoping, you know,  
19 that would get better, but I have really gotten worse. And  
20 last night was just awful. I was up and down every hour last  
21 night coughing. Just filling my nose with blood and -- and  
22 so I wasn't able to get any rest hardly last night, which is  
23 why I woke up late today.

24 And, you know, I -- well, you can probably see the  
25 difference between how I was yesterday versus how I was

- 52 -

1 today. I'm just not -- I mean I would love to go through  
2 this stuff if I was well, but I am just sick as a dog.

3 THE COURT: Well, my question is, what do you want to do?

4 MR. ROBINSON: I would like to go home and get some  
5 sleep.

6 THE COURT: Well.....

7 MR. ROBINSON: And I don't mean home in Soldotna, but I  
8 meant here in McGrath. I am really.....

9 THE COURT: I guess my question is if we wait until  
10 tomorrow is anything going to change?

11 MR. ROBINSON: Well, I hope so. I mean I -- you know,  
12 they say the best thing for a cold is lots of liquids and  
13 some rest, and so I wasn't able to get any rest last night,  
14 and I haven't been able to get any today. I finally got some  
15 -- hopefully some decongestant that will help -- that will  
16 help clear up my head, maybe; but I'm really -- I am really  
17 sick.

18 THE COURT: Because obviously my concern is partly for my  
19 schedule.....

20 MR. ROBINSON: I understand. Right.

21 THE COURT: ....but also -- but ignoring that, I mean I  
22 can do what I need to, but if we would stop for today and not  
23 finish even picking a jury we're definitely looking at next  
24 week, which means Ms. Magnuson would have to be excused.  
25 Would put us down to, I think, 18 or 19.....

- 53 -

1 MR. LEADERS: I've got 19 right now, and -- or 19 or 20  
 2 right now, and.....  
 3 THE COURT: So, you know, we're talking about going down  
 4 to an area where we're going to get very close to not having  
 5 enough jurors.....  
 6 MR. ROBINSON: Not enough jurors, I understand that, and  
 7 I.....  
 8 THE COURT: And you know, next week Ms. Banghart(ph)  
 9 could be bad. My concern is that if we're going to stop  
 10 today then I think the better part of wisdom, which is to me,  
 11 to put it off until the next calendar call.  
 12 MR. ROBINSON: That would be my -- I am just sick.....  
 13 THE COURT: And only because -- you know, I mean I  
 14 realize that when you're ill you don't know from one day to  
 15 the next whether it's going to be a good day or a bad day.  
 16 MR. ROBINSON: Right.  
 17 THE COURT: But with, you know, holding 18 people up and  
 18 saying come back tomorrow and we'll see, in addition to  
 19 everybody else's schedule. I know that I don't particularly  
 20 want to have to get this far and say no, but by the same  
 21 token I don't see too many alternatives because we could be  
 22 here all week saying are you.....  
 23 MR. ROBINSON: I'm not well yet. Right.  
 24 THE COURT: .....feeling better and getting through half  
 25 a day and.....

- 54 -

1 MR. ROBINSON: And I -- you know, and I really agonized  
 2 over this this morning because, you know, not only am I  
 3 concerned about the jury's concerns, your concerns, and the  
 4 way you'd have to (indiscernible).  
 5 THE COURT: Well, I mean I -- that's -- I'm not as  
 6 worried about that.....  
 7 MR. ROBINSON: And Mr. Haeg, too. And, you know,  
 8 generally I think I'm usually strong enough to get through  
 9 these kind of things, but I am -- I don't know what it is,  
 10 I'm -- you know, I knew I had it last week. I was, you know,  
 11 (indiscernible) and then when I checked with the clinic this  
 12 morning, I expect to have an appointment to go see them at  
 13 1:00 o'clock today. You know, they said, yeah, we've heard  
 14 about this thing and it's -- you know, you can go on for  
 15 weeks, so I really don't have any control of knowing when  
 16 it's over, but I can just tell you that at this moment I am  
 17 really out of it.  
 18 MR. HAEG: Can I say something?  
 19 THE COURT: It's up to Mr. Robinson.....  
 20 MR. HAEG: I would like to get this over with. I mean my  
 21 life hasn't been my life. But I don't know what to do.  
 22 THE COURT: And I understand that, Mr. Haeg. And quite  
 23 frankly, I mean I've mentioned that I'm moving, everybody  
 24 knows that, it's not a secret.  
 25 MR. ROBINSON: Right.

- 55 -

1 THE COURT: But if I'm not there it's not that big a  
 2 deal. There's people that can let them in my house and move  
 3 stuff. It's not -- you know, I'm not as worried about me at  
 4 all, but I'm more concerned about everybody else's issues  
 5 that need to be addressed. And my main concern is the  
 6 jurors, and having them have to kind of put things off  
 7 for.....  
 8 MR. ROBINSON: David, I'm sick.....  
 9 THE COURT: They -- I.....  
 10 MR. HAEG: Yeah, I -- I don't know what to say.  
 11 MR. ROBINSON: I'm not doing you -- I'm not going to do  
 12 you any good sick, that's the thing.  
 13 MR. HAEG: Well, you know, I want it over, but I also  
 14 don't want to do it by myself.  
 15 THE COURT: I understand. Mr. Leaders?  
 16 MR. LEADERS: Judge, I, like Mr. Haeg, want to get this  
 17 over with as well. I know you do, I think everybody wants to  
 18 get it over with. I'll agree. I mean I've been sitting  
 19 here, Mr. Robinson is under the weather, he's been nodding at  
 20 times. Mr. Haeg's entitled to competent representation. Not  
 21 that Mr. Robinson is not competent, but he's certainly  
 22 impaired if he's ill. My thought because we're a day and a  
 23 half into this, we spent a lot of resource and I think -- I'm  
 24 hopeful we could still get a jury out of who we have. Is --  
 25 at least try to pick this up tomorrow, see if we can get this

- 56 -

1 done tomorrow. Understanding that obviously if Mr. Robinson  
 2 doesn't get some rest, doesn't get improvement in his health,  
 3 then we have to look at some other alternative. And then  
 4 from there looking at it is possible that -- one of the  
 5 possible alternatives we'd call back this jury pool as well  
 6 -- you know, every one we've gone through to this point and  
 7 resume from where we're at now, and as well maybe call in  
 8 those that have been excused for next week, to revisit  
 9 whether or not they could then do trial at any future date.  
 10 I mean I'm -- and I'll -- I just throw that out there  
 11 for everyone to consider. I'm not saying that has to happen,  
 12 but, you know, we've put a day and -- about a day and a half  
 13 into it and I'd hate to have to start back at ground zero  
 14 again. So I'm not saying we have to make that decision now.  
 15 Certainly Mr. Robinson might want to consider it. Get your  
 16 rest first, but.....  
 17 MR. ROBINSON: Well, there is some merit to some of what  
 18 he said about perhaps preserving where we are with regard to  
 19 the people that have been summoned already. And that is so  
 20 you don't have to go and get a whole new pool and start all  
 21 over. We would probably be willing to agree with what we  
 22 have left, you know, we could continue with that, whatever.  
 23 I am willing to also to, you know, wait to see what I'm like  
 24 tomorrow, but I'm just telling you today I can't do it.  
 25 THE COURT: Well, I guess my concern is twofold. One, is

- 57 -

1 that I have a firm start date, and I have to be in Homer on  
2 the 1st, which doesn't mean that there might not be somebody  
3 else. But if -- and I don't know. I mean it would be up to  
4 the third and fourth districts as to whether or not I could  
5 come back and continue once I'm in Homer. It's between the  
6 two of them. And I have, you know, some control over that in  
7 the sense that I would be willing to, but it would be up to  
8 those, you know, that would have to be paying the bills.

9 MR. ROBINSON: The powers that be.

10 THE COURT: Yeah; and I work for them and I can't tell  
11 you what that decision would be. Obviously that would have  
12 some bearing on it. The other issue, you know, to me is that  
13 if we get to tomorrow morning, find out you're not better,  
14 we're all here for another day.

15 MR. ROBINSON: Right. It (indiscernible)....

16 THE COURT: Because we all know the flight goes -- I'm  
17 more inclined to say why don't we see what you're -- what the  
18 doctor has to say at 1:00 o'clock.

19 MR. ROBINSON: Okay.

20 THE COURT: And if he can give you some kind of medical  
21 opinion -- you know, some degree of medical certainty whether  
22 you would be ready, you know, assuming that you go back and  
23 get some rest between now and 1:00, that he knows -- can do  
24 some tests, find out, you know, whether there's anything that  
25 would make a change as you sleep through until tomorrow

1 morning that would make a difference.

2 MR. ROBINSON: Okay. And I'm up for that, yeah.

3 THE COURT: You know, at least -- because then that way  
4 if not, then we at least could....

5 MR. ROBINSON: That's what I -- right.

6 THE COURT: ....go forward and we could all go back to  
7 what we need to do and then....

8 MR. ROBINSON: Right.

9 THE COURT: ....I'm willing to say let's -- you know, I  
10 -- there aren't that many people, we can go -- listen to the  
11 jurors, have them call in at 1:00 o'clock or 2:00 o'clock,  
12 you know, at some time this afternoon to see if we're going  
13 to continue until tomorrow. And if not....

14 MR. ROBINSON: Right.

15 THE COURT: ....can we pick a date that -- I mean I  
16 don't -- I can call Homer in the meantime and find out what  
17 my calendar looks like for June, to see if there is some time  
18 in June that I could come up here.

19 MR. LEADERS: And I'm a little bit in a vacuum here  
20 without, you know, being able to consult with witnesses,  
21 because there's -- as you saw.....

22 THE COURT: Right.

23 MR. LEADERS: ....there's an extensive list, and not  
24 knowing, but I can check as much as I can between now  
25 and....

1 THE COURT: Well, that's what I'm thinking. Between now  
2 and then we can all do that and then maybe....

3 MR. LEADERS: We'll talk, yeah.

4 MR. ROBINSON: Okay.

5 THE COURT: ....come up with, if we can....

6 MR. ROBINSON: I mean I really apologize.

7 THE COURT: ....an alternate -- well, I mean it's not --

8 yeah, people get sick, that happens, and we have to  
9 accommodate it. I mean that's -- you know, I don't blame you

10 or anything, and I'll put a -- I'll still keep this issue

11 under advisement as to that. If we're not going to go

12 forward today, it's not an issue.

13 MR. ROBINSON: Right.

14 THE COURT: My concern was more with voir dire if the  
15 issue....

16 MR. ROBINSON: Right.

17 THE COURT: ....was going to be foreclosed that it not  
18 be mentioned in voir dire, so I'll keep that under advisement

19 for right now.

20 MR. LEADERS: Okay.

21 THE COURT: And we'll see....

22 MR. HAEG: What about the motions she was....

23 MR. LEADERS: Yeah, that was what I was going to ask you.

24 We got really close to resolving a motion....

25 MR. ROBINSON: She was going to (indiscernible).

1 MR. LEADERS: I don't know if Mr. Robinson....

2 MR. ROBINSON: She was going to keep it under advisement  
3 to determine what to do, so that's fine.

4 THE COURT: Yeah.

5 MR. LEADERS: Okay.

6 THE COURT: Then we'll see -- between now and then. Your  
7 appointment is at 1:00?

8 MR. ROBINSON: At 1:00.

9 THE COURT: Could you either ask the doctor to call me  
10 or....

11 MR. ROBINSON: I will. I'll have him call you....

12 THE COURT: ....you know, give me something -- some kind  
13 of....

14 MR. ROBINSON: Yeah, and let you know.

15 THE COURT: ....information, and then if you can let me  
16 know the schedule for, you know, like times available that  
17 you....

18 MR. ROBINSON: Yeah, I'm going to call and get my  
19 schedule now, so we can figure out....

20 THE COURT: Okay. You know, and then we'll either....

21 MR. LEADERS: We are possibly picking back up this  
22 afternoon or just -- or not you said?

23 MR. ROBINSON: No.

24 THE COURT: Not with the -- not with the jury.

25 MR. LEADERS: At the earliest it's in the morning?

1 THE COURT: Not with the jurors, but with the  
 2 parties.....  
 3 MR. ROBINSON: We want to know is whether we can go in  
 4 the morning and continue or are we going to have to  
 5 rearrange.....  
 6 THE COURT: Yeah. If not -- yeah, what -- so just if  
 7 everybody can check into some possibilities, some new time  
 8 frames, then we'll do that.  
 9 (Whispered conversation)  
 10 THE COURT: If you could just get everybody that's here,  
 11 tell them not until tomorrow morning for sure, and to call --  
 12 or we're not sure. We're done for today and have them call  
 13 back some time this afternoon and get a phone number and  
 14 we'll call them.  
 15 MR. ROBINSON: All right.  
 16 THE COURT: Okay?  
 17 MR. ROBINSON: All right.  
 18 (Off record)  
 19 THE CLERK: On record.  
 20 THE COURT: All right. We're back on record and we've  
 21 taken substantially a step -- a substantial time break. The  
 22 parties are present and the jury pool is absent. Mr.  
 23 Robinson, can you hear me okay?  
 24 MR. ROBINSON: Yes, I can.  
 25 THE COURT: Okay. And we've got Mr. Leaders and Trooper

- 62 -

1 Gibbens here in the office.  
 2 MR. ROBINSON: And Mr. Haeg is here with me, but we don't  
 3 have a speaker phone that plays, but he's here.  
 4 THE COURT: Okay. All right, I showed -- I gave a copy  
 5 of the letter to Mr. Leaders and I presume that you know what  
 6 it says or.....  
 7 MR. ROBINSON: Right. I.....  
 8 THE COURT: .....saw it before it was given to me. And  
 9 as my -- I think we were all kind of expecting or at least  
 10 somewhat and the doctor's recommending that you rest for at  
 11 least three days, which obviously based on what I was talking  
 12 about earlier I don't think we want to stay around here for  
 13 the next three or four days waiting and hoping that you're  
 14 better in that time period either. So I think what we need  
 15 to talk about is if we can pick kind of or at least either  
 16 set up a date to set the trial or look at time periods when  
 17 people might be available. And it's still kind of up in the  
 18 air as to whether I would be available or not. And I've told  
 19 the court that I'm willing to do it. They were going to talk  
 20 to the third and see, but it kind of is a timing issue,  
 21 obviously.  
 22 Nobody wants it to continue past -- you know, waiting  
 23 around for just me. There may be other people that would be  
 24 available, so I don't know if that's going to be an issue or  
 25 not yet. But to pick up where we left off and I don't want

- 63 -

1 to wait too long.....  
 2 MR. ROBINSON: Right.  
 3 THE COURT: .....if we don't have to. Were you able --  
 4 Mr. Robinson, were you able to check with your office on your  
 5 availability?  
 6 MR. ROBINSON: No, I haven't been able to do that yet. I  
 7 just got back here, waiting for your call. I was over at the  
 8 doctor's and when we broke at noon my office was closed for  
 9 lunch so nobody was there.  
 10 THE COURT: Okay. Okay.  
 11 MR. LEADERS: My thoughts on that, Judge, is maybe we set  
 12 a status hearing to determine -- you know, maybe then part --  
 13 a big issue there might be whether or not you're going to be  
 14 continuing on with the trial or what's going to happen there.  
 15 and then it would be your availability. I don't -- and then  
 16 Mr. Robinson can check his schedule, I can check mine as well  
 17 as start talking with witnesses and seeing what situations or  
 18 complications exist there.  
 19 THE COURT: Okay.  
 20 MR. LEADERS: And then is it this point the thought  
 21 process to try and essentially have a continuance of this  
 22 trial as opposed to a mistrial at this point and restarting,  
 23 or.....  
 24 MR. ROBINSON: Well, I would like to avoid that if  
 25 possible. I think that we could still kind of.....

- 64 -

1 THE COURT: Yeah, I mean whether -- I think.....  
 2 MR. LEADERS: Yeah.  
 3 THE COURT: .....if I'm not -- if they -- if the  
 4 determination is made that I'm not going to continue then the  
 5 determination is going to be made that I'm unavailable.  
 6 MR. LEADERS: Right.  
 7 THE COURT: In which case the presiding judge can have  
 8 somebody -- direct somebody else to take over. We will have  
 9 the tapes with us so I can get somebody -- not get them up to  
 10 speed, but somebody could get up to speed by listening to all  
 11 the prior recordings and issues in the tape -- in the case,  
 12 so that.....  
 13 MR. LEADERS: Right.  
 14 THE COURT: .....they could be -- know what's going on  
 15 with it.  
 16 MR. LEADERS: Right.  
 17 THE COURT: So -- yeah. But I would -- at this point I  
 18 would rather not start over, and I think whoever -- you know,  
 19 whether it's me or somebody else, would feel the same way.  
 20 MR. LEADERS: Okay. Okay, great, that's.....  
 21 THE COURT: Continue.....  
 22 MR. LEADERS: .....my preference, as well, as long as --  
 23 and this is what Mr. Robinson.....  
 24 THE COURT: There are some issues from people that won't  
 25 be available if we continue into June, which is obviously

- 65 -

1 where we're looking at at this point, but I think we can  
 2 revisit some of the people that had issues to get out for  
 3 this week and next week that.....  
 4 MR. LEADERS: Right.  
 5 THE COURT: .....have -- were brought in and re -- have  
 6 some of them maybe come back in.  
 7 MR. LEADERS: Okay. As well as possibly supplemental  
 8 jury summons.....  
 9 THE COURT: We may.....  
 10 MR. LEADERS: Juror summonses.  
 11 THE COURT: We may need to do that, yeah.  
 12 MR. LEADERS: Okay.  
 13 THE COURT: We're -- may see, because we're right at the  
 14 edge of maybe not getting enough, and I don't want to  
 15 continue, you know, a month from now continue further and  
 16 then.....  
 17 MR. LEADERS: If we're not getting anywhere, right.  
 18 THE COURT: .....run out at that point. So I'm thinking  
 19 there -- there are more people in the pool that we could call  
 20 in plus maybe look back at -- we have all the excusal  
 21 requests and say, okay, now you have to come back in on this  
 22 date.  
 23 MR. LEADERS: Okay.  
 24 THE COURT: From people that were excused for this time  
 25 period.

- 66 -

1 currently we're -- there's -- your -- the court was about to  
 2 make a decision -- so there's an issue under advisement. My  
 3 only request at this point would be that even if Magistrate  
 4 Murphy you're not going to continue on the case you would at  
 5 least resolve through that issue. Because I think --  
 6 otherwise we're going to start from ground one again. You  
 7 know, we need to have -- maybe that would occur at the next  
 8 status hearing when we determine that, so if there's further  
 9 argument that the parties want to, if Mr. Robinson wants to  
 10 give additional argument or if you want to hear from the  
 11 state again, or you want anything else clarified or -- Judge,  
 12 that's just my request is that may be resolved if you were to  
 13 hand -- if the case is going to be handed off to someone  
 14 else.  
 15 THE COURT: Well, as far as trying to pick a jury, I  
 16 agree that if we're not sure when we're coming back or that  
 17 it's going to have to go forward at some later date, trying  
 18 to pick people -- I mean some of the ones I have are like,  
 19 yeah, I might be gone during a couple weeks in June but I  
 20 won't know until next week when it is. And we end up picking  
 21 that person for the jury and then they're not available, we  
 22 run into a big problem.  
 23 The other issue I have is that if somebody is going to  
 24 take it over we're -- in preliminary matters, things that can  
 25 -- somebody else can change, and it isn't going to affect the

- 68 -

1 MR. LEADERS: Okay.  
 2 MR. ROBINSON: Well, here's another thought. And I'm  
 3 just throwing this out as a suggestion. It's -- could be  
 4 likely that if we started in the morning that I could -- we  
 5 could get a jury picked so that we'll know, and they'll know  
 6 that they'll be on the trial. Mr. Leaders' assistant, Mr.  
 7 Gibbens, is here and at least he has a witness that he can  
 8 swear in and begin the trial. And then that way we'll have  
 9 -- at least we'll have a jury picked and we'll know, and  
 10 they'll know who they are when we start up again.  
 11 MR. LEADERS: Well, I mean I guess I don't want to swear  
 12 in a jury because that's when jeopardy attaches, and so, you  
 13 know, at this point jeopardy hasn't attached. We tried to  
 14 get a jury. We're going to continue to try and get a jury,  
 15 but if things fall through I don't want jeopardy attaching at  
 16 this point. And so I -- I guess I'm not comfortable with  
 17 that procedure.  
 18 The -- so I guess that's the state's position on that.  
 19 I don't -- the other issue is we'd be picking a jury without  
 20 knowing when we're going to resume and we can't tell them or  
 21 make sure that they're going to be available on certain days.  
 22 We pick a jury and then they might not be available when we  
 23 restart. So my view is we just try to pick up with --  
 24 whenever we pick up from where we're at at this point. With  
 25 one -- and this is the one request I'd have, is, you know,

- 67 -

1 substantive issues that need to be addressed. For that  
 2 reason I'd rather not pick the jury but start up from where  
 3 we are at this point which is we can -- you know, notify the  
 4 individuals as they come in today or call back, and say this  
 5 is when, you know, we'll send you a notice next week and kind  
 6 of the same thing with the summons, a time and a date. The  
 7 difference is I would think we should be able to start at  
 8 like 10:00 o'clock on a Monday morning. After the flight --  
 9 assuming the flights on time or 1:00 o'clock in the afternoon  
 10 on Monday rather than waiting until Tuesday and having more  
 11 of a full week to.....  
 12 MR. LEADERS: Agreed.  
 13 THE COURT: .....do it in. Which, you know, hopefully  
 14 would mean that we could finish in that week, and then that  
 15 way if there's anybody with issues we would know about it  
 16 during that time period. And I had thought about the issue,  
 17 I have it under advisement, and if there's going to be time,  
 18 quite frankly, what I was thinking is I'd like it to be  
 19 briefed. To get some authority rather than -- because what  
 20 I'm getting from both sides is kind of well, here's the  
 21 statute, you read them, you know what they are.  
 22 Well, I'm not sure we're talking about the same ones,  
 23 necessarily, and at least -- not -- it doesn't have to be  
 24 anything involved, you know, but just maybe something with  
 25 the authority as the basis for the arguments from both sides

- 69 -



1 kind of.  
 2 MR. LEADERS: The -- so Judge, how about -- does the plan  
 3 of maybe a status hearing next week sound appropriate?  
 4 THE COURT: That's what I'm thinking is that, you know,  
 5 to kind of see where we stand. Everybody had a chance to  
 6 check their calendars and know what's going on, and have it  
 7 set for some time next week. I know Mr. Robinson's not  
 8 available on the 26th, because I.....  
 9 MR. LEADERS: Sure.  
 10 THE COURT: Know that that time is -- pretty much, but  
 11 other than that I think -- I know I have things scheduled for  
 12 the 24th, it's nothing I can't work around. Which is  
 13 Tuesday.  
 14 MR. LEADERS: And I'd ask for Tuesday or Wednesday so  
 15 that it gives time to get a hold of witnesses.....  
 16 THE COURT: Right, to get back.....  
 17 MR. LEADERS: You don't want to.....  
 18 THE COURT: Yeah, I don't want to do it Monday. I'm  
 19 thinking Wednesday, probably, would be.....  
 20 MR. ROBINSON: Wednesday is the 25th?  
 21 THE COURT: Yes.  
 22 MR. ROBINSON: Well, I guess if that's the way it's going  
 23 to be, that's how it's going to be. So I -- afternoon time  
 24 or?  
 25 THE COURT: It doesn't make any difference to me, I can

1 didn't know if you want to set a briefing schedule for it  
 2 so.....  
 3 THE COURT: No.  
 4 MR. LEADERS: .....if you want briefing, it's done before  
 5 we actually do trial or.....  
 6 THE COURT: No, because we'll see. If it ends up and  
 7 it's only going to be another week, you know, the week of the  
 8 6th is the day that works for everybody, it's only another  
 9 week. I don't like to put people in that kind of position.  
 10 MR. ROBINSON: Okay. All right.  
 11 MR. LEADERS: Okay.  
 12 THE COURT: So we'll see next Wednesday what we end up  
 13 with.  
 14 MR. LEADERS: Yes.  
 15 THE COURT: So we'll do a status Wednesday at 9:00  
 16 o'clock. We can just call you guys.  
 17 MR. LEADERS: Okay.  
 18 MR. ROBINSON: Okay.  
 19 THE COURT: Call -- you'll be in Kenai?  
 20 MR. LEADERS: Where would.....  
 21 MR. ROBINSON: Yeah, I'll be back in Kenai, so will Mr.  
 22 Leaders.....  
 23 THE COURT: Okay.  
 24 MR. ROBINSON: .....I presume.  
 25 MR. LEADERS: Yeah, I'll be available from my office,

1 be flexible. I have probably arraignments at 1:30, but other  
 2 than that I don't know for sure I have some. I think I do.  
 3 But other than that I'm pretty flexible, I think. There will  
 4 be.....  
 5 MR. LEADERS: I'm pretty flexible as well.  
 6 THE COURT: The morning -- quite frankly, the first thing  
 7 in the morning would be better. My moving people are  
 8 supposed to be in that morning, on the morning flight, so  
 9 that wouldn't be until 10:00 or 11:00, probably. So 9:00,  
 10 9:30, something like that would be better for me in the  
 11 morning.  
 12 MR. LEADERS: That's fine.  
 13 MR. ROBINSON: Well, that would be fine.  
 14 THE COURT: Okay. Shall we say 9:00 o'clock?  
 15 MR. ROBINSON: Yeah, that would be fine.  
 16 THE COURT: Okay. 9:00 o'clock.  
 17 MR. LEADERS: Judge -- okay, 9:00 o'clock Wednesday. Do  
 18 you want any type of briefing schedule on this? I know Mr.  
 19 Robinson is ill and.....  
 20 THE COURT: Yeah. No, between now and then I don't  
 21 expect it. And we can -- you know, like you said, if it's  
 22 not going to be enough time then I'll probably work through  
 23 it myself and -- I don't intend to give a ruling necessarily  
 24 on Wednesday. I may (indiscernible).....  
 25 MR. LEADERS: Okay. Well, I didn't think Wednesday -- I

1 Judge.  
 2 THE COURT: Yeah, I have -- okay, we have both your  
 3 office numbers so we'll just call you at 9:00 o'clock.....  
 4 MR. LEADERS: Okay.  
 5 THE COURT: .....on Wednesday morning.  
 6 MR. LEADERS: Okay, and so I understand status, we're  
 7 going to try and retain where we're at at this point, and  
 8 continue and we'll determine from there when we can look at  
 9 trial.....  
 10 THE COURT: Yeah. Right, what we'll do is we'll tell the  
 11 jurors when they call back that next week we'll send out a  
 12 notice as to when it's going to continue. If they have an  
 13 issue at that time that they can request an excusal at that  
 14 point. If it looks like we're getting in a few -- and maybe  
 15 even if it doesn't we'll send out some supplemental, or send  
 16 out notices to the ones that asked for an excusal this week.  
 17 MR. LEADERS: Right.  
 18 THE COURT: And see if they can come back in for the  
 19 next.....  
 20 MR. LEADERS: And maybe even the ones we've already  
 21 excused because they have an issue with this.....  
 22 THE COURT: Right, that's what I'm talking about.  
 23 MR. LEADERS: Okay, okay.  
 24 THE COURT: We have -- I have all the notes from all that  
 25 so I can.....

1 MR. LEADERS: Okay, very good.  
 2 THE COURT: Know who's gone like, you know, the woman  
 3 from Hawaii might be back and tanned and.....  
 4 MR. LEADERS: Right.  
 5 THE COURT: .....relaxed enough to decide to join us.  
 6 MR. LEADERS: Okay.  
 7 THE COURT: So.....  
 8 MR. ROBINSON: Okay.  
 9 THE COURT: .....we'll go through that. All right,  
 10 anything else?  
 11 MR. ROBINSON: No, that's it.  
 12 THE COURT: Mr. Leaders, anything else?  
 13 MR. LEADERS: I have nothing else. Get well, Chuck.  
 14 We'll see you back in Kenai.  
 15 THE COURT: Okay.  
 16 MR. ROBINSON: All right.  
 17 THE COURT: Hope you feel better soon, Mr. Robinson.  
 18 Thank you.  
 19 MR. ROBINSON: Bye.  
 20 MR. LEADERS: Okay.  
 21 (Off record)  
 22 09:51  
 23  
 24  
 25

- 74 -

1  
 2  
 3  
 4  
 5 TRIAL BY JURY, CONTINUED (EXCERPT)  
 6  
 7 BEFORE THE HONORABLE MARGARET L. MURPHY  
 8 District Court Judge  
 9  
 10 McGrath, Alaska  
 11 July 26, 2005  
 12 11:52 a.m.  
 13  
 14 APPEARANCES:  
 15 FOR THE PLAINTIFF: SCOT HENRY LEADERS  
 16 Assistant District Attorney  
 17 120 Trading Bay Drive  
 18 Suite 200  
 19 Kenai, Alaska  
 20  
 21 FOR THE DEFENDANT: ARTHUR ROBINSON  
 22 Attorney at Law  
 23 35401 Kenai Spur Highway  
 24 Soldotna, Alaska  
 25

- 75 -

1 PROCEEDINGS  
 2 4MC-05-07/Side C  
 3 0001  
 4 THE COURT: We're on record in the District Court for  
 5 the State of Alaska at McGrath, with Judge Murphy presiding.  
 6 Today is Tuesday, the 26th at 11:52. Case number 4MC-04-024  
 7 CR, State of Alaska versus David Haeg.  
 8 All right, gentlemen, we're more than 24 hours over  
 9 where we should have started yesterday. Gentlemen, we should  
 10 have started yesterday morning at 11:00. It's now almost  
 11 noon.....  
 12 MR. ROBINSON: Hey, wait a minute, Judge. Hold it,  
 13 Judge. I'm going to tell you something right now. I don't  
 14 know about Mr. Leaders but he was on the same flight that I  
 15 was. There was no earlier flight we could have gotten on,  
 16 but this is tourist season and we went to the airport.....  
 17 THE COURT: I understand that.  
 18 MR. ROBINSON: .....with every intent to be on that  
 19 plane, to catch a plane to come to McGrath at 8:15 out of  
 20 Anchorage. It isn't our fault that Era's plane had  
 21 mechanical problems.  
 22 THE COURT: I'm not saying it is, but we're still -- you  
 23 know, we're still putting jurors off. It's not me, I don't  
 24 care about me, it's the jurors that I'm concerned about.  
 25 We've put them off for 24 hours.....

- 76 -

1 MR. ROBINSON: Well, I just don't.....  
 2 THE COURT: .....and now it's another.....  
 3 MR. LEADERS: I guess I got the indication that it was  
 4 Mr. Robinson and I's responsibility (indiscernible).....  
 5 MR. ROBINSON: (Indiscernible)  
 6 THE COURT: No, no. Well, to be there at -- you know, to  
 7 do your best, that's why I was -- there was an earlier  
 8 flight. If it was booked that's -- it's booked, but.....  
 9 MR. LEADERS: And it was my understanding that both  
 10 flights, 825 and 827 were both delayed. That's what they had  
 11 on the (indiscernible).....  
 12 MR. ROBINSON: Exactly.  
 13 THE COURT: That's -- these things happen, I understand  
 14 that.  
 15 MR. ROBINSON: They had bad aircraft.  
 16 MR. LEADERS: We didn't have control.  
 17 MR. ROBINSON: We have no control.....  
 18 THE COURT: That I understand, but we're still -- we've  
 19 got jurors that have been, you know, planning on being here  
 20 yesterday. Now they've been sitting out here for an hour  
 21 this morning. Let's get going and figure out what we're  
 22 doing here.  
 23 That's my concern is -- we've got them here, let's go.  
 24 So what's the issue that's.....  
 25 MR. LEADERS: The -- it's an issue -- and I don't know,

- 77 -

1 Mr. Robinson -- there's different opinions as to the legal  
 2 status of some definitions that (indiscernible) that are  
 3 relevant to the charge. What I was going to seek to do and  
 4 what I'm seeking to do prior to trial, or prior to I guess  
 5 continuation of trial, is amend the complaints, or the  
 6 information to include additional relevant statutory and  
 7 regulatory prohibitions on same day airborne. Mr. Robinson  
 8 and I have a legal dispute or disagreement as to whether or  
 9 not some of these additional statutes and regulations that  
 10 I'm seeking to amend are at -- apply to hunting or not. And  
 11 I just -- right as you were saying we need to get going and I  
 12 was trying to figure out do we need to resolve this issue  
 13 now, or can we do jury selection and then resolve it  
 14 afterwards. Mr. Robinson has indicated that maybe we need  
 15 the legal input, basically of Mr. Kevin Saxby with the  
 16 Department of Fish and Game -- or the Department of Law that  
 17 addresses fish and game legal issues regarding the intent. I  
 18 don't dispute that. I think that may be appropriate. I  
 19 think it's certainly necessary prior to the presentation of  
 20 evidence and getting that far out to burden Mr. Robinson if  
 21 it (indiscernible) resolve these issues prior to jury  
 22 selection.....  
 23 MR. ROBINSON: I think if we can.....  
 24 MR. LEADERS: And if.....  
 25 MR. ROBINSON: .....get a jury and deal with the

1 THE COURT: Prohibiting same day.....  
 2 MR. LEADERS: I agree.....  
 3 MR. ROBINSON: Prohibiting these two conducts.  
 4 THE COURT: Right. I know what it says. I've read it  
 5 several times.  
 6 MR. ROBINSON: Wasting wild food animal and hunting.  
 7 MR. LEADERS: Okay.  
 8 MR. ROBINSON: Same day airborne.  
 9 MR. LEADERS: The -- there are numerous -- I guess our  
 10 legal dispute is under the definition of hunting. The  
 11 16.05.940.....  
 12 THE COURT: Uh-huh.  
 13 MR. LEADERS: .....states that hunting means the taking  
 14 of game under 6 -- A.S. 16.05 through 16.40 and the  
 15 regulations adopted under those chapters.  
 16 THE COURT: Uh-huh.  
 17 MR. LEADERS: Taking, that means taking, pursuing.....  
 18 THE COURT: Right.  
 19 MR. LEADERS: .....hunting, fishing, trapping or in any  
 20 manner disturbing, capturing or killing or attempting to  
 21 take, pursue, hunt, fish, trap, et cetera.  
 22 THE COURT: Right.  
 23 MR. ROBINSON: And trapping.....  
 24 MR. LEADERS: There's a separate definition for trapping.  
 25 Trapping means the taking of mammals. The clarifying

1 (indiscernible) if he's trying to do another amended  
 2 complaint or amended information, whatever he's trying to do.  
 3 MR. LEADERS: I can tell you -- here's what I'm looking  
 4 at, Judge. The -- it relates to Counts I through V, the  
 5 unlawful acts by guides, same day airborne. What the charge,  
 6 the statute states is that a person licensed -- a guide, a  
 7 person licensed under this chapter, to knowingly violate a  
 8 state statute or regulation prohibiting hunting on the same  
 9 day airborne.  
 10 THE COURT: Uh-huh.  
 11 MR. ROBINSON: Knowingly but -- no intent.  
 12 MR. LEADERS: Knowing -- it's not in there, but  
 13 knowingly.....  
 14 MR. ROBINSON: Well, it does say knowing.....  
 15 THE COURT: It's at the -- knowing is at the very  
 16 beginning of the statute.....  
 17 MR. ROBINSON: It's in there.  
 18 MR. LEADERS: Oh, I apologize.  
 19 THE COURT: Yeah, it is a knowing.  
 20 MR. LEADERS: Unlawful for a person to knowingly.  
 21 MR. ROBINSON: Yeah.  
 22 THE COURT: Uh-huh.  
 23 MR. LEADERS: Oh, I guess I agree. Okay, knowingly  
 24 violate a state statute or regulation.  
 25 MR. ROBINSON: No, not just a state statute.....

1 regulation to be fur bearers, so it's a subset of taking.  
 2 And by definitions the state's position is a subset of  
 3 hunting, as well.  
 4 THE COURT: Okay.  
 5 MR. LEADERS: You can say.....  
 6 MR. ROBINSON: Just wait, wait a minute. I.....  
 7 THE COURT: I just want to know what the question is.  
 8 MR. ROBINSON: The defendant's position is this, but then  
 9 we'll (indiscernible) the question?  
 10 MR. LEADERS: And so -- let me -- can I keep this to one  
 11 issue, and then -- so what I'm looking at, Judge, is the  
 12 charged statute is not restrictive in which of these statutes  
 13 or regulations to be violated; as long as it's hunting on the  
 14 same day airborne is what we're charging. We're not dealing  
 15 with the waste of wild food.  
 16 THE COURT: Uh-huh.  
 17 MR. LEADERS: And so what the state is seeking to do is  
 18 to include -- we've already charged one -- we've referenced  
 19 one of the regulations, 5 AAC 92.085. The means and methods,  
 20 you can't.....  
 21 THE COURT: Uh-huh.  
 22 MR. LEADERS: .....hunt same day airborne. 5 A. --  
 23 there's three others that would apply. 5 AAC 92.095, which --  
 24 .085 deals with big game.  
 25 THE COURT: Right.

1 MR. LEADERS: That's another issue. Wolf is defined as  
 2 big game and fur bearer. So .085 deals with big game, taking  
 3 of big game.  
 4 THE COURT: Uh-huh.  
 5 MR. LEADERS: .095 deals with taking of fur bearers, and  
 6 then there's two other statutes that are also -- deal with  
 7 the taking of game -- game, wolves, under 16.05. That's  
 8 16 05.783.  
 9 THE COURT: Uh-huh.  
 10 MR. LEADERS: Which basically says you can't take wolves  
 11 and other animals, but the department may authorize predator  
 12 control.  
 13 THE COURT: Right.  
 14 MR. ROBINSON: The board.  
 15 MR. LEADERS: The board, excuse me.  
 16 THE COURT: Right.  
 17 MR. LEADERS: And then, as well, 5 AAC 92.039 which is  
 18 the regulatory scheme setting out the predator control  
 19 program. It also begins with you can't do it unless.  
 20 THE COURT: Unless. Okay.  
 21 MR. LEADERS: So that's what I'm doing is -- and I guess  
 22 it could be done in one of two alternatives.  
 23 MR. ROBINSON: Predator control says you can't do it  
 24 unless -- unless you have a permit.  
 25 MR. LEADERS: Without the permit, right. The -- one of

1 can be done by the trapping, as well. What Mr. Leaders wants  
 2 is that he wants hunting to be some broad definition that  
 3 includes all kinds of taking. Whether it's trapping or  
 4 hunting which I would submit is the case. There's a specific  
 5 activity for trapping and there's a specific activity for  
 6 hunting. And therefore, when you -- Title 8 says that  
 7 knowingly hunt, same day airborne, that's a specific hunt.  
 8 Knowingly doing a specific conduct. If you were trapping it  
 9 doesn't apply.  
 10 And for the purposes of this case predator control  
 11 doesn't apply. The predator control, as we set out in our  
 12 proposed jury instructions, which comes directly from the  
 13 regulations themselves says a couple things that are very  
 14 important. Under 5 AAC 92.110 it specifically says a wolf  
 15 population reduction or wolf population regulation program  
 16 with status under this section is independent of and does not  
 17 apply to hunting and trapping authorized by 5 AAC 78 to 5 AAC  
 18 88. It's not the same kind of conduct.  
 19 And so the state's attempt now to try to broaden this  
 20 definition of hunting to include all kinds of taking is just  
 21 not logical. Hunting is a specific conduct and trapping is a  
 22 specific conduct. Or wolf population reduction or control is  
 23 a specific conduct. Taking does not resolve the issue.  
 24 THE COURT: Okay. And my question is do we need to do  
 25 this before we pick a jury?

1 two alternatives I suggest we could simply take out the  
 2 specific reference here, and we'd still charge -- it's  
 3 charged under the same statute, but take out the specific  
 4 reference to 5 AAC 92.085(a) or we could add in the three  
 5 other additional statutes or regulations that restrict  
 6 hunting. So that's what I -- the state is seeking to do. It  
 7 was -- and I apologize, I know this is late and we're --  
 8 we've started trial.....  
 9 MR. ROBINSON: Extremely late.  
 10 MR. LEADERS: .....and this is something actually it -- I  
 11 realized this, in fact, actually last night. I mean that's a  
 12 true reality is I realized that the narrowness of which we  
 13 define this, that it was defined too narrow by restricting it  
 14 to just one of the statutes and regulations prohibiting same  
 15 day airborne. And it really -- it focuses on that definition  
 16 of hunting.  
 17 THE COURT: Okay.  
 18 MR. LEADERS: So that's what I'm seeking, and I don't  
 19 know (indiscernible).  
 20 THE COURT: Your position, Mr. Robinson?  
 21 MR. ROBINSON: Not that this will matter, the taking as  
 22 he's looking at it involves different types of activity.  
 23 Otherwise the Legislature when they made the distinction  
 24 between hunting and trapping (indiscernible) in its own  
 25 definition of taking. Taking can be done by hunting, taking

1 MR. ROBINSON: I think we can do it after we pick a jury.  
 2 THE COURT: All right. Can we pick the jury first? My  
 3 concern is that we've got people that -- like I said, have  
 4 been put off from yesterday.....  
 5 MR. ROBINSON: I think we can deal with this after we  
 6 pick a jury.....  
 7 THE COURT: .....to today. And that we've got people  
 8 that are sitting out here waiting and I'd like to tell them  
 9 something now.  
 10 MR. ROBINSON: I think -- I think we can deal with it  
 11 after we pick a jury, myself.  
 12 MR. LEADERS: I won't disagree with that.  
 13 THE COURT: Okay. Because I'd rather.....  
 14 MR. LEADERS: I think it's a legal issue (indiscernible).  
 15 THE COURT: That -- and it's something -- I mean I'm  
 16 familiar with all the statutes. I've either read them or  
 17 typed them, or both, several times recently, so I know I'm  
 18 going to want some time to look at it, but I don't want to  
 19 keep the jury sitting here waiting any longer, I want to get  
 20 started. The questionnaires, I think you both saw them.  
 21 What we did was have them fill out the questionnaires and the  
 22 three individuals that we ran into trouble with last  
 23 time.....  
 24 MR. ROBINSON: Which, the old questionnaires or the new  
 25 questionnaires? (Indiscernible) I haven't seen any new

1 questionnaires.  
 2 THE COURT: He's making copies now. We're going to give  
 3 them to you now. No, we had them -- on the back what we did  
 4 was we started off with the questions already there on do you  
 5 know Alan Root, Lucky Egress(ph), and Toby Boudreau, and if  
 6 so, how. So that the copies we'll get will have that  
 7 information.....  
 8 MR. ROBINSON: Right off the bat.  
 9 THE COURT: .....right off the bat to start with, because  
 10 those are the three. I'm still going to go through the other  
 11 stuff that I did with those. I expect that there will be  
 12 some that we'll need to address individually again, but I'd  
 13 like to get as many, if not all of them, done before the  
 14 other group comes back at 1:00 o'clock. Because that group  
 15 is ready for, you know, you all to question them as a group.  
 16 MR. ROBINSON: Yeah. More specific about.....  
 17 THE COURT: We'd like to get to the -- to that point with  
 18 these -- they should be -- they were supposed to -- I thought  
 19 only a dozen. It looks like there may have been more than  
 20 that. I haven't counted for sure.  
 21 MR. ROBINSON: I think I know (indiscernible) the last  
 22 time that the McGrath people that were left.....  
 23 THE COURT: Yeah, then there were two from Tikatna.  
 24 MR. ROBINSON: And then the two from.....  
 25 THE COURT: The two boys -- guys from Tikatna

- 86 -

1 MR. LEADERS: Yeah. Yeah.  
 2 MR. ROBINSON: And then mine?  
 3 MR. LEADERS: I didn't add your's because I didn't -- I  
 4 don't have that list from that.....  
 5 MR. ROBINSON: I thought I just wrote underneath of it.  
 6 MR. LEADERS: You did. And I don't -- I didn't keep that  
 7 list from the last time. I'm sorry.....  
 8 THE COURT: So if you can.....  
 9 MR. LEADERS: If you can just add those to it.  
 10 THE COURT: Put your names back up there from last time  
 11 and we'll ask about them, too.  
 12 MR. LEADERS: (Indiscernible)I'll look after that.  
 13 MR. ROBINSON: Yeah, I thought I just wrote right  
 14 under.....  
 15 MR. LEADERS: You did, you just wrote it right to the  
 16 side.....  
 17 MR. ROBINSON: (Indiscernible).  
 18 THE COURT: So if we can do that. We'll gather everybody  
 19 up because I told them they could, you know, hang out outside  
 20 or something.  
 21 MR. LEADERS: But then from these folks after that  
 22 question and with the questionnaires I guess we're going to  
 23 have some individual voir dire.....  
 24 MR. ROBINSON: (Indiscernible).  
 25 THE COURT: Yeah, and I'd like to see what time it is and

- 88 -

1 (indiscernible). So let's go out and get started with them.  
 2 MR. LEADERS: What is the schedule then, Judge?  
 3 Obviously we're getting started with these folks, and.....  
 4 THE COURT: Yeah.  
 5 MR. LEADERS: .....you're going to go through kind of  
 6 your preparatory.....  
 7 THE COURT: The basic spiel, you know, here's what's  
 8 going -- you know, here's who the parties are and it's going  
 9 to be brief and as quickly -- not -- and I'm not going to  
 10 skip anything but I'm going to kind of go through it fairly  
 11 quickly as to those.  
 12 MR. ROBINSON: Are the questionnaires going to be ready?  
 13 THE COURT: Yeah, he's finishing them up right now.  
 14 MR. LEADERS: So we'll have the questionnaires, then  
 15 we're going to hear from -- after they go through that.....  
 16 THE COURT: I'm going to go through that.....  
 17 MR. LEADERS: .....first line of questioning that you  
 18 give to them.....  
 19 THE COURT: Yeah, are you going to -- do you know -- do  
 20 you have any experience with these charges, have you heard  
 21 anything about the case, do you know any of these people.  
 22 We'll go through it. And, again, with the list like with  
 23 Trooper Gibbens. It will be do you know him outside his  
 24 professional role as.....  
 25 MR. ROBINSON: Did you put your residence?

- 87 -

1 -- because we told those guys to come back at 1:00.  
 2 MR. ROBINSON: Come back at 1:00.  
 3 THE COURT: And I don't want to keep people through a  
 4 lunch hour, I was kind of hoping that we could get through  
 5 all this by now, and give them.....  
 6 MR. LEADERS: And.....  
 7 THE COURT: .....somewhat of a break, but I want to pick  
 8 a jury by this afternoon.  
 9 MR. LEADERS: Right.  
 10 THE COURT: And send home those that we don't need and we  
 11 can.....  
 12 MR. LEADERS: Are we breaking for lunch or anything like  
 13 that for the day or are we going straight through?  
 14 THE COURT: We may not, but the jurors will definitely  
 15 get lunch. We'll see.  
 16 MR. LEADERS: Okay. Well, that's what I was going  
 17 to.....  
 18 THE COURT: I mean we'll work something out. And one of  
 19 the guys in town at the café has said they'll bring over food  
 20 if we need to, so we'll figure something out. But I'd like  
 21 to see how far we get. Let's -- I figure the first thing is  
 22 get through the list, see how many from the questionnaires  
 23 they filled out that you think we need to -- and their  
 24 questions. I go through how, how many we need to talk to  
 25 individually. If it's the whole dozen we'll send six out for

- 89 -

1 lunch and have six come back in a half an hour and do the  
 2 first six and have them come back in, you know, 45 minutes,  
 3 whatever. And then we'll just start with the 1:00 o'clock  
 4 group a little late. But what I want to do is have everybody  
 5 ready to be group questions, you know, as soon as possible.  
 6 Because I don't -- once the group questioning is done I don't  
 7 expect it's going to take that much longer to pick a jury  
 8 after that.  
 9 MR. ROBINSON: Okay.  
 10 THE COURT: All right. We'll get everybody together. If  
 11 you could put your -- add your names on the list and.....  
 12 MR. ROBINSON: I'll add my name to the list right now.  
 13 THE CLERK: Okay, stop?  
 14 THE COURT: Yeah, we can go off record.  
 15 (Off record)  
 16 0182  
 17 (Tape change)  
 18 4MC-05-08/Side B  
 19 0919  
 20 THE COURT: All right. I was asked to keep an eye on the  
 21 fact that we had all the employees for Penn Air here, which I  
 22 was aware of, and so.....  
 23 MR. LEADERS: Oh.  
 24 THE COURT: .....I have -- I did -- Ms. Collins was one  
 25 of them. Unfortunately apparently she's not one of the ones

- 90 -

1 that they really need.  
 2 MR. LEADERS: Least important.  
 3 THE COURT: They need either Michael Baumgardener(ph) or  
 4 Melody Magnuson Strick. Ms. Strick is down at number 28.  
 5 I'm thinking we may not get to here anyhow.....  
 6 MR. LEADERS: I think the likelihood of getting to.....  
 7 THE COURT: I'd rather go ahead and excuse her for  
 8 tomorrow and actually that coincides with what they've said,  
 9 right?  
 10 UNIDENTIFIED SPEAKER: The two employees, yes. Ms.  
 11 Strick has other work conflicts, she's trying to get out of  
 12 two jobs to be here.  
 13 MR. LEADERS: Okay.  
 14 UNIDENTIFIED SPEAKER: And Mr. Baumgardener(ph) agreed to  
 15 work....  
 16 THE COURT: Ms. -- he's at 17.  
 17 UNIDENTIFIED SPEAKER: .....if she can go.  
 18 THE COURT: He's at 17, so it's easier to.....  
 19 MR. LEADERS: Right.  
 20 THE COURT: I -- he.....  
 21 MR. ROBINSON: He may actually be.....  
 22 THE COURT: He's -- well, he's already in the.....  
 23 MR. ROBINSON: Yeah, he'll be in the mix.  
 24 THE COURT: Well, no, he's not because number 18 was  
 25 excused so we're right there at him being next.

- 91 -

1 MR. ROBINSON: Yeah, but I mean he's within the  
 2 possibilities.....  
 3 THE COURT: Right, but I think the chances of Ms. Strick  
 4 -- Magnuson-Strick being in the mix is not high enough, that  
 5 it's worth putting her through that.  
 6 MR. ROBINSON: Yeah.  
 7 THE COURT: The other issue, Mr. Miller wanted to let me  
 8 know and he didn't want to mention it in front of other  
 9 people, but -- and he didn't know how to put it on the  
 10 questionnaire. Apparently he is subject to seizures. Mr.  
 11 Miller is number 11.  
 12 MR. ROBINSON: Subject to seizures.  
 13 UNIDENTIFIED SPEAKER: She -- I have heard first-hand  
 14 accounts of him having DT seizures on a regular basis. And  
 15 he was sober today so he would be heading down that road.  
 16 MR. ROBINSON: (Indiscernible).  
 17 MR. LEADERS: Yeah, we've got 33.....  
 18 THE COURT: He had -- well, he stayed sober the whole  
 19 last time.  
 20 UNIDENTIFIED SPEAKER: He did.  
 21 THE COURT: And he didn't have any issue, so I don't  
 22 know, I just -- as far as I'm concerned he'll stay and we'll  
 23 see what happens, but.....  
 24 MR. ROBINSON: Yeah.  
 25 THE COURT: If we see him, you know, veering off into

- 92 -

1 that.....  
 2 MR. LEADERS: Stand back.  
 3 THE COURT: Yeah. We'll get medical help and bring the  
 4 thing up.  
 5 (Whispered conversation)  
 6 THE COURT: Okay, everything has to go from down here,  
 7 because the council is coming. But if you want to leave  
 8 anything overnight in the office it will stay up there and we  
 9 won't mess with it. I know I have the only set of keys and I  
 10 know I'm not -- I've got enough of my own work, I don't need  
 11 your's. So you're more than welcome to leave anything here,  
 12 but we do need to get it out of here so we can.....  
 13 MR. LEADERS: Probably these boards, or whatever.  
 14 THE COURT: Yeah, we'll move them.....  
 15 UNIDENTIFIED SPEAKER: I'll move them out.  
 16 MR. LEADERS: Okay.  
 17 THE COURT: Yeah, we'll take care of them. We'll get the  
 18 seats reorganized and stuff.  
 19 MR. ROBINSON: I have spoken to Mr. Leaders about it, but  
 20 I just want to make sure we get it on the record. I've asked  
 21 him to provide me with an order of witnesses so that we'll  
 22 know who's going to go on first, prepare the cross and  
 23 he.....  
 24 MR. LEADERS: And I've -- what I've informed him is with  
 25 the schedule change, I hate to put it, I guess, but to put it

- 93 -

1 mildly, we've had to circulate to some extent our witnesses.  
 2 I honest -- I've got to -- and I haven't heard from my -- I  
 3 haven't had much time really to talk with my paralegal back  
 4 in Anchorage to see if they were able to get everything  
 5 adjusted. I will let Mr. Robinson know.  
 6 THE COURT: Okay. All right, we'll do what we can.  
 7 MR. ROBINSON: So I guess my point is that before I go  
 8 forward with cross examination that we can....  
 9 MR. LEADERS: Oh, that's.....  
 10 THE COURT: Yeah.  
 11 MR. ROBINSON: As is required -- I would expect that we  
 12 have an order of witnesses.  
 13 THE COURT: Yes. Well, we'll see what we can do. But,  
 14 we're going to start 8:30, promptly. They've all promised to  
 15 be here then, so....  
 16 MR. LEADERS: Yes.  
 17 MR. ROBINSON: Okay.  
 18 THE COURT: We should get there and hopefully -- and I've  
 19 told them they should be -- whoever is not on the jury should  
 20 be out of here before noon, so.  
 21 MR. LEADERS: I would expect so, yeah.  
 22 THE COURT: Hopefully. Okay.  
 23 UNIDENTIFIED SPEAKER: Sergeant Dobson will have the PBT  
 24 downstairs.  
 25 THE COURT: Just hope we don't need it.

- 94 -

1 MR. ROBINSON: Is that for tomorrow (indiscernible).  
 2 THE CLERK: Off record?  
 3 THE COURT: Yes.  
 4 (Off record)  
 5 0976  
 6  
 7  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

- 95 -

1  
 2  
 3  
 4  
 5 TRIAL BY JURY, CONTINUED (EXCERPT)  
 6  
 7 BEFORE THE HONORABLE MARGARET L. MURPHY  
 8 District Court Judge  
 9  
 10 McGrath, Alaska  
 11 July 27, 2005  
 12 8:50 a.m.  
 13  
 14 APPEARANCES:  
 15 FOR THE PLAINTIFF: SCOT HENRY LEADERS  
 16 Assistant District Attorney  
 17 120 Trading Bay Drive  
 18 Suite 200  
 19 Kenai, Alaska  
 20  
 21 FOR THE DEFENDANT: ARTHUR ROBINSON  
 22 Attorney at Law  
 23 35401 Kenai Spur Highway  
 24 Soldotna, Alaska  
 25

- 96 -

1 PROCEEDINGS  
 2 4MC-05-08/Side B  
 3 0976  
 4 (Portion not requested)  
 5 (Tape change)  
 6 4MC-05-09/Side A  
 7 0575  
 8 THE COURT: At this time we're going to start with  
 9 opening statements, and Mr. Leaders will begin. Mr. Leaders?  
 10 I'm sorry?  
 11 MR. LEADERS: (Indiscernible) it's up here somewhere.  
 12 Excuse me, Ms. Banks. I'm going to ask that  
 13 (indiscernible). Just speak up a little bit so it should  
 14 pick up on that.  
 15 THE COURT: Yes, it should be fine.  
 16 MR. LEADERS: Bad choices, deceitfulness. That's what  
 17 this case is about, ladies and gentlemen. The bad choices  
 18 and deceitfulness that David Haeg in the taking of wolves,  
 19 same day airborne, the use of his plane. Your bad choices  
 20 about how Mr. Haeg, after being granted an aerial predator  
 21 control permit to take wolves, same day airborne or with the  
 22 -- or through land and shoot by spotting them, landing his  
 23 plane and shooting them the same day, acts that would  
 24 otherwise be illegal but authorized under predator control  
 25 programs to eliminate wolves here in the area. How he then

- 97 -

1 in a very -- and authorized in a very specific and restricted  
 2 area permit that was enforceable, and in a very -- and that  
 3 only applied to a specific area, only set conditions for a  
 4 specific area and it was only enforceable in specific area.  
 5 The bad choices of Mr. Haeg, after getting that, to go hunt  
 6 for wolves well outside that permitted area, under the guise  
 7 of that permit. The bad choices in -- on five different  
 8 days, taking a total of nine wolves both he, with the  
 9 assistance of his gunner, Tony Zellers, while flying their  
 10 plane -- while Mr. Haeg was flying he had Mr. Zellers  
 11 shooting the wolves.

12 Bad choices to take wolves the first -- same day he got  
 13 the permit he actually flew into McGrath to get the -- pick  
 14 up the permit, and flew back towards his hunting lodge which  
 15 is southeast of McGrath, Trophy Lake Lodge. And on the way  
 16 back towards his lodge he spots and shoots wolves. The first  
 17 one that same day, mile to two miles outside the boundaries.  
 18 The bad choices to go back that next day, March 6th, look in  
 19 that same area where he had already illegally shot from the  
 20 air a wolf. Doesn't find them right in that area but he --  
 21 so he proceeds further south, further out of the restric --  
 22 or the permitted area, if he were to try and use his permit.  
 23 Whereas he and his gunner spot and shoot from the air  
 24 two more wolves, approximately 20, 24 miles outside of the  
 25 permitted boundaries at that point in time. Bad choices to

- 98 -

1 miles, a little over 80 miles, in fact, from the nearest  
 2 boundary to the permitted south. Bad choices to then bring  
 3 those first three hides that he had -- from the wolves he had  
 4 taken in here to McGrath. He talks about how he did get  
 5 those three legally in the permitted area. Claims that they  
 6 were legally taken under the auspices of the permit. Lies  
 7 about that.

8 One of the requirements, as many of you are aware as  
 9 well, is that you need to seal certain hides, Department of  
 10 Fish and Game. Mr. Haeg made the bad choice to lie on a  
 11 sealing permit, to falsify the locations where he took those  
 12 wolves. To falsify and state that he took them inside the  
 13 legal permit boundaries. The bad choices as well to then  
 14 continue back -- he goes back to his lodge after that on the  
 15 21st, and the next day he goes out looking for more wolves  
 16 and makes the bad choice again not to fly -- he doesn't fly  
 17 back towards -- anywhere near his permit area, but again  
 18 flies south -- in a somewhat southerly direction away from  
 19 the permitted area from his lodge, where he locates a dead  
 20 moose kill. And thinking there might be wolves around. And  
 21 sure enough he ends up finding some wolves in that area. He  
 22 and his gunner, again, shoot from the air and kill, and all  
 23 these wolves have been shot from the air. Shoots and kills  
 24 another wolf. This time along the Swift area -- Swift River  
 25 drainage, approximately -- over 50 miles from the nearest

- 100 -

1 then report -- one of the requirements for the permit was to  
 2 report where -- the locations you took wolves if you take  
 3 them under the permit, and to seal them with specific -- and  
 4 put specific locking tags on them, bring them in for samples.  
 5 So the bad choice to report a few days later to Fish and Game  
 6 that he had shot three wolves, claiming that he had legally  
 7 shot them inside the permit boundaries.

8 The bad choices to -- a couple weeks later when he -- he  
 9 at one -- he actually at one point leaves his lodge where  
 10 he's based out of -- his hunting operations were based out  
 11 of, takes the hides back to his home in the Soldotna area and  
 12 he's informed that he needs to have them actually sealed in  
 13 McGrath. So he brings them back out. Doesn't just bring  
 14 them, he brings the -- his gunner, Mr. Zellers, the guns, the  
 15 ammunition, everything they need to continue hunting for  
 16 wolves. And the bad choices that on March 21st he goes  
 17 looking for more wolves to shoot from the air. On that day  
 18 he makes the bad choice to -- from his lodge, Trophy Lake  
 19 Lodge. I told you it's southeast of the -- of McGrath,  
 20 southeast as well of the permitted area. He leaves his lodge  
 21 and heads further south. Further away from the permitted  
 22 area to hunt wolves, and makes a bad choice to shoot another  
 23 wolf that day. They see several others but they shoot --  
 24 they're able to shoot and kill one more on the 21st.  
 25 That one down around the Stony River. Approximately 80

- 99 -

1 boundary to the authorized permit zone.

2 And he assessed -- set -- he realizes it's a great  
 3 opportunity, he sets some traps and snares around that moose  
 4 kill so maybe he can get some more of these wolves, because  
 5 there's more than just the one he took. And he and his  
 6 gunner, Mr. Zellers, go back the next day. Sure enough,  
 7 there's no wolves in his traps or in his snares at the time  
 8 but they pick up that wolf pack again and they shoot four  
 9 more wolves from the air on the 22nd. Again, over 50 miles  
 10 from the nearest permit boundary; shooting all of them from  
 11 the air which is, as I'm sure you are all aware, and as the  
 12 court will instruct you, is illegal when you've hunting for  
 13 wolves.

14 Those are the -- he made further bad choices to leave  
 15 his traps and snares out -- the ones he had set around that  
 16 moose kill out in the field, even past the close of season  
 17 for both leg hold traps and for the snares. So he has a  
 18 couple of -- those traps actually caught game, or there were  
 19 game in those traps after the close of season. A couple of  
 20 the charges relate to those. A charge for the leg hold traps  
 21 and a charge for the snares. As well, one of those snares  
 22 when it was inspected after the season by Trooper Gibbens,  
 23 there was a wolf that had not been salvaged in that. That's  
 24 another one of the charges, failure to salvage the wolf.  
 25 Those bad choices are -- all those bad choices are what

- 101 -



1 relate to the numerous charges against Mr. Haeg. There's  
 2 five separate charges for same day airborne. Not one for  
 3 each of the wolves but one for each of the days in which Mr.  
 4 Haeg and Mr. Zellers illegally shot wolves from the air.  
 5 You're going to hear evidence, ladies and gentlemen,  
 6 from numerous sources about how Mr. Haeg did, in fact, have a  
 7 permit to lawfully take wolves same day airborne within the  
 8 predator control boundaries. And you're going to hear how  
 9 that permit didn't give him any authority outside those  
 10 boundaries. How that permit is not enforceable outside those  
 11 boundaries, created no authorizations, placed no restrictions  
 12 or limitations. The conditions of the permit apply only to  
 13 the -- inside of the boundaries established. Now Mr. Haeg  
 14 was made aware of that. The limitations, geographical  
 15 limitations.

16 You're going to hear that from different people, Mr.  
 17 Root. And you're going to hear evidence as well, ladies and  
 18 gentlemen, that on that same day he did, in fact, take wolves  
 19 -- that first wolf outside the boundaries. You're going to  
 20 hear some of this evidence from the gunner, Mr. Zellers.  
 21 He's scheduled to testify in this case.

22 But you're going to hear really about how this -- a lot  
 23 of the information you're going to hear is going to come from  
 24 Trooper Gibbens about how he became aware -- started this  
 25 investigation, how -- March -- approximately March 9th,

1 characteristics of Mr. Haeg's plane that were unique. A very  
 2 large -- or large oversized tail wheel, a big center skeg,  
 3 his aero 3000 skis for the plane, a certain characteristic  
 4 for that plane. He even talked with Mr. Haeg about that  
 5 unique configuration and Mr. Haeg talked about how it was --  
 6 he liked it because it helped him turn better, those types of  
 7 things. They talked about the permit. Trooper Gibbens made  
 8 sure Mr. Haeg was very clear about the permit boundaries on  
 9 March 21st.

10 Mr. Haeg confirmed that he was, he knew exactly what the  
 11 permit boundaries were and had no questions about it. You're  
 12 going to hear that -- Trooper Gibbens even let Mr. Haeg know  
 13 that he had seen him trapping some wolves outside the  
 14 permitted boundaries previously. You're going to hear the  
 15 evidence that despite those -- that interaction by affirming  
 16 that he did know exactly where those permit boundaries were.  
 17 I've already mentioned to you to some extent, they did take  
 18 wolves. Even after that interaction with law enforcement, 80  
 19 and 50 miles outside the boundaries.

20 You're going to hear evidence that a few days later by  
 21 the 26th or 27th Trooper Gibbens -- 26th I think it was,  
 22 Trooper Gibbens -- of March. And this is all happening in  
 23 March of 2004. Trooper Gibbens was responding from another  
 24 call when he came across a set of plane tracks he observed as  
 25 he's flying back towards McGrath. A set of plane tracks in

1 shortly after Mr. Haeg had reported to Mr. Boudreau about --  
 2 he called in by phone and -- satellite phone, and told Mr.  
 3 Boudreau, reported the location where he had taken those  
 4 wolves and reported them in the permit area. Reported the  
 5 taking of three gray wolves in that area.

6 How that information was conveyed to Trooper Gibbens  
 7 that day and the coordinates of where they were taken.  
 8 Trooper Gibbens, being a local from this area, familiar with  
 9 the game populations, as well not involved in the predator  
 10 control program, but certainly aware of the game populations  
 11 in the area. Knew that there were not three gray wolves in  
 12 that pack in the area they were reported to be taken from.  
 13 He knew that and others you'll hear from, that from that he  
 14 -- at the request even of Fish and Game, Department of Fish  
 15 and Game. Trooper Gibbens a couple days later flew out to  
 16 those coordinates. He located again that wolf pack that was  
 17 in the area but no kill sites showing that Mr. Haeg or anyone  
 18 else had killed wolves in that area.

19 And then you're going to hear additional information  
 20 that Mr. -- on the day that Mr. Haeg and Mr. Zellers brought  
 21 those first three wolves that were taken into McGrath to get  
 22 sealed, how Trooper Gibbens also met with them that day they  
 23 were there to get the hides sealed, to have samples taken.  
 24 How he met with Mr. Haeg and Mr. Zellers, talked with them  
 25 about the wolves that were taken. He noticed certain

1 the snow that had what appeared to have stopped down on a set  
 2 of wolf tracks and checked the direction of travel.

3 They appeared to be the same -- had the same  
 4 configuration and these tracks were well outside the permit  
 5 boundaries. They had the same configuration Mr. Haeg's  
 6 plane. How Trooper Gibbens -- that night he -- it was  
 7 getting late, running out of fuel, daylight, those type of  
 8 things, so he headed back to McGrath. The next day he went  
 9 back down to that area, picked up the tracks again and  
 10 followed them in the direction the wolves were traveling.

11 And as he followed them that's when he came across first  
 12 the moose kill site, or he saw that snares and traps had been  
 13 set around the moose at that point in time. Once he followed  
 14 further along the track, the wolf tracks, where he started  
 15 seeing multiple wolf kill sites. You'll hear about the  
 16 investigation that Trooper Gibbens, Trooper Dobson and other  
 17 troopers conducted at those wolf kill sites. The evidence  
 18 they collected that determined that those wolves had, in  
 19 fact, been shot from the air. They saw -- or they saw on --  
 20 in relation to each of these kill sites that same landing  
 21 gear configuration imprinted into the snow, and the tracks.  
 22 How they actually got out onto the ground and went to each of  
 23 the kill sites and tracked the wolves back, and were able to  
 24 determine where the wolves were first shot. How there were  
 25 no tracks, footprints around the wolves where they're shot,

1 in those areas. How the shot (indiscernible) and wolf tracks  
 2 clearly indicated the wolves were running and shot from the  
 3 air based on the shot patterns at different places where they  
 4 could find that in the snow.  
 5 You'll hear that evidence that established that these  
 6 wolves were taken -- certainly taken from the air. You'll  
 7 hear that evidence that relates to five of the wolves that  
 8 were taken. You'll hear how some of the evidence collected  
 9 was -- they collected -- actually some of the pellets from  
 10 the shotgun shells. Actually also collected a cert -- a  
 11 casing from a .223, inscribed Rem Wolf on it. Is the brand.  
 12 You'll hear how the officers continued an investigation.  
 13 Went out by Mr. Haeg's lodge. They located and seized  
 14 several wolf carcasses. How they performed necropsies on  
 15 those wolf carcasses and obtained the same shotgun -- shot  
 16 consistent with the type that was found out in the snow where  
 17 these wolves were shot. One of the wolves even had a shotgun  
 18 shell in its stomach during the necropsy.  
 19 You'll hear evidence as well about there was -- based on  
 20 the information search warrants were obtained to search Mr.  
 21 Haeg's lodge, his residence back in Soldotna, the plane which  
 22 had a unique insignia, the Batcub, and how that was searched  
 23 and seized out of his home down in Soldotna. The -- during  
 24 -- you'll hear from the troopers, some of the troopers  
 25 involved in that search down there, they found a shotgun that

- 106 -

1 was used, found the rifle. .223 caliber rifle that was used.  
 2 Found actually even one of those .223 Rem Wolf casings  
 3 sitting outside on the ground, outside Mr. Haeg's hangar down  
 4 in Soldotna.  
 5 The -- how the plane that was seized actually had the  
 6 same conf-- landing gear configuration that was consistent  
 7 with the landing gear configurations, the turn on the snow  
 8 and that Trooper Gibbens had seen Mr. Haeg flying. You'll  
 9 hear as well about Mr. -- from the statements Mr. Haeg made,  
 10 he wouldn't really state that he had killed any wolves from  
 11 the air. But he admitted that the guns seized were the guns  
 12 take -- used in taking the wolves.  
 13 He -- you'll hear the statements of the officers how he  
 14 had a defeated expression when he's asked -- when he's told  
 15 they need to talk with him about the wolves taken out in  
 16 McGrath. And how he made comments that he wanted to make  
 17 sure he wasn't in trouble for anything else. You'll hear  
 18 about how they obtained information that he had taken the  
 19 nine wolf hides over to a taxidermist in Anchorage, as well  
 20 as the wolf skulls to a taxidermist in the local area. The  
 21 skulls and hides were seized. You'll see the hides. Trooper  
 22 Gibbens is going to show you from the hides of -- the shot  
 23 patterns of the wolves were consistent with the shot patterns  
 24 observed at various kill sites.  
 25 And you're going to hear from Tony Zellers who in his

- 107 -

1 statements to law enforcement admitted that he and Mr. Haeg  
 2 had, in fact, taken these wolves, these nine wolves, outside  
 3 the permitted boundaries. That they knew that they were  
 4 outside the boundaries when they took the wolves. They, in  
 5 fact, shot each of them from the air. One or two of them  
 6 they had to finish off on -- they had to land and finish off,  
 7 how these wolves were shot from the air.  
 8 Ladies and gentlemen, the -- your -- that's the  
 9 evidence, or at least a synopsis of the evidence that you're  
 10 going to hear throughout the next couple days showing that --  
 11 that supports the basis for which the state has charged Mr.  
 12 Haeg with the five counts of taking wolves during the closed  
 13 season. Or excuse me, not the closed season, but same day  
 14 airborne. And the basis for which he's charged with once he  
 15 took those wolves same day airborne he then possessed them,  
 16 since they were taken illegal. It's illegal to possess game  
 17 taken illegally which he's charged as well, unlawful  
 18 possession. As well as -- I told you you'll hear the evidence  
 19 about Trooper Gibbens' follow up investigations of the scene,  
 20 how the traps set around the moose were never removed by Mr.  
 21 Haeg. They were left out there, left -- some of them left  
 22 active and open past the periods -- the season closures. And  
 23 how after the wolf season -- the snaring for wolf season  
 24 ended that, in fact, there -- well, a wolf had not been  
 25 salvaged from the traps as well.

- 108 -

1 That's the evidence that the state's going to expect to  
 2 be shown to support the charges. Thank you.  
 3 THE COURT: Thank you, Mr. Leaders. Mr. Robinson?  
 4 MR. ROBINSON: Well, ladies and gentlemen, it's the  
 5 defendant's turn to give an opening statement in the case by  
 6 trying to give you a road map of where we think the evidence  
 7 will go in this case and what will be shown as evidence in  
 8 this case.  
 9 I'd like to remind you again that you all promised that  
 10 you'd keep an open mind, you haven't come up with any  
 11 opinions as to Mr. Haeg's guilt at this point. We hope that  
 12 you keep that open mind until the end of the trial and you've  
 13 heard all the evidence in the case.  
 14 David Haeg, born in Alaska, raised in a very small area  
 15 called Chinitna Bay on the west side of Cook Inlet. He grew  
 16 up there with his father and mother and very few neighbors, a  
 17 couple, three. Commercial fished as a set netter for quite a  
 18 while, and then he became an adult and became a guide and a  
 19 trapper. He married, has two daughters.  
 20 In March of 2004, after the Board of Game had, in 1991,  
 21 established a predator control program for the management of  
 22 predators in Alaska. Predators who have decimated moose and  
 23 caribou stocks, particularly in this area. Got a permit as a  
 24 pilot for two things. Aerial shooting of wolves, same day,  
 25 or land and shoot wolves, same day.

- 109 -

1 The permit was for an area called Management Unit Number  
2 19-D, which as some of you may be familiar with located near  
3 here in McGrath. Also a permit holder was Tony Zellers. He  
4 got a permit as the gunner for aerial shooting and land and  
5 shoot of wolves, same day airborne. And when the two of them  
6 got these permits in March they began to look for wolves to  
7 shoot either from the air or land and shoot from the ground  
8 to eliminate predators who had decimated moose populations in  
9 this area.

10 They searched in Area D -- 19-D for quite a while and  
11 didn't find any moose. Didn't find any wolves in that area.  
12 So they decided to go outside the area for predator control  
13 to see if they could find wolves who had obviously killed  
14 moose or caribou in the area and eliminate them.

15 Now it's going to be no secret in this case that Mr.  
16 Haeg flew an airplane, along with Mr. Zellers, and on these  
17 occasions in the first five counts of the complaint, they did  
18 in fact shoot wolves, same day airborne. The question really  
19 in this case is whether they hunted wolves same day airborne,  
20 because those first five counts that the judge read to you in  
21 the instructions earlier says that Mr. Haeg knowingly  
22 violated the state game regulation prohibiting hunting on the  
23 same day airborne. Now some of you may think, well, what is  
24 hunting.

25 MR. LEADERS: Objection, this is argument not statement.

- 110 -

1 MR. ROBINSON: Well, I'm just going to tell you what the  
2 evidence is.

3 THE COURT: Okay, hang on just one second. We need to  
4 switch the tape, Mr. Robinson. That's.....

5 MR. ROBINSON: Sure.

6 00860

7 (Tape change)

8 4MC-05-09/Side B

9 0001

10 THE COURT: We're back on record.

11 MR. LEADERS: Did the court rule on the objection?

12 THE COURT: Yeah, I mean yeah. It has to stick to what  
13 the evidence is.

14 MR. ROBINSON: And it's exactly what I'm going to say.

15 THE COURT: Okay.

16 MR. ROBINSON: As some of you may wonder what hunting is  
17 and whether hunting is what Mr. Haeg was involved in on the  
18 days in question that he's charged with in these first five  
19 counts. We suspect that you will hear evidence from Kevin  
20 Saxby who is an assistant attorney general who represents the  
21 Board of Game. He will testify that when the board enacted  
22 the predator control or wolf population control program it  
23 was specifically intended that that program not be hunting or  
24 trapping. That it had another use which was called predator  
25 control.

- 111 -

1 And predator control is from a different category than  
2 hunting or trapping. In fact, you will see in evidence in  
3 this case that the license or the permit that Mr. Haeg and  
4 Mr. Zellers got from the Department of Fish and Game required  
5 them not to have a hunting license, but to have a trapping  
6 license. And you will hear from Tony[sic] Boudreau and Mr.  
7 Saxby why -- and a fellow named Peter Buist who was a Board  
8 of Game member when these regulations were enacted by the  
9 Board of Game as to the intent behind not having this pursuit  
10 of wolves be considered hunting.

11 You will hear from David Haeg his own intent and purpose  
12 of what he was doing, even though he was doing it outside of  
13 19-D. And as we discussed in voir dire, intent and purposes

14 of use of game is significant because it is the intent and  
15 purpose of the use that distinguishes.....

16 MR. LEADERS: Argument again.

17 THE COURT: You're going away from the evidence, Mr.  
18 Robinson.

19 MR. ROBINSON: All right. The evidence is it  
20 distinguishes the use, so you will hear from Mr. Haeg his  
21 intent, his purpose for shooting wolves, same day airborne,  
22 even though he shot them outside of the permitted area.

23 With regard to the other offenses that Mr. Haeg is  
24 charged with, the unlawful possession of game. He will admit  
25 that he took those wolves outside the area above and beyond

- 112 -

1 the permit authorizations, and so those were unlawfully  
2 possessed game. He will also admit that he falsified the  
3 record as to where the wolves were taken to the Department of  
4 Fish and Game when he had to have them sealed for purposes of  
5 statistical information.

6 But when it comes to the counts concerning trapping in  
7 closed season and failure to salvage game, you will hear  
8 evidence in this case that when it comes to trapping it's  
9 customary and traditional in the trapping industry for others  
10 to take over someone's trap line. And if someone else takes  
11 over that trap line with the trap operator's permission, and  
12 agrees to take the animals trapped and close out the traps  
13 when the season is over, that it then becomes really the  
14 responsibility of the person who took over the trap line to  
15 take care of the game that was taken, and to close out the  
16 traps.

17 Now Mr. Leaders forgot to tell you in his opening  
18 statement that when it came to the traps and snares that Mr.  
19 Haeg had set to continue to try to trap wolves, that a fellow  
20 by the name of Anthony Lee(ph) contacted Mr. Haeg -- who is  
21 also a trapper, Mr. Lec(ph), a licensed trapper, and asked  
22 Mr. Haeg if he could take over his traps for the balance of  
23 the season. He promised him that he would take care of the  
24 game taken and also close out the traps, and  
25 (indiscernible). And Mr. Haeg agreed to do that.

- 113 -

1 And it was Mr. Lee(ph) who left the snares open so that  
 2 game could be taken after the season was closed, and it was  
 3 Mr. Lee (ph) who failed to salvage the wolf that was in one  
 4 of the snares. And it was not Mr. Haeg that did that.  
 5 We believe that at the end of the case, when all is said  
 6 and done, and all the evidence is presented, and then after  
 7 you have been called upon to deliberate, that you should find  
 8 Mr. Haeg not guilty of knowingly hunting, same day airborne  
 9 with regard to those nine wolves that were taken outside of  
 10 the permitted area, and not guilty of trapping out of season,  
 11 and not guilty of failing to salvage the wolf hide that was  
 12 in the snare. Thank you.  
 13 THE COURT: Thank you, Mr. Robinson. Thank you. Looking  
 14 at the time trying to decide what we're going to do here. Is  
 15 anybody ready for lunch yet or do you want me to keep going?  
 16 (Whispered conversation)  
 17 THE COURT: Do you want to take just a few -- like a five  
 18 minute break and then keep moving? Is that -- or do you want  
 19 to take lunch right now?  
 20 UNIDENTIFIED JUROR: Let's keep going.  
 21 THE COURT: Keep going? Any of you need a five minute  
 22 break or anything, to stretch and....  
 23 MR. LEADERS: I notice I forgot, Judge, to get the  
 24 evidence we need for the first witness sent around.  
 25 THE COURT: Okay. Why don't we go ahead and take a five

- 114 -

1 minute break.  
 2 (Off record)  
 3 (Anteroom conference as follows):  
 4 11:20  
 5 THE COURT: Normally, Mr. Haeg, I have to inform you that  
 6 later on in the trial I'm going to ask you whether you want  
 7 to testify or not. I'm not asking you at this time, I just  
 8 need to tell you that I want you thinking about that, because  
 9 I am going to ask you about what your decision is going to  
 10 be. It is your decision to make on your own. Obviously  
 11 expect that you would ask for advice of counsel from Mr.  
 12 Robinson, but it is ultimately your decision as to what you  
 13 want to do. And I will ask you at that -- for that decision  
 14 at a later time in the trial. Normally I do that before the  
 15 opening statements, but the way we were set up I didn't want  
 16 to ask everybody to come up that time so this just seemed a  
 17 more.....  
 18 MR. HAEG: Yes. Yeah.  
 19 THE COURT: .....convenient time to do it. Okay. All  
 20 right, that's all I'm telling you. Okay.  
 21 MR. ROBINSON: (Indiscernible).  
 22 THE COURT: Yeah, it is and....  
 23 MR. HAEG: Owe somebody 40 bucks?  
 24 THE COURT: \$40, yes. We can go off record.  
 25 (Anteroom conference concluded)

- 115 -

1 11:22  
 2 (Bench conference as follows):  
 3 MR. LEADERS: I'm not going to discuss it. I mean I have  
 4 the witness here (indiscernible) for this witness and  
 5 (indiscernible) Mr. Robinson's opening (indiscernible).  
 6 MR. ROBINSON: (Indiscernible).  
 7 THE COURT: What? Whether he knew he it was.....  
 8 MR. ROBINSON: I mean he knew he was hunting and  
 9 that's.....  
 10 THE COURT: The (indiscernible) is closed.  
 11 MR. LEADERS: (Indiscernible).  
 12 THE COURT: Well, that's true.  
 13 (Indiscernible portion)  
 14 MR. ROBINSON: But still the question is intent and  
 15 purpose and knowingly falls in that category.  
 16 MR. LEADERS: There's.....  
 17 MR. ROBINSON: You cannot begrudge him from saying that  
 18 he wasn't hunting knowingly.  
 19 MR. LEADERS: (Indiscernible).  
 20 MR. ROBINSON: No, no, no, no. No, no.  
 21 MR. LEADERS: (Indiscernible).  
 22 MR. ROBINSON: She read them a synopsis of the  
 23 instruction of the charges that I'm almost certain  
 24 (Indiscernible) the statutes and instruction of what the  
 25 elements are.

- 116 -

1 THE COURT: Uh-huh.  
 2 MR. ROBINSON: The element is knowing that he was  
 3 hunting.  
 4 THE COURT: No, it's not (indiscernible).  
 5 (Portion indiscernible).  
 6 MR. ROBINSON: (Indiscernible) The knowingly  
 7 (indiscernible) knowingly violation is hunting. Yes, it is.  
 8 It's two of them. Hunting and waste of food animals.  
 9 (Indiscernible).  
 10 THE COURT: This is -- I'd rather get started on the  
 11 instructions. A person (indiscernible) knowingly violated  
 12 (indiscernible) regulations.  
 13 MR. ROBINSON: Prohibiting .....

14 THE COURT: Hunting.  
 15 MR. ROBINSON: Prohibiting hunting.  
 16 THE COURT: Right. Because the knowing (indiscernible)  
 17 violation (indiscernible).....  
 18 MR. ROBINSON: There's also -- no, you've got to be --  
 19 you have to.....  
 20 THE COURT: (Indiscernible).  
 21 MR. ROBINSON: Otherwise it would just say violated state  
 22 regulations, period. But it's (indiscernible) hunting.  
 23 THE COURT: Well, we'll do that when we go through these  
 24 things.....  
 25 MR. LEADERS: (Indiscernible).

- 117 -

1 MR. ROBINSON: The other thing I'd like to bring up is  
 2 that Mr. Miller is sitting so close to the counsel table that  
 3 he's able to read Trooper Gibbens notes. Can we move the  
 4 table back some?  
 5 MR. LEADERS: (Indiscernible)  
 6 (Bench conference indiscernible).  
 7 (End of bench conference)  
 8 MR. LEADERS: Get a little more space there.  
 9 THE COURT: Okay. Are we ready?  
 10 MR. LEADERS: The state's ready.  
 11 THE COURT: Okay. Do you want to.....  
 12 MR. LEADERS: Judge, the state's call, -- our first  
 13 witness is Glenn Godfrey, Junior.  
 14 THE COURT: Okay. Mr. Godfrey, if you'd just stand and  
 15 face the clerk so she can swear you in, and raise your right  
 16 hand, please.  
 17 (Oath administered)  
 18 MR. GODFREY: I do.  
 19 THE CLERK: Thank you, you may be seated.  
 20 GLENN GODFREY  
 21 called as a witness on behalf of the plaintiff, testified as  
 22 follows on:  
 23 DIRECT EXAMINATION  
 24 THE CLERK: State your name, spell your last name for the  
 25 record.

1 A Glenn Godfrey, G-o-d-f-r-e-y.  
 2 THE CLERK: Two n's in Glenn?  
 3 A Yes.  
 4 THE CLERK: Okay. Your occupation?  
 5 A State Trooper with Wildlife Enforcement.  
 6 THE CLERK: And where do you live?  
 7 A Soldotna, Alaska.  
 8 THE CLERK: Thank you.  
 9 MR. ROBINSON: Your Honor, at this time I'd like to  
 10 propose an objection. You can either do it in the presence  
 11 of the jury or we can do it up in the room.  
 12 THE COURT: All right. Let's go up there.  
 13 (Off record)  
 14 11:37/0030  
 15 (Tape change)  
 16 4MC-05-09/Side C  
 17 (Anteroom conference as follows):  
 18 THE COURT: We're on record, the parties are present, the  
 19 jury is out.  
 20 MR. ROBINSON: The objection is comes now the defendant,  
 21 David Haeg, by his counsel and objects to the introduction of  
 22 testimony in this case for the reason that the information is  
 23 not sufficiently verified under oath to put the defendant on  
 24 trial. And secondly, that the second amended complaint is  
 25 not valid because it charges additional crimes over the first

1 -- different additional crimes over the first amended  
 2 complaint and prejudices the defendant.  
 3 THE COURT: I think we (indiscernible) already ruled on  
 4 the motion to dismiss?  
 5 MR. ROBINSON: You may have ruled on the first one I  
 6 don't think you've ever ruled on the second.  
 7 THE COURT: (Indiscernible). I don't know what else you  
 8 want.....  
 9 MR. LEADERS: Just to make sure I understand Mr.  
 10 Robinson. The first is that the allegations or the charges  
 11 are based under hunting (indiscernible).  
 12 MR. ROBINSON: Yes, not sufficiently verified and under  
 13 oath.  
 14 MR. LEADERS: Okay.  
 15 MR. ROBINSON: (Indiscernible).  
 16 THE COURT: And the second one?  
 17 MR. ROBINSON: And the second one is that the second  
 18 amended complaint is not valid because it charges different  
 19 and additional crimes and prejudices Mr. Haeg's rights.  
 20 (Pause)  
 21 THE COURT: Mr. Leaders, your response?  
 22 MR. LEADERS: Sure. Judge, the first issue has been --  
 23 that was the basis for the pretrial motion to dismiss, the  
 24 information that has been already ruled on by the court, that  
 25 I haven't heard any additional argument subsequent to the

1 court's ruling on that issue as far as not sufficiently  
 2 verified under oath. Also I'd submit the second amended  
 3 information is under oath and is sufficiently verified by the  
 4 information contained in the information (indiscernible).  
 5 As to the second objection, the second amended complaint  
 6 that the charge is different and additional crimes -- in  
 7 fact, the second amended information clarifies the charges --  
 8 there was typographical errors in the I guess amended  
 9 information. It was a -- the charging language and the --  
 10 and I didn't bring my file up here so I'll -- let me know if  
 11 there's objection. I'll go track -- trace that history back.  
 12 Is there was an improper caption as far as the charge  
 13 citation in a portion of the indictment, or not indictment,  
 14 information, excuse me.  
 15 Information, and that was clarified by the second  
 16 amended information which properly had all -- not just  
 17 charged language but also citations in all the appropriate  
 18 places listing them, and I'm assuming -- and just correct me  
 19 if I'm wrong, but you're referring to Counts I through V, Mr.  
 20 Robinson?  
 21 MR. ROBINSON: Correct.  
 22 MR. LEADERS: Okay. All the rest of the charges are  
 23 already filed, as well. So in Counts I through V we  
 24 clarified, made sure all language charging statutes and  
 25 language was consistent as far as 8.54.720, subsection

1 (a)(15). So there's no additional or new charges or  
 2 different charges from the second amended information.  
 3 Additionally, even if there were, Judge, I mean the case  
 4 law and Rules of Evidence provide that the state can amend  
 5 charges even up -- basically up to a jury verdict. The court  
 6 has to consider prejudice to the defendant and such, but this  
 7 is all done well in advance of even our first attempt at  
 8 trial back in May, so there's been ample notice and  
 9 opportunity to prepare based on what was clarified to be the  
 10 actual charges being presented in this by the state. And  
 11 that is 8.54.720 (a)(15) violations. So it isn't an issue of  
 12 changing charges or adding additional charges now at trial.  
 13 We're just -- or to (indiscernible) it's certainly not  
 14 prejudice to the defendant, possibly (indiscernible) stated.  
 15 There's -- you know, I don't know what is exactly being  
 16 requested. I don't think Mr. Robinson has legal merit to the  
 17 objections.

18 THE COURT: Mr. -- yeah, generally.

19 MR. ROBINSON: If the court looks at its file there are  
 20 actually three informations that are in the court file. The  
 21 original information, the amended information, and the second  
 22 amended information. The original information and the first  
 23 amended information as far as the body of the complaint is  
 24 concerned because the captions are irrelevant. They're  
 25 (indiscernible). That's not what the information is.

1 conduct is different, by knowingly violating game laws  
 2 prohibiting hunting, same day airborne. Is different than  
 3 the charges in eight -- or Title 8, which was just some  
 4 nebulous undefined conduct.

5 So the second amended complaint is a complaint that  
 6 charges additional crimes, or different crimes. Rule seven  
 7 of the criminal rules says, yeah, that a complaint can --  
 8 information in the complaint can be amended up to the  
 9 verdict, except if it doesn't charge additional crimes. This  
 10 one does. For that reason we shouldn't be able to have any  
 11 testimony in this case on the second amended complaint, as  
 12 well as the second amended complaint is not under oath as  
 13 required in (indiscernible). And if it isn't under oath  
 14 before a magistrate or a judge as to the (indiscernible)  
 15 because the first amended complaint was not. And so  
 16 therefore for that reason the second amended complaint is not  
 17 sufficiently verified and under oath to put the defendant on  
 18 trial.

19 MR. LEADERS: Just briefly (indiscernible), Judge. Part  
 20 of this is -- Mr. Robinson's at a disadvantage for not --  
 21 because he wasn't the original attorney, wasn't present at  
 22 the arraignment. At the arraignment this issue was discussed  
 23 at that point in time as to why Mr. Haeg was being arraigned  
 24 on the amended information as opposed to -- the original  
 25 information was under charges under 8(a)(A) -- or A.8(a), and

1 The information are the counts that are actually  
 2 charged. And the counts that are charged in the first  
 3 information and in the first amended information are for the  
 4 first five counts in this case are Title 8, the short  
 5 version, 8 (8) of the guide statutes. The state charged that  
 6 twice. In the original information and then in the first  
 7 amended information. To say that was a typographical error  
 8 is very difficult to believe because the typographical error  
 9 should have been caught -- if there was one, from the time of  
 10 the first information being filed and the first amended  
 11 information being filed. but it wasn't. The actual body of  
 12 those informations contain the exact language for all --for  
 13 the five counts.

14 It wasn't until after we objected to the information as  
 15 not being under oath and verified that the state then filed  
 16 this -- or proposed to file a second amended complaint, which  
 17 now the body of the complaint contains 8, the short version,  
 18 15(a). So this business about it being a typographical error  
 19 is just hard to believe, given the fact that that same charge  
 20 is repeated twice in the original information and the first  
 21 amended information.

22 The second information charges different and additional  
 23 crimes in Counts I through V, because the penalties are  
 24 different for violation of 15(a) (indiscernible) then they  
 25 are under 8(a). And the activity is different. The actual

1 Mr. -- I indicated to the court at the time of arraignment  
 2 the resolution which would have allowed for it to be under  
 3 that offense, under that statute, wasn't reached. I  
 4 indicated to the court at the arraignment, we filed the  
 5 amended information. There was a discussion on the record  
 6 but Mr. Cole(ph) indicated you don't need to arraign on the  
 7 second information and there was a discussion on the record  
 8 that, yes, we do because they are different charges under the  
 9 first five offenses. So he was actually arraigned knowing  
 10 that they were 8(15) violations. It is -- there were  
 11 typographic errors because in the charging language, the  
 12 citing statute, that was not changed in the amended  
 13 information from the first information. That was corrected.  
 14 The second amended information. So Mr. Haeg was actually  
 15 arraigned on charges, it was on the record, that they were  
 16 8(15) violations. He was never even arraigned on the A(8)  
 17 information, the original information. That was the first --  
 18 at the first arraignment.

19 We scheduled an arraignment, that's when he was  
 20 arraigned on the -- we skipped the information in the  
 21 arraignment on the amended information. Also, I'd just point  
 22 out that I mean Mr. Robinson's argument would indicate that  
 23 the state could never amend charges, they could never -- if  
 24 you filed -- if the state filed an information and then got  
 25 additional information that there were other offenses

1 committed. they would never be able to file an amended  
 2 information.  
 3 What Rule 7(e) discusses is that -- and it states, the  
 4 court may permit an indict -- or information to be amended at  
 5 any time before verdict or finding if no additional or  
 6 different charge -- offense is charged and the substantial  
 7 rights of the defendant are not prejudiced. So it's  
 8 discussing once you get into trial you look at what's the  
 9 prejudice to the defendant. Otherwise Mr. Robinson's  
 10 argument -- the state would have to -- the troopers would  
 11 have to get it right the first time. If they don't get every  
 12 possible violation on there you could never have an amended  
 13 information. That's not an accurate understanding of the  
 14 law.  
 15 THE COURT: I was listening.  
 16 MR. LEADERS: I understand. Thanks.....  
 17 THE COURT: I'm getting more than one thing at a time.  
 18 MR. ROBINSON: Yeah. Mr. Haeg wants to speak to me in  
 19 private. So I'm going to go over here.  
 20 THE COURT: Okay, sure.  
 21 (Whispered conversation)  
 22 MR. LEADERS: Does the court have the log notes from the  
 23 arraignment? Can I review those to see if there's anything  
 24 in there? What was.....  
 25 THE COURT: They're the first ones on top of the other

1 MR. ROBINSON: The way I read the rule. Under Rule 9  
 2 it's mandatory for the court to issue one or the other. And  
 3 (indiscernible).....  
 4 THE COURT: I mean it.....  
 5 MR. ROBINSON: Yes, it is. If you'd pull out Rule 9.  
 6 THE COURT: Yes, it's right here.  
 7 MR. ROBINSON: I didn't bring my rules. I had mine. I'm  
 8 sorry. But here's -- Rule 9, it says that upon the filing of  
 9 an information the court shall issue a warrant for arrest.  
 10 And then this.....  
 11 THE COURT: Unless -- Uh-huh (Affirmative). Right.  
 12 MR. ROBINSON: And you can issue a summons, but it's  
 13 mandatory, it's not a discretionary part of the court to do  
 14 one -- it's mandatory to do one or the other.  
 15 MR. LEADERS: Well, it says if it is supported by oath  
 16 (indiscernible).  
 17 MR. ROBINSON: Right. Exactly.....  
 18 MR. LEADERS: So the only connection.....  
 19 MR. ROBINSON: If it's supported by oath then it's manda  
 20 -- you have to issue -- I mean if -- an indictment is  
 21 already a probable cause (indiscernible)the grand jury, and  
 22 information has to be supported by oath in order to be  
 23 probable cause but then the court has jurisdiction to issue a  
 24 warrant or a summons.  
 25 THE COURT: But in this case it was a voluntary hearing

1 carbon (indiscernible).  
 2 MR. LEADERS: Thank you.  
 3 THE COURT: I'm not taking -- I'm just taking these out  
 4 so that we can look at them.....  
 5 MR. LEADERS: Yeah. No, I.....  
 6 THE COURT: .....if you want to, they've just not been  
 7 put into evidence.  
 8 MR. LEADERS: Yeah, that's fine.  
 9 (Whispered conversation)  
 10 (Pause)  
 11 THE COURT: Go ahead, Mr. Robinson.  
 12 MR. ROBINSON: I've pretty much made my argument, Judge.  
 13 None of the information that Mr. Haeg pled not guilty to was  
 14 sufficiently verified and under oath (indiscernible) second  
 15 amended complaint charges different crimes.  
 16 THE COURT: It's Mr. Robinson's motion, he gets the last  
 17 word, Mr. Leaders.  
 18 MR. LEADERS: Yeah, I'm sorry.  
 19 THE COURT: The issue I know that I ruled on before,  
 20 because I remember writing it, and I double checked it is  
 21 that the only -- there's actually no requirement that an  
 22 information be filed under oath or affirmation, unless a  
 23 summons or a warrant is going to be issued. In this  
 24 particular case a warrant and summons were never issued  
 25 (indiscernible).

1 so therefore no warrant or summons was issued.  
 2 MR. ROBINSON: What voluntary hearing?  
 3 THE COURT: Mr. Haeg appeared voluntarily at this  
 4 hearing.  
 5 MR. HAEG: No, I didn't.  
 6 THE COURT: There's.....  
 7 MR. ROBINSON: I don't understand a voluntary hearing.  
 8 THE COURT: That's why there was no warrant or summons  
 9 issued, because he was there and present for arraignment with  
 10 his counsel.  
 11 MR. ROBINSON: On the amended complaint -- on the amended  
 12 information?  
 13 THE COURT: Yes. On the amended information. There was  
 14 never any arraignment on the originally filed  
 15 information.....  
 16 MR. ROBINSON: He was arraigned on the amended  
 17 information which was filed by the prosecution?  
 18 THE COURT: Uh-huh.  
 19 MR. ROBINSON: After the original information?  
 20 THE COURT: Uh-huh.  
 21 MR. ROBINSON: And where was the warrant or summons to  
 22 make him come to court?  
 23 THE COURT: There -- he voluntarily appeared. There was  
 24 no warrant issued.  
 25 MR. LEADERS: Well, actually Mr. Cole(ph) and I discussed

1 a specific date -- we agreed on a date where he and his  
 2 client would appear and I was available as well. There was  
 3 -- that he wasn't needed, and no summons or warrant was  
 4 issued or required. There was just a request that the.....  
 5 (Whispered conversation)  
 6 MR. ROBINSON: Well, anyway that -- we made the  
 7 objection, so.  
 8 THE COURT: I understand.....  
 9 MR. LEADERS: It think it's.....  
 10 THE COURT: And that one's overruled based on that, and  
 11 the -- prior -- ruled on prior to that. The issue as to the  
 12 second one, the amended information. It was amended and  
 13 filed with the court -- I'm going to look at the dates here,  
 14 I believe April something, April 25th. The -- and I recall  
 15 from the -- although I'm not sure that I requested it in the  
 16 log notes but it's my recollection of the arraignment was it  
 17 was discussed that the allegation was -- or the allegations  
 18 were in Counts I through V under the A(15) as listed in the  
 19 caption, and that the -- Mr. Haeg was on notice as of the  
 20 original -- the date of arraignment which I believe was  
 21 November 8th, that those were the charges under  
 22 8.54.720(a)(15). The -- as I recall the discussion that the  
 23 maximum penalty was under that section. I have not listened  
 24 to the arraignment tape since it occurred so -- but it's my  
 25 recollection that that was specifically discussed as to the

1 an hour, hour and 15 just because I know people need to walk  
 2 and go places.  
 3 MR. ROBINSON: Yeah. Yeah. We're on bicycles.  
 4 THE COURT: Well.....  
 5 MR. LEADERS: How late are we going today, Judge? I  
 6 know.....  
 7 THE COURT: We've got to be done before 6:30.  
 8 MR. ROBINSON: And we have that 4:00 o'clock.  
 9 MR. LEADERS: We've got a 4:00 o'clock.  
 10 THE COURT: Now my -- I have a question about that. Is  
 11 that just for you all? Because here's my point. I don't  
 12 want to break at 4:00 o'clock and have them call you at 5:00.  
 13 MR. LEADERS: If we're in our.....  
 14 THE COURT: Well, I mean I don't mind even stopping kind  
 15 of mid.....  
 16 MR. ROBINSON: No, it's just Scot and I have a -- we have  
 17 a first degree murder case and Judge Wolverton is.....  
 18 THE COURT: And I understand, but what I'm saying is  
 19 that.....  
 20 MR. LEADERS: Are we just a long list.....  
 21 THE COURT: .....I have no problem calling Judge  
 22 Wolverton and saying are they number 1 on your list at 4:00  
 23 or are they.....  
 24 MR. ROBINSON: Oh, right, right.  
 25 THE COURT: .....number 12.

1 difference in penalties, and so as of the arraignment date of  
 2 November 8th, I believe, Mr. Haeg was on -- 11-9, sorry.  
 3 November 9th. Mr. Haeg was on notice of that. Even assuming  
 4 he wasn't, the amended one with the caption and the  
 5 subsequent -- in each count, the ones both showing (a)(15)  
 6 were on -- filed on April 25th which was prior to the  
 7 beginning of this trial. It was jury selection on May 17th.  
 8 Even if all of that was not true, looking at this -- at any  
 9 prejudice, any potential prejudice to the defendant in this  
 10 particular case, and in opening statement indicated that you  
 11 had prepared and worked -- that your argument is based on  
 12 these charges, so I see no prejudice to the defendant at this  
 13 point even if the charges were amended in April. And it's  
 14 been clear that everybody's been preparing for that, all the  
 15 arguments and motions that have been going on are based on  
 16 the allegation being under Alaska Statute 8.54.720(a)(15), so  
 17 even if it wasn't done earlier it was clearly done in April,  
 18 and I find no prejudice to the defendant for allowing the  
 19 amended charges at this time. So I'm going to deny both  
 20 those motions. All right.  
 21 MR. LEADERS: (Indiscernible) plan at this point?  
 22 THE COURT: I -- yeah, it -- we're now into the noon  
 23 hour, I'm going to go ahead.....  
 24 MR. ROBINSON: Yeah, we'll take a lunch.  
 25 THE COURT: .....and break for lunch. I'd like to give

1 MR. LEADERS: If you'll secure that.  
 2 MR. ROBINSON: You secure that.....  
 3 MR. LEADERS: You have -- you have more sway than we do,  
 4 Judge, so.....  
 5 MR. ROBINSON: You have.....  
 6 THE COURT: I want to get a time specific so that we're  
 7 not wasting everybody's time.....  
 8 MR. LEADERS: So do we, Your Honor.  
 9 MR. ROBINSON: Yeah, I agree. I agree with that.  
 10 THE COURT: So I will call. It's Judge Wolverton?  
 11 MR. ROBINSON: Judge Wolverton.  
 12 MR. LEADERS: Yeah.  
 13 THE COURT: I will call his administrative assistant and  
 14 get back.....  
 15 MR. ROBINSON: Right, because I don't want to be waiting  
 16 either.  
 17 THE COURT: Get that set up.  
 18 MR. LEADERS: I agree. And then we'll resume after....  
 19 THE COURT: And then we will break for the day no long --  
 20 no later than 6:30 so that -- probably 6:00.  
 21 MR. ROBINSON: Okay. All right. So they can ahead with  
 22 the pot luck.  
 23 THE COURT: No later than that to let everybody go to  
 24 that. I will tell everybody we're going to go to lunch and  
 25 be back at 1:15. I want -- I mean that means we want to



1 start at 1:15. The jurors have been very, very good about  
 2 coming back even early, so....  
 3 MR. LEADERS: Okay. All right.  
 4 THE COURT: ....let's not keep them hold up, okay.  
 5 MR. ROBINSON: Okay.  
 6 (Anteroom conference concluded)  
 7 0110  
 8 (Tape change)  
 9 4MC-05-09/Side B  
 10 0030  
 11 THE COURT: We're back on record. As you can tell, that  
 12 took some time, and now we are into the lunch hour, so rather  
 13 than get started and have everybody's stomach start growling  
 14 and I've worked up an appetite running up and down the stairs  
 15 here after everybody, so we are going to go ahead and take a  
 16 break. We are going to start back at 1:15 promptly, and I  
 17 have been assured that everybody knows 1:15 and me promptly  
 18 means we're going by this clock, at 1:15. So we'll go ahead  
 19 and take a lunch and be back at 1:15. If your clock is  
 20 different than that one, adjust accordingly. Okay, so we can  
 21 be ready to go at 1:15.  
 22 One second. I have to read this one to you. From now  
 23 until the end of the trial when I send you to the jury room  
 24 to decide the case you may not discuss this case with or  
 25 offer an opinion about it to anyone else. This means not

- 134 -

1 with anyone else on the jury and also not with any other  
 2 person including court personnel. You are expected to  
 3 evaluate the evidence independently until you are told to  
 4 deliberate as a group.  
 5 As the case moves along you should keep in mind that the  
 6 evidence can only be presented one piece at a time. You  
 7 should keep an open mind and form no opinion until the end.  
 8 Until the trial is over you must avoid contact with any of  
 9 the persons who are participating in the trial. This  
 10 includes the parties, the lawyers, the witnesses and any  
 11 person that you see in close contact with these individuals.  
 12 Do not visit the scene where the -- any of the events took  
 13 place, do not conduct any investigation outside the  
 14 courtroom. Remember that you are to decide the case only on  
 15 the evidence presented here in court. Okay, lunch time.  
 16 See you all at 1:15. Thank you. We can go off record.  
 17 (Off record)  
 18 THE COURT: All right, we're back on record, the parties  
 19 are present and the jury is present. Mr. Godfrey is in the  
 20 witness chair. Mr. Godfrey, I want to remind you that before  
 21 we left you were sworn in so you are still under oath, okay.  
 22 Mr. Leaders, do you want to proceed?  
 23 MR. LEADERS: Yes, Judge, may I remain seated for  
 24 questioning with our courtroom set up here?  
 25 THE COURT: Sure. That's fine with me.

- 135 -

1 MR. LEADERS: Thank you.  
 2 BY MR. LEADERS:  
 3 Q Mr. Godfrey, who do you work for, sir?  
 4 A Alaska State Troopers, Bureau of Wildlife Enforcement.  
 5 Q How long have you worked for the troopers?  
 6 A It will be nine years next month, or September for nine  
 7 years.  
 8 Q And how long in wildlife enforcement?  
 9 A The whole time, nine years.  
 10 Q Okay. What's your current position then?  
 11 A Sergeant in charge of the Soldotna area. Soldotna and  
 12 Homer, and based in Soldotna.  
 13 Q How long have you been in your Sergeant position?  
 14 A Three years next month.  
 15 Q The -- have you had any involvement in an investigation  
 16 related to Mr. David Haeg and allegations of aerial wolf  
 17 shooting down in the McGrath area?  
 18 A Yes. Yes, I did.  
 19 Q Can you explain to the jury what your involvement was  
 20 and I guess when you became involved, first of all?  
 21 A Well, I got a -- received a call from Trooper Gibbens  
 22 asking him to see if there was a plane which he  
 23 described to me as a Cub, colors on it and a bat painted  
 24 on the -- on the tail of it. Certain residents out in  
 25 Brown's Lake, which is out in the Soldotna area,

- 136 -

1 Frontage River Road area, on the 31st of March of '04.  
 2 Drove out....  
 3 Q So last year on the 31st of March?  
 4 A Yes.  
 5 Q Okay.  
 6 A Of '04. Drove out there on that day. Did see the Cub  
 7 out there, did see it at a residence which we identified  
 8 as Mr. Haeg's residence. And....  
 9 Q Okay. Any other involvement then after -- other than  
 10 just checking to see if his plane was there?  
 11 A Yes, I reported back to Trooper Gibbens, told him what  
 12 was going on and then he sent some search warrants our  
 13 way the next day, and asked us to go serve the search  
 14 warrants and seizure warrants.  
 15 Q So the next day, -- so April 1st of 2004?  
 16 A Correct.  
 17 Q Were you involved then in the service of the search  
 18 warrants?  
 19 A Yes, I was.  
 20 Q And what did the search warrants -- those are warrants  
 21 issued by the court authorizing a search?  
 22 A Yeah, there was a search warrant for the residence, the  
 23 out buildings, and plane. I don't remember all the  
 24 details of the warrants themselves, but they're pretty  
 25 encompassing of everything out on that property.

- 137 -

1 Q Okay. And so you went to the property to assist with  
 2 the service of these warrants?  
 3 A Yes, I did.  
 4 Q Okay. I guess what all there on the property was to be  
 5 searched?  
 6 A His residence, any out buildings, planes. Like -- like  
 7 I said, pretty much anything out in his -- on his  
 8 property out there, out buildings.  
 9 Q What buildings were there that were searched?  
 10 A Searched the house, mainly the garage portion of the  
 11 house which is a garage/hangar. He had a plane in  
 12 there. There's some out buildings, if I remember, by  
 13 the lake, outside -- his house is on a lake, right out  
 14 there. There was an out building, a shed type thing. I  
 15 remember searching that. And the garage, and then also  
 16 looking in the plane that was in the hangar and the  
 17 plane we called the Batcub, 4011 Mike I think it was.  
 18 Q 4011M the tail number?  
 19 A And -- tail numbers, yes.  
 20 Q Okay. And so that plane is -- as well is also searched?  
 21 A Yeah, it wasn't there when we arrived, but it was  
 22 contacted by troopers -- my Lieutenant contacted him via  
 23 the air traffic controllers -- I mean calling him and  
 24 asking him to come back. When we showed up it was  
 25 actually taxiing off the lake at that time.

1 Q So when you first show up at that plane the Batcub  
 2 plane?  
 3 A Yeah, I -- we call it that because there's a bat -- like  
 4 a picture of a bat on the tail, so.  
 5 Q And so that plane was taxiing off the lake when you  
 6 first arrived?  
 7 A Yes.  
 8 Q And you had someone call it back?  
 9 A Yes.  
 10 Q Does the plane come back?  
 11 A Yes.  
 12 Q Okay. Who was in the plane?  
 13 A Mr. Haeg was in the plane and another gentleman named  
 14 John Jedliki.  
 15 Q Okay. Did you talk with Mr. Haeg about why you were  
 16 there?  
 17 A Yes, I did.  
 18 Q What was -- how did Mr. -- what did you tell Mr. Haeg?  
 19 A I don't think I was the first one to contact him. I  
 20 think Trooper Mountain actually was the first one to  
 21 contact him, and I don't know what was said right then  
 22 and there. I think I came up right after, but basically  
 23 that we had search warrants involving the shooting of  
 24 some wolves up in this area, basically was....  
 25 Q When you say up in this area, you mean the McGrath area?

1 A Yes.  
 2 Q Okay.  
 3 A Stemming from McGrath. I don't remember exactly what he  
 4 used.  
 5 Q Okay. And what was Mr. Haeg's reaction to that?  
 6 A Kind of downtrodden, a little surprised I think at  
 7 first, in my opinion, and then kind of -- I think as we  
 8 went on he seemed a little bit more and more depressed,  
 9 downtrodden, looking down a lot and -- and not saying  
 10 much, really.  
 11 Q Kind of a defeated type....  
 12 A Yes.  
 13 MR. ROBINSON: Objection, leading.  
 14 THE COURT: Sustained.  
 15 Q Do you....  
 16 A Yeah, he was just looking down, hands down a lot and not  
 17 looking up and as -- and as it went on it got more and  
 18 more so of that.  
 19 Q As it went on, I mean did you discuss then more about  
 20 why you were there or I mean I guess what do you mean  
 21 when you -- as you say as....  
 22 A Yeah, we were there for -- I don't remember exactly how  
 23 long we were there, but we were there quite a while, and  
 24 just the more we talked about it and kind of told him  
 25 what was going on, what we were looking for, what we saw

1 and the more questions we asked, just like I said, he  
 2 was looking down a lot. Kind of seemed almost depressed  
 3 to me, something like that.  
 4 Q Was he that way when you first cont -- he -- you first  
 5 contacted him....  
 6 A No, when he -- when he first came out of the plane it  
 7 was probably more curiosity, you know kind of type.  
 8 What's going on, you know. And then as we began talking  
 9 it got -- it became that way eventually.  
 10 Q Okay. Well, when the plane arrived who was piloting the  
 11 plane?  
 12 A Mr. Haeg was.  
 13 Q So you told Mr. Haeg why you were there and we've kind  
 14 of discussed how he reacted to that. And you've said  
 15 you were there for a search warrant. What were you  
 16 looking for under the search warrant?  
 17 A If I recall it was guns, photos, navigational equipment,  
 18 ammo. I don't remember the details. There was a lot of  
 19 stuff, but -- but -- so anything to do pretty much with  
 20 wolf hunting and navigating and flying and stuff like  
 21 that type.  
 22 Q In fact, even weren't a couple specific types of guns  
 23 identified under the warrant?  
 24 A I -- I think so. And I'm not sure, but I think there  
 25 was, yes.

1 Q Now let me ask. Did you -- did you observe any or find  
2 any guns when you searched?  
3 A Yes. When I first got there, saw the plane taking off,  
4 we went and looked around the house while we were  
5 waiting for it to return, and could see inside the  
6 hangar -- could see guns from inside the hangar and saw  
7 that one of the doors was unlocked in the back. But I  
8 could see some guns on the -- I think it was on the far  
9 wall when we were sitting the farthest away from the  
10 lake, looking on the -- looking in the hangar. Or the  
11 hangar/garage.  
12 Q Okay. Did you discuss those guns with Mr. Haeg at all?  
13 A I did, yes.  
14 Q What was the discussion?  
15 A We were in the garage at the time and if I remember  
16 correctly I think it was sitting on the counter  
17 (indiscernible). And I asked him if those were the guns  
18 that he used to shoot wolves, and he just said yeah.  
19 Q Okay. And shooting wolves, that's what you had told him  
20 you were there about, is that correct?  
21 A That's correct.  
22 Q Did Mr. Wolf -- or Mr. -- excuse me -- Haeg talk with  
23 you about the wolves he had shot?  
24 A He talked some. I asked questions and he'd -- he'd  
25 answer some or -- or sometimes ask questions back to me.

- 142 -

1 questions. He has a right not to do that at any time, so I  
2 want you basically just to ignore that kind of line of  
3 questioning and those answers and questions that went along  
4 with that, and to take no inference from those. Okay. Mr.  
5 Haeg? Mr. -- oh, I'm sorry. Mr. Leaders, you want to  
6 continue?  
7 MR. LEADERS: Yes, thank you, Judge.  
8 Q You spoke with Mr. -- so you've talked about you spoke  
9 with Mr. Haeg about the guns. Did you seize those guns,  
10 sir?  
11 A Yes, we did.  
12 Q Okay. In fact, you've brought them up here into court  
13 earlier, is that correct?  
14 A Yes, I did.  
15 MR. LEADERS: May I approach the witness with the  
16 exhibits, Judge?  
17 THE COURT: Sure. What is that marked as?  
18 Q This is marked as Prosecution Exhibit 1, correct?  
19 A Yes.  
20 Q Could you identify that, please?  
21 A Yes; this is one of the guns that was on the wall that  
22 we seized.  
23 Q Is it one of the guns Mr. Haeg indicated was used in the  
24 taking of wolves?  
25 A Yes, this -- well, they were over there together and I

- 144 -

1 Q Did you get much information out of him?  
2 A I didn't think I -- I didn't think I got much. I got  
3 some I think.  
4 Q Okay. I mean how was -- was he directly responding to  
5 your questions and just didn't have the information or?  
6 A I don't know. It seemed -- to me it seemed to be  
7 evasive at times or just not answering.  
8 MR. ROBINSON: Objection.  
9 (Bench conference as follows:)  
10 MR. ROBINSON: (Indiscernible) of any opinions about  
11 (indiscernible) questions.  
12 MR. LEADERS: (Indiscernible).  
13 MR. ROBINSON: You can exercise that right at any time.  
14 So why does he want to comment on that?  
15 (Bench conference indiscernible)  
16 (End of bench conference)  
17 THE COURT: Ladies and gentlemen of the jury, we -- the  
18 questions that Mr. Leaders was asking and the responses by  
19 Mr. Godfrey -- as I said earlier in the instructions.  
20 Everybody has a right to remain silent. You'll never have to  
21 answer any questions. Mr. Godfrey's question -- or comments  
22 in response to the questions were not in any way meant to  
23 indicate that Mr. Haeg had an obligation to answer, and  
24 they're not to be taken as any type of inference of guilt  
25 because he did not answer or did not respond to any

- 143 -

1 just pointed over there and said are these the guns you  
2 used to shoot the wolves, and he just said yeah.  
3 Q Okay. How many guns were there there total?  
4 A I think there was two if I recall correctly.  
5 Q Okay. All right. And that was taken from where?  
6 A It was on the far wall of the hangar/shop. If I  
7 remember I think they were hanging up on the -- sitting  
8 up on the wall in a gun rack or something -- on  
9 something like that. I don't recall exactly, but I  
10 remember.....  
11 Q At the shop or hangar at Mr. Haeg's residence?  
12 A In the hangar, yes. The hangar/garage, yeah.  
13 Q Okay.  
14 MR. LEADERS: State would seek to admit Exhibit 1.  
15 MR. ROBINSON: No objection.  
16 THE COURT: Okay. Admit Exhibit 1.  
17 (Plaintiff's Exhibit 1 admitted)  
18 MR. LEADERS: Judge, where you would you like those put?  
19 Maybe back over here a different way or.....  
20 THE COURT: Yeah, give it to Magistrate Widnesy(ph) and  
21 he'll set it over by him somewhere.  
22 MR. LEADERS: Okay.  
23 THE COURT: Or behind us or something. Just so everybody  
24 knows, those are unloaded, correct?  
25 UNIDENTIFIED SPEAKER: Yes.

- 145 -

1 MR. LEADERS: Yeah, I guess I'll (indiscernible).  
 2 A Double check too.  
 3 MR. ROBINSON: Is that a shotgun?  
 4 A Yes.  
 5 MR. LEADERS: Actually -- Magistrate, maybe I'll....  
 6 Q Can you identify -- okay, you've identified it as a  
 7 shotgun?  
 8 A Yes, sir.  
 9 Q Can you identify what type of shotgun? Make, model,  
 10 gauge?  
 11 A Well, I guess I can look under here. Benelli.  
 12 Q Okay.  
 13 A It says the Armi system, A-r-m-i system.  
 14 Q Okay.  
 15 A I believe it's a 12 gauge shotgun is what it is.  
 16 Q Okay.  
 17 MR. LEADERS: May I approach -- marked....  
 18 THE COURT: That's marked as number 2?  
 19 Q Exhibit number 2, correct?  
 20 A Correct.  
 21 Q Okay. Do you recognize this item?  
 22 A Yes, this was another one of the guns.  
 23 Q And I guess earlier you testified that they were both  
 24 kind of together, is that correct?  
 25 A Yes.

- 146 -

1 Q The same location. Can you identify make and model,  
 2 caliber, of that item there?  
 3 A Commonly called a mini 14, I believe. It's a .223  
 4 Ruger.  
 5 Q Okay. Is that again one of the guns you pointed to when  
 6 you asked Mr. Haeg if those had been used....  
 7 A Yes.  
 8 Q Maybe -- if you could hand that to the Magistrate. The  
 9 -- did you find any other items related to the firearms  
 10 used during the taking of....  
 11 A Yes.  
 12 Q .....those wolves?  
 13 A I did.  
 14 Q Okay. What did you find?  
 15 A Found some ammo on the -- spent shell casing and some  
 16 magazines.  
 17 Q Okay. The magazines, can you describe those?  
 18 A There are two, what I would call large, magazines  
 19 (indiscernible)a whole lot. I don't know how many  
 20 rounds they hold but they were taped together in the  
 21 reverse fashion where you could put one in, take it out,  
 22 turn it over, and stick the other one in.  
 23 Q Okay. Was that seized as well?  
 24 A Yes, it was.  
 25 Q Okay.

- 147 -

1 MR. LEADERS: May I approach, Judge?  
 2 THE COURT: Uh-huh.  
 3 Q What's the exhibit number?  
 4 A This is Exhibit number 3.  
 5 Q Is that the taped together magazines you were referring  
 6 to?  
 7 A Yes.  
 8 Q Do you recall where you located those?  
 9 A I don't.  
 10 Q Okay. Was it -- do you recall if it was at -- but it  
 11 was located during the time of the search, is that  
 12 correct?  
 13 A That's correct.  
 14 Q Okay. And the search was of the residence, the hangar?  
 15 A Yes, I -- I think, I'm not positive, but I think they  
 16 were on the -- the counter in the hangar/garage, I  
 17 think, but I'm not positive.  
 18 Q Okay. I guess I'll also have you hand those to the  
 19 Magistrate and we'll put those away for safe keeping at  
 20 this time.  
 21 MR. LEADERS: And actually the state is going to seek to  
 22 admit Exhibits 2 and 3 at this point.  
 23 THE COURT: Mr. Robinson?  
 24 MR. ROBINSON: No objection.  
 25 THE COURT: Okay. 2 and 3 will be admitted.

- 148 -

1 (Plaintiff's Exhibits 2 & 3 admitted)  
 2 Q Now you also -- you mentioned a casing?  
 3 A Yes.  
 4 Q What was that?  
 5 A It was a .223 spent casing, same type of round used in  
 6 the .223 rifle.  
 7 Q Was that seized as well?  
 8 A Yes, it was.  
 9 Q Okay. Do you recognize this?  
 10 A Yes, this is the -- this is the evidence container that  
 11 we put the casing in.  
 12 Q Can you open that, please.  
 13 A (Pause) We'll have to cut the whole thing off here.  
 14 Q Do you recognize that?  
 15 A Yes.  
 16 Q And is it -- what is it?  
 17 A It's the .223 Remington casing.  
 18 Q Okay. And it's a spent casing?  
 19 A Yes.  
 20 Q No longer live. And where was that found?  
 21 A Outside the garage. And -- and if I remember it was  
 22 snowing and it was kind of sitting on the snow there.  
 23 MR. LEADERS: I'm going to mark this as Exhibit 4. And  
 24 approach to have the exhibit marked.  
 25 THE COURT: Sure.

- 149 -

1 MR. LEADERS: And the state would seek admission.  
 2 THE COURT: Any objection, Mr. Robinson?  
 3 MR. ROBINSON: No, no objection.  
 4 THE COURT: Number 4 will be admitted.  
 5 (Plaintiff's Exhibit 4 admitted)  
 6 MR. LEADERS: And actually (indiscernible).  
 7 Q The -- now did you -- Mr. Haeg mentioned taking some  
 8 wolves out in the McGrath area. didn't he?  
 9 A Yeah, he -- he-- he said he did. He didn't say when or  
 10 anything like that, but kind of through our conversation  
 11 we gathered that he had.  
 12 Q Okay. And actually he talked about having some wolves  
 13 sealed, is that correct?  
 14 A Yes.  
 15 Q And.....  
 16 A I -- I believe I asked him about the carcasses.  
 17 Q Oh, you asked him if he.....  
 18 A I believe I asked him if he had wolf seals, somewhere.  
 19 Or sent somewhere.  
 20 Q Okay.  
 21 A Because I -- if I remember that was one of the things on  
 22 the search warrant was wolf carcasses or wolf hides or  
 23 something.  
 24 Q And I guess, did you find any wolf carcasses or hides  
 25 there during the search?

- 150 -

1 A No, did not.  
 2 Q So you asked him about having them sent out?  
 3 A That's correct, yes, I did.  
 4 Q Did he indicate he had had any sent out?  
 5 A Yeah, I believe he said that he had them sent out to  
 6 Anchorage but he wasn't sure where, he couldn't --  
 7 couldn't remember at the time.  
 8 Q Okay. Based on that did you do any other follow up  
 9 regarding possible -- Mr. Haeg having possibly sent some  
 10 wolf hides to Anchorage?  
 11 A I myself did not, no. But I -- I think other people --  
 12 other troopers must have.  
 13 Q Did you contact anyone else about having follow up done  
 14 on that?  
 15 A I don't recall -- I don't recall doing that, no.  
 16 Q Okay. So you don't recall if you contacted a Burke  
 17 Waldron about checking on that?  
 18 A I don't know if I personally contacted Burke or not.  
 19 I'm sure I told Trooper Gibbens about it, but I don't  
 20 know that. I -- I may have. I can't say what I  
 21 (indiscernible).  
 22 Q Okay. Now did you talk with Mr. Haeg at all about  
 23 trapping wolves in the McGrath area?  
 24 A I did. Trooper Gibbens had mentioned that there -- he  
 25 had still had some traps set, which he believed were Mr.

- 151 -

1 Haeg's up there, and asked me to see if he knew anything  
 2 about them. I did question him about them.  
 3 Q In fact, you asked him if he had all his traps up,  
 4 correct?  
 5 A That's correct.  
 6 Q Do you recall Mr. Haeg's response?  
 7 A I do. If I can look at my report it would be a direct  
 8 quote. (indiscernible).....  
 9 Q Did you document in your report as a direct quote.  
 10 A I did. Yeah, I did, yes.  
 11 Q Okay. And would it assist your memory then if you refer  
 12 to your report?  
 13 A It would.  
 14 Q You can go ahead.  
 15 A Okay. And basically I asked him if he got all his wolf  
 16 traps up and he responded, I think the wolf trapping  
 17 season is still open, isn't it. Kind of a question.  
 18 Q So that was his response that he thought the season was  
 19 still open?  
 20 A Correct.  
 21 Q That was April 1st, right?  
 22 A That's correct.  
 23 Q Did he ever talk about or say anything about a Tony  
 24 Lee(ph) handling his wolf traps at that point -- or his  
 25 traps at that point?

- 152 -

1 A You know, it sounds familiar but I -- I -- I can't  
 2 recall it specifically, no.  
 3 Q Now did Mr. Haeg make any comments about wanting to talk  
 4 with anybody about what was happening out in -- what had  
 5 happened out in McGrath?  
 6 A Yes, he did.  
 7 Q What did he say?  
 8 A During some point, I believe it was near the end of me  
 9 conversing with him he asked if it was okay if he talked  
 10 to the trooper in McGrath.  
 11 Q Did he say why?  
 12 A Yeah, and I -- again, if I can look at my report to  
 13 refresh my memory, I put it in direct quotes in my  
 14 report.  
 15 Q Go ahead.  
 16 A Basically he said it seems to me there's been a lot of  
 17 activity out there, and I just don't want someone to  
 18 think I did something else wrong if I go out there.  
 19 Q So his comment was he didn't want people to think he did  
 20 something else wrong?  
 21 A Correct.  
 22 Q Now we've talked about some of the items that were  
 23 seized and that will be testified here in court. There  
 24 were other items seized, is that correct?  
 25 A That's correct, yes.

- 153 -

1 Q Okay. One of the things to be seized was the plane, is  
 2 that correct?  
 3 A That is correct, yes.  
 4 Q And was that done on that day?  
 5 A Yes, it was.  
 6 Q Were there any other troopers or officers that assisted  
 7 you in this search warrant service?  
 8 A Yes, there were several.  
 9 Q Okay. Trooper Mountain was one of them, is that  
 10 correct?  
 11 A That's correct.  
 12 Q Now -- (pause).  
 13 MR. LEADERS: I have no further questions for Sergeant  
 14 Godfrey.  
 15 THE COURT: Thank you. Mr. Robinson?  
 16 GLENN GODFREY  
 17 testified as follows on:  
 18 CROSS EXAMINATION  
 19 BY MR. ROBINSON:  
 20 Q Just one subject here that.....  
 21 MR. ROBINSON: Can I remain seated as well?  
 22 THE COURT: Sure. Sure.  
 23 Q Sergeant Godfrey, when you spoke to Mr. Haeg about the  
 24 wolf trapping season still being open. He simply asked  
 25 you whether it was still open?

- 154 -

1 A Yes.  
 2 Q Did you know when wolf season closed in that.....  
 3 A Not up in this area I did not, no.  
 4 MR. ROBINSON: No further questions.  
 5 THE COURT: Okay. Can Sergeant Godfrey be excused  
 6 permanently? Or is he subject to recall?  
 7 MR. LEADERS: I think -- I would ask that he be released  
 8 from his subpoena.  
 9 THE COURT: Okay.  
 10 MR. ROBINSON: No objection.  
 11 THE COURT: Thank you, Sergeant Godfrey.  
 12 MR. LEADERS: Okay, thank you. Well, I'll get my next  
 13 witness, Judge, and while we're doing that I'll also seek to  
 14 admit Exhibit number 4. That's the casing.  
 15 THE COURT: Any objection, Mr. Robinson?  
 16 MR. ROBINSON: No.  
 17 THE COURT: Okay, number 4 will be admitted.  
 18 (Plaintiff's Exhibit 4 admitted)  
 19 THE COURT: Your next witness?  
 20 (Witness summoned)  
 21 (Whispered conversation)  
 22 MR. LEADERS: This seat will be for you. Before you're  
 23 seated though we'll swear you in.  
 24 THE COURT: It would be nice if I had a name, sir.  
 25 MR. LEADERS: Judge, the state is calling Trooper Todd

- 155 -

1 Mountain.  
 2 THE COURT: Thank you.  
 3 THE CLERK: Ready for swearing?  
 4 THE COURT: Yes.  
 5 (Oath administered)  
 6 TROOPER MOUNTAIN: I do.  
 7 THE CLERK: And you may be seated.  
 8 JAMES TODD MOUNTAIN  
 9 called as a witness on behalf of the plaintiff, testified as  
 10 follows on:  
 11 DIRECT EXAMINATION  
 12 THE CLERK: State your full name and spell your last name  
 13 or the record.  
 14 A It's James Todd Mountain, M-o-u-n-t-a-i-n.  
 15 THE CLERK: Todd with one D?  
 16 A Two D's.  
 17 THE CLERK: Two D's. Your occupation?  
 18 A State Trooper with Wildlife Enforcement.  
 19 THE CLERK: And what town do you live in?  
 20 A Soldotna.  
 21 THE CLERK: Thank you.  
 22 THE COURT: Go ahead, Mr. Leaders.  
 23 MR. LEADERS: Thank you.  
 24 BY MR. LEADERS:  
 25 Q So a State Trooper with Wildlife Enforcement?

- 156 -

1 A Yes.  
 2 Q And how long in that position, sir?  
 3 A It will be eight years this August.  
 4 Q Eight years. And you're based out of Soldotna?  
 5 A Yes, I am.  
 6 Q How long have you been based out of Soldotna?  
 7 A About five years now.  
 8 Q Okay. The -- let me ask you. Did you have involvement  
 9 -- or have you had involvement in an investigation  
 10 relating to David Haeg regarding alleged aerial wolf  
 11 shootings in the McGrath area?  
 12 A Yes, I did.  
 13 Q Can you explain to the jury what involvement you had in  
 14 that investigation?  
 15 A I was -- I believe it was spring of '04, April -- early  
 16 April of '04, Sergeant Godfrey had asked that I help in  
 17 executing a search warrant at David Haeg's residence out  
 18 at Brown's Lake Road in reference to some wolf hunting  
 19 around -- from around the McGrath area. Myself, a  
 20 number of other troopers, U.S. Fish and Wildlife officer  
 21 executed a search warrant on the first of that month,  
 22 being the 1st of April at his residence.  
 23 Q Okay. And what was the purpose of the search warrant?  
 24 A The purpose of the search warrant, from talking to -- to  
 25 Trooper Gibbens and reading the search warrant, we were

- 157 -

1 looking for documents, rifles. We were to search the  
 2 residence and -- and a certain airplane that we were  
 3 looking for.  
 4 Q What certain airplane?  
 5 A It was one that Trooper Gibbens described to me as -- as  
 6 a purple colored airplane with a bat symbol on the tail.  
 7 Q Okay. Now -- and so you personally went to that  
 8 residence in the Soldotna area to assist with the  
 9 warrant service?  
 10 A I did. I did.  
 11 Q What happened when you got there?  
 12 A When we first -- we got to the end of Brown's Lake Road  
 13 we thought the airplane that we were looking for was  
 14 taking off from Brown's Lake. And I believe Sergeant  
 15 Godfrey got a hold of Lieutenant Steve Bear(ph) back at  
 16 post to see if he could get a hold of Kenai flight  
 17 service to have that airplane turn back around and come  
 18 back to Brown's Lake. Myself, the other troopers, U.S.  
 19 Fish and Wildlife officer went into the house and con --  
 20 and started conducting the search warrant.....  
 21 Q Okay. What -- were there buildings then on the resid --  
 22 or the property that was searched?  
 23 A Yes.  
 24 Q Okay.  
 25 A A house, apartment style house with a hangar attached,

1 Q What do you -- do you recognize it from prior to being  
 2 here in court?  
 3 A I do.  
 4 Q Okay. Where do you recognize it from?  
 5 A From the hangar on David Haeg's property.  
 6 Q Okay. That was a gun seized there?  
 7 A Yes.  
 8 Q At the time of the search?  
 9 A Yes.  
 10 Q And Exhibit number 2, do you recognize that?  
 11 A Yes, I do.  
 12 Q And what is that?  
 13 A A stainless mini 14 which was right next to the shotgun  
 14 on a bench in the same hangar.  
 15 Q Okay. And al -- so that was also then taken during the  
 16 search?  
 17 A Yes, it was.  
 18 Q Okay. Now.....  
 19 MR. ROBINSON: (Indiscernible).  
 20 Q .....there was -- was there any ammunition related to  
 21 either of these weapons found?  
 22 A We found numerous shotgun -- or unused shotgun shells,  
 23 buckshot and I believe two -- two mini 14 magazines that  
 24 were -- that were taped together.  
 25 Q Recognize those?

1 an out building down by the lake, several other out  
 2 buildings that were -- were there.  
 3 Q And what were you searching for?  
 4 A Searching for a number of things. Rifle, shotgun, some  
 5 documents that might have something to do with where  
 6 wolf hides might be to be tanned, anything to do with --  
 7 with wolf hunting at the time.  
 8 Q Okay. In fact several items were seized, is that  
 9 correct?  
 10 A Yes.  
 11 Q Okay.  
 12 MR. LEADERS: May I approach to get exhibits?  
 13 THE COURT: Why don't you tell Magistrate (indiscernible)  
 14 to, he can get them.....  
 15 MR. LEADERS: Okay, I'll stay.....  
 16 UNIDENTIFIED SPEAKER: Get your rifles.  
 17 THE COURT: Well, you can hand them to him. That will be  
 18 the easiest, right?  
 19 MR. LEADERS: That will be fine. The two guns I guess.  
 20 All right.  
 21 Q First of all, Exhibit number 1, do you recognize this  
 22 item?  
 23 A I do.  
 24 Q Okay. What is that?  
 25 A I believe it's a Benelli -- Benelli shotgun.

1 A Yes, those are the.....  
 2 Q Exhibit number 3?  
 3 A Yes.  
 4 Q Those were the mini 14 magazines taped?  
 5 A Yes.  
 6 Q Okay. Did you find any spent shells?  
 7 A I don't -- I -- myself, I don't -- I don't remember  
 8 finding the spent shells.  
 9 Q Okay. Fine. The -- did you have contact -- oh, you  
 10 said when you got there there was a plane that was kind  
 11 of taking off?  
 12 A Yes.  
 13 Q Okay. What happened to that plane?  
 14 A It came back around and -- and landed back out in front  
 15 of the Haeg residence.  
 16 Q Did anyone get out -- who got out of the plane?  
 17 A David Haeg and another gentleman that I -- I didn't get  
 18 his name, he was contacted by Sergeant Godfrey.  
 19 Q Okay. Did you have contact with Mr. Haeg then?  
 20 A I did.  
 21 Q Okay. Who -- did you have -- who had the first contact  
 22 with Mr. Haeg once he arrived back?  
 23 A I believe I did.  
 24 Q Okay. What was Mr. Haeg's demeanor?  
 25 A I -- well, I mentioned to him that we were there to talk

1 to him about his wolf hunting in McGrath and he seemed  
 2 -- just kind of seemed pretty down or just, you know,  
 3 that wasn't really something he wanted to talk to us  
 4 about.  
 5 Q You ...  
 6 A Just kind of, you know.....  
 7 Q I mean did he have physical gestures.....  
 8 A Yeah, just kind of....  
 9 Q .....or anything like that or?  
 10 A Head, you know, kind of down as to -- it -- it just  
 11 didn't seem like something he wanted to talk about.  
 12 Q Okay. Did he talk about it though with you?  
 13 A A little bit, pretty vague.  
 14 Q Okay. He talked with you about he had been trapping out  
 15 in the McGrath area, is that correct?  
 16 A Yes.  
 17 Q Okay. Out near his lodge?  
 18 A Yes.  
 19 Q Do you recall talking about -- with him whether or not  
 20 he had moved some snares from one area to another along  
 21 the Swift River?  
 22 A Right.  
 23 Q Did he have any recollection of that?  
 24 A He's -- I don't think he -- he had an answer or just --  
 25 or couldn't remember.

- 162 -

1 Q He couldn't remember. I mean that -- okay. Now did you  
 2 ask if he had loaned his plane to anyone or anything  
 3 like that?  
 4 A I did.  
 5 Q Had he?  
 6 A He said he hadn't.  
 7 Q Did you talk with him about if he had had anything done,  
 8 any taxidermy or tanning work done on any wolf hides?  
 9 A I did, I asked him -- I knew -- I knew Mr. Haeg had a  
 10 permit for the controlled area and he said he had three  
 11 hides that he had sealed and I asked him where he might  
 12 have those hides now and he said he might have them at  
 13 Nights(ph) Taxidermy in Anchorage, but he -- at the time  
 14 he said he wasn't sure.  
 15 Q Okay. Did you find any other information relating to  
 16 wolves being taken, or wolves being possessed or any  
 17 work done on them recently?  
 18 A I -- I believe it was in -- in Mr. Haeg's business  
 19 office was a receipt from a -- a taxidermist in -- in  
 20 Soldotna, Kenny Jones, that had a number of wolf skulls  
 21 being cleaned up at -- at that -- at that shop.  
 22 Q Okay. So -- and so that receipt was something you  
 23 observed or saw during the search warrant?  
 24 A I did.  
 25 Q Okay.

- 163 -

1 MR. LEADERS: May I approach, Judge?  
 2 (Pause)  
 3 Q That's Prosecutor's Exhibit 5, correct? Okay? Is that  
 4 what it indicates?  
 5 A Yeah, that's what it says.  
 6 Q Okay. Do you recognize that item?  
 7 A I do.  
 8 Q And what is that?  
 9 A A receipt from Skulls and Bones by Kenny Jones and the  
 10 name David Haeg on it. It has two wolf skulls to be  
 11 bugged and whitened, one wolverine, one martin and nine  
 12 wolf skulls, credit at \$10 each it says.  
 13 Q So indicating a transfer of 11 -- or.....  
 14 0428  
 15 (Tape change)  
 16 4MC-05-10-A/Side A  
 17 0428  
 18 THE COURT: Okay, we're back on record. Go ahead, Mr.  
 19 Leaders.  
 20 Q And with that receipt, or the information on that  
 21 receipt did you do anything else in this case?  
 22 A I did. I applied for a search warrant through the Kenai  
 23 courthouse for the taxidermy shop of Kenny Jones and  
 24 executed that search warrant two days later on the 3rd,  
 25 and seized 11 -- the 11 wolf skulls that were on this

- 164 -

1 receipt. Two of the -- I believe two of the wolf skulls  
 2 had -- they were separate from the nine, I believe that  
 3 were for credit, had metal tags on them with David  
 4 Haeg's name on them.  
 5 Q Now.....  
 6 MR. LEADERS: The state would seek to have Exhibit number  
 7 5 admitted.  
 8 MR. ROBINSON: No objection.  
 9 THE COURT: Number 5 will be admitted into evidence.  
 10 (Plaintiff's Exhibit 5 admitted)  
 11 MR. LEADERS: I have no further questions.  
 12 THE COURT: Mr. Robinson?  
 13 MR. ROBINSON: I don't have any questions.  
 14 THE COURT: Mr. -- may Trooper Mountain be excused  
 15 permanently?  
 16 MR. LEADERS: I'd ask that he be excused.  
 17 THE COURT: Okay, Trooper Mountain, hand me that exhibit  
 18 back. Thank you, sir.  
 19 A Thank you, Your Honor.  
 20 THE COURT: Okay. You are excused.  
 21 A Thank you.  
 22 THE COURT: (Indiscernible). Yes.  
 23 (Whispered conversation)  
 24 (Witness summoned)  
 25 MR. LEADERS: Mr. Hacken, this seat's going to be for

- 165 -



1 you, but before you sit down we're going to swear you in for  
 2 testimony.  
 3 THE COURT: Ask you take off your sunglasses and hat,  
 4 too, please, sir. You can just leave them right on the  
 5 corner of the table there right by (indiscernible). And if  
 6 you'd just face the clerk here and raise your right hand.  
 7 (Oath administered)  
 8 MR. HACKEN: I do.  
 9 THE COURT: Go ahead and have a seat in the chair right  
 10 there.  
 11 THE CLERK: Please be seated.  
 12 KEVIN HACKEN  
 13 called as a witness on behalf of the plaintiff, testified as  
 14 follows on:  
 15 DIRECT EXAMINATION  
 16 THE CLERK: State your name and spell your last name for  
 17 the record.  
 18 A Kevin Hacken. H-a-c-k-e-n.  
 19 THE CLERK: Your occupation?  
 20 A I do the shipping and receiving at Alpha Fur Dressers.  
 21 THE CLERK: And receiving where?  
 22 A At Alpha Fur Dressers.  
 23 THE CLERK: How do you spell that first name?  
 24 A A-l-p-h-a Fur Dressers.  
 25 THE CLERK: Okay. And where do you live, what town?

- 166 -

1 A Anchorage.  
 2 THE CLERK: Thank you.  
 3 THE COURT: Thank you, Mr. Hacken. Mr. Leaders?  
 4 MR. LEADERS: Thank you, sir.  
 5 BY MR. LEADERS:  
 6 Q How long have you been working there at Alpha Fur  
 7 Dressers?  
 8 A For five years.  
 9 Q Okay. And kind of for that period of time you've been  
 10 doing kind of the same stuff, handling shipping and  
 11 receiving?  
 12 A Correct.  
 13 Q Do you kind of handle the, I guess, records or whatever  
 14 when things come in and go out?  
 15 A Correct.  
 16 Q Okay. Are you personally then involved a lot of times  
 17 as far as actually receiving the items that come in and  
 18 documenting?  
 19 A That's what I do.  
 20 Q Oh, okay. And let me ask you. We're going to talk  
 21 about back in 2004, spring of 2004. Did -- around March  
 22 did Alpha Fur Dressers receive any wolf hides from a  
 23 David Haeg?  
 24 A Correct.  
 25 Q Well, did they -- did the -- Alpha Fur Dressers.....

- 167 -

1 A Well, they didn't come in from Dave Haeg, they came in  
 2 from someone else, but they were put in his name.  
 3 Q Okay. How many wolf hides were put in Mr. Haeg's name?  
 4 A Nine.  
 5 Q Do you recall when that occurred?  
 6 A Probably mid-March about a year and a half ago.  
 7 Q When someone drops off furs to have work done on them,  
 8 is there some type of paperwork done or records.....  
 9 A Yeah, we fill out, you know, what they're bringing in  
 10 and those came in all frozen which we weren't going to  
 11 put them in the work right away, and usually on the  
 12 frozen stuff like whether it be a brown bear or a wolf  
 13 or lynx or whatever, you can't read the tag numbers, but  
 14 if it comes in where we can read the tag numbers we'll  
 15 put what's there. You know, so many wolves and then all  
 16 their fish and game tag numbers.  
 17 Q Okay.  
 18 MR. LEADERS: Judge, can I approach? I've got Exhibit  
 19 number 6. (Pause)  
 20 (Whispered conversation)  
 21 MR. LEADERS: I'm going to approach.  
 22 Q That's Prosecution Exhibit number 6, correct?  
 23 A Yep, that's what it says.  
 24 Q Okay. Can you see if you recognize that please?  
 25 A Yep.

- 168 -

1 Q What is that?  
 2 A It's acknowledgment showing that for Dave Haeg we  
 3 received nine wolves. They came in, they need their  
 4 nose, ears, lips and (indiscernible) done on them, and  
 5 then we were going to tan them.  
 6 Q Okay. When is this filled out, this acknowledgment?  
 7 A This came in 3-26-04.  
 8 Q So that's the date that that one was filled out?  
 9 A That was the date it came in.  
 10 Q Kind of in the process is this something that's filled  
 11 out when furs are dropped off?  
 12 A Correct.  
 13 Q Okay.  
 14 A That's how we keep track of what comes in.  
 15 Q So from this record that -- and is this a record that's  
 16 kept by Alpha Fur Dressers?  
 17 A Correct.  
 18 Q And is this, in fact, a record kept by -- or that you're  
 19 familiar.....  
 20 A No, there's three copies to this. There's a white copy  
 21 that stays with the hides, there's a yellow copy that  
 22 goes in our files and then there's a pink copy that goes  
 23 to whoever dropped the hides off.  
 24 Q I see, okay. And is that, in fact, a form that you  
 25 filled out does it appear?

- 169 -

1 A I filled that out.  
 2 Q From the writing?  
 3 A Yeah.  
 4 Q Okay. And it's -- so then from the record I guess we  
 5 can assume that it was 3-26 of '04 that these furs were  
 6 dropped off?  
 7 A Correct.  
 8 Q Okay. Now you said it wasn't Mr. Zellers then -- or  
 9 Mr.....  
 10 A It wasn't.....  
 11 Q It wasn't Mr. Haeg that dropped those off?  
 12 A Right.  
 13 Q Did you know who it was that had dropped them off?  
 14 A I didn't know. You know, he just sounded like he was a  
 15 friend or worked or something for Dave Haeg. I'm not  
 16 sure. You know, he just dropped them off. I mean we  
 17 get stuff that comes in for Dave Haeg all the time, you  
 18 know, during the hunting season, he's a guide.  
 19 Q Okay.  
 20 A Most of it gets dropped off or comes in air freight.  
 21 Q Okay. And I guess -- you were contacted by the Alaska  
 22 State Troopers about those hides, is that correct?  
 23 A Correct.  
 24 Q Do you recur -- recall when about -- about what time  
 25 that occurred?

- 170 -

1 A It must have been -- I'm thinking at least a month,  
 2 month and a half after they got dropped off.  
 3 Q Okay. How about do you think it's possible it might  
 4 have actually been about five or six days?  
 5 A It could have been. it seems like it was longer, but  
 6 there again, that was a year and a half ago, I.....  
 7 Q Year and a half ago. I assume you handle a lot of  
 8 furs.....  
 9 A Right. Lot of furs.  
 10 Q .....at a taxidermy shop?  
 11 A Right.  
 12 Q Okay. And, in fact, you probably have handled a lot of  
 13 furs for Mr. Haeg?  
 14 A We do.  
 15 Q Okay. Do you recall though a specific time where  
 16 troopers contacted you about wolf hides of Mr. Haeg's?  
 17 A I remember they had called and asked if we had anything  
 18 like that there and I says, yeah, I think we do. And  
 19 then he had con -- and then the trooper came in, you  
 20 know, at a later point and, yeah, we pulled them out of  
 21 the freezer and checked them out.  
 22 Q Okay. And -- now let's see. The -- I think when you  
 23 first talked to the trooper you told him it wasn't Mr.  
 24 Haeg that dropped them off, you thought it was someone  
 25 else?

- 171 -

1 A Right.  
 2 Q Or someone you thought might have (indiscernible).....  
 3 A I knew it wasn't Dave Haeg that dropped them off.  
 4 Q Oh, and you thought it may have been an assistant guide  
 5 or something like that?  
 6 A Right.  
 7 Q Okay. But you couldn't remember that person's name at  
 8 the time?  
 9 A No.  
 10 Q Did.....  
 11 A That was the first time, I think, I had ever met him,  
 12 the guy that dropped off the stuff.  
 13 Q Oh, okay. The person that dropped them off did they  
 14 talk about where the wolves had come from?  
 15 A He had said they had been, you know, hunting out at  
 16 McGrath.  
 17 Q Did he talk about how.....  
 18 MR. ROBINSON: Objection, hearsay. And ask that that be  
 19 stricken.  
 20 Q The.....  
 21 THE COURT: Mr. Leaders?  
 22 MR. LEADERS: That response -- that won't be.....  
 23 THE COURT: Okay. That question and response, you're to  
 24 ignore those. Okay. They'll be stricken from the record.  
 25 Mr. Leaders?

- 172 -

1 Q The hides, the -- did they have any identifications on  
 2 them when you obtained them, do you recall? Or any.....  
 3 A Well, they were all bundled up in a tub and frozen so I  
 4 hadn't seen the identifications on them, you know, to  
 5 speak of, but.....  
 6 Q Okay.  
 7 A .....you know once we pulled them out with the trooper  
 8 I mean they had aerial wolf tags on them.  
 9 Q Okay. The aerial wolf tags, what were those? Were they  
 10 something special?  
 11 A It's a little locking tag that has a bell on it versus a  
 12 fish and game plastic tag. They had both fish and game  
 13 plastic tags plus a metal locking tag that has a little  
 14 bell on it. All aerial wolves get sealed twice.  
 15 There's a special metal seal.  
 16 Q But not all of these nine hides had that special tag,  
 17 the aerial wolf tag, is that correct?  
 18 A I can't even remember.  
 19 Q Okay.  
 20 A They had -- they had said they had only shot a few  
 21 wolves out there aerial hunting, you know, that  
 22 conditions were poor.  
 23 Q Now the trooper.....  
 24 MR. ROBINSON: The trooper -- one moment. The trooper  
 25 said this?

- 173 -

1 A No, the guy that dropped them off.  
 2 MR. ROBINSON: I'm going to object to that. Your Honor,  
 3 as hearsay and ask that that be stricken, too.  
 4 THE COURT: Yeah, right. Mr. Hacken, try to just respond  
 5 to the question that's asked. okay.  
 6 A Okay.  
 7 Q Well, let me ask. Did they -- did this person indicate  
 8 that those wolves had been taken through the predator  
 9 control program?  
 10 MR. ROBINSON: Objection.....  
 11 MR. LEADERS: It's not offered for the truth of the  
 12 matter asserted. Judge.  
 13 MR. ROBINSON: Well, I don't know what else it would be  
 14 offered for.  
 15 MR. LEADERS: I guess we need to approach on that.  
 16 (Bench conference as follows:)  
 17 MR. ROBINSON: What else would it be offered for?  
 18 MR. LEADERS: They did indicate it was taken -- the  
 19 wolves were taken out of a predator control program and  
 20 that's not the truth, so it's not offered for the truth of  
 21 the matter asserted.  
 22 MR. ROBINSON: (Indiscernible).  
 23 THE COURT: Except for that it's not true is the same  
 24 as.....  
 25 MR. ROBINSON: It's the same thing as offering it as the

- 174 -

1 truth.  
 2 THE COURT: You're still offering it for the truth of the  
 3 matter asserted.  
 4 MR. ROBINSON: Yeah.  
 5 THE COURT: It's still hearsay.  
 6 (End of bench conference)  
 7 Q Now the trooper -- a trooper showed up to -- with a  
 8 search warrant to get these wolf hides, is that correct?  
 9 A Correct.  
 10 Q Okay. In fact, have you kept contact with that trooper  
 11 here today?  
 12 A Correct.  
 13 Q You know who it is?  
 14 A Right.  
 15 Q Burke Waldron?  
 16 A Right.  
 17 Q Now when -- and so when he arrived did -- were you able  
 18 at that time to identify who the person was that had  
 19 dropped these hides off?  
 20 A Well, he showed me some photos and I picked out the one  
 21 that I thought looked closest to the person that dropped  
 22 it off, but I don't really keep track of people's faces,  
 23 you know, when they drop stuff off. I mean.....  
 24 Q Okay. I see. Fair enough. Now the -- did you turn  
 25 these hides over to the troopers?

- 175 -

1 A Yeah, anytime fish and game or fish and wildlife comes  
 2 into our shop we do whatever they want.  
 3 Q Okay. Now do you recall the -- there was -- was there  
 4 something you had done to figure out who this person was  
 5 that dropped the hides off prior to the trooper  
 6 arriving?  
 7 A Well, I knew he had dropped off some stuff of his own so  
 8 we had another acknowledgment there, you know, that was  
 9 dropped off at the same time.  
 10 Q Okay.  
 11 MR. LEADERS: May I approach with Exhibit 7, Judge?  
 12 MR. ROBINSON: Can I see Exhibit 6 again?  
 13 THE COURT: Yes.  
 14 (Whispered conversation)  
 15 Q That's Prosecution Exhibit 7, correct?  
 16 A Correct.  
 17 Q Can you identify that? Do you recognize that?  
 18 A Okay. It says Tony Zellers and he dropped off five  
 19 martin and one mink frozen, the same date on -- looks  
 20 like it's corresponding tag number -- he dropped his  
 21 stuff off first. Acknowledgment 261, and then he  
 22 dropped off the stuff for Dave Haeg which is 262.  
 23 Q Okay. So from that you were able to figure out that it  
 24 was Mr. Zellers that.....  
 25 A Correct.

- 176 -

1 Q Okay.  
 2 (Whispered conversation)  
 3 MR. LEADERS: May I approach with Exhibit 8?  
 4 THE COURT: Uh-huh.  
 5 Q You -- you said you were shown some photos. I'm going  
 6 to make sure that's Exhibit number 8, correct?  
 7 A Correct.  
 8 Q Okay. You were shown some photos. Are these the photos  
 9 you were shown?  
 10 A It's hard to say a year and a half ago. I mean it -- I  
 11 mean you could have the President of the United States  
 12 on there and I wouldn't know it.  
 13 Q Fair enough. Do you -- from these photos do you recall  
 14 who it was that had dropped off the hides? And if you  
 15 don't, that's fair enough as well?  
 16 A Yeah, at this point in time I mean I can't even  
 17 remember, so.....  
 18 Q Okay. Fair enough.  
 19 A .....it wouldn't be fair to pick it (indiscernible).  
 20 Q Certainly. Thank you. Did the person that dropped  
 21 these hides off, did they indicate if any of the hides  
 22 had been trapped?  
 23 MR. ROBINSON: Objection.  
 24 A Ye.....  
 25 THE COURT: Just a minute, Mr. Hacken.

- 177 -

1 MR. LEADERS: It's not offered for the truth of the  
 2 matter, Judge.  
 3 THE COURT: The objection is sustained.  
 4 Q Now....  
 5 MR. LEADERS: I have no further questions, Judge.  
 6 THE COURT: Thank you. Mr. Robinson? Wait a minute, Mr.  
 7 Hacken. Mr. Robinson may have some questions for you.  
 8 A Oh, yeah.  
 9 MR. ROBINSON: I have a couple questions.  
 10 KEVIN HACKEN  
 11 testified as follows on:  
 12 CROSS EXAMINATION  
 13 BY MR. ROBINSON:  
 14 Q I'm going to ask you some questions about Exhibit number  
 15 7. I believe. Or Exhibit 6. Could you read that -- I  
 16 had trouble reading the small print that's on the bottom  
 17 of Exhibit number 6. What does it say?  
 18 A Well, this is a copy here and I don't -- it says  
 19 something -- addition of accordance the limit of  
 20 reliability for any loss or damage to merchandise while  
 21 in -- while in our possession shall be the actual market  
 22 value. Actual market value shall be defined as our  
 23 actual cost to purchase a skin of similar species. This  
 24 procedure shall guarantee to the results of any fur or  
 25 specimen forwarded to us for processing. Alpha Fur  
 - 178 -

1 Dressers shall not be liable for any other obligation  
 2 other than that it -- than is expressly set forth herein  
 3 and no agent, servant or employee of this company is  
 4 authorized to change terms of this order. All claims  
 5 subject to a \$200 deduction. Shipper agrees to above  
 6 terms as stipulated. Skins on page four are more than  
 7 90 days may be sold to pay expenses.  
 8 Q So what is it exactly that Alpha Fur Dressers does?  
 9 A We tan the hides.  
 10 Q And why do you tan them?  
 11 A They have to be tanned to be preserved to be mounted or  
 12 turned into a garment or just to have a wall hanger, or  
 13 you know, wolf hanging on your wall if it's not tanned  
 14 it's going to eventually fall apart or spoil.  
 15 Q So if somebody wanted to purchase a wolf hide, a tanned  
 16 hide would be a good hide to buy because it would be one  
 17 that could be preserved, right?  
 18 A Correct, it is preserved.  
 19 Q And in your business, Mr. Hacken, have you known people  
 20 like Mr. Haeg who may deliver furs to you to be tanned,  
 21 that those furs have they been tanned for eventual sale?  
 22 A Well, most people with wolf hides probably sell them. I  
 23 mean if they're hunting or trapping wolves that's why  
 24 they do it. You know, your individual that maybe just  
 25 takes one once in a while is probably going to keep that  
 - 179 -

1 for themselves.  
 2 MR. ROBINSON: I don't have any further questions.  
 3 MR. LEADERS: The state would seek to admit Exhibits 6  
 4 and 7, Judge.  
 5 MR. ROBINSON: No objection.  
 6 THE COURT: Okay. 6 and 7 will be admitted.  
 7 (Plaintiff's Exhibits 6 & 7 admitted)  
 8 THE COURT: Can Mr. Hacken be permanently excused?  
 9 MR. LEADERS: That's fine with the state, Judge.  
 10 THE COURT: Okay. Thank you very much for your  
 11 testimony, Mr. Hacken. You are excused.  
 12 A Okay, thanks.  
 13 MR. LEADERS: Judge, I need a little bit I think to set  
 14 up for the next witness. We've been almost(indiscernible).  
 15 THE COURT: Okay. We've been back for about an hour. I  
 16 don't know about you guys but after lunch I need to stretch a  
 17 little more frequently sometimes. We're going to move things  
 18 around a little bit here, so let's take 15 minutes. Be back  
 19 at 2:30. Okay.  
 20 MR. ROBINSON: Thank you, Judge.  
 21 THE CLERK: Thank you.  
 22 (Off record)  
 23 THE COURT: Are those better chairs?  
 24 UNIDENTIFIED JUROR: Uh-huh (Affirmative).  
 25 THE COURT: That's a hard -- hope that doesn't mean you  
 - 180 -

1 won't stay awake.  
 2 (Whispered conversation)  
 3 THE CLERK: Please raise your right hand.  
 4 THE COURT: Let the record....  
 5 (Oath administered)  
 6 TROOPER WALDRON: I do.  
 7 THE CLERK: You may be seated.  
 8 BURKE WALDRON  
 9 called as a witness on behalf of the plaintiff, testified as  
 10 follows on:  
 11 DIRECT EXAMINATION  
 12 THE CLERK: Please state your name and spell your last  
 13 name for the record?  
 14 A Burke Waldron, W-a-l-d-r-o-n.  
 15 THE CLERK: L-d- -- I guess I'll ask you to spell the  
 16 first name, too.  
 17 A B-u-r-k-e.  
 18 THE CLERK: That helps. And your occupation?  
 19 A Alaska State Trooper.  
 20 THE CLERK: And what town do you live in?  
 21 A I work in Anchorage, I live outside Eagle River.  
 22 THE CLERK: Okay. I'll just put Anchorage.  
 23 A That's good enough for me. It's pretty much all the  
 24 same anyway, isn't it.  
 25 THE COURT: Uh-huh. (Indiscernible). Go ahead, Mr.  
 - 181 -

1 Leaders  
 2 MR LEADERS: Thank you.  
 3 BY MR LEADERS:  
 4 Q Sir, you work for the Alaska State Troopers and Wildlife  
 5 Enforcement, correct?  
 6 A Yes.  
 7 Q Your position with them?  
 8 A I'm a Sergeant with the wildlife investigations unit,  
 9 state-wide investigations unit.  
 10 Q How long have you been with Fish and Wildlife  
 11 Enforcement for the State of Alaska?  
 12 A Been a trooper for 15 years now. I've been with  
 13 wildlife enforcement for eight years. Eight of it.  
 14 Q How long in your current position as Sergeant in the  
 15 investigations?  
 16 A A little over two and a half years.  
 17 Q Okay. And did -- have you had any involvement in the  
 18 investigation of David Haeg for alleged aerial shooting  
 19 of wolves in the McGrath area?  
 20 A Yes.  
 21 Q And this is from 2004?  
 22 A Correct.  
 23 Q Okay. What was your involvement?  
 24 A I was informed of the case, I don't recall by who, on  
 25 the 1st of April. And.....

1 the court here in -- actually I think the court was in  
 2 Aniak, and -- to go to Alpha Fur Dressers and recover  
 3 the wolf hides.  
 4 Q Okay. And were you able to obtain that search warrant?  
 5 A Yes.  
 6 Q And were you able -- did you then obtain the wolf hides?  
 7 A I did. I went and served the warrant at Alpha Fur  
 8 Dressers and -- and seized nine wolf hides.  
 9 Q When did that occur?  
 10 A April 2nd, 2004.  
 11 Q Okay.  
 12 MR. LEADERS: May I approach with.....  
 13 Q While there did you speak with Mr. Hacken again?  
 14 A I did.  
 15 Q Okay. And did he have any records relating to the wolf  
 16 hides?  
 17 A Yes, he did.  
 18 Q And what records did he have?  
 19 A He had an invoice or receipt of, you know, that he  
 20 received the hides.  
 21 Q Okay. Did you obtain a copy of that receipt?  
 22 A Yes, he made a copy for me.  
 23 Q Did you obtain any other paperwork from him?  
 24 A I received an invoice for Mr. Zellers, too, that were  
 25 not wolves.

1 Q Of 2004?  
 2 A Of 2004, sorry. And the first thing I did was go by the  
 3 residence of Tony Zellers to try to conduct an interview  
 4 with him.  
 5 Q Were you able to?  
 6 A No, he wasn't home.  
 7 Q Okay. What else -- what did you do next then?  
 8 A The -- I was told that -- that Mr. Haeg had dropped  
 9 several wolves off at a taxidermist in -- in the  
 10 Anchorage area, but -- but we didn't know -- when I say  
 11 I mean the troopers didn't know which one.  
 12 Q Uh-huh.  
 13 A So I got out the yellow pages and started calling local  
 14 area taxidermists to ask if they had the wolf hides,  
 15 until I contacted Alpha Fur Dressers and was told that  
 16 they had them.  
 17 Q Okay. Who did you contact there?  
 18 A Talked to Kevin Hacken.  
 19 Q Okay. And so Mr. Hacken indicated that they had some  
 20 hides of Mr. Haeg's, is that correct?  
 21 A Yes.  
 22 Q What did you do at that point?  
 23 A Well, I -- at that point in time I just talked to Mr.  
 24 Hacken and got some details of the wolf hides and then  
 25 the following day filed a -- for a search warrant with

1 Q Okay.  
 2 A And I don't recall receiving any other paperwork from  
 3 him.....  
 4 Q Handing you Exhibit 6. Do you recognize that?  
 5 A Yes, this is the invoice for nine wolves for Dave Haeg,  
 6 signed by Mr. Hacken.  
 7 Q Okay. And Exhibit 7, do you recognize that?  
 8 A That's an invoice for Tony Zellers, it's previous -- one  
 9 number previous to Dave Haeg, and that's for some mink  
 10 and martin.  
 11 Q Okay.  
 12 A Or a mink and five martin.  
 13 Q Okay. Very good. Now -- I guess I'll take those two  
 14 and put it back. Did -- now was -- what was the  
 15 significance of the David [sic] Zellers' receipt? Do  
 16 you recall?  
 17 A Tony Zellers?  
 18 Q Or Tony Zellers, excuse me. Thank you.  
 19 A When I initially spoke to Mr. Hacken he did not know the  
 20 name of the person that dropped the wolf hides off in  
 21 Dave Haeg's name, just remembered him as being an  
 22 employee in the past. An assistant guide for David  
 23 Haeg.  
 24 Q Okay. Based on that did you prepare anything to assist  
 25 to help Mr. Hacken identify who had dropped the furs

1 off?  
 2 A Yes, I made a -- or I didn't physically make it myself,  
 3 but requested that a OL photo lineup be made of Tony  
 4 Zellers to present to Mr. Hacken.  
 5 Q And OL photo lineup, what is that?  
 6 A It's -- they have a computer program that generates  
 7 randomly like photographs based on characteristics, and  
 8 then they take actual copies of those driver's license  
 9 photos or I.D. photos that they have on file, and they  
 10 put the photos together in a random order, one of which  
 11 would be, in this case, Tony Zellers.  
 12 Q Okay.  
 13 A And five other people of names I don't even know who  
 14 they are.  
 15 (Whispered conversation)  
 16 MR. LEADERS: May I approach the witness?  
 17 THE COURT: Yes.  
 18 Q First of all, this is Exhibit number 8.  
 19 A Okay.  
 20 Q Do you recognize what that is?  
 21 A It's a photocopy of the -- of the photo lineup.  
 22 Q Okay. And number 10 is what? This is number 10,  
 23 correct?  
 24 A Okay.  
 25 Q What is that?

- 186 -

1 A This is either the photo lineup or a color copy of the  
 2 photo lineup.  
 3 Q Okay. Was that the photo lineup that was used to show  
 4 to Mr. Hacken?  
 5 A Best of my recollection, yes.  
 6 Q Okay.  
 7 A Yeah.  
 8 Q Did Mr. Hacken indicate -- and can I -- and identify the  
 9 person that dropped off the furs from this photo lineup?  
 10 A Yes, he indicated, if I recall, this photo number 2.  
 11 The envelope that these are in are labeled, you know,  
 12 they're -- they're numbered. He identified, I believe  
 13 it was number 2, which was Tony Zellers. He picked the  
 14 person out almost immediately and clarified that he  
 15 wasn't absolutely certain because when the wolf hides  
 16 were dropped of the -- the gentleman was wearing a hat.  
 17 Q Okay. When you say number 2 -- I guess we'll hold this  
 18 up. Can you show us which ex -- which photo would be  
 19 number 2.  
 20 A It would be 1, 2, 3, 4, 5, 6, and this would be number  
 21 2.  
 22 Q Okay. So the top center?  
 23 A Top center.  
 24 Q Okay. Now is this then the -- are those the photos that  
 25 were shown or is that how the photos are presented in a

- 187 -

1 photo lineup or to Mr. Hacken, or is there any  
 2 information provided?  
 3 A There's -- there's a waiver that is provided when I do  
 4 the photo lineup that basically describes briefly where  
 5 the photos come from. And just because someone's  
 6 picture in here does not mean that they've been  
 7 convicted of any crimes or is a criminal in any way, so  
 8 there's that waiver that I presented to Mr. Hacken, he  
 9 signed and -- and this is what he sees, just these  
 10 pictures.  
 11 Q There's no identifying information as far as who.....  
 12 A There's no identifying.....  
 13 Q .....these people are?  
 14 A .....information at all, no.  
 15 Q Okay. Now Exhibit number 9, correct?  
 16 A Yes.  
 17 Q Okay. What is that?  
 18 A This is an actual copy of the -- of the I.D.'s or OL  
 19 photos that they pulled these -- when I say they, I --  
 20 we have a section called OL photos, but -- that the  
 21 pictures are pulled from.  
 22 Q Okay. And so that top center photo, does -- there's an  
 23 I.D. or OL attached to that, correct?  
 24 A Yes. Yes.  
 25 Q And who does it indicate that is?

- 188 -

1 A It's an I.D. card for Tony Zellers.  
 2 Q Okay.  
 3 MR. LEADERS: The state would seek to admit 8, 9 and 10.  
 4 MR. ROBINSON: Can I ask him some questions about those  
 5 exhibits first, before I.....  
 6 THE COURT: Uh-huh.  
 7 VOIR DIRE BY MR. ROBINSON:  
 8 Q Trooper Waldron, when was the first time you showed  
 9 these photos to Mr. Hacken?  
 10 A When? Today? No.  
 11 Q When was the first time you showed him these photos?  
 12 A April 2nd.  
 13 Q Oh, you took them with you to (indiscernible).....  
 14 A Right, when I served the search warrant, yes.  
 15 Q 2004?  
 16 A Yes.  
 17 Q Okay. And it was at that time you said he couldn't be  
 18 absolutely certain?  
 19 A That's correct.  
 20 Q Did you show it to him again? Recently?  
 21 A No. No.  
 22 Q So you didn't show him since then these photographs?  
 23 A Not that I recall.  
 24 Q And you said he picked out Zellers but he wasn't  
 25 absolutely sure that it was him?

- 189 -

1 A He wasn't absolutely sure because the gentleman was  
2 wearing a hat when he dropped off the hides, and of  
3 course, none of these pictures anybody is wearing a hat.  
4 Nobody is wearing a hat.  
5 Q So he didn't give you an absolutely identification then?  
6 A Not an absolute, positive identification, no.  
7 MR. ROBINSON: I object to the admission of these on  
8 relevance. There hasn't been any identification Mr. Hacken  
9 that this is absolutely Tony Zellers even in these  
10 photographs.

11 THE COURT: That's the only basis for the objection?

12 MR. ROBINSON: Yes.

13 THE COURT: It's overruled. Those will be admitted into  
14 evidence. 8, 9 and 10 will be admitted.

15 (Plaintiff's Exhibits 8, 9 & 10 admitted)

16

17 DIRECT EXAMINATION CONTINUED

18 BY MR. LEADERS:

19 Q So -- and -- I guess Mr. Waldron to be short. Did you  
20 show these photographs or either one of these lineups to  
21 Mr. Hacken today?

22 A Prior to his testimony? No.

23 Q Okay. Now what else did you do -- or did you do  
24 anything else during your contact with Mr. Hacken?

25 A I -- I -- like I say I seized the wolves and talked to

- 190 -

1 him a little bit about what his position was and what he  
2 knew about the wolves and the circumstances that they  
3 were taken under.

4 Q Okay. You seized the wolves. There's a bunch of wolf  
5 hides laying out in front of you.

6 A Correct.

7 Q Do you recognize those?

8 A I recogni -- yeah, I mean I recognize the evidence tags,  
9 it has my signature and all that stuff on it.

10 Q Okay.

11 A (Indiscernible).

12 Q Let me ask you what you did -- you seized the wolves.  
13 What did you do with them?

14 A I seized the wolves, I photographed them, I attached our  
15 evidence tags on them to identify them and I stored them  
16 in a freezer.

17 Q Okay. The -- you said you attached evidence tags. Is  
18 that these items here that are attached to....

19 A That's correct.

20 Q ....the various wolf hides?

21 A That's correct.

22 Q Okay. And you personally attached those?

23 A Yes.

24 Q Okay. And was there anything -- any further  
25 identification that was unique amongst any of the

- 191 -

1 wolves? Do they have information on them?

2 A Yes, they have wolf seals on them and then I believe  
3 three of them also have -- I don't know what the-- I was  
4 calling them complimentary tags indicating that they  
5 were the predator control aerial hunt seal.

6 Q Can you show us what you mean by three of them had I  
7 guess these complimentary tags?

8 A This -- this here would be the seal and then there's a  
9 yellow metal locking tag that indicates it was an aerial  
10 predator hunt kill.

11 Q Okay. And you said three of them? So this one here....

12 A Yeah, that's my recollection, is three. So here's  
13 one....

14 Q This tag....

15 A That would be two, and there's a yellow one on that one  
16 as well, so that would be three.

17 Q And this here?

18 A Yes.

19 Q Okay. Now -- and then this brown tag here, that was --  
20 that's what?

21 A That -- that's a se -- that's a seal, the Department of  
22 Fish and Game seal -- oops.

23 Q Is that a -- that's a seal that each of these nine hides  
24 have then?

25 A Yes.

- 192 -

1 Q Okay. Now after putting the evidence tags on then you  
2 secured them in the troopers....

3 A In an evidence freezer, a locked evidence freezer.

4 Q You've reviewed these tags, is that correct? Are these  
5 the same wolves that you seized?

6 A Yes. Yes.

7 Q Okay. What else -- did you have any other involvement  
8 in this investigation?

9 A At some point later, I don't recall exactly when,  
10 Trooper Gibbens came to town and we removed the wolves  
11 from the freezer and took more detailed photographs  
12 documenting injuries to the hides and things of that  
13 sort.

14 Q Okay. And Trooper Gibbens was with you for that  
15 process?

16 A Yes.

17 Q Okay. Trooper Gibbens will likely testify about that  
18 further. Did -- after I guess Trooper Gibbens came into  
19 town and after that what did you do with the hides?

20 A Again, they were still stored in the evidence freezer  
21 and then I -- I brought the wolf hides out with me to  
22 McGrath for previous proceeding we had.

23 Q We started to begin trial back in May, correct?

24 A Right.

25 Q You flew out to testify at that one?

- 193 -

1 A And I brought -- I brought them out then.  
 2 Q Okay. At that time then you turned them over to Trooper  
 3 Gibbens, is that correct?  
 4 A That's correct.  
 5 Q Okay.  
 6 MR. LEADERS: Judge, I don't have stickers on yet. I'm  
 7 going to mark via the evidence tags these wolves as I guess  
 8 -- what do I need.  
 9 THE COURT: 11.....  
 10 MR. LEADERS: Exhibits 11 through 19. And I'd seek  
 11 admission of Exhibits 11 through 19.  
 12 MR. ROBINSON: 19 or 11 through 20?  
 13 THE COURT: 11 through 20.  
 14 MR. ROBINSON: Yeah, (indiscernible). There's nine,  
 15 right?  
 16 MR. LEADERS: There should be nine, so it should be  
 17 11.....  
 18 THE COURT: There's nine. 11 through 20.  
 19 (Whispered conversation)  
 20 THE COURT: I don't know how else -- you're going to  
 21 put.....  
 22 MR. ROBINSON: 11 through 19.  
 23 UNIDENTIFIED SPEAKER: It actually would be 19.  
 24 MR. LEADERS: Yeah. Exhibits 11 through 19.  
 25 THE COURT: 11 through 19.

- 194 -

1 MR. LEADERS: (Indiscernible).  
 2 MR. ROBINSON: Yeah.  
 3 THE COURT: Okay. And -- I'm sorry, you're going to mark  
 4 the -- put the exhibit tag on the.....  
 5 MR. LEADERS: I'll put the exhibit sticker on the  
 6 evidence tag.  
 7 THE COURT: Okay. So.....  
 8 MR. LEADERS: And.....  
 9 UNIDENTIFIED SPEAKER: Well, you can't (indiscernible).  
 10 MR. LEADERS: What's that?  
 11 A I said it won't stick anywhere else.  
 12 MR. LEADERS: Well, we can staple it, too.  
 13 A Yeah.  
 14 MR. LEADERS: I mean to secure -- I want to make sure  
 15 there's -- unless -- I'll tag them any way the court or.....  
 16 THE COURT: I think that would make sense.....  
 17 MR. LEADERS: .....anyone else prefers.  
 18 THE COURT: Just -- you only wrote on one side of the  
 19 evidence tags, correct?  
 20 A No, actually I wrote on both.  
 21 THE COURT: Is it possible to get that little sticker on  
 22 there without covering up -- I don't know if.....  
 23 MR. LEADERS: I think.....  
 24 THE COURT: .....there's going to be any issues with it,  
 25 but.....

- 195 -

1 MR. LEADERS: I think we can do that, Judge. And....  
 2 MR. ROBINSON: (Indiscernible).  
 3 MR. LEADERS: I can -- we can staple them, you know, the  
 4 mechanism that -- when we.....  
 5 THE COURT: Just so that -- if there's nothing covered up  
 6 on those tags I think is the best way. Okay. And then what  
 7 else did you say -- did you say you wanted them admitted  
 8 then, or?  
 9 MR. LEADERS: And I'm seeking to have them admitted.  
 10 THE COURT: Any objection, Mr. Robinson?  
 11 MR. ROBINSON: No objection.  
 12 THE COURT: Okay. Let's see if we can tag them somehow  
 13 with 11 through 19 (indiscernible).  
 14 (Plaintiff's Exhibits 11-19 admitted)  
 15 A (Indiscernible).  
 16 MR. LEADERS: Judge, I'll tell you what -- because what  
 17 I'll probably do is once I finish with Trooper Waldron, once  
 18 we're done with him.....  
 19 THE COURT: We can tag them when we're done with them.  
 20 MR. LEADERS: .....then we can maybe remove them at that  
 21 point if -- if we can discuss that.....  
 22 THE COURT: Tag them at that time, unless you want them  
 23 tagged right now, Mr. Robinson, some way.....  
 24 MR. ROBINSON: When do you want to remove them?  
 25 MR. LEADERS: After the trooper -- or we'll tag them

- 196 -

1 before they're removed.  
 2 MR. ROBINSON: So you want -- you still have more  
 3 questions for the trooper?  
 4 MR. LEADERS: I'm done with questioning.....  
 5 MR. ROBINSON: All right. And you just want to tag them  
 6 and remove them?  
 7 MR. LEADERS: Yeah. I mean that's -- I think that would  
 8 be the easiest.....  
 9 THE COURT: When you're done crossing. Or when you're  
 10 done with -- when we're done with.....  
 11 MR. LEADERS: Yeah.  
 12 THE COURT: .....Mr. Waldron -- or with Sergeant Waldron.  
 13 MR. ROBINSON: When we're done with his testimony?  
 14 THE COURT: Yes.  
 15 MR. ROBINSON: Okay.  
 16 THE COURT: If that's all right with you we'll tag them  
 17 at that time.  
 18 MR. ROBINSON: Sure.  
 19 THE COURT: Just to make it easier.  
 20 MR. ROBINSON: Are you done?  
 21 MR. LEADERS: (Indiscernible). Yes, I am.  
 22 THE COURT: Okay. Mr. Robinson?  
 23 MR. ROBINSON: I don't have any questions.  
 24 THE COURT: Okay. All right, can Sergeant Waldron be  
 25 excused permanently then?

- 197 -



1 MR. LEADERS: Trooper Waldron may from the state's  
 2 perspective.  
 3 THE COURT: Okay. Let's take a couple minutes, we'll  
 4 clear the area here so -- so....  
 5 A You want me to put these up here. Your Honor?  
 6 THE COURT: Please.  
 7 A Okay.  
 8 THE COURT: Yes.  
 9 (Whispered conversation)  
 10 THE COURT: Oh, I need to mark them. Okay. And let's --  
 11 we should be able to take -- get these taken care of in like  
 12 10 minutes?  
 13 MR. LEADERS: Yeah, I -- see, if I can take -- well, 10  
 14 to 15 to take -- get them out of here. I....  
 15 THE COURT: Okay. Why don't we start back up at 10  
 16 after. Take a 20 minute break, give everybody time to clear  
 17 the area and stuff.  
 18 (Whispered conversation)  
 19 THE COURT: I don't think you guys want to sit there with  
 20 the exhibits. Okay.  
 21 THE CLERK: Off record?  
 22 THE COURT: Yeah.  
 23 (Off record)  
 24 THE COURT: Back on record. Mr. Leaders, you want to  
 25 call your next witness?

1 BY MR. LEADERS:  
 2 Q How long have you lived here in McGrath?  
 3 A Since 1985.  
 4 Q Okay. And you're currently with the Division of  
 5 Forestry. How long have you been with them?  
 6 A Seasonally since 1985.  
 7 Q Okay. And you've been in the same position, seasonal  
 8 with them?  
 9 A I've gone back and forth between helitac and dispatch  
 10 and spent one year in Palmer working at dispatch.  
 11 Q Okay. Any other employment you've held out here in  
 12 the....  
 13 A Part-time at the library and part-time at the post  
 14 office.  
 15 Q Okay. Have you had any employment as well with the  
 16 Department of Fish and Game?  
 17 A I have worked officially in a -- in a fish and game  
 18 position two winters, seasonally, and then on-loan from  
 19 the Department of Natural Resources two additional  
 20 winters for fish and game.  
 21 Q When you say winters, what type of I guess months does  
 22 that encompass?  
 23 A Usually -- it varies from year to year, but usually four  
 24 to six months, starting sometime between August and  
 25 September and ending anywhere from December through

1 MR. LEADERS: Thank you, Judge. I'm calling Mr. Alan  
 2 Root, he's here in the courtroom.  
 3 THE COURT: Okay. Mr. Root, if you'd just come and stand  
 4 right next to that blue chair there and face the clerk here  
 5 she will swear you in.  
 6 THE CLERK: Okay. Raise your right hand, please  
 7 (Oath administered)  
 8 MR. ROOT: Yes, I do.  
 9 THE CLERK: Thank you. you may be seated.  
 10 ALAN ROOT  
 11 called as a witness on behalf of the plaintiff, testified as  
 12 follows on:  
 13 DIRECT EXAMINATION  
 14 THE CLERK: If you would spell -- state your first -- I  
 15 mean state your name and spell your last name for the record.  
 16 A Alan Root, the last name R-o-o-t.  
 17 THE CLERK: Okay. A-l-a-n?  
 18 A Correct.  
 19 THE CLERK: Your occupation?  
 20 A Currently employed by the State of Alaska, Division of  
 21 Forestry as a wildland fire dispatcher.  
 22 THE CLERK: And what town do you live in?  
 23 A McGrath.  
 24 THE CLERK: Thank you.  
 25 THE COURT: Thank you. Go ahead, Mr. Leaders.

1 March, depending on when I -- what the work load was,  
 2 what the budget was, and when I need to go back to  
 3 forestry.  
 4 Q Okay. Let me ask you. In March of 2004, the last  
 5 month, not this March but the previous year, were you --  
 6 did you have any duties with the Department of Fish and  
 7 Game?  
 8 A Yes, I was working for fish and game for trophy control  
 9 here in McGrath, and one of my primary responsibilities  
 10 was issuing permits for the aerial wolf patrol, and  
 11 keeping records for that.  
 12 Q Okay. The aerial wolf -- the predator control program  
 13 that's....  
 14 A Yes.  
 15 Q ....being administered out here? Okay. And what was  
 16 your role with that?  
 17 A Basically once applicants were accepted and received  
 18 authorization letters then the applicants that were  
 19 successful would come to McGrath and we would issue  
 20 their permits in person.  
 21 Q Uh-huh.  
 22 A And that process involved going through the conditions  
 23 of the permit, asking them questions about the permit.  
 24 Once the permittees had -- had read and signed the  
 25 permits and been given a copy of the map for the area

1 that -- that was basically the role. And also keep  
 2 records on any wolves that were taken under the  
 3 conditions of the permit.  
 4 Q Okay. So as far as keeping records for wolves that were  
 5 taken, what was that process? How did you get the  
 6 information?  
 7 A Usually in person or people would call with wolves they  
 8 had harvested under the permit, and there was a  
 9 supplemental sealing form that was used that -- where  
 10 you recorded information specific to the wolves that  
 11 were taken under the permit. In addition to when they  
 12 did come in then the -- the regular fur bearer sealing  
 13 certificate was also used, just like any wolf that was  
 14 harvested.  
 15 Q Okay. Now let me ask. Did you -- so you personally I  
 16 guess kind of helped hand out some of these or issued  
 17 these permits?  
 18 A Yes. Yeah, I issued -- I don't -- I didn't issue all  
 19 the permits that were issued out of McGrath, but I  
 20 probably issued a fair number of them.  
 21 Q Okay. Do you know the individual sitting I guess to  
 22 your right at counsel table there?  
 23 A Yes, I do. Mr. Haeg.  
 24 Q Okay. Did you have interaction with Mr. Haeg regarding  
 25 these aerial wolf predator control permits?

- 202 -

1 A Yes. I issued the permits to Mr. Haeg and Mr. Zellers  
 2 when they came to McGrath.  
 3 Q Okay. So you personally issued the permit to Mr. Haeg?  
 4 A Yes, I did.  
 5 Q And you said there was another person, Mr. Zellers, with  
 6 him?  
 7 A Yes.  
 8 Q And was -- what was -- why was it that you issued  
 9 permits to both of them?  
 10 A Mr. Haeg was listed as the pilot on the permit and.....  
 11 Q Actually -- hold on, I'll have you hold on one second.  
 12 THE COURT: (Indiscernible).  
 13 MR. LEADERS: It might be distracting.  
 14 THE COURT: Just hand that -- that should do it. Might  
 15 as well take the little one down, too, huh?  
 16 MR. LEADERS: Yes.  
 17 (Pause)  
 18 THE COURT: Thank you.  
 19 MR. LEADERS: Okay. There.  
 20 Q So I guess what we were talking about is you issued the  
 21 permit, personally, to Mr. Zellers[sic], right?  
 22 A Yes.  
 23 Q And there was another person that you.....  
 24 A Oh, and Mr.....  
 25 Q Or excuse me, Mr. Haeg here.

- 203 -

1 A The way the permits were set up is the pilot -- the  
 2 pilot had to get a permit and then there were also a  
 3 gunner or gunners that were authorized to go with the  
 4 pilot, and they had -- the gunners also had to have a  
 5 permit as well to participate under the permit  
 6 conditions. So when Mr. Haeg arrived in McGrath Mr.  
 7 Zellers was with him as authorized gunner, and received  
 8 a permit as well as Mr. Haeg did.  
 9 Q Okay. So then they each individually got their own  
 10 separate permits?  
 11 A Correct.  
 12 Q One as a pilot and one as a gunner?  
 13 A Correct.  
 14 Q Okay. The -- and those permits were then issued at the  
 15 same time?  
 16 A Correct.  
 17 Q Do you recall when it was that you issued a permit to  
 18 Mr. Haeg?  
 19 A I don't recall specifically but it -- it would be in the  
 20 -- I have notes here in my own handwriting that -- it  
 21 says that on the 5th of March -- excuse me. That would  
 22 have actually been on the actual -- yeah, it was the 5th  
 23 of March -- here's the permit conditions with Mr. Haeg's  
 24 signature and my signature on it. 5th of March, 2004.  
 25 And Mr. Zellers' permit would have been issued at the

- 204 -

1 same time.  
 2 Q Okay. Now what was the process that you went through  
 3 for issuing these permits?  
 4 A Basically the permit conditions and anybody that's  
 5 receiving a permit is asked to read through the permit  
 6 conditions before they sign it. Once they've signed the  
 7 permit conditions we keep a copy and they are given a  
 8 copy. And additionally, we emphasized some key  
 9 provisions on the permit conditions, such as there were  
 10 some questions on allowable methods of date, which type  
 11 of firearms you could use, whether you were airborne or  
 12 on the ground. The permit area itself and which, of  
 13 course, they were given a map that showed the permit  
 14 area. And then also the methods, reporting requirements  
 15 for wolves taken under the conditions of the permit.  
 16 Q Okay. And you said -- the permit conditions, were those  
 17 noted somewhere in writing for permittees?  
 18 A Yes, they were. There's the signa -- the signed copy  
 19 that we kept on record and then also the permit that the  
 20 permittees had also had the permit conditions on it.  
 21 Q Okay. Now -- and did you do anything with the permittees  
 22 to make sure that they were aware of these conditions?  
 23 A Yes, they were -- they were given a copy which they were  
 24 to read and -- and they signed before they were given  
 25 the permit....

- 205 -

1 0016  
 2 (Tape change)  
 3 4MC-05-10/Side B  
 4 0016  
 5 THE COURT: Go ahead. Mr. Root.  
 6 A So the applicants, the permittees, also had a copy of the  
 7 permit conditions with their permit which was -- one of  
 8 the permit conditions I believe was to have the permit  
 9 with have them while they were participating in this  
 10 program.  
 11 Q Okay. Did those permit conditions also go over, you  
 12 know, as far as where the permit applied?  
 13 A I'd have to look specifically on the.....  
 14 Q Actually, let me.....  
 15 MR. LEADERS: Maybe I can approach at this point, Judge,  
 16 and produce exhibits. Mr. Robinson.  
 17 (Whispered conversation)  
 18 Q I'm going to hand you Exhibits -- this is number 21 --  
 19 or 20, excuse me, correct?  
 20 A Yeah.  
 21 Q 21. Okay, and.....  
 22 MR. ROBINSON: Can you tell me which permit is 20?  
 23 MR. LEADERS: Number 20 is -- I'll.....  
 24 Q That's a permit for whom?  
 25 A Let's see. Number 20 is permit for David Haeg, and for

- 206 -

1 a pilot permit, and number 21 is a gunner permit for Mr.  
 2 Zellers.  
 3 Q And number 22, Exhibit 22? What is that?  
 4 A Exhibit 22 is the enlarged wolf control area. That was  
 5 revised -- the map was revised on the 1st of March,  
 6 2004, that's my handwriting on the bottom. That's when  
 7 they had increased the size of the area that was allowed  
 8 for the permits.  
 9 Q Okay. Let's discuss each of these exhibits then. First  
 10 of all, Exhibit number 20. Can you -- what exactly is  
 11 that and what does it indicate?  
 12 A It's a -- it's a -- it's a pretty much standard State of  
 13 Alaska permit, and on the front of it it has the  
 14 individual's name, the date, their hunting license  
 15 number, some various information on where they reside,  
 16 the type of aircraft they're going to use, and the  
 17 locking tag numbers that we issued with the permit that  
 18 were to be used for any wolves taken. And then on the  
 19 back of it it has the actual permit conditions, it has  
 20 the applicants signature, my signature, and the date  
 21 issued.  
 22 Q Okay. And the permit conditions. Is there any -- you  
 23 said you had the individuals review that, is that  
 24 correct? The permit conditions on the back?  
 25 A Correct. Yeah, you can -- you can see right on the

- 207 -

1 permit. The conditions are listed and then the  
 2 applicant signs, and once the applicant has read and  
 3 signed the conditions then myself, as an agent of fish  
 4 and game, I would sign it and date it to verify that it  
 5 had, indeed, been signed by the applicant.  
 6 Q Okay. And so you had them do that in your presence?  
 7 A Correct.  
 8 Q Condition number 3 of this permit, can you read that,  
 9 please?  
 10 A This -- number 3. This permit allows the taking of  
 11 wolves using aircraft only within the portion of Unit  
 12 19-D east. That includes the experimental micro-  
 13 management area. The attached map and written  
 14 description specifically identify the control area  
 15 within which this permit may be used.  
 16 Q Okay. So three sets out that the permit is limited only  
 17 to the specified permit area contained on a map?  
 18 A Correct, yes, and this is the -- Exhibit -- I believe  
 19 it's 22. Exhibit 22 is that exact map that was issued  
 20 to the permittees at the same time they got the permits.  
 21 Q Okay. So it gave no authority outside the boundaries of  
 22 that?  
 23 A No, it did not.  
 24 Q And so could it control then what happened outside of  
 25 that (indiscernible)?

- 208 -

1 A No, the -- actually item number 14 says this permit may  
 2 be revoked at any time for non-compliance with permit  
 3 conditions.  
 4 Q Okay. I guess that -- fair enough. Now -- and item --  
 5 or Exhibit number 22, that's that map, correct?  
 6 A Correct.  
 7 Q And you -- now according to Exhibit -- or condition  
 8 three that it talks about a map that's -- the attached  
 9 map?  
 10 A Correct.  
 11 Q And so was one of these maps provided to Mr. Haeg?  
 12 A Yes. All of the permittees were given copies of the  
 13 maps.  
 14 Q Okay. And did you discuss with Mr. Haeg in any way the  
 15 permit boundaries or anything like that?  
 16 A Not specifically. The map is -- is pretty obvious as to  
 17 where the -- there's lat and long, there's geographic  
 18 reference on a topographic base, so it's -- it's  
 19 relevelatively evident of where the predation control area  
 20 is from looking at the map.  
 21 Q Okay. Now were there any -- is -- now I guess the area  
 22 -- obviously you give them a map. Did you -- is that  
 23 one of the conditions you emphasize then with the  
 24 permittees when you issue?  
 25 A Yes, it was, especially this time of the season because

- 209 -

1 the -- the area had just been enlarged so we wanted  
 2 make sure that everybody knew that the area had been  
 3 enlarged and that everybody had a copy of the current  
 4 map. And we had issued permits to other folks prior to  
 5 the area being enlarged and we also went back and made  
 6 sure that all the people that previously had gotten  
 7 permits did receive the updated map.  
 8 Q Okay.  
 9 A Yeah.  
 10 Q Now were there any other conditions of this permit that  
 11 you emphasized with the permittees, and I guess in  
 12 particular with Mr. Haeg?  
 13 A No, the main ones were just the -- the map, the methods  
 14 of take, and the reporting requirements.  
 15 Q Reporting requirements. Was that one of the written  
 16 conditions?  
 17 A Yes, it -- it is on here.  
 18 Q Is that condition number 8?  
 19 A Correct.  
 20 Q What are the reporting requirements?  
 21 A Item number 8 on the permit conditions, the permittee  
 22 shall report by phone or in person the number and GPS  
 23 location of wolves taken to the McGrath Fish and Game  
 24 office within five days of taking. The GPS data must  
 25 also be reported. Permittee shall make every practical

1 -- on the 9th of March Mr. Haeg called in and said that  
 2 he had taken three wolves on the 6th of March and he  
 3 gave a latitude and longitude and a general geographic  
 4 description of the area that he had reported harvesting  
 5 those wolves in.  
 6 Q What was that latitude and longitude?  
 7 A 62 degrees 33 minutes by 155 degrees, three minutes.  
 8 And this lat and long may have been determined from his  
 9 description.  
 10 Q Okay.  
 11 A And the description was Big River, west/northwest of  
 12 Lone Mountain.  
 13 MR. ROBINSON: What mountain?  
 14 A Lone Mountain.  
 15 MR. ROBINSON: L-o-a-n?  
 16 A L -- L-o-n-e.  
 17 MR. ROBINSON: Lone Mountain.  
 18 Q Now....  
 19 A I should note that on the coordinates I have a  
 20 handwritten note that says rough, so that -- that means  
 21 it's -- it's not an exact precise GPS set of  
 22 coordinates. It's a set of coordinates that generally  
 23 describes the area where they reported taking them.  
 24 Q Okay. Now this permit, did it authorize any aerial  
 25 taking of wolves outside of the specified control area?

1 effort to salvage hides for sealing and shall  
 2 immediately affix a metal locking tag to the hide that  
 3 shall remain on the hide until it is sealed. The  
 4 permittee shall have hides and se -- excuse me. The  
 5 permittee shall have the hides sealed at the McGrath Fish  
 6 and Game office within 30 days after taking. The  
 7 location of a wounded wolf must be reported to McGrath  
 8 Fish and Game office as soon as possible.  
 9 Q The -- and so this is all the information you went over  
 10 with Mr. Haeg, is that correct?  
 11 A Generally. I don't know if I specifically read those  
 12 permit conditions to Mr. Haeg. I did emphasize the --  
 13 this is a little different than somebody that normally  
 14 harvests a wolf. The reporting conditions are a little  
 15 bit different, so I wanted to make sure that people knew  
 16 the area, the methods of take, and reporting  
 17 requirements. Although they did -- they were told to  
 18 read this before they signed it, so they were  
 19 responsible for all of the conditions on the permit.  
 20 Just wanted to make sure that they were specifically  
 21 aware of those three items.  
 22 Q Okay. Did -- do you know if Mr. Haeg made any reports  
 23 about wolves taken?  
 24 A I do have a handwritten record of my own handwriting.  
 25 Mr. Haeg did call in and said that he had harvested three

1 A No, it did not.  
 2 Q Okay. Did it regulate any behavior outside of the  
 3 specified control area?  
 4 A No, it had no bearing whatsoever on anything outside of  
 5 the wolf control area.  
 6 Q Kind of like a -- any -- kind of like a typical  
 7 (indiscernible)....  
 8 A Yeah, just like a -- just like any hunt that you're  
 9 involved in, the regulations for that hunt only apply to  
 10 the area that's designated for that hunt. If you -- you  
 11 can't -- those regulations don't apply outside of that  
 12 hunt area.  
 13 Q Okay.  
 14 MR. LEADERS: I have no further questions for Mr. Root.  
 15 THE COURT: Thank you, Mr. Leaders. Mr. Robinson?  
 16 ALAN ROOT  
 17 testified as follows on:  
 18 CROSS EXAMINATION  
 19 BY MR. ROBINSON:  
 20 Q Mr. Root, now you said that when you issued the permit,  
 21 which is Exhibit number 20, that you got a hunting  
 22 license number from Mr. Haeg?  
 23 A No, a trapping license number.  
 24 Q Oh, trapping license number. So when you said hunting  
 25 earlier you didn't mean that did you?

1 A No.  
 2 Q You meant trapping license?  
 3 A Correct.  
 4 Q Because he didn't have to provide a hunting license  
 5 (indiscernible)....  
 6 A No, no hunting license was required for these, it was a  
 7 trapping license.  
 8 Q Trapping license was required?  
 9 A I misspoke.  
 10 Q Other than the being on loan from DOT to work with ADF&G  
 11 and Mr. Boudreau in giving out the permits, were you  
 12 involved in any of the discussions leading up to or  
 13 (indiscernible) creation of the predator control  
 14 program?  
 15 A No, I wasn't.  
 16 Q So you don't know why a trapping permit was required?  
 17 A A trapping license?  
 18 Q A trapping license would be required.  
 19 A No, I don't.  
 20 Q So you don't know whether that was so because this was,  
 21 considered a trapping activity?  
 22 A I -- I really don't -- I couldn't really -- couldn't  
 23 answer that.  
 24 Q And the same was true for Mr. Zellers, too, he had to  
 25 provide his trapping license.....

1 Q Correct.  
 2 MR. ROBINSON: No further questions.  
 3 THE COURT: Any redirect, Mr. Leaders?  
 4 MR. LEADERS: The state is going to seek to have admitted  
 5 Exhibits 20 through 22.  
 6 MR. ROBINSON: No objection.  
 7 THE COURT: Okay. 20 -- Exhibits 21, 20 -- 20, 21 and 22  
 8 will be admitted.  
 9 (Plaintiff's Exhibits 20-22 admitted)  
 10 THE COURT: Anything else for Mr. Root?  
 11 MR. LEADERS: No, thank you, Judge.  
 12 THE COURT: Mr. Root, can be excused then. Thank you  
 13 very much for your time today, Mr. Root, you are excused.  
 14 MR. LEADERS: I'll get my next witness, Judge?  
 15 THE COURT: Please.  
 16 (Witness summoned)  
 17 (Whispered conversation)  
 18 MR. LEADERS: Mr. Boudreau, that seats going to be for  
 19 you. Before you sit down we're going to swear you in to  
 20 testify.  
 21 THE COURT: You can just stand by the chair there  
 22 and.....  
 23 MR. BOUDREAU: (Indiscernible).  
 24 THE COURT: All right. Face the clerk there and  
 25 she'll.....

1 A Correct, yes.  
 2 Q And you said that the original map for the patrol -- for  
 3 the predator control area was expanded?  
 4 A The original permits that were issued -- the people that  
 5 were given maps, were given a map that showed a smaller  
 6 area that was allowed for the taking of wolves under  
 7 this permit. During the course of the period of when it  
 8 was -- these -- these permits were valid, the area was  
 9 increased and this map here, which was revised on the  
 10 1st of March, it had a larger area, and then at that  
 11 time the people that had already been given permits were  
 12 given copies of the new map, and any permits that were  
 13 issued after the 1st of March, those individuals got the  
 14 new map with the larger area on it.  
 15 Q And the -- and from what I can tell from the permit  
 16 conditions on the back that the permits were valid until  
 17 April 30, 2004?  
 18 A Sir, I'd have to take a quick look.  
 19 Q Take a look at condition number 5.  
 20 A Correct.  
 21 Q So -- and Mr. Haeg got his permit on March 6th was it?  
 22 A March 5th.  
 23 Q March 5th. And there was approximately a month and a  
 24 couple weeks left of....  
 25 A Correct.

1 THE CLERK: Please raise your right hand.  
 2 (Oath administered)  
 3 MR. BOUDREAU: I do.  
 4 THE CLERK: You may be seated.  
 5 TOBY BOUDREAU  
 6 called as a witness on behalf of the plaintiff, testified as  
 7 follows on:  
 8 DIRECT EXAMINATION  
 9 THE CLERK: Please state your name and spell your last  
 10 name for the record.  
 11 A My name is Toby Boudreau, B-o-u-d-r-e-a-u.  
 12 THE CLERK: B -- could you spell it again?  
 13 A B as in boy-....  
 14 THE CLERK: Okay.  
 15 A .....o-u-d as in dog, r-e-a-u.  
 16 THE CLERK: Thank you. Your occupation?  
 17 A Wildlife biologist.  
 18 Q And what town do you live in?  
 19 A Pocatello, Idaho.  
 20 THE CLERK: Thank you.  
 21 THE COURT: Go head, Mr. Leaders.  
 22 MR. LEADERS: Thank you.  
 23 BY MR. LEADERS:  
 24 Q How long have you lived in Pocatello?  
 25 A Two weeks.

1 Q You came from the McGrath area?  
 2 A Yes.  
 3 Q How long were you here in McGrath?  
 4 A I lived here for seven years and one month.  
 5 Q Okay. And while you were here in McGrath what -- were  
 6 you employed?  
 7 A Yes.  
 8 Q Where were you employed?  
 9 A At the Alaska Department of Fish and Game.  
 10 Q And what was your position there?  
 11 A I was the McGrath area biologist.  
 12 Q What did your duties entail, sir?  
 13 A My duties entailed wildlife population surveys,  
 14 management reports, setting regulations in seasons and  
 15 baggings and op -- running any kind wildlife management  
 16 programs within the 60,000 square mile area.  
 17 Q Okay. And how long were you in that position?  
 18 A Seven years and one month.  
 19 Q Seven years. The entire time you were here?  
 20 A Yes.  
 21 Q And so you left that position?  
 22 A Yes, I did.  
 23 Q Just within the last month or so?  
 24 A Yes. July 1st was my last day.  
 25 Q And during that time frame, Mr. Boudreau, did you then

- 218 -

1 have -- did you help administrate the -- there was a  
 2 predator control program for wolves in this area,  
 3 correct?  
 4 A Yes, sir.  
 5 Q And did you help administer that?  
 6 A Yes, I did.  
 7 Q Can you explain to the jury what that program was, or  
 8 is?  
 9 A Well, the wolf control program was part of a research  
 10 program to eliminate -- to look at increasing wolf --  
 11 moose numbers around the McGrath area by taking or  
 12 eliminating all sources of predation to within 500  
 13 square miles around McGrath to see how fast and how big  
 14 we could get the moose population over the shortest  
 15 period of time, so we moved -- we eliminated human  
 16 harvest of moose, moved 125 bears over two years and  
 17 began wolf control program in 2003.  
 18 Q Okay. And the -- so there were multiple phases to the  
 19 wolf control program, correct? Or I guess aspects of  
 20 it? The removal of bears.  
 21 A (Indiscernible).  
 22 Q I guess that's the -- that's the moose -- that's an  
 23 attempt to generate the moose population?  
 24 A Yes. There were multiple phases.  
 25 Q The wolf predator control aspect was just one of those

- 219 -

1 several aspects in enhancing moose....  
 2 A Yes, sir.  
 3 Q ....populations?  
 4 A Yes.  
 5 Q Okay. Now what exactly did the wolf predator control  
 6 program entail?  
 7 A It had -- well, the objective of wolf control predation  
 8 program was to remove the wolves out of the 528 square  
 9 miles -- or 520 square miles around McGrath.  
 10 Q Okay.  
 11 A And to do that, of course, because wolf pack  
 12 territories, you know, are normally -- or, you know,  
 13 around 500 square miles, and there were five different  
 14 packs using the area, we established a larger area to  
 15 try to encompass the majority of the range of the wolf  
 16 packs that were affecting the 500 square miles of  
 17 experimental area. We wanted to remove all the wolves.  
 18 Q And what mechanism was going to be used for removing  
 19 those wolves?  
 20 A Well, beyond public trapping and snaring, we have a --  
 21 the Board of Game approved a wolf control program that  
 22 involved aerial gunning and land and shoot hunting.  
 23 Q Now aerial gunning, what is that?  
 24 A Aerial gunning is shooting from an airplane at a wolf  
 25 while it's flying.

- 220 -

1 Q Shooting at a wolf while the airplane is flying,  
 2 shooting at a wolf....  
 3 A Shooting a wolf from an airplane.  
 4 Q And what is land and shoot?  
 5 A Land and shoot, I mean is -- the simplest definition of  
 6 land and shoot hunting is landing the airplane, getting  
 7 out of the airplane and shooting of the wolf once the  
 8 airplane is landed.  
 9 Q Now I guess first with aerial shooting. Well, are  
 10 either of these two methods legal for general hunting?  
 11 A No.  
 12 Q Okay. Specifically regarding the land and shoot method.  
 13 A Yes.  
 14 Q I mean certainly people can fly and....  
 15 A They just can't -- you mean for, you know, big game  
 16 animals it's not legal, no.  
 17 Q Okay. What -- sort of people have to get to hunting  
 18 camps, that type of thing, right? They fly into remote  
 19 sites?  
 20 A Uh-huh (Affirmative).  
 21 Q So I assume there's at a point where they can then hunt  
 22 or....  
 23 A Yeah, 3:00 o'clock -- 3:00 a.m. the next day.  
 24 Q Okay. So after -- if you fly on one day, on a non-  
 25 commercial flight, you have to wait until 3:00 a.m. the

- 221 -

1 next day?  
 2 A Yes, sir.  
 3 Q And that's for big game animals?  
 4 A Yes, except for deer. I think you can fly and shoot the  
 5 same day in Kodiak....  
 6 Q Where there's deer populations and hunting seasons.....  
 7 A Yes.  
 8 Q .....I assume?  
 9 A Yes.  
 10 Q Okay. And isn't it true there's also some land and  
 11 shoot provisions for caribou in certain game management  
 12 units like 17?  
 13 A Yes, here in the Mulchatna range areas, or.....  
 14 Q The Mul.....  
 15 A .....part of the Mulchatna range there is same day  
 16 airborne season in the late winter.  
 17 Q Okay. So that's a very specific area and time frame, is  
 18 that correct?  
 19 A Yes, sir.  
 20 Q Okay. Generally for big game you cannot -- you have to  
 21 -- if you fly on a non-commercial flight you have to  
 22 wait until after 3:00 a.m. the next day before you can  
 23 shoot an animal, is that correct?  
 24 A Yes.  
 25 Q Okay. Now a wolf is a big game animal, correct?

1 had a short lapse when the court injunction was filed  
 2 and it was suspended for a short period of time and then  
 3 went back in actively December.  
 4 Q Okay. There's a court injunction. In fact, it's been a  
 5 very litigious and very controversial program, is that  
 6 fair to say?  
 7 A Yes.  
 8 Q The Department had to work hard in order to get this  
 9 program in place?  
 10 A Yes.  
 11 Q And it's a fragile footing, I'm assuming?  
 12 A Yes. We're -- the Department worked pretty hard to  
 13 gather the data to support the program for eight years  
 14 before it was started, so.  
 15 Q So November, 2003 for a few months, then a brief lapse,  
 16 and then it began again, or restarted?  
 17 A Yes.  
 18 Q And what area was -- did this predator control program  
 19 cover?  
 20 A Well, it first covered an area 1,710 square miles which  
 21 basically encircled the 520 square mile research area.  
 22 Q Okay.  
 23 A And that was just kind of an expansion of -- of the --  
 24 of the research area. I have a map of -- and then in --  
 25 as of March then it was expanded to 3,200 square feet --

1 A Yes.  
 2 Q Is it also classified in any other mea -- by any other  
 3 designation?  
 4 A Also a fur bearer.  
 5 Q A fur bearer?  
 6 A Yes.  
 7 Q And are either of these methods, this land and shoot or  
 8 the aerial shooting, authorized for the taking of fur  
 9 bearers?  
 10 A Aerial shooting is not authorized for any of the fur  
 11 bearers. Land and shoot hunting -- land and shooting is  
 12 authorized for I believe coyotes and otters, and.....  
 13 Q How about for wolves?  
 14 A No.  
 15 Q Okay.  
 16 A Is not. More likely wolves, lynx, wolverines.  
 17 Q Now the -- so these methodologies for taking wolves were  
 18 -- typically are something that we auth -- you authorize  
 19 or the Department authorizes as something that would  
 20 typically be illegal, is that correct?  
 21 A Yes, sir.  
 22 Q Okay. Now when did this program, as far as the aerial  
 23 predator control aspect of the wolf control go into  
 24 effect?  
 25 A It first went into effect in November of 2003, and then

1 square miles, because it was -- the wolf pack  
 2 territories were found to be bigger than the 1,700  
 3 square miles and the program was -- was not being as  
 4 effective as -- as we hoped it.....  
 5 Q Okay. And you said that the program boundaries then  
 6 were depicted by -- on map?  
 7 A Yes.  
 8 MR. LEADERS: May I approach?  
 9 THE COURT: Yes.  
 10 MR. LEADERS: It's Exhibit 22.  
 11 (Whispered conversation)  
 12 MR. ROBINSON: Number 21?  
 13 MR. LEADERS: 22.  
 14 MR. ROBINSON: Thank you.  
 15 Q Exhibit number 22, correct?  
 16 A Yes.  
 17 Q Okay. Do you recognize what this exhibit is?  
 18 A Yes, I do, it's the map.  
 19 Q Okay. That's the map as far as the map that depicts the  
 20 wolf predator control boundaries?  
 21 A That is the second map, yes.  
 22 Q Okay. The second map. Maybe you can hold that up in a  
 23 manner so that the jury can see. So this is the  
 24 enlarged boundaries area?  
 25 A Yes, sir.

1 Q And I guess it won't be exact, but can you somewhat show  
2 us where the original area was?  
3 A Well, the -- the inner dark line here that has the words  
4 across it, is the experimental area boundary. That's  
5 500 square miles. Basically the -- the -- the previous  
6 1,700 square miles just gave us about a 10 mile buffer  
7 around the area, basically on -- on three sides it gave  
8 us 10 miles, and then on this -- on the western boundary  
9 it's actually less than that. And when we expanded the  
10 area we moved it south and north because of the range of  
11 the wolf packs that were -- that were basically found  
12 during the wolf control program.  
13 Q Okay. And so -- and essentially it approximately  
14 doubled in size, the original area?  
15 A Yes.  
16 Q And that went into effect March 1st of 2004, is that  
17 correct?  
18 A Yeah.  
19 Q The -- so for -- and there was a predator prog --  
20 control program for the aerial taking of wolves in  
21 effect in March of 2004?  
22 A Yes.  
23 Q When did that program, I guess, begin and end, do you  
24 recall?  
25 A Well, the program actually began, like I said, in late

- 226 -

1 November. It was stopped for a couple weeks, and then  
2 started again in December and went all the way through,  
3 really, until April 30th.  
4 Q Okay. In fact, I won't keep you holding that up at this  
5 point. Thank you. Now what was the -- who determined  
6 these boundaries?  
7 A Well, it was kind of a conser -- you know, a -- a group  
8 effort, looking at, you know, -- my supervisor and all  
9 the way up to the director basically, you know, took my  
10 input and asked, you know, what's the smallest area that  
11 we can get these wolves taken out of, and do the best  
12 job we can. So there were several -- multiple  
13 iterations of maps to get a boundary until they were  
14 happy of the 1,700 square mile map. And we let that go  
15 for a couple months, and because there were very few  
16 wolves taken and the wolf hunters, or wolf shooters had  
17 seen wolves going out of that 1,700 square mile area and  
18 knew that they were not very far out, the -- it was  
19 decided by the director that we should expand the area  
20 and.....  
21 Q So the Department of Fish and Game then made those  
22 boundary determinations?  
23 A (Indiscernible).  
24 Q And was it part of Department of Fish and Game that  
25 administered this program?

- 227 -

1 A Yes.  
2 Q What was the -- the boundaries of this permit area....  
3 A Uh-huh (Affirmative).  
4 Q Now does it relate in any way to any local game  
5 management areas for hunting?  
6 A Yes, it does. The -- when we tried to -- when we  
7 expanded it, of course, we were running into -- we -- we  
8 were fairly close to game management unit boundaries  
9 and, yes, on the northern border from the west corner up  
10 to the farthest northeast point is the game management  
11 boundary between 19-D and 21 -- 21-A. And then --  
12 which is the Noitnah(ph) drainage, and then the southern  
13 boundary -- this -- this north/south boundary is just a  
14 latitudinal line because everybody uses GPS's nowadays  
15 we thought that just a -- a good latitude -- a good  
16 longitude line would be -- would be good for that. And  
17 then once in the southeast corner it follows the 19-C  
18 boundary which goes down to where it hits the Big River  
19 and then it follows the -- the drainage of the Sulatna  
20 River and is north of the Sulatna because that -- north  
21 of the Sulatna is the 19-E east boundary and the  
22 boundary of the control area. So the area that the  
23 board has authorized the Department to do control in, so  
24 that goes over to here and then up along the western  
25 boundary is, again, just a longitudinal boundary.

- 228 -

1 Q Okay. So what area has the board authorized the control  
2 program in?  
3 A In -- in Unit -- in 19-D east, which is 8,600 square  
4 miles up -- it's 19 -- it's Unit 19-D upstream of the  
5 Sulatna and Black Rivers, including the Takotna and all  
6 upstream in the North Fork in 19-D.  
7 Q Okay. So the predator control program is only  
8 authorized in 19-D east?  
9 A Yes, sir.  
10 Q Okay. How was it that you went about finding who would  
11 be allowed to participate in the program?  
12 A Well, the -- the -- the permit program was announced to  
13 the public and applications were handed out and -- and  
14 -- and they were filled out and accepted in Anchorage.  
15 Q Okay. Was there specific criteria required?  
16 A There is some criteria set out in the statute, or set  
17 out in regulation as to -- but, no. Basically the --  
18 the application had several questions. It asked the  
19 pilot's experience flying, experience with the game  
20 management unit, maybe possible experience wolf -- going  
21 after wolves in airplanes.  
22 Q Okay. Now -- and so then I assume, you know, people  
23 applied and decisions were made, right?  
24 A Yes.  
25 Q Were you involved in the actual decision making process

- 229 -



1 as to who obtained permits?  
 2 A Well, I was involved in but I wasn't the -- I -- I  
 3 wasn't the only person that made any decisions. It --  
 4 it was a three-step process and it went -- well,  
 5 actually probably a four-step process because it --  
 6 applicants were sent to myself, to the regional office  
 7 in Fairbanks, and headquartered in Juneau.  
 8 Q Okay. Now -- so you did participate in reviewing the  
 9 applications?  
 10 A Yes, I do.  
 11 Q Did it -- do you know the individual sitting next -- I  
 12 guess your right at counsel table here?  
 13 A Yes.  
 14 Q Who is that person?  
 15 A David Haeg.  
 16 Q Did -- do you know if he applied for one of these  
 17 permits?  
 18 A Yes, he did.  
 19 Q Did you review his application?  
 20 A Yes, I did.  
 21 Q Are you familiar with it?  
 22 A Yes, I am. Relatively familiar.  
 23 Q Okay. The ....  
 24 (Whispered conversation)  
 25 MR. LEADERS: Wait a moment while Mr. Robinson.....

- 230 -

1 (Pause)  
 2 MR. LEADERS: May I approach the witness, Judge?  
 3 THE COURT: Go ahead.  
 4 Q Prosecution Exhibit 23, correct?  
 5 A Yes.  
 6 Q On the corner there.  
 7 A Uh-huh (Affirmative).  
 8 Q And I'll hand that to you, and do you recognize what  
 9 that is?  
 10 A Yes.  
 11 Q What (indiscernible) familiar?  
 12 A It's -- it's the application of David Haeg and -- to get  
 13 a permit to take wolves in.....  
 14 Q Is that the.....  
 15 A .....19-D east.  
 16 Q Excuse me?  
 17 A It's -- it's his application to take wolves in 19-D  
 18 east  
 19 Q Okay. When was that application submitted, do you know?  
 20 Does it indicate?  
 21 A It doesn't.  
 22 Q Okay. Do you know -- is this an application you  
 23 reviewed?  
 24 A Yes, it is. It was actually submitted to ADF&G on  
 25 December the 12th, 2003 at 11:53 a.m.

- 231 -

1 Q And so you reviewed this as part of the process, review  
 2 process?  
 3 A I -- I reviewed all the applications that were faxed to  
 4 me.  
 5 Q And about the third page of this application it  
 6 indicates Mr. Haeg's qualifications to the program in  
 7 Unit 19, is that correct?  
 8 A Yes, sir.  
 9 Q Talks about his pilot qualifications, as pilot in  
 10 command?  
 11 A Uh-huh (Affirmative).  
 12 Q Time. And then his hunting qualifications?  
 13 A Uh-huh (Affirmative).  
 14 Q What does it state under hunting qualifications?  
 15 A It says grew up in a remote wilderness where hunting and  
 16 trapping was a integral part of life. Learned to trap  
 17 and hunt big game alone at age 16. Became an assistant  
 18 big game guide at age 21. Registered big game guide in  
 19 Unit 19 at age 25, and is currently a licensed master  
 20 big game guide in Unit 19 at age 38. Has taken up to 14  
 21 wolves per season in Unit 19, and is an expert at  
 22 tracking and locating.  
 23 Q It indicates approximately -- well, let's see.  
 24 Registered big game guide in Unit 19 at age 25, and  
 25 master big game guide Unit 19 at age 38, right?

- 232 -

1 A Yes.  
 2 Q And he showed a pretty significant amount of hunting  
 3 experience, or would indicate a significant amount of  
 4 experience in the area, is that correct?  
 5 A Yes, sir.  
 6 Q His knowledge of the geography of the area was important  
 7 to the permit?  
 8 A Yes, it was.  
 9 Q Under pilot in command, do you see that?  
 10 A Und -- on the third page here?  
 11 Q Third page, yeah, that's correct. The.....  
 12 A It's -- yeah, it says -- and it's 7,000 total hours,  
 13 6,000 in PA 18 Super Cubs or PA 12 Super Cruisers, low  
 14 level, and shoot/trap in leg hold and snare trapping.  
 15 Q So lo -- in low level land and shoot, trapping, leg hold  
 16 and snare trapping?  
 17 A Le -- leg, yeah.  
 18 Q Okay.  
 19 A Guiding and herring spotting.  
 20 Q That indicates an amount of time -- how many of those  
 21 hours does it indicate were spent inside Unit 19?  
 22 A Over 3,000 of these hours were inside Unit 19.  
 23 Q And indicating a significant knowledge of the area?  
 24 Which would be important because this is the  
 25 geographical boundaries are significant to this program,

- 233 -

1 correct?  
 2 A Yes, sir.  
 3 Q Now that's Mr. Haeg's app -- part of Mr. Haeg's  
 4 application. He -- was Mr. Haeg actually authorized to  
 5 receive a permit?  
 6 A Yes.  
 7 Q Okay. And when was Mr. Haeg's permit issued to him?  
 8 A I believe some time in the first week of March. I was  
 9 at the Board of Game meeting when that occurred.  
 10 Q Okay. What would that permit have authorized Mr. Haeg  
 11 to do?  
 12 A It would have authorized Mr. Haeg to conduct aerial  
 13 gunning and/or land and shoot, taking of wolves in --  
 14 within the permit area in 9 -- within 19-E east for a  
 15 3,200 square mile area.  
 16 Q The permit, did it give -- did it authorize any conduct  
 17 outside that control area?  
 18 A No.  
 19 Q Okay. Did it control any conduct outside that permit  
 20 area?  
 21 A No.  
 22 Q If someone were aerial hunting or land and shoot hunting  
 23 for wolves outside that control area, is there anything  
 24 you could do under the permit?  
 25 A No.

- 234 -

1 asked a follow up question of why not.  
 2 MR. LEADERS: Why?  
 3 THE COURT: And he was explaining why not.  
 4 MR. ROBINSON: So when you -- I guess I need to -- maybe  
 5 I need a clarification. When you mean you, do you mean  
 6 ADF&G? When he says anything you can do about it?  
 7 MR. LEADERS: I can rephrase.  
 8 Q When -- if someone -- okay, was there anything the  
 9 Department could do about someone aerial shooting or  
 10 land and shoot hunting for wolves outside the control  
 11 program, or anything the control -- based on this  
 12 control program, was there anything that could be done  
 13 if someone land and shoots or aerial shoots wolves  
 14 outside of the boundaries?  
 15 A Well, I mean, of course, enfor -- enforce the  
 16 regulations that applied to, you know, land and shoot or  
 17 aerial gunning outside the area, which falls into the  
 18 Airborne Hunting Act and same day airborne hunting.  
 19 Q Okay. So there's nothing you can do under the authority  
 20 of the permit, is that correct?  
 21 A The permit does not allow you to conduct either of those  
 22 said activities outside of the control area boundary  
 23 area.  
 24 Q So if someone engages in those activities outside the  
 25 boundaries what are they doing?

- 236 -

1 Q And why is that?  
 2 A The permit boundaries are specifically denoted in here  
 3 that only those activities can take -- can take place  
 4 within the specific geographical boundaries laid out by  
 5 latitude and longitude lines and physiographic and  
 6 hydrographic boundaries that are laid out on this map,  
 7 and in meets and bounds descriptions on the permit which  
 8 he had to sign as to being fully read and understood  
 9 those conditions and area.  
 10 MR. ROBINSON: Your Honor, I'm going to object to this as  
 11 non-responsive. Wasn't the question what you could do about  
 12 it?  
 13 MR. LEADERS: No, I asked him why he couldn't -- why the  
 14 permit didn't authorize it, that's what he's explaining is  
 15 the limita.....  
 16 MR. ROBINSON: No, but I thought the question was if the  
 17 permittee went outside of the boundaries is there anything you  
 18 could do about.  
 19 THE COURT: And he said no.....  
 20 MR. LEADERS: No.....  
 21 THE COURT: .....and then.....  
 22 MR. LEADERS: I guess -- was there anything that could  
 23 be done under the permit, and he said no.....  
 24 MR. ROBINSON: Oh, there was another question?  
 25 THE COURT: Yeah, there was -- he said no and then he

- 235 -

1 A They're breaking the law.  
 2 Q What law?  
 3 A The Airborne Hunting Act and the regulations in that  
 4 green book that says that you can't hunt using an  
 5 airplane for same day airborne for wolves.  
 6 Q Okay. The -- now -- oh, the permit that Mr. Haeg  
 7 received, did it have any conditions, as far as what he  
 8 needed to do in order to -- or under the permit if he  
 9 took any wolves?  
 10 A Yes, it had stipulations as to how he needed to report  
 11 the take of wolves and to -- in regard to getting the  
 12 wolves sealed.  
 13 Q Okay. In fact he had to -- those were conditions that  
 14 were codified by regulation, correct?  
 15 A Yes, sir.  
 16 Q 5 AAC 92.039 was a regulation enacted to institute this  
 17 program, right?  
 18 A Yes.  
 19 Q And it set out those restrictions.....  
 20 A Yes.  
 21 Q .....or the conditions, excuse me?  
 22 A Yes.  
 23 Q Among those was a -- the person would have to report the  
 24 number of wolves and the location -- location those  
 25 wolves were taken?

- 237 -

1 A Yes. And then seal them in an ADF&G office. And  
 2 actually for that program it was specifically in  
 3 McGrath.  
 4 Q Okay. So have to report number and location of wolves  
 5 taken under the program. Have to do that by -- what  
 6 type of information would have to be provided for  
 7 location?  
 8 A Latitude and longitude of the GPS coordinates for the --  
 9 for the kill locations, and also GPS locations for any  
 10 wolves that were wounded and not recovered.  
 11 Q Okay. They'd also have to -- you said that they'd have  
 12 to have them sealed?  
 13 A Yes.  
 14 Q And that would have to -- for this program have to occur  
 15 here in McGrath?  
 16 A Yes.  
 17 Q And what was that process?  
 18 A That process is just -- you know, basically presenting  
 19 the hides to fish and game, putting the metal lock and  
 20 seal, filling out a form that entails the -- the seal --  
 21 I mean the plastic lock and seal, the siting seal.  
 22 Filling out a form that has the name, address, license  
 23 number of the -- of the person sealing the wolves. It  
 24 has the -- the name and location of the sealer, and  
 25 whether they're an appointed sealer or fish and game

- 238 -

1 sealer, has the date and then it has in there -- below  
 2 that it has the seal number, the -- a couple codes which  
 3 are fish and game codes like the sub unit code and then  
 4 a -- another code for the purposes of tracking harvest,  
 5 and then the location of the take, of -- of -- a brief  
 6 location of the take. Then the method used to take, the  
 7 method used to transport the harvester to how he got  
 8 there, and the color of the wolves and how many were in  
 9 the pack are -- are all part of that form. And -- and  
 10 there's -- each line for each -- each individual animal  
 11 taken, and a seal for each.  
 12 Q So that was -- all that information was -- if you took a  
 13 wolf under the program it was required to be provided to  
 14 the Department?  
 15 A Yes, that -- that information is required for every wolf  
 16 taken.  
 17 Q For every wolf?  
 18 A Yes.  
 19 Q Now for the program there was also an additional  
 20 identification mechanism, isn't that correct?  
 21 A Yes, we had -- we had separate seals and -- and we also  
 22 had to get latitude and longitude, you know, locations.  
 23 Q Okay. Now you say separate seal, was that in addition  
 24 to or I guess instead of?  
 25 A In addition to.

- 239 -

1 Q So any wolf taken under the program would require two  
 2 seals?  
 3 A Yes.  
 4 Q Kind of the -- the seal everyone is required to provide  
 5 at that time was like a brown seal, is that correct?  
 6 A Yes.  
 7 Q A band?  
 8 A Yes.  
 9 Q And for the predator control program was what?  
 10 A Yellow metal.  
 11 Q Yellow metal?  
 12 A Uh-huh (Affirmative).  
 13 Q Now it's also a requirement to provide -- any other  
 14 information required by the Department?  
 15 A Yes.  
 16 Q And to provide biological samples or specimens if  
 17 requested?  
 18 A Yes.  
 19 Q Okay. Now -- and this -- now the predator control  
 20 program is by definition limited to the specific area  
 21 authorized, is that correct?  
 22 A Yes.  
 23 Q Okay. If you're taking wolves outside of the specific  
 24 area are you engaged in predator control.....  
 25 0609

- 240 -

1 (Tape change)  
 2 4MC-05-11/Side A  
 3 0609  
 4 MR. ROBINSON: Yeah, that calls for speculation on the  
 5 part of this witness as to what's in the mind of somebody who  
 6 is outside of the area. And so therefore, to have Mr.  
 7 Boudreau give his opinion is not a stated fact. He's not  
 8 stating a fact, he's giving an opinion and his opinion is  
 9 speculative.  
 10 MR. LEADERS: He's stating a fact based on the  
 11 application of the predator control program, the game  
 12 management.....  
 13 MR. ROBINSON: No.....  
 14 MR. LEADERS: .....program, and its definitions.  
 15 MR. ROBINSON: No, he's not. He's not. The state is  
 16 asking him to come up with an ultimate fact determination  
 17 that this jury is to decide.  
 18 THE COURT: Wait -- wait, was -- reached -- tell me again  
 19 how you stated the question?  
 20 MR. LEADERS: If someone takes a wolf outside of the  
 21 specified or the designated geographic area of the predator  
 22 game management program, are they engaged in predator  
 23 control?  
 24 MR. ROBINSON: That's the ultimate -- that's ultimate  
 25 fact for the jury.....

- 241 -

1 THE COURT: In accordance with the program?  
 2 MR. LEADERS: In accordance with the program.  
 3 THE COURT: I'll allow that question. The objection is  
 4 overruled. You can answer the question. Mr. Boudreau.  
 5 A It's -- it's not -- it's not an approved predator  
 6 control -- you know, no. It's not approved predator  
 7 control.  
 8 Q Okay. So they're not engaged in the program?  
 9 A No.  
 10 Q Okay. It's not approved? They can call it whatever  
 11 they want, I guess, right? But.....  
 12 A Yes.  
 13 Q They can call it whatever they want, but what is it  
 14 under the law?  
 15 MR. ROBINSON: Objection, Your Honor, it's -- that's a  
 16 legal determination.  
 17 THE COURT: It is. It's past -- that one I'll sustain,  
 18 it's past the scope of his.....  
 19 Q Let's see. Did Mr. Haeg report any wolves being taken  
 20 under the program?  
 21 A Yes, he reported three wolves to my assistant. Or I'm  
 22 sorry, the technician, Al Root.  
 23 Q Mr. Root?  
 24 A Yes.  
 25 Q Okay. And we've heard him testify about that. Was that

- 242 -

1 information passed on to you?  
 2 A Yes.  
 3 Q Did you pass that information on to anyone?  
 4 A I passed it on to Trooper Gibbens.  
 5 Q Okay. Anyone else?  
 6 A Well, basically I was required -- every time somebody  
 7 reported the taking of a wolf in the predator control  
 8 program I was required to e-mail a half dozen people  
 9 throughout the Department, including headquarters, that  
 10 more wolves had been taken.  
 11 Q Okay. Now you said you reported Mr. Haeg's -- the  
 12 wolves that he reported, you informed Trooper Gibbens of  
 13 that?  
 14 A Yes, sir.  
 15 Q Did -- was that unique to Mr. Haeg or did you  
 16 report.....  
 17 A No.  
 18 Q .....or inform Mr. -- Trooper Gibbens of all the wolves  
 19 taken?  
 20 A I informed Trooper Gibbens of all the kills that were  
 21 taken.  
 22 Q Did you have any contact with Mr. Haeg about wolves he  
 23 had taken?  
 24 A I was there when Mr. Haeg came and sealed his wolves.  
 25 Q When was that?

- 243 -

1 A Some time in March, (indiscernible)....  
 2 Q When he came and sealed his wolves what was the process  
 3 or procedure that you went through with him?  
 4 A Well, he came to the office with the wolves in a bag and  
 5 we unrolled the wolves, looking for tag numbers, wrote  
 6 down the supplemental sealing information, filled out  
 7 the sealing form, had got his license number, went ahead  
 8 and applied the -- the siting seals to it and filled out  
 9 all the information on the sealing form and took small  
 10 hide samples for genetics. And then Mr. Haeg left.  
 11 Q Okay. So you talked about a form that you use.  
 12 MR. LEADERS: May I approach the witness, Judge?  
 13 THE COURT: Uh-huh.  
 14 (Whispered conversation)  
 15 Q Handing you Exhibit 24, is that correct?  
 16 A Yes.  
 17 Q What is that?  
 18 A That's a sealing form.  
 19 Q Okay. It's a sealing form. Which -- is it a particular  
 20 sealing form?  
 21 A It's David Haeg's sealing form.  
 22 Q Okay. And what's -- what does it -- what's being sealed  
 23 on that form?  
 24 A Three wolves. Three gray wolves. And.....  
 25 Q What's the date?

- 244 -

1 A The date is March 21st, 2004.  
 2 Q There's information regarding where the wolves were  
 3 taken, is that correct?  
 4 A Yes, sir.  
 5 Q And where does that indicate?  
 6 A Big River, near Lone Mountain.  
 7 Q Okay. All three of them? I mean how many wolves are  
 8 actually sealed on this then?  
 9 A There are three -- three wolves sealed on this sealing  
 10 form. And there's in parens that all three, same  
 11 location.  
 12 Q Does it indicate when the wolves were taken?  
 13 A In March.  
 14 Q Of 2000.....  
 15 A 2004.  
 16 Q Okay. Not a specific date with that?  
 17 A No.  
 18 Q Okay. And a method of taking?  
 19 A Same day airborne.  
 20 Q And a method of transporting them?  
 21 A Airplane.  
 22 Q The -- there's seal numbers located -- or registered on  
 23 the form, correct?  
 24 A Yes.  
 25 Q What do those relate to?

- 245 -

1 A Those -- the first three relate to the siting seal  
 2 numbers that we seal all wolves with, and then there's  
 3 the three other seal numbers which are the metal locking  
 4 seals that were issued to permittees.  
 5 Q Okay.  
 6 A So when they took a wolf they had to apply that seal to  
 7 each animal.  
 8 MR. LEADERS: May I approach the witness again, Your  
 9 Honor?  
 10 THE COURT: Uh-huh.  
 11 (Whispered conversation)  
 12 Q Handing you what's been admitted as Exhibit number 20,  
 13 identified -- it was identified as Mr. Haeg's permit.

14 A Uh-huh (Affirmative).  
 15 Q On the bottom there's several numbers in serial....  
 16 A Yes.  
 17 Q What are those numbers?  
 18 A Those numbers are the -- are the recorded numbers of his  
 19 locking tags that he was issued before the....  
 20 Q The....  
 21 A ....program, to apply to each wolf that was taken in  
 22 the program.  
 23 Q And that's that additional locking tag or  
 24 identifier....  
 25 A Yes.

1 Q ....that you've talked about earlier?  
 2 A The yellow tag, yes.  
 3 Q Okay. And do those numbers correlate to any numbers on  
 4 -- or the tags identified on the sealing certificate?  
 5 A Yes, it correlates number 100541, 100542 and 100543 are  
 6 on the permit to take wolves using aircraft, and written  
 7 on the fur sealing certificate, both.  
 8 Q Okay. Now the form also indicates that the color of the  
 9 wolves were all -- all three were gray, correct?  
 10 A Yes.  
 11 Q And the pack they were taken out of?  
 12 A Yes, the num -- the number in the pack.  
 13 Q Number in the pack, excuse me.  
 14 A Yeah.  
 15 Q Now who provided the information on the form?  
 16 A Mr. Haeg.  
 17 Q Okay. Did he fill it out or....  
 18 A No.  
 19 Q Who filled it out?  
 20 A Most of that writing is mine.  
 21 Q Okay. So you filled in most of the information and  
 22 where did you get that from?  
 23 A I asked Mr. Haeg.  
 24 Q So you had direct conversation, discussion with him  
 25 about these issues....

1 A Yes.  
 2 Q Okay. And one of the-- it's required that an individual  
 3 sign that sealing certificate, isn't that correct?  
 4 A Yes, sir.  
 5 Q Did Mr. Haeg sign the sealing certificate.....  
 6 A Yes, he did.  
 7 Q Did you actually observe him sign it?  
 8 A Yes.  
 9 Q Okay. Above the signature there's a notation indicated  
 10 that falsification of information on this form is  
 11 punishable under A.S. 11.56.210(a), isn't that correct?  
 12 A That's correct.  
 13 Q Now -- and that -- below that then it states I certify

14 that the information provided herein is accurate and  
 15 true to the best of my knowledge?  
 16 A That's correct.  
 17 Q Followed by a signature line, correct?  
 18 A Yes.  
 19 Q And is that signature line where David Haeg signed?  
 20 A Yes, it is.  
 21 Q And you -- there's a date there of 3-21-04?  
 22 A Yes.  
 23 Q Is that the date he signed it?  
 24 A Yes.  
 25 Q Now there's a second page to that, is that correct?

1 A Yes.  
 2 Q What's the information contained on the second page?  
 3 A It's the supplemental sealing form, and it includes the  
 4 name David S. Haeg, his trapping license number, the fur  
 5 bearer sealing certificate number which the number off  
 6 of here from the upper left-hand corner. It includes  
 7 the date of the FF -- FAA tail number from the airplane  
 8 that was used. The date that the wolves were taken, the  
 9 locking tag number and the seal number for those -- each  
 10 individual wolf.  
 11 MR. LEADERS: Judge, the state would seek to admit  
 12 Exhibits 23, Mr. Haeg's application; and 24, the March 21st,  
 13 2004 sealing record of Mr. Haeg.  
 14 MR. ROBINSON: No objection.  
 15 THE COURT: Okay. Exhibit -- that was 23 and 24, right?  
 16 They'll both be admitted then.  
 17 (Plaintiff's Exhibits 23 & 24 admitted)  
 18 MR. LEADERS: I have no further questions.  
 19 THE COURT: All right. Mr. Robinson?  
 20 MR. ROBINSON: Yes.  
 21 TOBY BOUDREAU  
 22 testified as follows on:  
 23 CROSS EXAMINATION  
 24 BY MR. ROBINSON:  
 25 Q Mr. Boudreau, you said you were the area biologist here

1 for seven years?  
 2 A Yes, sir.  
 3 Q Which seven years? If you can just give me a time  
 4 frame?  
 5 A May 15th -- May 16th, 1998 to July the 1st, 2005.  
 6 Q When you became the area management area -- is it called  
 7 area management biologist?  
 8 A We just call them the area biologist. Area biologists.  
 9 The fish guys call them unit biologist.  
 10 Q And the game guys have a different name?  
 11 A Yes, sir.  
 12 Q But you're in charge of managing the -- a particular  
 13 geographical area, right?  
 14 A Yes, I am.  
 15 Q What is that area?  
 16 A That area is the Kuskokwim drainage, upstream from and  
 17 including lower Kalskag on the Kuskokwim. It includes  
 18 the upper Noitna River and from the Big Mud River  
 19 upstream. It also includes the drainage of the Yukon  
 20 between upper Eagle Island and Pine -- and the village  
 21 of Paimiut over on the -- which is basically just  
 22 downstream of (indiscernible).  
 23 Q Does that area include all of Unit 19 -- in Unit 19?  
 24 A Yes, it does. It includes all of Unit 19 and sub-unit  
 25 21-A and 21-E.

- 250 -

1 Q Now while you were the wildlife biologist with those  
 2 game management areas how often did you participate in  
 3 Board of Fishery -- I mean Board of Game hearings  
 4 concerning the predator control program for wolves?  
 5 A Well, I believe.....  
 6 Q And by participate I mean like either wrote reports or  
 7 attended meetings yourself, gave staff comments, et  
 8 cetera?  
 9 A Well, there has been a -- on the books by the Board of  
 10 Game wolf control program since 1995 in Unit 19-D east  
 11 before I came here. Although nothing was done for eight  
 12 years, as far as doing something on the ground, other  
 13 than the fish and game doing studies to support the  
 14 science -- to get the science to back up predator  
 15 control. I can't tell you how many times the board has  
 16 talked about -- in fact, every -- well, I -- I can tell  
 17 you, every spring they wanted an update on what the  
 18 Department was doing on predator control even before the  
 19 Department was doing -- taking any intensive management  
 20 activities for programs. I didn't participate in -- I  
 21 only participated in every other year in those Board  
 22 meetings because my supervisors gave that report that I  
 23 summarized.  
 24 Q So between 1998 and 2005 what were those every other  
 25 years that you participated?

- 251 -

1 A Well, I participated in 2004 and 2002, and 2000, and  
 2 actually had a special Board of Game meeting in May of  
 3 2001 that was just for Unit 19.  
 4 Q And those you personally participated in?  
 5 A Yes, sir.  
 6 Q As the area biologist?  
 7 A Yes, sir.  
 8 Q Now during your participation in these Board of Game  
 9 meetings was it -- wasn't it your understanding that if  
 10 there was an implementation of the predator control  
 11 program that that program would not be considered  
 12 hunting?  
 13 A Yes.  
 14 Q And why was that?  
 15 A Because it's predator control.  
 16 Q So there's a difference between hunting and predator  
 17 control, right?  
 18 A Yeah.  
 19 Q Now when the permit was issued to Mr. Haeg on March 5 of  
 20 2004, I noticed that there was a requirement -- you can  
 21 take a look at this, it's already been admitted.  
 22 There's a requirement of Mr. Haeg of his trapping  
 23 license number. Correct?  
 24 A Yes.  
 25 Q Why was it, Mr. Boudreau, that Mr. Haeg was required to

- 252 -

1 have a trapping license in order to get a predator  
 2 control permit?  
 3 A I don't know.  
 4 Q As the area biologist you didn't understand why the  
 5 Department of Fish and Game was requiring a trapping  
 6 permit to receive a predator control permit?  
 7 A Well, I can only surmise that it's because it's not  
 8 hunting.  
 9 Q Because it wasn't hunting, correct?  
 10 A Yes.  
 11 Q Trapping isn't hunting either, is it?  
 12 A Well, I guess not.  
 13 Q What are prey animals, Mr. Boudreau?  
 14 A Prey animals are animals that feed predators.  
 15 Q And your Unit is 19, 21 and 22?  
 16 A 21-A and 21-E are the two.....  
 17 Q 21-A and 21-E. What are the prey animals in those  
 18 units?  
 19 A Well, they range from voles to moose.  
 20 Q Moose is an important prey animal in those game units?  
 21 A In -- in some of those units, yes.  
 22 Q What about 19?  
 23 A In parts of 19, yes.  
 24 Q And why are they important?  
 25 A Because they have a fairly large bio mass.

- 253 -

1 THE COURT: I'm sorry, they have a fairly large, what?  
 2 A Bio mass. They're large.  
 3 THE COURT: Okay.  
 4 A They weigh a lot.  
 5 Q They weigh a lot. What are their connections with human  
 6 use, these large bio mass moose?  
 7 A Moose are an important food source for people in the  
 8 upper Kuskokwim.  
 9 Q Is McGrath considered upper Kuskokwim?  
 10 A Yes.  
 11 Q Nicholai?  
 12 A Yes.  
 13 Q Lime Village?  
 14 A Yes.  
 15 Q And how important is it for those people in those units?  
 16 A Moose is probably one of the primary protein sources of  
 17 wild game.  
 18 Q Of wild game. As the area biologist you issue permits  
 19 for subsistence activities?  
 20 A No, sir. I mean I -- I was involved in one and two tier  
 21 hunt, but all the hunting that goes on around McGrath is  
 22 general season hunting, or registration permit, has  
 23 nothing to do with subsistence.  
 24 Q Are you aware of subsistence in your game unit areas  
 25 like Unit 19?

- 254 -

1 A Well, under state regulations currently there is no  
 2 subsistence hunting. It's everyone's equal. All  
 3 residents of the state of Alaska.  
 4 Q So you're saying there's no distinction between a  
 5 subsistence hunting and sportsman?  
 6 A There's no dif -- there's -- I'm saying that there's no  
 7 difference between any resident of the state of Alaska.  
 8 Q For residents?  
 9 A Yes, sir.  
 10 Q In your -- aren't Tier II permit hunts subsistence  
 11 hunts? You have to have a license for it....  
 12 A Well, they're not subsistence hunts, they're for people  
 13 who have a history of hunting in an area, usually where  
 14 game populations are.....  
 15 Q Depleted?  
 16 A Yes. That can sustain general hunting seasons, yes.  
 17 But they're not subsistence hunts because anybody can  
 18 get their -- somebody from Anchorage who has a history  
 19 of hunting can get the same permit that somebody from  
 20 Lime Village has.  
 21 Q Well, let me understand this, Mr. Boudreau. Are you  
 22 saying that under Alaska licensing, for purposes of  
 23 hunting, there is no license for subsistence hunting?  
 24 A No, sir, there is -- there is not.  
 25 Q So if you get a hunting license that includes both

- 255 -

1 subsistence activity and sports activity?  
 2 A Yes, sir.  
 3 Q Is there a distinction in activity, however, between a  
 4 subsistence hunt and a sports hunt? In other words the  
 5 purpose for somebody hunting for subsistence reasons is  
 6 different than somebody hunting for sports reasons?  
 7 A Those are personal values.  
 8 Q You mean personal purposes?  
 9 A Those are personal value judgments as to how people use  
 10 resources.  
 11 Q In your experience as a wildlife biologist have you ever  
 12 done any fisheries management?  
 13 A No, sir.  
 14 Q So it's all been game?  
 15 A Yes, sir.  
 16 Q Now I take it that in the sport hunting or general  
 17 hunting situation there's the -- there are areas that  
 18 are closed as well as areas that are open, correct?  
 19 A Are you referring to resident and non-resident hunting?  
 20 Q Well, I'm just deterring to the fact that isn't it true  
 21 that in your experience of managing game as a wildlife  
 22 biologist in Alaska, in the area of management -- area  
 23 biologist in Alaska that there are areas that are open  
 24 for hunting and areas that are closed for hunting?  
 25 A There are -- there are lands closed to hunting for

- 256 -

1 everybody.  
 2 Q And so if somebody had a hunting permit and hunted in a  
 3 closed area could still be hunting but just in a closed  
 4 area, right?  
 5 A They would be hunting out of season.  
 6 Q Or it could be during season but in a closed area? I  
 7 mean there's a difference between seasons and areas  
 8 aren't there?  
 9 A Yes.  
 10 Q A season tells you how long it would be to do an  
 11 activity, right?  
 12 A Uh-huh (Affirmative).  
 13 Q An area tells you where you can do it, right?  
 14 A Yes.  
 15 Q So somebody could have a hunting license and be hunting  
 16 in a closed area but they'd be still hunting, just  
 17 hunting in a closed area, correct?  
 18 A That is -- that's poaching.  
 19 Q Well, poaching is a value judgment, isn't it?  
 20 A No, it's hunting outside the legal regulations.  
 21 Q Yeah, but it's still the activity of hunting, isn't it?  
 22 A No, it's pursuing game but it's illegally pursuing game.  
 23 Q Yeah, illegally pursuing game. Is that what you call  
 24 it?  
 25 A Well, it's not hunting.

- 257 -

1 Q Well, is that because hunting is something that is only  
2 authorized?  
3 A It could mean a lot to (indiscernible).  
4 Q And therefore if it's not authorized then it's not  
5 hunting? Is that your opinion?  
6 A It's poaching.  
7 Q Do you know of any regulation that calls that activity  
8 poaching? Can you point to any specific language in any  
9 regulation that calls hunting in a closed area or taking  
10 game in a closed area poaching?  
11 A No.  
12 Q So poaching, like I said, is a value judgment, right?  
13 A No, I -- well, I don't -- no, I don't think it's a value  
14 judgment.  
15 Q Well, I mean it's a term that you give to an activity  
16 that gives it some sort of value, like some illegal or  
17 wrong conduct but it isn't something that's lawfully  
18 recognized by a word or a phrase in a regulation, is it?  
19 A That's correct.  
20 Q Did I hear you say that there wasn't anything that ADF&G  
21 could do if somebody violated the conditions of the  
22 permit that they were given to aerial shoot or land and  
23 shoot wolves?  
24 A They can take their hunting license.  
25 Q Oh, so there is something you could do. I thought you

- 258 -

1 had said there was nothing that ADF&G could do, but  
2 apparently there are things that they can.....  
3 A Well, after -- after the fact, if ADF&G knew that  
4 something was going on.....  
5 Q Well, I understand that, but the question was from Mr.  
6 Leaders if somebody hunted -- I mean if somebody aerial  
7 shot or land and shoot a moose [sic] outside of the  
8 permitted area, what could ADF&G do and you said  
9 nothing. You remember that?  
10 A Yes. I misspoke.  
11 Q You misspoke. Because under the permit conditions the  
12 permit could be revoked, right?  
13 A Yes.  
14 Q Not only for that violation of the permit condition but  
15 any violation of the permit conditions, right?  
16 A Yes.  
17 Q When you say that your supervisors participated in the  
18 board meetings who would have been your supervisor?  
19 A My direct supervisor was Roy Nowlin(ph).  
20 Q Who?  
21 A Roy Nowlin(ph), he's the management coordinator, and his  
22 supervisor is the regional supervisor in Fairbanks. His  
23 name is David James.  
24 Q David James. And they never told you why a trapper's  
25 license was required to get a -- this predator control

- 259 -

1 permit? You never talked to your supervisors about  
2 that?  
3 MR. LEADERS: Calls for hearsay.  
4 MR. ROBINSON: My question -- well, it's a state  
5 department.  
6 Q I was just wondering if you ever talked to your  
7 supervisors.....  
8 THE COURT: I'll allow that question.  
9 Q .....about why a trapping permit was required to get a  
10 predator control permit?  
11 A I was told that that's the way it was.  
12 MR. ROBINSON: Give me a second.....  
13 (Whispered conversation)  
14 Q Now this program was implemented by the Department of  
15 Fish and Game, right?  
16 A Yes.  
17 Q And it was the Department of Fish and Game that actually  
18 decided what areas would be open for the taking of  
19 wolves through the aerial shooting and land and shoot  
20 program?  
21 A The Board of Game actually specified those areas.  
22 Q Well, how did the expansion occur? From.....  
23 A Well, the -- the Board of Game authorized wolf control  
24 in the larger area and then the Department, based on the  
25 objectives of the -- of the study, decided -- they --

- 260 -

1 they set the -- they set the boundaries.  
2 Q The Department.....  
3 A Of -- of the specific approved control area.  
4 Q So the Department did set the boundaries?  
5 A Yes. Inside -- within the board -- within the  
6 boundaries that the board had laid out.  
7 Q And, in fact, the current boundaries go all the way to  
8 19-A and 19-D and 19-E, don't they?  
9 MR. LEADERS: Objection, relevance.  
10 THE COURT: Don't answer that yet. Mr. Robinson?  
11 Q Well, you said the boundaries have never been expanded  
12 beyond 19-D. That isn't true, is it?  
13 THE COURT: Well, the.....  
14 MR. ROBINSON: Well, that was the answer to that  
15 question. So I'll withdraw.....  
16 THE COURT: Well, the bound.....  
17 MR. ROBINSON: .....the question and ask it again.  
18 THE COURT: Okay.  
19 Q Your testimony was that the boundaries have never been  
20 expanded beyond 19-D east, correct?  
21 A That's correct.  
22 Q But that isn't true, is it? They have been expanded  
23 beyond 19-D east to include 19-D, 19-A and 19-B,  
24 correct?  
25 MR. LEADERS: Objection, relevance.

- 261 -



1 THE COURT: What -- wait.  
 2 Q Isn't that correct?  
 3 A No.  
 4 THE COURT: Wait. wait.  
 5 MR. ROBINSON: He says -- he answered  
 6 (indiscernible).....  
 7 THE COURT: When there's an objection you wait.....  
 8 A Oh, I'm sorry.  
 9 THE COURT: Okay.  
 10 (Whispered conversation)  
 11 Q Now isn't it your testimony that one of the reasons that  
 12 the Department expanded the area from what it was prior  
 13 to March of 2004 was because the program.....  
 14 MR. LEADERS: Objection, Judge, relevance.  
 15 THE COURT: Well, we're talking about March, 2004.....  
 16 MR. ROBINSON: Well, you asked.....  
 17 THE COURT: ....expansion. He was referring to the  
 18 March, 2004 -- or the expansion that was.....  
 19 MR. ROBINSON: March, 2004 expansion.  
 20 MR. LEADERS: Okay, I apologize. I thought you were  
 21 talking about expansion in the past.....  
 22 THE COURT: Go ahead.  
 23 Q Was that the program was not effective as hoped?  
 24 A The reason for the expansion was because the five main  
 25 wolf packs that occupied the 520 square miles around  
 - 262 -

1 McGrath used an area larger than the original 1,700  
 2 square mile control area that was first set out, and it  
 3 was expanded to include a great proportion of the range  
 4 of the wolves of the five wolf packs that moved in the  
 5 520 square mile area.  
 6 Q But I thought I heard you, Mr. Boudreau, testify on  
 7 direct examination that one of the reasons that it was  
 8 expanded was because the program was not as effective as  
 9 hoped?  
 10 A That's correct, because the wolves -- the -- the members  
 11 of the five wolf packs used -- used -- were using an  
 12 area larger than 1,700 square miles, and it was expanded  
 13 so the program could be more effective at removing the  
 14 wolves out of the research area.  
 15 Q What was hoped?  
 16 A The objective -- you mean the objective?  
 17 Q Yeah, when you said the program was not as effective as  
 18 hoped, what was hoped?  
 19 A Well, biologists don't talk about hope, but our  
 20 objective was to remove 100 percent of the wolves out of  
 21 the 520 square mile area. To do that we set out with  
 22 the first boundary of 1,700 square miles and then  
 23 expanded it out to 3,200 square miles to try to maximize  
 24 the number of moose surviving over winter and being able  
 25 to produce calves (indiscernible) the moose population.  
 - 263 -

1 Q Was there a quota on the number of wolves that could be  
 2 taken?  
 3 A There was a guideline.  
 4 Q What was that guideline?  
 5 A It was 40 -- 45 to 55 wolves.  
 6 Q 45 to 55 wolves.  
 7 A Uh-huh (Affirmative).  
 8 Q Was that because that what was exp -- the number of  
 9 wolves that was estimated to be in the five wolf packs  
 10 that were considered the predators on the prey animal in  
 11 the McGrath area?  
 12 A Yes.  
 13 Q Wolves are migratory, aren't they?  
 14 A They have pack territories.  
 15 Q And then they move around?  
 16 A They have pack territories.  
 17 Q Well, what is a pack territory?  
 18 A Pack territory is the area in which a pack exists over a  
 19 given period of time. It's usually about 500 square  
 20 miles in Alaska. Four to 500 square miles.  
 21 Q That's quite a big area?  
 22 A It's 25 miles by 20 miles.  
 23 Q More than a house fly, isn't it? I mean it's a pretty  
 24 big area, right?  
 25 A It's -- well, it is by Alaskan standards. It's more  
 - 264 -

1 (indiscernible) area, but yes. You know, it's not as  
 2 big as a grizzly bear home range.  
 3 Q You mean they don't range as much as a grizzly, but  
 4 their range is a substantial amount of area?  
 5 A Right.  
 6 Q 25 by what?  
 7 A 20.  
 8 Q 25 by 20 miles?  
 9 A Yes.  
 10 Q So wolves that are in 19-D east could move out of 19-D  
 11 east, come back to 19-D east and range within that 500  
 12 square mile area, right?  
 13 A Probably parts of the time they may move out.  
 14 Q In and out, right?  
 15 A It's conceivable.  
 16 Q I'm looking for a regulation (indiscernible). I've got  
 17 them. Now each predator control program is to be  
 18 administered by the Department of Fish and Game employee  
 19 in the Department, the office nearest to the wolf  
 20 control area, right?  
 21 A Well, kind of. I mean it's -- it's -- it's administered  
 22 through the regional office and through the area office,  
 23 and somewhat, you know, through headquarters.  
 24 Q Are you familiar with this regulation 5 AAC 92.110?  
 25 A I know where it is in the book.  
 - 265 -

1 Q I mean it's something you should be interested in if you  
 2 are going to be part of the administering of the  
 3 predator control program for wolves, right?  
 4 A Yes.  
 5 Q So if that regulation says each program will be  
 6 administered by a Department employee in the  
 7 Department's office nearest to the wolf control area,  
 8 you wouldn't disagree with that would you?  
 9 A Well, I mean I was -- it's -- it's -- it was through the  
 10 regional office and through the area office.  
 11 Q So you guys kind of fudged on what the regulation  
 12 required? Is that what you're saying?  
 13 A No, just the lack of manpower in McGrath.  
 14 Q Lack of (indiscernible) on-hand help in the McGrath  
 15 area? You were it, basically?  
 16 A Not during the -- the course of this operation, no. Al  
 17 Root was there to help and -- and I guess during that  
 18 year -- last year, it was both through the regional  
 19 office and during last -- and when Al was here, you  
 20 know, he -- he made it more centralized in the McGrath  
 21 office.  
 22 Q And he was on loan from DOT to help out ADF&G, right?  
 23 A He was a seasonal -- he's a seasonal technician from  
 24 DNR, yes.  
 25 Q I'm sorry, DNR.

1 A Yes.  
 2 Q The Department of Natural Resources, all right. But  
 3 anyway, by regulation I guess the administration of this  
 4 program was to fall on your shoulders but regional  
 5 helped you out?  
 6 A Yes.  
 7 Q Now you said that you were involved in determining which  
 8 permit applications -- which permittee applicants would  
 9 get a permit. What role did you actually play in making  
 10 that determination?  
 11 A I just reviewed the applications and -- and there was a  
 12 -- kind of a committee of my supervisors and myself and  
 13 they came up with names.  
 14 Q So.....  
 15 A Based on experience.....  
 16 Q .....there were three of you on this committee?  
 17 A Well, and -- and headquarters was involved also.  
 18 Q How was headquarters involved?  
 19 A Because when -- Matt Robe(ph) is the current director  
 20 had -- he's the one that, you know, made the final  
 21 decision.  
 22 Q So there were four of you on the committee?  
 23 A At least.  
 24 Q And so of those four what role did you play?  
 25 A I played a similar role as everybody else. I reviewed

1 the applications and looked at experience and other  
 2 qualifications that were on the applications.  
 3 Q Did you know Mr. Haeg before you.....  
 4 A I knew of him. I met him at Board of Game meetings and  
 5 I talked to him on the phone because he's a guide in --  
 6 in the area.  
 7 Q Had you talked to him about predator control before you  
 8 issued -- or before he got the permit, with Mr. Haeg?  
 9 A We could have had a conversation at a Board of Game  
 10 meeting but I -- I don't -- I don't recall.  
 11 Q Now under the permit conditions it says that pi --  
 12 permit pilots must have previous experience flying small  
 13 aircraft in Alaska. That includes low level maneuvers  
 14 and off airport operation. Is that what you saw in Mr.  
 15 Haeg's application?  
 16 A I saw that in his application.  
 17 Q And it says permittee pilots and gunners must have  
 18 knowledge of the geography of the permit area and  
 19 demonstrated capability and commitment to act under this  
 20 permit in a timely manner. Did you see the commitment  
 21 to act under the -- in a timely manner in the  
 22 application that Mr. Haeg gave to you, gave to the  
 23 Department?  
 24 A I'm sorry, could you rephrase that question.  
 25 Q Did you see in Mr. Haeg's application a commitment to

1 act under the permit in a timely manner?  
 2 A There's no indication in the application that he  
 3 wouldn't.  
 4 Q Well, that was one of the qualifications of getting the  
 5 permit was a commitment to act under the permit in a  
 6 timely manner, right?  
 7 A Yes.  
 8 Q And that had to be demonstrated by capability -- by  
 9 capability to be able to commit yourself to act in a  
 10 timely manner, right?  
 11 A I would assume so.  
 12 Q And is that what you saw in Mr. Haeg's application?  
 13 A I didn't -- I was at the Board of Game meeting when Dave  
 14 Haeg was notified that he got an app -- he got a -- he  
 15 got a permit. I was not involved in the decision  
 16 process to give Dave Haeg the permit.  
 17 Q Oh, okay. That helps for me to understand what role you  
 18 played. Tell me the role you actually played in  
 19 determining Mr. Haeg's application, because apparently  
 20 you told Mr. Leaders that you were involved in  
 21 determining his application. I want to know what role  
 22 you played, Mr. Boudreau?  
 23 A I -- I looked at all the applications that came in.  
 24 Q Did you recommend anything? Did you -- what did you do?  
 25 A I recommended that we have enough permits that we didn't

1 give -- need to give any more out. That we had enough  
 2 permitted pilot/gunner teams already in McGrath and --  
 3 and I didn't -- previous to Mr. Haeg getting the permit.  
 4 Q Oh, so previous to Mr. Haeg getting a permit you  
 5 recommended that no more should be given out?  
 6 A I -- I didn't -- I -- I thought we had sufficient  
 7 numbers of permits and pilots and that decision was not  
 8 made by me (indiscernible).....  
 9 Q I mean that's what you recommended to this committee  
 10 that was involved in making a determination as to who  
 11 was going to get a permit or not, right?  
 12 A I was just one of -- one of the pieces of the pie.  
 13 Q I understand that, Mr. Boudreau, but I just want to make  
 14 clear and understand in my mind that prior to the time  
 15 that Mr. Haeg made an application to get a permit you  
 16 recommended to your supervisors and whoever else was on  
 17 this committee that makes the decision not to give out  
 18 any more?  
 19 A Well, I thought there was going to be a sufficient  
 20 number of permits issued.  
 21 Q Yes or no, you recommended not to give out any more  
 22 permits?  
 23 A I -- I probab -- I -- I -- I probably did that.  
 24 Q Okay. I noticed that the permit number for Mr. Haeg is  
 25 number 12?

- 270 -

1 A Yes.  
 2 Q How many permits were there before Mr. Haeg got a  
 3 permit?  
 4 A I think there was -- the -- the numbering system is a  
 5 little bit deceiving because there were some permits  
 6 issued and then they were turned back in and reissued  
 7 because of the court injunction.  
 8 Q Okay.  
 9 A So I think there were five permits out previous to Mr.  
 10 Haeg. It was either three or five.  
 11 Q Okay. So when did you find out that your recommendation  
 12 wasn't going to be followed and wolf permits were going  
 13 to be given?  
 14 A I found out at the board meeting in March in Fairbanks  
 15 that David Haeg and Tony Lee(ph) had been sent letters  
 16 or called up and -- and issued permits, or -- or given  
 17 (indiscernible).  
 18 Q Or given an application?  
 19 A No, that their applications were -- or had been granted,  
 20 they were going to give out permits.  
 21 Q Okay. So even though they didn't actually get the  
 22 permit until March of 2004 you knew in December of 2003  
 23 that they were going to get a permit?  
 24 A No.  
 25 Q When was this meeting -- the board meeting?

- 271 -

1 A The board meeting was in March.  
 2 Q Oh, I'm sorry.  
 3 A The board meeting was in March and I found out from my  
 4 supervisor's supervisor that he had gone ahead and  
 5 issued permits to Mr. Haeg and Anthony Lee(ph).  
 6 Q And he also knew before this time that you had  
 7 recommended that no more permits be issued?  
 8 A True.  
 9 Q And was the reason that Mr. Haeg and Mr. Zellers got  
 10 permits because your supervisor thought they needed more  
 11 people out there predator controlling?  
 12 A You'd have to ask him.  
 13 Q He didn't give you a reason?  
 14 A No.  
 15 Q What was your reaction to it?  
 16 A Yes, sir.  
 17 Q Aye, aye?  
 18 A Right.  
 19 Q Up until the time of this Board meeting and you were  
 20 informed that Mr. Haeg and Mr. Zellers had gotten this  
 21 patrol -- predator control permits, how many wolves had  
 22 been taken under the program?  
 23 A I believe it was somewhere in the neighborhood of seven  
 24 or eight wolves.  
 25 Q Not many?

- 272 -

1 A Those were taken by permittees.  
 2 Q Yeah, that's what I'm documenting.  
 3 A Yeah, I believe it was seven or eight or nine.  
 4 Q So a long way from the quota?  
 5 A Yes.  
 6 Q And when did -- and it started -- when did the actual  
 7 predator control activity start?  
 8 A Well, it falsely started in November and then it started  
 9 in earnest in December.  
 10 Q So from December until March of 2004 -- December 2003 to  
 11 December of 2004 seven or eight wolves had been taken up  
 12 to that point, right?  
 13 A Yes.  
 14 Q And the program was going to be done for the season  
 15 April 30th, 2000 [sic], right?  
 16 A Correct.  
 17 Q And so you were a long way from getting the elimination  
 18 of the 100 percent, somewhere around 40 to 55 wolves,  
 19 right?  
 20 A That's correct.  
 21 Q Do you know how many guides were given permits under  
 22 this program?  
 23 A In 19-E east or in any program (indiscernible).  
 24 Q Well, in the one that -- where Mr. Haeg got a permit?  
 25 A I guess it was -- for permittees that actually picked up

- 273 -

1 their permits it was two guides.  
 2 Q Other than Mr. Haeg?  
 3 A No, one other than Mr. Haeg.  
 4 Q So there's only one other guide other than Mr. Haeg?  
 5 A Yes. That actually physically picked up their permit.  
 6 Q You mean there were permits granted that people didn't  
 7 pick up?  
 8 A Yes.  
 9 Q Do you know why?  
 10 A Because it was into the bear season and the guides  
 11 didn't want to jeopardize bear season (indiscernible).  
 12 Q Do you know whether the other guide turned his permit  
 13 back in?  
 14 A Yes. Yes.  
 15 Q Do you know why?  
 16 A Because he was not going to be able to participate for  
 17 the rest of the season because of other commitments.  
 18 (Pause)  
 19 (Whispered conversation)  
 20 Q So by April 30 of 2004.....  
 21 0218  
 22 (Tape change)  
 23 4MC-05-11/Side B  
 24 0232  
 25 THE COURT: Okay, go ahead, Mr. Boudreau.

- 274 -

1 A Well, if you count the wolves that were reported on this  
 2 form they're not.  
 3 Q No, what I want you to tell me is, if you know, the  
 4 total number of wolves that were taken under predator  
 5 control activity in the permitted area by the end of  
 6 that season of April 30, 2004?  
 7 A 17.  
 8 Q 17?  
 9 A Yes.  
 10 Q Still a far cry from the 55?  
 11 A Yes.  
 12 MR. ROBINSON: No further questions.  
 13 THE COURT: Mr. Leaders?  
 14 MR. LEADERS: So -- thank you.  
 15 TOBY BOUDREAU  
 16 testified as follows on:  
 17 REDIRECT EXAMINATION  
 18 BY MR. LEADERS:  
 19 Q So 17 were actually taken under the program, that is  
 20 within the program area.....  
 21 A Yes.  
 22 Q .....with these records?  
 23 A Yes.  
 24 Q By program participants, right?  
 25 A By permittees, yes.

- 275 -

1 Q Permittees. And were there other wolves taken then by  
 2 other means?  
 3 A Yes, by trapping.  
 4 Q By trapping.  
 5 A Yes.  
 6 Q Do you have any idea of the numbers there?  
 7 A I think it was roughly 13 wolves were taken by trappers.  
 8 Q Okay. So somewhere -- totals come up somewhere in the  
 9 30?  
 10 A Yes.  
 11 Q Somewhere around the 30's. The -- and what was the  
 12 target or the goal?  
 13 A Well, the objective was 100 percent removal from the  
 14 Spring Valley area. The guideline harvest -- the rough  
 15 -- the rough harvest figure was 45 to 55 wolves.  
 16 Q Now the other guides who were given permits, one of  
 17 those was a local Robert Maxie, Junior, is that correct?  
 18 A Oh, I'd -- well, actually -- I -- I'm sorry if I -- I  
 19 guess I messed up. I forgot that he's a guide.  
 20 Q Okay.  
 21 A And he's kind of part-time.....  
 22 Q Forgot one of the locals, as well.  
 23 A Well, he's kind of a part-timer.  
 24 Q Sure. Okay. He didn't turn his permit in did he?  
 25 A Not until the end of the season.

- 276 -

1 Q Not until -- at the end of the program, right?  
 2 A Yeah.  
 3 Q He was taking wolves up to the end of the program?  
 4 A Yes, sir. Until conditions said, you know, were  
 5 unsuitable for landing.  
 6 Q (Indiscernible). Okay. Now the -- there was this --  
 7 let's talk -- the program started in November, right?  
 8 MR. ROBINSON: Of what?  
 9 Q Of '03.  
 10 A Yes.  
 11 Q And went for how long before there was the injunction?  
 12 A Two or three days maybe.  
 13 Q Okay. Any wolves get taken in those two days?  
 14 A No.  
 15 Q Okay. And the injunction lasted until?  
 16 A Some time in -- about two weeks. Some time in -- right  
 17 around the middle of December.  
 18 Q Okay. And then so between the middle of December until  
 19 Mr. Haeg's issued a permit, approximately seven to nine  
 20 wolves were taken in that time frame?  
 21 A Yes.  
 22 Q When -- how many permittees were operating during that  
 23 time frame?  
 24 A I think there were six total permittees that had operated  
 25 during periods of that time. Some out of area permittees

- 277 -

1 only operated for a short period of time and then had to  
 2 leave for other commitments.  
 3 Q And when out of area you mean don't live in the local  
 4 area?  
 5 A Yes, sir.  
 6 Q Okay. Not that they were hunting out of....  
 7 A No, no, they were just -- they -- they reside in other  
 8 areas and had other commitments.  
 9 Q Sure. And at least up to a few days before Mr. Haeg  
 10 received his permit they were all under the smaller  
 11 control zone, right? That was up to March 1st?  
 12 A Yes.  
 13 Q Just five days before Mr. Haeg got his permit?  
 14 A Yes.  
 15 Q In the much shorter time period, a little over a month  
 16 and a half after Mr. Haeg gets his permit there's a much  
 17 -- there's -- well, I guess it would be more than double  
 18 the number of wolves taken, and that's in the larger  
 19 area?  
 20 A Yes, the conditions were optimal during that period  
 21 because during December and January it's fairly dark.  
 22 It's very cold and it's very difficult to -- to, you  
 23 know, operate an airplane at those temperatures and as  
 24 February and March come along it gets....  
 25 Q Starts getting long days and better conditions?

- 278 -

1 A The conditions are better.  
 2 Q Okay. Well, I'm assuming the -- do you have any idea as  
 3 to where the number that were taken in the enlarged area  
 4 as opposed to the original area? Or did that add to the  
 5 numbers?  
 6 A The enlarged area did increase the number taken.  
 7 Q Okay. So the board -- or the Department was recognizing  
 8 and has mechanisms for enhancing the success of the  
 9 program?  
 10 A Yes, sir. within the boundaries set by the Board of  
 11 Game.  
 12 Q All right. Those boundaries that were set by the Board  
 13 of Game, you've -- we've talked about -- and Mr.  
 14 Robinson was talking to you about those are the bound --  
 15 the Board of Game boundaries are larger than the  
 16 Department's boundaries, right?  
 17 A Yes.  
 18 Q Do the Board of Game's -- for Mr. -- on Mr. Haeg's hunt  
 19 -- the Board of Game boundaries go beyond 19-D?  
 20 A No.  
 21 Q So even the board....  
 22 A It didn't -- it didn't go beyond 19-D east.  
 23 Q Didn't even go beyond 19-D east?  
 24 A Yes.  
 25 Q Okay. Oh, let me -- (indiscernible)....

- 279 -

1 MR. ROBINSON: (Indiscernible).  
 2 (Whispered conversation)  
 3 MR. ROBINSON: Okay, we object to that. (Indiscernible)  
 4 any information from (indiscernible).  
 5 (Whispered conversation)  
 6 THE COURT: Gentlemen, if this is going to take a few  
 7 minutes why don't we....  
 8 MR. ROBINSON: Yeah, I think it is, Your Honor.  
 9 THE COURT: .....let everybody take a break here for just  
 10 a few minutes, but I want to finish up with Mr. Boudreau  
 11 before we go to dinner, if we can, so why don't we take until  
 12 20 after, give everybody a chance to go to the restroom and  
 13 stretch a few minutes and we'll come back and....  
 14 (Off record)  
 15 0347  
 16 (Tape change)  
 17 4MC-05-09/Side C  
 18 0110  
 19 (Anteroom conference as follows:)  
 20 THE COURT: Okay. We're on record and the parties are  
 21 present, the jury is outside.  
 22 MR. LEADERS: Judge, I asked to come up before we  
 23 finished with Mr. Boudreau because there's a stipulation, I  
 24 think Mr. -- the defense and the state have reached regarding  
 25 an exhibit that I think we'll enter and the state's going to

- 280 -

1 seek to put into evidence later, but Mr. Robinson objects to  
 2 it this time because of certain information contained.  
 3 THE COURT: Okay.  
 4 MR. LEADERS: This is a map Trooper Gibbens has said --  
 5 you were the one that, right, that did this.  
 6 TROOPER GIBBENS: Yes.  
 7 MR. LEADERS: And he kind of did a -- trying to fairly --  
 8 and fairly depict the boundaries to the permit area, and then  
 9 it was used in an interview, one with Mr. Haeg, which is not  
 10 admissible because it was based on plea negotiations and also  
 11 with Mr. Zellers regarding the -- where wolves were taken.  
 12 THE COURT: Uh-huh.  
 13 MR. LEADERS: I was going to have to go over with Mr.  
 14 Boudreau that it does accurately -- or is fairly, not exactly  
 15 but fairly represent the boundaries of the permit area. Mr.  
 16 Robinson I think doesn't object, and we discussed it and I  
 17 think we've reached a resolution or that we -- a stipulation  
 18 that at least the eastern, southern and western  
 19 boundaries....  
 20 THE COURT: Uh-huh.  
 21 MR. LEADERS: .....fairly depict the permitted -- the  
 22 permit boundaries.  
 23 THE COURT: Okay.  
 24 MR. LEADERS: So the -- I guess predator control aerial  
 25 wolf permit boundaries.

- 281 -

1 THE COURT: Okay. (Indiscernible)....  
 2 MR. LEADERS: And in lieu of that I wouldn't need to get  
 3 into the issue with Mr. Boudreau.  
 4 THE COURT: Okay. Since we're up here, how much longer  
 5 do you expect to be? I'm not trying to cut your time, I just  
 6 -- it's getting close to the dinner hour.  
 7 MR. ROBINSON: Close to 6:00 o'clock.  
 8 MR. LEADERS: I'll be....  
 9 THE COURT: Close to 6:00, I know....  
 10 MR. LEADERS: I think -- I've got just a few issues -- I  
 11 mean it should be fair -- pretty brief with Mr. Boudreau.  
 12 THE COURT: Okay. Are you -- as of this moment do you  
 13 expect to have any recross or?  
 14 MR. ROBINSON: Not a lot. Not more than five or 10  
 15 minutes, and so do you want to end with him today?  
 16 MR. LEADERS: I -- we're almost 5:30....  
 17 MR. ROBINSON: Yeah, that's....  
 18 THE COURT: Yeah, we're going to. Yeah, we're going to.  
 19 MR. LEADERS: (Indiscernible) that.  
 20 THE COURT: I'm just -- the question is whether we're  
 21 going to finish or stop here. I -- we're going to be -- we  
 22 can finish....  
 23 MR. ROBINSON: Well, we can end with him today.  
 24 THE COURT: Yes. We'll start tomorrow with whoever is  
 25 up. And my intention is to ask the jury whether they want to

- 282 -

1 start at 8:00 or 8:30. If they're willing to start at 8:00  
 2 we'll be here.  
 3 MR. LEADERS: Okay.  
 4 THE COURT: My hunch is they'll probably want to go for  
 5 the 8:30 start.  
 6 MR. ROBINSON: Yeah. I'm hoping.  
 7 THE COURT: And then....  
 8 (Whispered conversation)  
 9 MR. LEADERS: Yeah, I mean that's one of the issues  
 10 that's going to have to come up. The wolves will probably  
 11 have to go back in. Oh, but you'll just....  
 12 THE COURT: Yeah, we're -- Magis -- yeah, Magistrate  
 13 Wodmansy(ph), he is our evidence custodian for the court. So  
 14 he....  
 15 MR. LEADERS: Okay.  
 16 MR. ROBINSON: That was locked up (indiscernible) the  
 17 key.  
 18 MR. LEADERS: So he'll coordinate with the trooper here?  
 19 THE COURT: Right.  
 20 MR. LEADERS: Because they'll have to get pulled out at  
 21 some point.  
 22 THE COURT: And he will -- he's going to stay, so....  
 23 TROOPER GIBBENS: Put them in the freezer and pull them  
 24 out at 4:00 in the morning.  
 25 MR. LEADERS: How long (indiscernible).

- 283 -

1 UNIDENTIFIED SPEAKER: (Indiscernible).  
 2 TROOPER GIBBENS: That will work.  
 3 MR. LEADERS: Well....  
 4 TROOPER GIBBENS: That will work. I'll get up early and  
 5 check on them.  
 6 UNIDENTIFIED SPEAKER: If you're going to have to take  
 7 them in at 4:00 in the morning I'll be....  
 8 MR. LEADERS: Oh....  
 9 MR. ROBINSON: One thing I need -- one thing I wanted to  
 10 know, since....  
 11 UNIDENTIFIED SPEAKER: Let me think about if they're....  
 12 UNIDENTIFIED SPEAKER: I don't mind.  
 13 MR. ROBINSON: As I understood the testimony from Trooper  
 14 Waldron he said that the evidence came down to his area, he  
 15 pulled the wolves out and....  
 16 MR. LEADERS: Inspected them.  
 17 MR. ROBINSON: .....inspected them and he took  
 18 photographs of the wounds and all that stuff. Why can't we  
 19 just use the photo of the wounds?  
 20 MR. LEADERS: (Indiscernible) some of the hides.  
 21 MR. ROBINSON: Yeah. I mean I guess the question is....  
 22 MR. LEADERS: Trooper Gibbens and I will discuss this a  
 23 little bit more....  
 24 MR. ROBINSON: Yeah, can we just use those  
 25 photographs....

- 284 -

1 MR. LEADERS: .....to see if we can use them or not....  
 2 MR. ROBINSON: .....without bringing the wolves back.  
 3 MR. LEADERS: We may -- I don't know that we'll be able  
 4 to -- the, you know, the one dimensional photograph is going  
 5 to portray what -- it can be portrayed as far as....  
 6 THE COURT: Well, you all decide that then. Any time  
 7 they need to be moved....  
 8 MR. LEADERS: Yeah.  
 9 THE COURT: .....and we still need to make sure....  
 10 UNIDENTIFIED SPEAKER: Okay. We won't touch them without  
 11 Magistrate Wodnesky(ph).  
 12 THE COURT: Okay. All right, let's....  
 13 MR. LEADERS: So that -- I guess....  
 14 MR. ROBINSON: Yeah.  
 15 MR. LEADERS: .....are you agreeing to that stipulation?  
 16 MR. ROBINSON: Yeah, I'll agree that this green area on  
 17 this unidentified map so far that may get introduced into  
 18 evidence is a fair reflection of the predator....  
 19 MR. LEADERS: And it can be....  
 20 MR. ROBINSON: .....control area of Unit -- Game Unit 19-  
 21 D east.  
 22 MR. LEADERS: With the exception of the northern  
 23 boundary.  
 24 MR. ROBINSON: With the exception of the northern  
 25 boundary.

- 285 -

1 MR. LEADERS: Okay. I can mark it as an exhibit, that  
 2 way then we'll have a stipulation as to -- I think on that  
 3 Exhibit 25 now.....  
 4 THE COURT: Okay.  
 5 MR. LEADERS: And then I'll just mark it as 25. We'll  
 6 stick a.....  
 7 THE COURT: Yeah, just for identification for assistance  
 8 on this.  
 9 MR. LEADERS: Okay. Certainly.  
 10 THE COURT: Okay. Let's get going so we can get those  
 11 guys out of here and get to the.....  
 12 (Off record)  
 13 (Anteroom conference concluded)  
 14 0172  
 15 (Tape change)  
 16 4MC-05-11/Side B  
 17 0232  
 18 THE COURT: Back on record, the parties are present again  
 19 and the jury is also present. Mr. Boudreau, I want to remind  
 20 you that you still are under oath.  
 21 A Thank you.  
 22 THE COURT: Go ahead, Mr. Leaders.  
 23 MR. LEADERS: Thank you.  
 24 Q Mr. Boudreau, the -- you had some discussion with Mr.  
 25 Robinson regarding your involvement in the decision

- 286 -

1 making process of permits?  
 2 A Yes.  
 3 Q And I believe you testified that at the time Mr. Haeg  
 4 had applied it was your recommendation that no new  
 5 permits be issued?  
 6 A Yes, sir.  
 7 Q Did you make any other specific -- did you, however -- I  
 8 guess you've also testified that you were involved in  
 9 the review process of each application?  
 10 A Yes.  
 11 Q Did you actually review Mr. Haeg's application?  
 12 A Yes, I did.  
 13 Q Did you have a specific recommendation as -- on --  
 14 regarding whether Mr. Haeg should get a permit?  
 15 A Yes.  
 16 Q And what was that recommendation?  
 17 A To not give David Haeg a permit.  
 18 Q And was that based just on your belief or your opinion  
 19 that no new permits should get authorized?  
 20 A No, it was.....  
 21 Q Based on your review of the application?  
 22 A Based on my review of the application and my knowledge  
 23 of -- of.....  
 24 Q The applicants?  
 25 A Of the applicants and I thought it was a risk.

- 287 -

1 Q Now there was some discussion about area -- whether or  
 2 not there was predator control -- whether or not this  
 3 predator control program expanded into area 19-A.  
 4 A Yes, sir.  
 5 Q Has it?  
 6 A No.  
 7 Q Is there a predator control program in 19-A currently?  
 8 A Yes, there's a separate program in 19-A currently.  
 9 Q Okay. So there is a program, but your testimony was  
 10 that this program here did not expand into it, is that  
 11 correct?  
 12 A That's correct. They are two separate programs.  
 13 Q Does that mean if someone gets a permit here do they  
 14 also get a -- are they authorized to -- for the program  
 15 in 19-A?  
 16 A No. Not necessarily. They can -- they can apply and be  
 17 approved for both areas but they are not automatically  
 18 approved for any control area in the state.  
 19 Q Does the area biologist here in McGrath also administer  
 20 that program out of 19-A?  
 21 A Yes.  
 22 Q Okay. Are they administered separately though then --  
 23 the specific program that.....  
 24 A Yes.  
 25 Q .....Exhibit 22 depicts? So it's a program administered

- 288 -

1 separately?  
 2 A Yes.  
 3 Q Okay. Separate application process?  
 4 A It actually is the same form but it is a -- basically  
 5 there's a separate review process for each of the areas.  
 6 Q Separate objectives?  
 7 A Yes.  
 8 Q Now the -- let me ask. When did the program in 19-A go  
 9 into effect?  
 10 A That went into effect last -- actually it was -- it was  
 11 supposed to go into effect as soon as I got done with  
 12 the wildlife surveys in December, which never occurred.  
 13 So it really only got going some time in -- in mid  
 14 winter of last year.  
 15 Q In mid?  
 16 A Mid -- mid winter. I -- I can't remember the exact  
 17 date, but it went for -- it was mostly in 2005.  
 18 Q Okay. So when you say last -- mid winter of last year  
 19 you mean this last winter season?  
 20 A Yeah, the.....  
 21 Q So calendar year 2004/2005?  
 22 A Was the time that, yeah, it began and -- and actually it  
 23 physically began -- I think it was late December I think  
 24 it was when.....  
 25 Q We don't need specific.....

- 289 -

1 A Yeah.  
 2 Q Because -- so that program wasn't up and running or  
 3 authorized or whatever at the time of Mr. Haeg's hunting  
 4 in March of 2004?  
 5 A No, sir.  
 6 Q The -- now there was this discussion about taking moose  
 7 in a closed season. You said that's poaching?  
 8 A Uh-huh (Affirmative).  
 9 Q Is that a legal definition or is that simply your  
 10 definition?  
 11 A That's my definition.  
 12 Q What do you mean that to be?  
 13 A It's illegal taking of a game animal outside of the  
 14 seasons or permitted area.  
 15 Q Illegally taking or illegally hunting for game?  
 16 A Illegally taking game, yes.  
 17 Q The -- now I guess in the scenario that Mr. Robinson  
 18 talked to you about, he said if -- about taking moose in  
 19 a closed area. Remember that discussion?  
 20 A Yes.  
 21 Q Would the mere fact whether you had a license to hunt or  
 22 not change that?  
 23 A No.  
 24 Q If you have a hunting license does that negate or.....  
 25 A No.

- 290 -

1 Q The -- so the programs expanded since Mr.....  
 2 MR. LEADERS: I don't have any further questions.  
 3 THE COURT: Thank you, Mr. Leaders. Mr. Robinson?  
 4 TOBY BOUDREAU  
 5 testified as follows on:  
 6 RE CROSS EXAMINATION  
 7 BY MR. ROBINSON:  
 8 Q Well, now that Mr. Leaders brought it out, are you  
 9 saying that in the winter of 2004/2005 there was  
 10 predator control in 19-D east and 19-A?  
 11 A Yes. There were two control programs.  
 12 Q And there were other areas, too. Wasn't there 19-B?  
 13 A No, sir. There was not in -- there -- there was no  
 14 predator control program in 19-B.  
 15 Q Was there any other area besides 19-A and 19-D east?  
 16 A Within the state?  
 17 Q Well, within your game management unit?  
 18 A No.  
 19 Q Wasn't it approved -- 19-B was approved by the Board of  
 20 Fisheries -- I mean the Board of Game?  
 21 A The board approved predator control in 19-A and B but  
 22 the program was for 19-A.  
 23 Q Okay. So -- but the board approved 19-B? Correct?  
 24 A (Pause)  
 25 Q So the board approved and expanded the area over what

- 291 -

1 was 19-D east?  
 2 A It was (indiscernible).  
 3 Q Yes, but it was a more expansive area. It was in the  
 4 same game unit as 19, right? We're talking about game  
 5 unit 19 which is broken into different sections, A, B,  
 6 C, D, correct?  
 7 A Uh-huh (Affirmative). Which is 36,000 square miles.  
 8 Q Okay. So.....  
 9 A It was approved in 3,200 square miles and it was  
 10 approved in another 10,000 -- or 9,904 square miles.  
 11 Q All right. So within Unit -- Game Unit 19 the  
 12 experimental program started out in 19-D east?  
 13 A Yes.  
 14 Q And then 19-D east was expanded by the Department of  
 15 Fish and Game in 2004?  
 16 A Yes.  
 17 Q And then the Board in Game Unit 19 then also expanded  
 18 predator control within Unit 19 and approved it to  
 19 include 19-A and 19-B, correct?  
 20 A They created a -- a separate control area, yes.  
 21 Q But it's still in the same game unit?  
 22 A Yes.  
 23 Q And it was for the same predator species, right?  
 24 Wolves?  
 25 A Yes.

- 292 -

1 Q And so you're saying that in order to do predator  
 2 control in 19-A you had to apply for a permit and get a  
 3 permit?  
 4 A Yes.  
 5 Q But that doesn't mean you couldn't do both D east and  
 6 19-A, did it? In other words you could get a permit for  
 7 both areas, right?  
 8 A Yes. It's possible.  
 9 Q And the reason the board expanded the wolf control and  
 10 predator control program is because it wanted to insure  
 11 that more wolves were taken in a bigger range of area,  
 12 right?  
 13 A No. It -- the reason that the board created the control  
 14 program in 19-A was because it was a significantly  
 15 depleted moose population.....  
 16 Q Right.  
 17 A .....in the central Kuskokwim.  
 18 Q Right.  
 19 A Not to just expand wolf control.  
 20 Q Okay. But there's a depleted population of moose in  
 21 that area?  
 22 A In that area.  
 23 Q And the belief was that the wolf was contributing to the  
 24 depleted population, right?  
 25 A Yes.

- 293 -



1 Q And so it was expanded to eliminate wolves, right?  
 2 A In a separate pro -- program created.  
 3 Q To eliminate wolves?  
 4 A To reduce the wolves, not....  
 5 Q To reduce the wolf?  
 6 A There's a -- there's a -- it's a separate set of  
 7 objectives for 19-A.  
 8 Q Anyway, to reduce the wolf population?  
 9 A Yes.  
 10 Q Kill wolves to reduce the population, right?  
 11 A Yes, sir.  
 12 Q And then they approved 19-B, though the plan hasn't been  
 13 implemented yet, for the same purpose, depletion of prey  
 14 animals, right?  
 15 A Actually I think the program is -- I -- I -- I think I  
 16 misspoke before. I think the program was actually just  
 17 approved for 19-A because at the last Board of Game  
 18 meeting they discussed expanding it into 19-B, and did  
 19 not because of....  
 20 Q You're sure about that?  
 21 A Yes. I'm -- yes, I am sure about that now. I apologize.  
 22 Q All right. But anyway, 19-A -- more of Uni -- Game Unit  
 23 19 was expanded to 19-A because of depletion of prey  
 24 animals, namely moose?  
 25 A Yes.

1 (Whispered conversation)  
 2 THE COURT: 8:00 o'clock. It looks like the jury has  
 3 decided. We'll start at 8:00 o'clock. Okay. We will start  
 4 at 8:00 o'clock. We will try to break at a normal hour for  
 5 the lunch hour. If there is something that's going on like I  
 6 know tonight they said the farewell pot luck for the Meltons  
 7 and I want to make sure everybody can go to that if they'd  
 8 like to. If there is something going on please let me know  
 9 and we'll try to adjust our times to accommodate that type of  
 10 community function.  
 11 And as far as that goes if you all -- like tomorrow  
 12 night if there's not going -- anything going on -- last night  
 13 there was the council meeting, if you want to take a dinner  
 14 break and come back to try and finish in a shorter period of  
 15 time we can definitely -- I think we can accommodate that if  
 16 that's what everybody wants to. I'm not going to take an  
 17 affirmative action on that at this point, but think about it,  
 18 discuss it. That issue you can discuss among yourselves if  
 19 you want to do that and let me know if you reach a consensus  
 20 and we'll make that -- until tomorrow, before the lunch break  
 21 so that everybody knows what we're going to do.  
 22 Okay. So we'll see everybody back here tomorrow morning at  
 23 8:00 o'clock. Thank you all very much. I want to admonish  
 24 you again not to talk to each other or anybody else, discuss  
 25 anything, talk to anybody that's associated with the trial.

1 Q Caused by predator animals, namely wolves?  
 2 A Wolves and bears.  
 3 Q And bears. You know, for the purpose of reducing the  
 4 number of wolves by killing, correct?  
 5 A By increasing the amount -- the -- the methods and means  
 6 allowed to take wolves through permits to reduce the  
 7 wolf population.  
 8 Q And reduction was through the purpose of killing? It  
 9 wasn't removing them from 19-A, the purpose was to kill  
 10 them, right?  
 11 A That's correct. That's correct.  
 12 Q By aerial shooting and land and shoot shooting, correct?  
 13 A That's correct.  
 14 MR. ROBINSON: That's all I have.  
 15 MR. LEADERS: No other questions.  
 16 THE COURT: Okay. Is Mr. Boudreau free to go? Okay.  
 17 Thank you, Mr. Boudreau. All right, ladies and gentlemen,  
 18 we're going to stop here. I know there's a farewell pot luck  
 19 tonight and everything else going on. Just because I like to  
 20 do things to get everybody on board, we'll do this  
 21 democratically. We'll either start at 8:00 or 8:30 and you  
 22 guys get to choose what time we start.  
 23 UNIDENTIFIED JUROR: 8:00.  
 24 THE COURT: 8:00? I'm hearing a couple people saying  
 25 8:00. If you don't want 8:00 get....

1 Okay. We can go off record.  
 2 (Off record)  
 3 0538  
 4  
 5  
 6  
 7  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

1  
2  
3  
4  
5 TRIAL BY JURY, CONTINUED (EXCERPT)  
6  
7 BEFORE THE HONORABLE MARGARET L. MURPHY  
8 District Court Judge  
9  
10 McGrath, Alaska  
11 July 28, 2005  
12 8:05 a.m.  
13  
14 APPEARANCES:  
15 FOR THE PLAINTIFF: SCOT HENRY LEADERS  
16 Assistant District Attorney  
17 120 Trading Bay Drive  
18 Suite 200  
19 Kenai, Alaska  
20  
21 FOR THE DEFENDANT: ARTHUR ROBINSON  
22 Attorney at Law  
23 35401 Kenai Spur Highway  
24 Soldotna, Alaska  
25

1 A McGrath, Alaska.  
2 THE CLERK: Thank you.  
3 THE COURT: Go ahead, Mr. Leaders.  
4 MR. LEADERS: Thank you.  
5 BY MR. LEADERS:  
6 Q Sir, how long have you been with the Alaska State  
7 Troopers?  
8 A Eight years this September.  
9 Q Okay. So approaching eight years?  
10 A Yes, sir.  
11 Q And has all that time been with Bureau of Wildlife  
12 Enforcement?  
13 A Yes, sir. It used to be Fish and Wildlife Protection,  
14 now the Bureau of Wildlife Enforcement.  
15 Q Okay. And you're currently stationed here in McGrath?  
16 A Yes, sir, I am.  
17 Q How long have you been stationed here?  
18 A Three years August 1st.  
19 Q Okay. And where else have you been stationed then as a  
20 Fish and Wildlife officer?  
21 A Fairbanks for a year and a half and Galena for three and  
22 a half years prior to moving here.  
23 Q Okay. What are your duties?  
24 A Enforcement of the fish and game laws and regulations in  
25 the state of Alaska, as well as all of the statutes and

1 PROCEEDINGS  
2 4MC-05-11/Side B  
3 0538  
4 THE CLERK: On record.  
5 THE COURT: All right, we're back on record, the parties  
6 are present and the jury is present. Mr. Leaders, you want  
7 to call your next witness, please.  
8 MR. LEADERS: Yes, Judge. I'll call Trooper Gibbens, but  
9 -- is my next witness.  
10 THE COURT: Okay. Trooper Gibbens, you want to stand up  
11 by the witness chair and face the clerk, please.  
12 (Oath administered)  
13 TROOPER GIBBENS: Yes, ma'am, I do.  
14 THE CLERK: Okay, you may be seated.  
15 BRETT SCOTT GIBBENS  
16 called as a witness on behalf of the plaintiff, testified as  
17 follows on:  
18 DIRECT EXAMINATION  
19 THE CLERK: Please state your name, and spell your last  
20 name for the record.  
21 A Brett Scott Gibbens, G-i-b-b-e-n-s.  
22 THE CLERK: Your occupation?  
23 A Alaska State Trooper with the Bureau of Wildlife  
24 Enforcement.  
25 THE CLERK: And city of residence?

1 regulations under state law.  
2 Q I guess why fish and wildlife, sir? Fish and wildlife  
3 enforcement?  
4 A Why am I assigned to that or why did I choose that?  
5 Q Why did you choose it?  
6 A I chose it because I grew up in Bush Alaska, I've lived  
7 in Galena, McGrath, Aniak, Cordova and Kodiak my whole  
8 life. I enjoy the outdoors. I'm a hunter, trapper.  
9 I'm a bush pilot, and I believe that I was probably more  
10 aptly suited to the game warden line of work and so  
11 that's what I chose.  
12 Q Okay. So I guess -- you said you were a hunter, fisher,  
13 trapper. You've been involved in those activities  
14 throughout your life?  
15 A Yes, sir.  
16 Q You still involved in those activities?  
17 A Absolutely.  
18 Q Okay. The -- so a lot of the types of offenses you  
19 investigate, you feel that you have kind of personal  
20 knowledge about the activities?  
21 A Yes, sir. I have personal knowledge about the species  
22 and sometimes the methods of take. Certainly about the  
23 species habits and the -- the activities going on,  
24 either through things that I've seen or witnessed or  
25 experienced.

1 Q Okay. You have been involved in an investigation  
2 regarding David Haeg. is that correct?  
3 A Yes, sir, I have.  
4 Q What has been your role in this investigation?  
5 A I'm the primary case officer. I initially discovered  
6 the -- the first of what I believe to be the violations,  
7 and initiated the case investigation.  
8 Q What type of violations? What type of violations are  
9 you talking about?  
10 A The take of same day airborne wolves illegally.....  
11 Q Okay.  
12 A .....is the primary and then the closed season trapping  
13 and fail to salvage game, and unsworn falsification;  
14 those are kind of the crux of the case.  
15 Q Okay. Of -- and those are all charges you investigated  
16 relating to Mr. Haeg?  
17 A Yes, sir, they are.  
18 Q The -- I guess -- how did this investigation begin,  
19 Trooper?  
20 A The investigation began when I was informed by Toby  
21 Boudreau of the Alaska Department of Fish and Game that  
22 David Haeg had reported that he and his gunner, Tony  
23 Zellers, had harvested three gray wolves as part of the  
24 19-D east predator control program. It was very common  
25 for Mr. Boudreau to report -- not only common. Every

- 302 -

1 wolf that was harvested as part of the 19-D east  
2 predator control program Mr. Boudreau reported to me,  
3 and I then verified kill site locations. It's part of  
4 what I do. And in this case Mr. Boudreau reported that  
5 Mr. Haeg had reported three wolves killed and he gave me  
6 a set of GPS coordinates and the general area near Lone  
7 Mountain on the Big River where the wolves had been  
8 harvested. And when he initially told me that it had  
9 been three gray wolves that brought up my suspicion  
10 because I -- I had been in that area very recently, I  
11 knew the other permitted hunters, I had been talking to  
12 them. Everybody had been kind of keeping track of a big  
13 pack of wolves known as the Venesaly(ph) pack. The  
14 wolves had kind of anchored up in a big patch of spruce  
15 near the Big River, near Lone Mountain, and hadn't moved  
16 for close to a week at this point. They had a kill back  
17 in there. They were making tracks on the river but they  
18 were going back in and nobody was getting a chance at  
19 them.  
20 Q Who let you know about this pack down there?  
21 A I had seen the pack several times recently. I knew that  
22 pack to have two.....  
23 Q Recently? Recently as to now or recently as to?  
24 A Recently as to earlier that winter, on several occasions  
25 prior to March 6th. Or, well, March 9th was the date I

- 303 -

1 believe that Mr. Boudreau told me about it, after it was  
2 reported, but I think the harvest date was reported as  
3 March 6th. So leading up to March 6th I had seen the  
4 Venesaly(ph) pack several times. It was predominantly  
5 black wolves. Only two of the wolves that I had ever  
6 seen in that pack of 11 wolves were what I would  
7 classify as gray wolves. So.....  
8 Q Was that consistent with the information you had  
9 obtained from others as well?  
10 A Yes, sir, it was.  
11 Q Just two gray wolves in that pack?  
12 A The same with other hunters that were involved in the  
13 project that had seen the Venesaly(ph) pack. It....  
14 Q So what peaked your.....  
15 A .....was predominantly black.  
16 Q I'm sorry. What peaked your interest then about Mr.  
17 Boudreau's report to you?  
18 A That it was three grays taken out of the Venesaly(ph)  
19 pack.  
20 Q Okay. You said -- were you given -- they, I guess, were  
21 identified. Was it identified as the Venesaly(ph) pack  
22 or how was it.....  
23 A No, just the location, and I knew that's where the  
24 Venesaly(ph) pack had been anchored up right beside  
25 there.

- 304 -

1 Q How -- what type of location were you given, or how was  
2 the location communicated to you?  
3 A As GPS coordinates was how I received it from fish and  
4 game.  
5 Q Okay. Do you know what those GPS coordinates were?  
6 A Yes, sir. If you'll bear with me just a second.  
7 Q Let me ask. I assume you drafted a report based on the  
8 information you obtained?  
9 A Yes, sir, I did.  
10 Q Did you record such things as the GPS coordinates or  
11 other details of your investigation in that report?  
12 A Yes, sir, I did.  
13 Q Do you remember off -- it's been how long since you  
14 received that information?  
15 A It would be one year and several months.  
16 Q Okay. Do you recall the GPS coordinates at this time?  
17 A No, sir, I don't recall the exact numbers.  
18 Q If it's in your report that would refresh?  
19 A Yes, sir. (Pause) The coordinates which were provided  
20 to me from fish and game as the coordinates which were  
21 reported by Mr. Haeg for the harvest of those three gray  
22 wolves were north 6233 and west 15503.  
23 Q Those are the same coordinates Mr. Root testified about  
24 yesterday?  
25 A Yes, sir, they are.

- 305 -

1 Q Okay.

2 MR. ROBINSON: Mr. Root or Mr. Boudreau?

3 MR. LEADERS: Excuse me?

4 MR. ROBINSON: Mr. Root or Mr. Boudreau?

5 MR. LEADERS: These are for the clerk.

6 A I -- I then -- I then did two things. I plotted that on

7 a map to see where that would be, and those plotted

8 coordinates do fall just within the legally permitted

9 predator control area in 19-D east. And those

10 coordinates also fall right beside where the

11 Venesaly(ph) pack had been spending time.

12 MR. LEADERS: Okay. May I approach, Judge?

13 THE COURT: Uh-huh.

14 Q Exhibit 22. Are you familiar with what Exhibit 22 is,

15 Officer?

16 A Yes, sir.

17 Q Trooper. Excuse me. And what is -- and this has been

18 identified as the permit boundaries, correct?

19 A Yes, sir.

20 Q Okay. A map of them. And where would those GPS

21 coordinates fall?

22 A Okay, just so the folks have a reference here. This is

23 Lone Mountain and this is Big River. Big River flowing

24 towards the Kuskokwim this direction. Those coordinates

25 would have placed the harvest at just inside this

- 306 -

1 boundary right here on Big River. The coordinates I

2 received were actually right in the river bed of Big

3 River.

4 Q Okay. And that would have been consistent with that

5 pack then?

6 A Yes, sir. That -- that was where those wolves were

7 hanging out right then.

8 Q The -- once you obtained that information what did you

9 do?

10 A On the 11th of March I flew to those coordinates and

11 checked. There were numerous wolf tracks around there.

12 You could still tell that the wolves had been there and

13 that some of them were still close by there. However, I

14 was unable to find any airplane ski tracks or kill sites

15 any-- anywhere right near those coordinates.

16 Q How would you have been able to determine airplane ski

17 tracks or kill sites?

18 A By tracks in the snow. As far as the airplane tracks it

19 would be tracks in the snow left by the skis or the tail

20 wheel. And then as far as kill sites, if the wolves are

21 skilled on -- killed on site it's pretty easy to find

22 because there's ravens cluing you if the wolves aren't

23 killed on site you're looking for a bloody spot in the

24 snow basically, with either ski tracks or footprints

25 going up to it where the wolf carcass has been removed.

- 307 -

1 Q All right. So the weather conditions or (indiscernible)

2 to know that type of thing to still be able to leave

3 those types of impressions?

4 A There -- there had been some wind so there were areas on

5 the Big River right there that were pretty drifted up,

6 but there was still plenty of snow that in -- in most

7 areas you would have left tracks, yes, sir.

8 Q The -- and you found no kill sites in that area?

9 A No, sir, I didn't.

10 Q The -- what else did you do in this case?

11 A Well, I can back up by saying that what further peaked

12 my suspicions was back on March 6th, which actually is

13 the same date as the reported harvest, I was out on my

14 own time on the ground walking near my airplane and saw

15 what's now been identified as Mr. Haeg's airplane. The

16 purple and silver Batcub fly over me a couple of miles

17 outside the permitted area following a track farther out

18 of the permitted area. So that was on March 6th, so at

19 that point my curiosity was peaked as to why he was

20 following tracks outside the area because I knew that he

21 had just been issued a permit and then when I received

22 the report from Mr. Boudreau on the 9th about the three

23 grays killed out of a pack that I believed didn't have

24 three grays in it, that just further peaked my

25 suspicion.

- 308 -

1 Q Okay. Now, Officer, this Batcub as you explained it,

2 can you describe that. What -- I mean what do you mean?

3 A Well, it's a Piper PA-12 that's been modified. It's got

4 modifications to many to note, including a bigger engine

5 and different tail feathers. Oversized tail wheel.

6 It's purple and silver, a pretty distinctive color

7 pattern. It has a large emblem of a bat, similar to the

8 -- the batman insignia painted on the tail of the

9 aircraft. And along the cowling, horizontally, it says

10 Batcub on that aircraft. It's November 4011 Mike.

11 Q Okay.

12 (Whispered conversation)

13 A I had not seen that airplane before March 6th. I had

14 heard of the airplane and knew that David Haeg had an

15 airplane with batman on it. Was basically what I had

16 heard to that point.

17 Q So is that the first time you saw the plane?

18 A Yes, sir, it is.

19 Q Okay. And where was it that you saw the plane?

20 A I was on the Windy Fork of the Big River a couple miles

21 east of the predator control boundary.

22 Q So a couple miles outside of....

23 A I was -- I was outside the boundary, actually trapping

24 at the time.

25 Q So you were personally trapping at that time?

- 309 -

1 A Yes, sir.  
 2 Q Okay. What was the Batcub -- what do you see it doing?  
 3 A Just flying low level up the Windy Fork and there was,  
 4 coincidentally, a fresh wolf track headed right up the  
 5 Windy Fork in the same direction that the Batcub was  
 6 traveling, eastbound, out of the area.  
 7 Q And he appeared to be following that track?  
 8 A Appeared to be following that track.  
 9 Q Okay. The -- have any contact with that plane or anyone  
 10 in it at that time?  
 11 A No, sir, I didn't.  
 12 Q Okay. Do you have any contact with that plane or anyone  
 13 in it after that?  
 14 A Yes, sir. On the 21st of March I received a phone call  
 15 from Toby Boudreau that Mr. Haeg and Mr. Zellers were  
 16 going to seal their three wolves in McGrath. That being  
 17 the three gray wolves which they had reported on the  
 18 6th. I just wanted to make contact with Mr. Haeg at  
 19 that time, and so I saw -- that's the first time I saw  
 20 the Batcub, it was in front of the pumps at Yukon Fuel.  
 21 Q Wait a second. It's the first time you saw it. I  
 22 thought you said you saw it on the 6th?  
 23 A Yes, that's the first time I saw it in conjunction with  
 24 Mr. Haeg and saw Mr. Haeg.  
 25 Q Okay.

1 A Specifically unique to his situation with the Batcub is  
 2 the oversized tail wheel that it has. There's a couple  
 3 things that people usually have on a Supercub or a PA-12  
 4 and that being in the winter in deep snow operations  
 5 either a tail ski or just a standard -- what's known as  
 6 a Scott 3200 tail wheel. That you could go out and look  
 7 at all the Cubs that are here in town, they all have a  
 8 Scott 3200 tail wheel. Mr. Haeg has a extra wide tail  
 9 wheel which -- it's so wide it probably almost acts as a  
 10 tail ski in some scenarios. But that distinctive tail  
 11 wheel definitely makes the track pattern and the gear  
 12 configuration unique on that airplane, and specifically  
 13 in conjunction with his type of skis and the large  
 14 center skeg on his skis. Leaves -- would leave a  
 15 distinct track.  
 16 Q So both the tail wheel and the center skeg on his skis  
 17 are I guess oversized compared to most that you do  
 18 encounter?  
 19 A Well, the center skeg was just distinctive. I mean you  
 20 could either have a center skeg or -- or you could have  
 21 a skeg on either side of the ski or you could have two  
 22 skegs per ski. And I just noticed that he had one  
 23 center skeg.  
 24 Q Okay.  
 25 A Not -- not that that's necessarily highly non-standard.

1 A I should clarify.  
 2 Q All right.  
 3 A Up to that date I had never seen Mr. Haeg and had never  
 4 physically, myself, seen him with that airplane.  
 5 Q You just heard of the two associated?  
 6 A To -- to further confirm that that was his airplane. So  
 7 on March 21st I actually met with Mr. Haeg and Mr.  
 8 Zellers as they were loading the Batcub there on the  
 9 ramp. They had already sealed the three wolves with  
 10 Toby Boudreau.  
 11 Q And where was it you met them? Here in McGrath on  
 12 the.....  
 13 A Here -- here in McGrath right in front of the Yukon Fuel  
 14 gas pumps where the Batcub was parked. I conducted a  
 15 brief interview at that point. Talked to Mr. Haeg about  
 16 the type of skis that he had and the large center skeg  
 17 that they had on those skis. He operates.....  
 18 Q Why did you talk with him about those skis and the  
 19 center skeg?  
 20 A Pilots talk about how their airplanes are configured.  
 21 That's -- that's just one thing pilots talk about. I'm  
 22 a pilot, he's a pilot, I was basically initiating  
 23 conversation.  
 24 Q Is there anything unique about the skis or the  
 25 configuration of this landing gear configuration?

1 Just that it was unique and I noticed it.  
 2 Q Okay. The -- did you discuss anything else? I mean I  
 3 guess you talked with Mr. Haeg about his plane?  
 4 A My -- myself and Mr. Haeg talked about his plane. He  
 5 said he liked the big center skeg because it helped him  
 6 to turn better he thought on ice. I asked Mr. Haeg -- I  
 7 mentioned to Mr. Haeg that I had seen him outside the  
 8 permit area following a wolf track and asked him what he  
 9 was doing. He said they were just looking to see where  
 10 the wolves went when they went out. That in and of  
 11 itself wouldn't be that uncommon to see where they went  
 12 and if they were looping back. So af -- after that he  
 13 asked if I was in a white and silver Cessna 170 and I  
 14 told him that I was.  
 15 Q What that what you were in the day that you saw him east  
 16 of the boundaries?  
 17 A Yes, sir, that's my personal airplane. Number 2601  
 18 Delta. He -- so he -- they had obviously seen me on the  
 19 ground the same day that I saw them in the air. They  
 20 commented that they -- and when I say they, Mr. Haeg and  
 21 Tony Zellers were both talking to me at this point. And  
 22 they mentioned that they saw me and my airplane another  
 23 time on Big River at some point earlier on a day that I  
 24 hadn't seen them, so I must have been up in the woods or  
 25 something. He asked what else I was flying, and I said

1 that I had state Cub, my 170 and a silver and red PA-11  
 2 that belongs to my dad that I use. During that  
 3 interview Mr. Zellers actually did most of the talking  
 4 when I started asking about weapon type used to get the  
 5 wolves and how they got the wolves and things like that.  
 6 Mr. Haeg was fairly quiet.  
 7 MR. ROBINSON: Objection, with regard to whatever Mr.  
 8 Zellers would be saying.  
 9 MR. LEADERS: He hasn't -- he just mentioned Zellers was  
 10 talking, he hasn't made any statements.  
 11 Q Let's -- with Mr. -- this plane, I want to ask a couple  
 12 more questions about the plane or .....  
 13 (Whispered conversation)  
 14 MR. LEADERS: I'm handing -- I'm sorry. May I approach  
 15 the witness.....  
 16 MR. ROBINSON: Wait a minute -- wait a minute, Scot,  
 17 (indiscernible)those numbers. I messed up with those numbers  
 18 (indiscernible).  
 19 (Whispered conversation)  
 20 Q I'm handing you Exhibits 26, 27 and 28. If you'll pick  
 21 them up and see if you can identify those.  
 22 A Marked Prosecution Exhibit 26 is a full photo of the  
 23 left side of November 4011 Mike. Appears -- it's --  
 24 it's still in its ski configuration. This photo wasn't  
 25 taken by me. It appears to have been taken at Brown's

- 314 -

1 Lake at the time of the.....  
 2 Q Is it consistent though with the -- what you observed of  
 3 the plane on March 21st?  
 4 A Yes, sir. That is the same airplane, in the same  
 5 configuration.  
 6 Q Okay. Okay. What's the next, Exhibit number 27?  
 7 A Marked Prosecution Exhibit 27 is a closer photo of the  
 8 rear half of the left side of the fuselage and tail of  
 9 November 4011 Mike. It shows the N number, the batman  
 10 emblem, and the oversized tail wheel fairly clearly.  
 11 Q Okay.  
 12 A Again not.....  
 13 Q So that tail wheel there is what you're indicating as  
 14 oversized compared to most.....  
 15 A Yes, sir.  
 16 Q How many times have you encountered that tail wheel?  
 17 A In my life or in a year, or on ski planes? In my -- in  
 18 my life, 30 roughly. As far as used by private people  
 19 in my area hunting or trapping, none. As far as by  
 20 guides, I know of two in my primary patrol area that use  
 21 a tail wheel of this sort. Mr. Haeg being one of them.  
 22 Q When you say nobody -- no guides. Mr. Haeg, isn't he a  
 23 guide?  
 24 A Yes, sir, he is.  
 25 Q Okay. So I guess he's a guide that uses it?

- 315 -

1 A Yes, sir.  
 2 MR. ROBINSON: He already answered that question. Asked  
 3 and answered.  
 4 Q And I guess -- go ahead with the exhibit, the next  
 5 exhibit then.  
 6 A Okay. Marked Prosecution Exhibit 28 is basically a  
 7 closeup photo of the front half, left side, fuselage and  
 8 cowl of November 4011 Mike. This photo clearly shows  
 9 both the paint scheme and the horizontal painting of the  
 10 Batcub, B-a-t-c-u-b along the side of the cowl.  
 11 Q Okay.  
 12 MR. LEADERS: The state would seek to admit Exhibits 26,  
 13 27 and 28.  
 14 THE COURT: Any objection, Mr. Robinson?  
 15 MR. ROBINSON: No objection.  
 16 THE COURT: 26, 27 and 28 will be admitted.  
 17 (Plaintiff's Exhibits 26, 27 & 28 admitted)  
 18 Q What was the -- the -- Mr. -- through this investigation  
 19 have you verified or confirmed that Mr. Haeg is actually  
 20 a big game guide?  
 21 A Yes, sir, I have. I checked with the Department of  
 22 Occupational Licensing, did verify that Mr. Haeg is a  
 23 registered master guide in the state of Alaska.  
 24 Q Okay.  
 25 MR. LEADERS: May I approach?

- 316 -

1 THE COURT: Yes.  
 2 Q Exhibit 29, correct?  
 3 A Yes, sir.  
 4 Q What is that?  
 5 A This is a verification of licensure provided by Cindy  
 6 Rocado(ph) who handles the different types of licenses  
 7 by the Division of Occupational Licensing. This is a --  
 8 looks like a sealed copy signed in ink by Ms.  
 9 Rocado(ph) verifying that it's a true and correct copy  
 10 stating that David Scott Haeg is a master guide. Guide  
 11 license number 146, with an original issue date of  
 12 November 13th, 2003. And an expiration date of December  
 13 31st, 2005, listing the license status as active and  
 14 listing Mr. Haeg's address as P.O. Box 123, Soldotna,  
 15 Alaska. The additional comment section states that Mr.  
 16 Haeg held registered guide license number 783 from April  
 17 17th, '92 through November 13th, 2003. And that he had  
 18 held assistant guide license number 2322 from May 21st,  
 19 1996 to April 17th, 1992.  
 20 Q It would actually be 1986 to '92, would that be correct?  
 21 A Yes, sir, it would.  
 22 Q Kind of hard to go backwards.....  
 23 A Yes. Yes, sir.  
 24 Q Okay.  
 25 A And Ms. Rocado(ph) dated it the 17th of May, and it's

- 317 -

1 got a raised seal and her signature.  
 2 Q Okay. The time that you're in contact with Mr. Haeg  
 3 that was -- you've talked about March. It was March of  
 4 last year, 2004, correct?  
 5 A Yes, sir. March.....  
 6 Q So he was an active guide at that point in time?  
 7 A Yes, sir.  
 8 Q Based on the information?  
 9 A Yes, sir, he was.  
 10 MR. LEADERS: The state seeks to admit Exhibit 29.  
 11 MR. ROBINSON: No objection.  
 12 THE COURT: All right, 29 will be admitted.  
 13 (Plaintiff's Exhibit 29 admitted)  
 14 Q Now back to this contact with Mr. Haeg on the 29th. You  
 15 talked, I guess, with him about his plane; did you  
 16 talked with him about anything else?  
 17 A After talking to him about seeing him outside the area  
 18 and exchanging information about what times -- what  
 19 types of airplanes we each flew, I asked if he was very  
 20 clear on the permit boundaries, to which he responded  
 21 that he was.  
 22 Q The -- what permit boundaries were you referring to?  
 23 A The 19-D east predator control program boundaries that  
 24 he was operating under, when issued the permit.  
 25 Q Had you been discussing the wolves taken that -- the

1 we clear on the boundaries.  
 2 Q Okay.  
 3 A That -- that was the whole reason I drove over there  
 4 that day was to talk to Mr. Haeg about boundaries.  
 5 Q Your conversation with him about boundaries, did it  
 6 appear to you that -- what did he express to you?  
 7 A That he was clear on the boundaries and had no  
 8 questions.  
 9 Q Did anyone show you the types of ammunition they were  
 10 using?  
 11 A Yes. Mr. Zellers got a box of Remington heavy shot,  
 12 which is a relatively new kind of buckshot, out of the  
 13 plane, showed it to me and said that Boondock's Sporting  
 14 Goods had -- and he said given it to him to try out on  
 15 wolves.  
 16 MR. ROBINSON: Objection.  
 17 MR. LEADERS: That's not offered for the truth of the  
 18 matter whether or not Boondock's gave it to him or not to try  
 19 on wolves.  
 20 MR. ROBINSON: But that he had the buckshot is offered  
 21 for the truth of the matter asserted.  
 22 THE COURT: Well, but that's -- that's.....  
 23 MR. LEADERS: The testimony showed it wasn't hearsay.  
 24 A I saw it.  
 25 THE COURT: I'll allow that.

1 wolves he had taken under the permit?  
 2 A Yes, sir, we had. And -- and once again, he didn't say  
 3 very much about the three wolves taken. That would go  
 4 more into my interview with Mr. Zellers.  
 5 Q We aren't going to talk about that, but we're going to  
 6 talk about -- that was the context of the conversation  
 7 with Mr. Haeg, is that correct?  
 8 A Yes, sir, and he verified that they had been here  
 9 scaling the three wolves that they had gotten on Big  
 10 River.  
 11 Q Okay. And did -- and so it was in the context of your  
 12 question regarding are you familiar with the boundaries  
 13 in the context of the predator.....  
 14 0830  
 15 (Tape change)  
 16 4MC-05-12/Side A  
 17 0830  
 18 THE COURT: Okay. We're back on record. Go ahead,  
 19 Trooper Gibbens.  
 20 A Yes, sir, it was in the context, when I spoke of  
 21 boundaries as it was in the context of his 19-D east  
 22 predator control pro -- permit that he had received.  
 23 And further it was in the context of you've now reported  
 24 wolves in the area and I've -- I've seen you out of the  
 25 area, are there any questions about the boundaries. Are

1 MR. LEADERS: That was the context of the question.  
 2 Q Let's -- do you have any -- oh, actually .....

3 MR. LEADERS: We need to approach -- I need to -- Mr.  
 4 Robinson.  
 5 (Whispered conversation)  
 6 THE COURT: Trooper Gibbens, while we're waiting can you  
 7 hand me those pictures, those exhibits. I'll write on them  
 8 admitted.  
 9 A Sure.  
 10 THE COURT: And the.....  
 11 A And the Occupational Licensing paper also?  
 12 THE COURT: Uh-huh. I'm just going to write on them.  
 13 I'll give them back to you. Yeah. (Indiscernible).  
 14 Q The -- Trooper Gibbens, did you do any further  
 15 investigation in this case, or did you get any further  
 16 information in this case?  
 17 A Yes, sir. On March.....  
 18 Q When was that?  
 19 A On March 26th I was contacted by RCC, the Rescue  
 20 Coordination Center in Anchorage. They reported that  
 21 they had an ELT, that's an emergency locator transmitter  
 22 in an aircraft, going off, and wondering if I could go  
 23 look for the ELT. They gave me the coordinates -- the  
 24 initial coordinates of their first satellite passes on  
 25 that ELT which put it on the Hoholita River, which as

1 everybody knows is basically straight south of here a  
 2 pretty good distance. I fueled up the airplane, put  
 3 some extra gas in the airplane also in the form of cans,  
 4 and flew to the coordinates on the Hoholitna River.  
 5 After performing a grid search on the first set of  
 6 coordinates on the Hoho, I got a hold of them through  
 7 Kenai radio over sparvon(ph) repeater and at that time  
 8 was given a new set of GPS coordinates for the ELT.  
 9 MR. ROBINSON: Your Honor, may I impose an objection  
 10 here. The officer is reading from his report.

11 MR. LEADERS: The officer testified -- don't read from  
 12 the report, you need to testify about what occurred, from  
 13 your memory, okay. If you need to refresh your memory, let  
 14 us know.

15 A Okay.

16 Q Okay. And so can you tell us what happened on the 26th?

17 A Okay. I went to a second set of coordinates plotted by  
 18 RCC through sparvon(ph) RCO, and again performed a grid  
 19 search. Was unable to locate an airplane and had -- at  
 20 that -- at that time a second set of coordinates was  
 21 about 20 miles from the first set of coordinates. It  
 22 put me pretty close to Cairn Mountain. There's a guide  
 23 camp know as Osprey Lodge at Cairn Mountain owned by  
 24 Gary Pogany(ph). Since I was close by I thought that,  
 25 hey, there might be people here, there might be

- 322 -

1 airplanes here, this is the logical spot to check.  
 2 Landed as Osprey Lodge on the strip. There were several  
 3 airplanes there. One of which was a Cessna 180. I  
 4 wouldn't know the N number without looking at the  
 5 report. Upon landing and taxiing near the 180 I got ELT  
 6 bleed off onto my radio. An ELT gives off a pue-pue-  
 7 pue(ph) type audible signal. I got that bleeding over  
 8 on my radio, very loud, the closer I got to that Cessna  
 9 180. I went and contacted some fellows that were  
 10 working with some heavy equipment. Identified who owned  
 11 the 180. We walked up there. He said he hadn't moved  
 12 it in a couple of days, didn't know how his ELT could  
 13 possibly be going off. I asked him to please show me  
 14 the ELT and at that time we opened the door and got his  
 15 ELT. The switch was kind of in an intermediate  
 16 position. We cycled it and switched it all the way to  
 17 the off position, and then I got a hold of RCC. They  
 18 never received another hit. So that search was  
 19 terminated basically as no more ELT signal going off.  
 20 So on my way home on an almost direct route -- I was  
 21 going to cross parts of the Stony and Swift Rivers early  
 22 on after leaving sparvon(ph) and between the Stony and  
 23 Swift Rivers I hit a fairly -- what I would consider a  
 24 major wolf track from a large pack of wolves, and it was  
 25 headed generally home. I followed that track for about

- 323 -

1 10 minutes and the track came down off of some tundra  
 2 flats onto the Swift River proper. Right where the wolf  
 3 tracks came down onto the Swift River was a set of  
 4 airplane ski tracks. I made several passes looking at  
 5 the airplane ski tracks to determine if somebody had a  
 6 trap site there or if somebody had landed and shot a  
 7 wolf there or if somebody had got out and relieved  
 8 themselves there. And from what I could tell from the  
 9 air nobody ever fully exited the airplane. Certainly  
 10 they hadn't traveled any distance from the airplane  
 11 there, if they did. It was actually starting to get  
 12 dusk, it was late in the day. I was very low on gas.  
 13 Based on my training and experience I believe that set  
 14 of tra -- that set of airplane ski tracks to be a site  
 15 where somebody had landed to check wolf track direction.  
 16 Before you can pursue or follow up wolves, no matter  
 17 what your reason for wanting to find them is, you have  
 18 to determine the direction of travel of their tracks in  
 19 the snow. That's what I believed these tracks to be.  
 20 Q Is that a fairly common technique? Just kind of land  
 21 and.....  
 22 A Yes, sir, especially if it's low light conditions or  
 23 less than ideal snow conditions. Sometimes it can be  
 24 difficult to tell track direction from the air, and you  
 25 can save a lot of time and gas by landing quickly and

- 324 -

1 looking at the tracks, and -- and then you can follow  
 2 them faster instead of trying to figure it out from the  
 3 air all the time.  
 4 Q So in that location where the tracks, the ski plane --  
 5 the ski tracks and the wolf tracks I guess on top of  
 6 each other or in the same area, immediate area?  
 7 A Yeah, the airplane ski tracks crossed the wolf tracks.  
 8 The airplane landed, turned in -- in a U, got back on  
 9 its own tracks and took right back off, and the airplane  
 10 ski tracks clearly were on top of some of the wolf  
 11 tracks. The -- that night I called my supervisor, told  
 12 him that I found suspicious airplane ski tracks over on  
 13 the Swift River and wanted to go back and look the next  
 14 day, and try and figure out what somebody was checking  
 15 track direction for.

16 Q Did you notice anything in particular about the ski  
 17 tracks?

18 A It appeared that it was fairly wide skis and either --  
 19 at -- at that point I didn't land, I had only looked  
 20 from the air, and either a narrow tail ski or a wide  
 21 tail wheel from the tracks. But like I said, I didn't  
 22 land that night, so it looked like it might be fairly  
 23 distinctive airplane tracks.

24 Q Okay. Did you go back to that area then after talking  
 25 with your supervisor?

- 325 -



1 A Yes, sir. The next day with better light. On the 27th  
 2 of March I flew directly from McGrath to the exact  
 3 coordinates of the ski tracks I had found the day before  
 4 on the Swift River. I looked at that a few more times  
 5 from the air, confirmed that I was comfortable that  
 6 there wasn't -- that there wasn't a trap site or a kill  
 7 site where those ski tracks were. I then followed the  
 8 wolves -- the -- the wolf tracks in the snow for roughly  
 9 a couple of miles up the Swift River. That being  
 10 eastbound. Pretty soon I came to a moose kill on a  
 11 large island and I could see that the airplane had  
 12 landed near that moose kill and had walked into the  
 13 moose kill and then there was numerous wolf trails in  
 14 the heavy brush all throughout the island, around the  
 15 moose kill. So at this point I suspected possibly  
 16 somebody had gone in there to set wolf traps or snares  
 17 at that site and actually while I was circling I saw a  
 18 wolverine still alive in a snare, which confirmed that  
 19 there was traps and/or snares at that site. And I  
 20 decided to follow the wolf tracks farther upstream and  
 21 see if -- if there was just more trap sets or something  
 22 different. I followed the tracks no more than a half a  
 23 mile upstream. Some of the wolf tracks away from that  
 24 moose kill site and found what from the air looked to me  
 25 like very clearly a kill site of a wolf. After several

- 326 -

1 passes I could see where a wolf had come out in an  
 2 irregular running pattern and then there was a bloody  
 3 spot in the snow and some airplane ski tracks landing,  
 4 taxiing right over to the bloody spot. There was no  
 5 carcass or anything there. I did not land at that time.  
 6 I followed the rest -- like I said, this was a big wolf  
 7 pack. There was a lot of tracks. So I followed more of  
 8 the tracks that were headed upstream on the Swift River.  
 9 Traveled upstream maybe a couple of miles and came to  
 10 another similar scenario where there was erratic running  
 11 tracks by -- made by a wolf, a blood spot in the snow  
 12 and then actually a zig zagging bloody spot where a  
 13 wounded wolf had drug itself on the ice for some  
 14 distance and there was a set of ski tracks near there  
 15 and then a drag mark where that wolf had been drug to  
 16 the airplane and transported out. There was no carcass  
 17 at that location. I followed three of the other sets of  
 18 wolf tracks which headed upstream on the same little  
 19 side branch of the Swift River right there. Traveled  
 20 probably -- probably not more than five or 600 yards,  
 21 came to another set of ski tracks and a bloody spot in  
 22 the snow at the end of a set of running wolf tracks.  
 23 Followed one set of wolf tracks from that location that  
 24 crossed the Swift River, now southbound, up through some  
 25 little Jack spruce trees and then right when they kind

- 327 -

1 of topped out on a plateau and the spruce trees thinned  
 2 out blood spot at the end of the running wolf tracks.  
 3 Actually those wolf tracks were more like walking. I  
 4 remember they weren't full stride out running tracks  
 5 right there, but....

6 Q What do you mean you can tell they're different from the  
 7 running tracks?

8 A Running tracks have a different shape pattern to them.  
 9 Almost -- almost similar to a rabbit track, because when  
 10 the animal is running his tracks aren't all nice and  
 11 straight in a row like when he's walking. If -- if he's  
 12 moving slowly his tracks are far different than if he's  
 13 full out running from something.

14 Q Can you tell us the physical difference if you're  
 15 looking at the tracks? How you'd know that?

16 A Yes. A running track is going to be a lot farther  
 17 apart, the track marks in the snow, and instead of more  
 18 circular or oval footprints kind of in a straight row,  
 19 it's going to be a couple of tracks off center, almost  
 20 like the big tracks on a rabbit track and then two  
 21 tracks kind of straight behind it. It's a completely  
 22 different shape. So that -- that track didn't appear to  
 23 be full out running at the time it was shot. There was  
 24 a set of ski tracks where an airplane had landed and  
 25 recovered the animal at the end of that set of tracks.

- 328 -

1 At none of those four sites that I just described where  
 2 there were bloody spots at the end of a set of wolf  
 3 tracks; at none of those sites were there -- was there  
 4 any sign of any traps or snares being set and from --  
 5 based on my training and experience, even from the air,  
 6 they all looked like wolves which were shot from the  
 7 air. I....

8 Q And why do you say that? What told you that they  
 9 appeared to be wolves shot from the air?

10 A Specifically at the very first kill site I could  
 11 actually see the buckshot pellet marks in the snow,  
 12 which is a rare occurrence to be able to see that from  
 13 the air, but the type of snow crust that was present and  
 14 we'll show photos here at some point. The kill site  
 15 that I've named kill site number 1 had a very obvious  
 16 shotgun pellet marks in the snow which even show the  
 17 direction the shot came from, and right there the wolf  
 18 track kind of zig zags, staggered a few ways and fell  
 19 again where it came to rest. At that time I -- I felt  
 20 that I had confirmed my suspicions from the day -- day  
 21 before. Here I had something that I needed to do a  
 22 detailed investigation of. I needed to have good  
 23 daylight, I needed to potentially have another person to  
 24 help take photographs and help run a metal detector. I  
 25 went back and landed near one of the kill sites just to

- 329 -

1 basically completely solidify in my mind that what I saw  
 2 on the ground was what I thought I was seeing from the  
 3 air. I landed on the river near what will be kill site  
 4 three. and walked into it, several hundred yards. At  
 5 that -- at that site I was not comfortable landing the  
 6 state airplane and putting it at risk. It was a very  
 7 marginal landing location, that's why I landed a  
 8 distance away and snowshoed into it. When I snowshoed  
 9 in there I basically confirmed what I had seen from the  
 10 air, that it was a -- there was no traps, no snares, no  
 11 sign that there ever had been any, and I believe that  
 12 wolf track -- where the wolf had died in that case  
 13 wasn't where the wolf was shot. I could see that that  
 14 wolf had come running in there bleeding, and then had  
 15 died in that spot. And I took some pictures. Took hair  
 16 and blood sample out of the snow where the wolf had died  
 17 and then I actually snowshoed back to the airplane. Got  
 18 on my satellite phone, tried to get somebody out there  
 19 to help me work the scenes that day, and there was  
 20 nobody that could respond. So I actually -- after, like  
 21 I said, taken some photos, going back and GPSing each of  
 22 the sites, including -- there -- there was one site kind  
 23 of centrally located between these other spots that had  
 24 multiple sets of ski tracks, and I did land at that  
 25 spot. That -- that will be what I called the staging

1 worked the crime scenes and before I went to Anchorage  
 2 to conduct any interviews with Mr. Zellers or Mr. Haeg.  
 3 Q Okay. Now -- and how did you do that? What did you do  
 4 to plot this information on a map?  
 5 A I took a -- first of all I put the applicable boundaries  
 6 of the predator control area in 19-D east on the map,  
 7 outlined it with a dark pen, and then highlighted it. I  
 8 then plotted through these GPS coordinates the location  
 9 of each of the kill sites that I found and the moose  
 10 kill that was set up.  
 11 Q And did you mark them somehow on the map?  
 12 A I -- I marked them in pen on the map, and then I  
 13 actually typed up a legend. I gave them a number code,  
 14 starting with zero and ending with -- I don't know, I  
 15 don't remember what, but gave them a number code, marked  
 16 them on there and then typed up a legend, what -- what  
 17 each number represented.  
 18 (Pause)  
 19 A Can I get my water?  
 20 THE COURT: Sure.  
 21 THE COURT: Don't break the table. I've heard if you  
 22 break the table you have to buy it.  
 23 (Whispered conversation)  
 24 (Pause)  
 25 MR. LEADERS: I'll bring this out here

1 area. There was at least several sets of ski tracks  
 2 there and there was some blood in the snow. I could not  
 3 tell that a wolf had died at that spot, but that  
 4 something had been laid in the snow and bled right  
 5 there.  
 6 Q Let me ask you. These various kill sites that you've  
 7 located, and this moose kill first and then these  
 8 various wolf kill sites you've identified. Where were  
 9 they in relation to the predator control zone?  
 10 Boundaries of permitted area?  
 11 A Very far to the southeast. I'd have to plot it on the  
 12 map, but from the -- from the very nearest border of the  
 13 legally permitted predator control area the kill sites I  
 14 found were between 40 and 55 miles from the very nearest  
 15 boundary. I'd need the bottom on there to give you the  
 16 exact distance from the nearest legal spot.  
 17 Q Did you do -- did you actually plot any of this onto a  
 18 map?  
 19 A Yes, sir, I did. I had....  
 20 Q And when did you do that?  
 21 A I did that -- well, like I said, initially -- I mean I  
 22 had put a dot on my map on my wall way back when I got  
 23 the coordinates from Toby Boudreau, the initial report  
 24 coordinates. But as far as plotting these kill sites on  
 25 a map and the moose kill site, I did that after we had

1 (indiscernible)....  
 2 (Whispered conversation)  
 3 THE COURT: We may want to move it back a little bit so  
 4 Mr. Haeg can see.  
 5 MR. LEADERS: I don't think you're looking at anything  
 6 else. Sorry, Judge. This is the.....  
 7 MR. ROBINSON: This is.....  
 8 MR. LEADERS: Exhibit 25.  
 9 MR. ROBINSON: .....Exhibit 25.  
 10 THE COURT: This is exhibit 25. (Indiscernible).  
 11 (Pause)  
 12 Q Okay. Officer, first of all I'm going to show you  
 13 what's marked as Exhibit 25, and I want to see if you  
 14 recognize that?  
 15 A Yes, sir, I do.  
 16 Q And what is that?  
 17 A That's an aircraft sectional for the McGrath area,  
 18 marked with marks and a legend placed on it by myself.  
 19 Q Okay. So -- Exhibit-- oh, (indiscernible) yeah, that's  
 20 better yet. (Pause) Can you explain to the jury what  
 21 you're depicting here in this exhibit?  
 22 A Yes, sir. This -- this area, and we've already agreed  
 23 that the.....  
 24 Q Well, just what is that area?  
 25 A Oh, okay. This -- this area is the 19-D east predator

1 control area. This is the area that was in effect in  
 2 March, 2004 for the 19-D east predator control program.  
 3 Q Okay. Can you point out where McGrath is on that map?  
 4 A McGrath is this purple circle right here.  
 5 Q Okay. Now you've identified certain marks on this map.  
 6 What does this identify, number 7?  
 7 A Number 7 is the -- basically the closest point in the  
 8 predator control area to where the kill sites that I  
 9 found were located.  
 10 Q Okay. Where are those kill sites that you found? Where  
 11 are they located?  
 12 A South along the Swift River.  
 13 Q Okay. And you -- there's -- I guess you've said that  
 14 this is the legend you attached then, is that correct?  
 15 A Yes, sir, it is.  
 16 Q Okay. The -- number 8 identified here.  
 17 A Yes, sir.  
 18 Q What does that depict?  
 19 A Number 8 identified here just inside the permit hunt  
 20 boundaries is the reported kill location of the three  
 21 gray wolves taken by David Haeg and Tony Zellers.  
 22 Q Okay.  
 23 MR. ROBINSON: Well, this is to the area, location area.  
 24 MR. LEADERS: Okay. Judge, I've discussed with Mr.  
 25 Robinson we'd -- I'd like to inform the jury that the parties

- 334 -

1 have stipulated that these fairly represent, they're not  
 2 exact, but fairly represent the eastern/western and southern  
 3 boundaries of the.....  
 4 THE COURT: For the.....  
 5 MR. LEADERS: .....permit hunt area. Okay.  
 6 Q Now -- so we've talked about seven and eight. What are  
 7 -- can you tell us what number 6 is?  
 8 A Yes, sir. Number 6, located right here, is Trophy Lake  
 9 Lodge, the lodge owned by Mr. Haeg.  
 10 Q And how -- now walk us through what you've identified  
 11 here. You've indicated that that was kind of the kill  
 12 site area, is that correct?  
 13 A Yes, sir. Like I said, I was on my search over in this  
 14 area, Cairn Mountain, so you can see flying from Cairn  
 15 Mountain back to McGrath, this was fairly close to the  
 16 route.  
 17 Q Any particular reason you went slightly off the direct  
 18 route or?  
 19 A I hadn't looked at that area of the Swift River since  
 20 the fall, actually. Late in the fall I had been there,  
 21 in September, and patrolled that area. Hadn't looked at  
 22 it. I wanted to look at it and was still curious. I'm  
 23 not going to dispute, that was still curious where the  
 24 three wolves had come from that were reported in -- in  
 25 here, because I honestly believed that they had not been

- 335 -

1 shot where they were reported.  
 2 Q Okay. And that was based on the number of the -- the  
 3 (indiscernible)?  
 4 A Three -- three grays out of a pack that I did not  
 5 believe contained three grays.  
 6 Q Okay.  
 7 A Zero, which is the farthest downstream mark on the Swift  
 8 River right here is the location where I saw the initial  
 9 airplane tracks. Where the wolf trail came down off of  
 10 some higher country and came down into the river, and  
 11 the airplane track where -- that's what I found the  
 12 night of the 26th.  
 13 Q Which direction were those tracks heading then?  
 14 A The wolf tracks were headed upstream on the Swift River  
 15 or eastbound, this direction.  
 16 Q Okay.  
 17 A So when I came back on the 27th I came straight to zero.  
 18 Number 1, which is roughly a couple of miles upstream or  
 19 farther east. Actually let's go to kill number 5. Or  
 20 excuse me, number 5 on here is going to be the -- the  
 21 very next thing as I proceeded upstream that I found.  
 22 That's going to be the location of the dead moose  
 23 carcass with wolf tracks all around it, ravens, and a  
 24 wolverine caught in a snare on the 27th. As you can  
 25 see, the next thing -- the next dot is very close to

- 336 -

1 that. That's kill site number 1, that's where the first  
 2 wolf was shot from the air, and the very distinctive  
 3 pellet pattern was visible in the snow next to the  
 4 bloody spot at the end of the wolf tracks.  
 5 Q And I guess why do you say it's the first?  
 6 A I say the first just because of its close proximity to  
 7 the moose kill site, and it's the first one I found as I  
 8 proceeded upstream on the wolf tracks. At this point  
 9 this moose kill, in my estimation, is up to a week old.  
 10 It's a big pack of wolves. They haven't gone away,  
 11 they're still around. I don't know if they're still  
 12 there the day I'm there but they've -- they've been back  
 13 and forth, so.  
 14 Q So you're not implying though a sequence of killings?  
 15 A I'm not.  
 16 Q Simply a sequence of you finding them?  
 17 A I numbered the kills in the sequence I found them as I  
 18 proceeded upstream along the wolf tracks.  
 19 Q Okay.  
 20 A So.....  
 21 THE COURT: Excuse me. Trooper Gibbens you said num --  
 22 the first kill site, but you indicated it has a number --  
 23 what's the number.....  
 24 Q What is the number?  
 25 THE COURT: .....on the map that you.....

- 337 -

1 A Number 1 is what I call kill site one.  
 2 THE COURT: Okay. That is -- okay.  
 3 A It's the first one I found. It's right near number 5  
 4 which is the moose kill site.  
 5 THE COURT: Okay. That's where I was getting confused.  
 6 Okay, thank you.  
 7 A After leaving number 1 I proceeded upstream. Like I  
 8 said, maybe a couple of miles and then I'm going to get  
 9 to what's called number 9 on my map, is the next thing I  
 10 came to. Several sets of airplane ski tracks on an area  
 11 and some blood in the snow, not necessarily a kill  
 12 location. And at the time I didn't know what that was  
 13 until I landed and looked at it, which I -- I land -- I  
 14 had landed there but hadn't walked around on the 26th.  
 15 When I went back on the 27th I had an opportunity to  
 16 walk around that site more. Let me -- let me go through  
 17 all the numbers and then -- go through all the numbers  
 18 and then go back to what was found at each spot, or.....  
 19 Q Yeah, we'll do it that way.  
 20 A Okay. So that's -- number 9 was the next thing as I  
 21 proceeded upstream. I call the staging area. Within a  
 22 mile or so upriver of that is number 2. That's going to  
 23 be kill site number 2. That was two sets of airplane  
 24 ski tracks near a bloody spot and a bloody drag mark  
 25 which originated at the end of a set of wolf tracks.

- 338 -

1 Upstream a very short distance from there, possibly a  
 2 half mile, is going to be number 3. That's kill site  
 3 number 3, and that's a wolf that's running and bleeding  
 4 and dies and is picked up by the same airplane indicated  
 5 by the ski tracks, and until I go back I don't know  
 6 where that wolf was initially shot. From -- from kill  
 7 site number 3 we actually cross the Swift River,  
 8 southbound, go just up onto one -- one small level of  
 9 terrain featured through some spruce trees, go up on  
 10 there and as soon as the black spruce thins out that's  
 11 where there's kill site number 4, as I've named it,  
 12 bloody spot in the snow at the end of the wolf tracks,  
 13 and a set of airplane ski tracks where it had been  
 14 picked up. Number 10, which is marked on the map but  
 15 it's not on the legend is the very closest snowmachine  
 16 track anywhere to all of this. I was just interested in  
 17 determining -- making sure that there wasn't a  
 18 snowmachine involved with this, tied into this, and.....  
 19 Q And what's the significance of that?  
 20 A The significance of that would be if -- if possibly  
 21 somebody had shot these wolves with a snowmachine and  
 22 just come back to pick them up with an airplane or if  
 23 somebody had been there as part of a trapping operation  
 24 with a snowmachine. There were no snowmachine tracks  
 25 going to these kill sites. The -- the very closest

- 339 -

1 snowmachine track was a track which I followed. It came  
 2 to the end of this long lake which is several miles -- I  
 3 wan -- I have to look at my report, but I believe it was  
 4 5.2 miles away from the nearest of the kill sites, and  
 5 that snowmachine track led all the way back to Lime  
 6 Village, actually. And it didn't come any farther  
 7 north.  
 8 Q So around the kill sites you didn't find any sign of  
 9 land travel?  
 10 A No sign of land travel other than short sets of  
 11 footprints and at several of the kill sites there was  
 12 even very few footprints. A couple of the kills sites  
 13 the airplane was taxied right up next to the wolf and  
 14 there was maybe several footprints right there where the  
 15 wolf was loaded, but no carrying it for any distance or  
 16 -- so -- so we had kind of both things. We had a lot of  
 17 foot travel in the area where the moose kill site was  
 18 set up because someone had to walk in there and set a  
 19 bunch of traps and snares over a pretty large area. And  
 20 we also had one of the wolves specifically which was  
 21 drug for a long ways after it was pulled out of a hole  
 22 in the ice. The wolf was all wet. There was a icy drag  
 23 mark after they pulled it out of that hole in the ice  
 24 and drug to the airplane. But then at a couple of these  
 25 spots there weren't hardly any tracks. They just taxied

- 340 -

1 right up to them. Maybe I'll back up and go back to  
 2 what was found at each spot.  
 3 Q Not yet. Have you identified number 5?  
 4 A Yes, we identified number 5 as the moose kill site with  
 5 a wolverine in a snare at that -- at that point that's  
 6 what I knew before I went into the sites.  
 7 Q Okay.  
 8 MR. ROBINSON: (Indiscernible) take a break.  
 9 MR. LEADERS: Could we take a break, a brief break at  
 10 this time? I think it would a good transition point to set  
 11 up the next phase of testimony. We've been a little over an  
 12 hour.  
 13 THE COURT: Sure. How long do you guys need? 10, 15?  
 14 Does anybody care? Are you awake enough to move yet. Why  
 15 don't we start back up then at -- you're going to bring the  
 16 hides up?  
 17 MR. LEADERS: No, not at this time we won't bring up the  
 18 hides, but.....  
 19 THE COURT: Oh, okay.  
 20 MR. LEADERS: .....10 to 15 minutes would be good, I  
 21 think.  
 22 THE COURT: Okay. Let's start back up at 20 after then.  
 23 (Off record)  
 24 THE COURT: Back on record, the parties are present and  
 25 the jury is present. Trooper Gibbens is back on the stand

- 341 -

1 and I want to remind you, Trooper Gibbens, that you are still  
 2 under oath.  
 3 A Yes, Your Honor.  
 4 THE COURT: Okay. Mr. Leaders, go ahead.  
 5 MR. LEADERS: Thank you, Judge.  
 6 Q Trooper Gibbens, now I want to talk in a little bit more  
 7 detail about these sites you located and identified.  
 8 (Whispered conversation)  
 9 Q You -- I believe you said you were there a couple  
 10 different times. Once the first time you first see them  
 11 it's late at night or in the evening and you don't  
 12 really land and inspect, correct?  
 13 A Yes, sir. Evening of the 26th.

14 Q Okay. And you go back the next day?  
 15 A The 27th, land at two spots, just to check -- just to  
 16 basically confirm what I saw from the air, and then.....  
 17 Q Do you do anything to document or record what you  
 18 observed on that day?  
 19 A I take some photos at kill site number 3. I take some  
 20 photos at what I call the staging area, and then I get  
 21 GPS locations of each kill site as well as the moose  
 22 kill site.  
 23 Q Okay. And that's for the purpose of the next day you do  
 24 what?  
 25 A I return, along with -- along with Trooper Dobson, now

- 342 -

1 Sergeant Dobson, and Trooper Roe(ph) also comes out and  
 2 meets up with us. He gets there a little bit later than  
 3 us. Trooper Dobson shows up in a fixed wing aircraft,  
 4 I'm in a fixed wing aircraft, and Trooper Roe(ph) shows  
 5 up in a helicopter.  
 6 Q Okay. And what's the reason all three of you go out  
 7 there?  
 8 A Specifically I need at least one other person to assist  
 9 me with photographing and running the metal detector,  
 10 taking measurements, things like that. Brought the  
 11 helicopter out because there was very specifically one  
 12 of the sites that I wasn't going to land the state-owned  
 13 Supercub at. It was a very limited distance for landing  
 14 or taking off with tree obstacles on one end and open  
 15 water on the other end.  
 16 Q Okay. Now on that, I guess kind of the third day,  
 17 you're there?  
 18 A Yes, sir.  
 19 Q And now with two other troopers?  
 20 A Yes, sir.  
 21 Q Do you also document what you observed on those -- on  
 22 that day?  
 23 A Yes, sir. The third day is when basically the most  
 24 detailed portion of the investigation at all of the  
 25 scenes occurred.

- 343 -

1 Q Okay. And we're going to walk through that to some  
 2 extent. But first of all, you talked -- at each of  
 3 these different -- well, I won't say each of the ones  
 4 you've marked, but down there around the kill sites that  
 5 you've marked and the staging area, and the moose kill,  
 6 that type of thing; you've talked about ski -- plane ski  
 7 tracks?  
 8 A Yes, sir, and consistent through every scene that I  
 9 looked at both from -- from the first night that I found  
 10 it on the 26th. When I went back on the 27th and when I  
 11 came out on the 8th [sic], all of the tracks appeared to  
 12 be the same type of tracks consistent with.....  
 13 Q What can you describe about those tracks?

14 A Specifically the most distinctive thing was the  
 15 oversized tail wheel.  
 16 MR. ROBINSON: The 8th of April or the 28th of March?  
 17 Q Will you clarify the date, please?  
 18 A 28th of March.  
 19 MR. ROBINSON: Oh, okay.  
 20 A 2004.  
 21 Q Thank you. And so they're all consistent in each of the  
 22 locations?  
 23 A Yes, sir.  
 24 Q And they're distinctive primarily because of this  
 25 oversized tail wheel?

- 344 -

1 A The oversized tail wheel and they've all got relatively  
 2 large ski tracks from the main skis on the main gear  
 3 with a center skeg.  
 4 Q Okay. And did you document those tracks at the various  
 5 locations by photos?  
 6 A Yes, sir, we did. We photographed and measured the  
 7 tracks.  
 8 Q Now I'm not going to have you talk about all the photos,  
 9 but number 30, photo of ski track -- plane ski tracks.  
 10 So I'm going to identify, I guess I'll make sure. Could  
 11 you, I guess, identify that for the court?  
 12 A Yes, just a representative sample of the relatively wide  
 13 main gear skis with a pretty wide center skeg marking,  
 14 you know, and then the distinctive wide tail wheel marks  
 15 everywhere where the tail wheel touches on.....  
 16 Q Well, I mean why don't you approach the jury a little  
 17 bit. I mean they're kind of straining I know. It's a  
 18 small photo. Can you tell why -- or what's distinctive  
 19 about the.....  
 20 MR. ROBINSON: (Indiscernible) admit them and just pass  
 21 them around.  
 22 MR. LEADERS: Okay. Okay.  
 23 Q Why don't you pass it around as you're explaining --  
 24 thank you.  
 25 A The main -- the main gear skis, that being the wider

- 345 -

1 tracks on the outside on each side, were fairly wide and  
 2 had a wide center skeg. There's a lot of different  
 3 kinds of skegs. If.....  
 4 Q How is that center skeg depicted in the photos? As the  
 5 photo here?  
 6 A Is -- yes, it is. It shows.....  
 7 Q Can you explain how it is depicted?  
 8 A Well, it's -- it's the mark right in the center of the  
 9 widest ski track on the right side of that photo, and  
 10 that center skeg appeared to be over an inch wide.....  
 11 Q The imprint.....  
 12 A .....in this -- in this -- it's an imprint, it's pushing  
 13 down farther than the ski itself pushes down.  
 14 Q Okay.  
 15 A And the other distinctive thing is the -- like I said,  
 16 the oversized tail wheel marks in the snow, larger than  
 17 tail wheel marks made by standard equipped Cubs that you  
 18 might see around here, but narrower than a tail ski  
 19 track; I guess would be the best way to describe it.  
 20 Fairly unique.  
 21 Q Okay.  
 22 A Kind of fit right in the middle between a standard size  
 23 Cub type tail wheel and a tail ski.  
 24 Q Okay. And that photo then represents fairly the -- all  
 25 the tracks that you observed?

- 346 -

1 A Yes, sir.  
 2 Q Okay. Thank you. The -- let's discuss specifically the  
 3 kill sites. Kill site number 1?  
 4 A Kill site number 1, the first kill site upstream from  
 5 the moose kill.  
 6 Q And I'll take just a moment to.....  
 7 A Okay. And there's going to be three photos in sequence  
 8 that you're going to look at here. The first photo is  
 9 going to be.....  
 10 THE COURT: Well, wait. You can't tell them that until  
 11 they've actually been admitted.  
 12 Q Why don't you wait just a moment, Officer. Trooper.  
 13 (Pause)  
 14 (Whispered conversation)  
 15 Q I'm going to hand you four exhibits. I want you to look  
 16 at them real quick and then we'll go through each of  
 17 them. I'll set those right there for right now.  
 18 A (Pause)  
 19 Q Okay. The first one I handed you, what is that?  
 20 A Let me make sure first.  
 21 Q Number 31, correct?  
 22 A Yes, sir. Exhibit number 31 is this photo.  
 23 Q Okay. What are you depicting? Actually why don't you  
 24 tell us.....  
 25 A Well, I'll.....

- 347 -

1 Q .....what you observed at the scene and how these photos  
 2 fit into that, and as you relate to each photo we'll  
 3 have to have you describe what it is.  
 4 A Okay, at the scene where this photo, Exhibit number 31,  
 5 was taken, that's the closest kill site to the moose  
 6 kill site, there were several sets of wolf tracks and  
 7 one of the sets of wolf tracks did a couple of direction  
 8 changes and then I can see a pellet pattern in the snow  
 9 where the shotgun pellets had impacted the snow, and  
 10 then I could see wolf tracks for another short distance  
 11 where the wolf went down, maybe 10 yards from where this  
 12 initial pellet pattern impacted the wolf. And then the  
 13 wolf track gets up one more time, goes on another few  
 14 yards and then there's airplane ski tracks consistent  
 15 with the photo that I just showed you, landing, taxiing  
 16 right up to the spot and basically just putting the wolf  
 17 right into the airplane there.  
 18 Q Okay. Now what does this photo show us then about when  
 19 you're saying.....  
 20 A This -- this photo.....  
 21 Q .....pellet pattern?  
 22 A In this photo is -- is a wolf track coming from the  
 23 right side of the photo over here, this -- the shot was  
 24 fired from this direction, as you can tell by the impact  
 25 direction in the snow of these pellets. So the wolf was

- 348 -

1 hit right here and he went out this direction here  
 2 judging by these tracks. These are his tracks right  
 3 beside the pellet pattern straight out past the pellet  
 4 pattern photo. Do you want to go through all three and  
 5 then pass them around?  
 6 Q Why don't you go through all three and we'll pass them  
 7 out, and.....  
 8 A Okay.  
 9 MR. LEADERS: .....Judge, may we publish it without -- if  
 10 there's no objection?  
 11 MR. ROBINSON: I don't have any objection to the  
 12 photographs.  
 13 MR. LEADERS: Okay.  
 14 A Okay. Why don't.....  
 15 Q I'll have you describe.....  
 16 THE COURT: Any objection to them being admitted or being  
 17 published?  
 18 MR. ROBINSON: Being admitted, and they're photographs  
 19 31, 32, 33.  
 20 THE COURT: What about 30?  
 21 MR. ROBINSON: And 30.  
 22 MR. LEADERS: 30, right. Yeah.  
 23 THE COURT: Okay. We'll admit 30, 31, 32 and 33.  
 24 MR. LEADERS: Yes.  
 25 (Plaintiff's Exhibits 30-33 admitted)

- 349 -

1 A Okay, after we photographed this pellet pattern in the  
 2 snow there was kind of a crust on the snow so -- and we  
 3 could tell the direction of trajectory so to locate the  
 4 pellets we then kind of walked out of the snow and just  
 5 lifted it away, and this is a picture of a double-ought  
 6 buckshot pellet. You can still see its trajectory in  
 7 the snow actually behind it. That's the first one that  
 8 was exposed. There were 13 recovered out of that shot  
 9 pattern. One of which still had tissue and hair stuck  
 10 to it. Had been a pass through shot on a wolf. The  
 11 third photo, number 33, is a 12 gauge shotgun wad which  
 12 was found at the second spot the wolf fell down, so at  
 13 that point, 20 yards or so from where he was shot, there  
 14 was blood and hair in the snow where the wolf rolled  
 15 around as he died, and where this wad must have then  
 16 fell out of his fur. That's the only way I could  
 17 speculate that wad could have gotten off in that side  
 18 direction where the wolf ended up dying.

19 Q What's the significance of it? I mean is that common to  
 20 have a shotgun wad at a kill site like that?

21 A Common to find them at a kill site in the general  
 22 direction the shot was fired. This was off to the side  
 23 and right in the -- basically the death bed of the wolf.  
 24 The significance to me would mean that evidently this  
 25 wolf was shot at pretty close range and the wad must

1 fired. It may stray off a little bit as it loses  
 2 velocity out there from wind friction, but generally you  
 3 see the wad travel in the direction of the shot, whereas  
 4 this one was found off to the side in the death bed of  
 5 the wolf.

6 Q Okay. Now did you find anything else at the scene? I  
 7 mean I guess you -- from the photos it looked like you  
 8 found at least a pellet?

9 A From the photo we show the exposure of the first pellet  
 10 under that cake of snow. Once those pellets hit some of  
 11 them continued and went down at a fair steep trajectory  
 12 indicative of a shot from the air, and others stayed  
 13 just under that top, about two inches of crust and  
 14 traveled underneath. We ended up using a metal detector  
 15 to see how far out we were going to have to go with the  
 16 search and recovered 13 double-ought buckshot pellets  
 17 from the direction of travel of that shot pattern right  
 18 there.

19 THE COURT: What's the number on that one?  
 20 MR. LEADERS: 34.

21 A Exhibit 34, Your Honor.

22 THE COURT: Okay.

23 MR. LEADERS: Yeah. I'd offer Exhibit -- seek admission.  
 24 MR. ROBINSON: No objection.

25 THE COURT: Okay, 34 will be admitted.

1 have got hung up in his hair. I've actually never seen  
 2 a wad travel with an animal before like that, and I....

3 Q How far was this wad from the pellet pattern imprints  
 4 that you found?

5 A Roughly greater than 20 yards.

6 Q Okay.

7 A And off to the side from the direction of -- of the shot  
 8 being fired.....

9 0431

10 (Tape change)

11 4MC-05-12/Side B

12 0471

13 THE COURT: Go ahead, Trooper.

14 Q You were saying that it was not in the same direction  
 15 that the shot had come from?

16 A Right. And the -- the way a shotgun shell is put  
 17 together you've got the hull of your shell with a primer  
 18 in it, obviously. You get a powder charge in there and  
 19 you get a wad. A plastic wad like you'll see in this  
 20 photo, goes over the powder charge and then is filled  
 21 with the shot type, whatever that is. When you fire the  
 22 shotgun out comes -- if there's an over shot wad it  
 23 comes out, then the pellets and then this big plastic  
 24 wad that's between the powder and the shot. Normally  
 25 that flies generally in the direction that the shot is

1 (Plaintiff's Exhibit 34 admitted)

2 Q Now you can....

3 A And one of those pellets had tissue and hair stuck to it  
 4 at the time. It has since rattled off in the bag here.

5 Q The -- this -- these double-ought buckshots, how many  
 6 pellets would be in a shell?

7 A Depending on shell type, for a three inch shell it could  
 8 be 13 or 15 pellets. Three and a half inch shell would  
 9 be 18 pellets. Both three and three and a half inch  
 10 shells are common use in wolf hunting. This -- this  
 11 shell could have had 13 or 15 pellets likely in it.

12 Q Through the course of further investigation, I think  
 13 we'll talk about it a little bit more, but did you find  
 14 ammunition consistent with the double-ought buck for the  
 15 12 gauge?

16 A Yes, sir. Yes, sir.

17 Q From Mr. Haeg?

18 A Yes, sir.

19 Q Okay. And were they three inch or three and a half,  
 20 or....

21 A There was -- there was a mixture. There were -- there  
 22 was three inch shells in the double-ought and I don't  
 23 remember for sure if there was any three and a half at  
 24 the time.

25 Q Okay. So the three inch would have been consistent you

1 said with either 13 or 15 pellets?  
 2 A Yes.  
 3 Q You found 13 here?  
 4 A Yes.  
 5 Q Okay. One of which passed through the wolf?  
 6 A One of which passed through the wolf.  
 7 Q How did you know that?  
 8 A Because of the tissue and hair stuck to the deformed  
 9 pellet that was recovered. Most of the pellets were  
 10 generally still round. The soft lead buckshot pellets  
 11 get deformed some when they hit snow or ice, but as you  
 12 can see, most of them are generally round and one had a  
 13 little bit of deformation to one side and had tissue and  
 14 a little bit of hair stuck on it when it was recovered.  
 15 THE COURT: If Trooper Gibbens is done demonstrating he  
 16 should be seated again.  
 17 MR. LEADERS: Yeah, for right now. It will be -- it will  
 18 kind of be and up and down procedure as we....  
 19 THE COURT: You don't have to -- usually we take a break  
 20 and don't have to keep moving it back (indiscernible).  
 21 Q Trooper, those are some of the things you recovered.  
 22 Anything else at the scene?  
 23 A At that scene after the tracks were photoed and the  
 24 pellets were recovered, some of the measurements of the  
 25 tracks were taken and we collected obviously blood and

- 354 -

1 hair samples.  
 2 Q Okay. Any indication of land travel to that kill site?  
 3 A No, sir.  
 4 Q The second scene, kill site number 2 as you've  
 5 identified it.  
 6 A Yes, sir.  
 7 Q Marked number 2 on the map.  
 8 A Yes, sir.  
 9 Q Did you also inspect that site that day? On the 28th?  
 10 A Yes, sir, I did. It was the next in order.  
 11 Q Okay. And can you tell the jury what you found at kill  
 12 site number 2?  
 13 A Kill site number 2 there were two sets of airplane  
 14 tracks landing and of the sites it had the most foot  
 15 travel. Near where the airplane had landed and turned  
 16 around somebody had got out, walked to where a wolf had  
 17 drug itself into a hole in the ice and then clawed for a  
 18 long period of time trying to get out of the ice hole as  
 19 it was wounded, judging by its tracks. They had landed,  
 20 finished it off and then drug the wet wolf back to the  
 21 airplane. That wolf had initially been shot probably a  
 22 hundred yards from where it eventually was finished off.  
 23 At the location where the wolf was initially shot the  
 24 wolf went down and then drug half of its body,  
 25 apparently the back half judging from the tracks, in a

- 355 -

1 zig zag pattern up a small icy side channel of the Swift  
 2 River. Each time the wolf would attempt to leave the  
 3 slough and go into the woods it had apparently too  
 4 difficult of a time dragging his back half, turned  
 5 around and went back down onto the slough leaving a very  
 6 distinctive zig zag bloody drag pattern until he then  
 7 attempted to cross a little creek that had open water  
 8 and he fell in an ice hole. My best description is just  
 9 a circular claw pattern dug pretty deep into the ice and  
 10 repeatedly while that wolf tried to claw out of that  
 11 hole in the ice, and then at some time somebody had  
 12 landed and finished him off and drug him back to the  
 13 airplane. The drag marks back to the airplane were very  
 14 distinct because they were icy like something wet had  
 15 been drug behind the person walking. At that scene,  
 16 along with the blood and hair samples there was also a  
 17 .223 shell casing found off to the side of the  
 18 footprints and the drag mark.  
 19 Q Okay. Was that seized?  
 20 A Yes, sir, it was.  
 21 MR. LEADERS: May I approach?  
 22 THE COURT: Uh-huh.  
 23 Q Exhibit 35, correct?  
 24 A Yes, sir.  
 25 Q Can you identify what that is?

- 356 -

1 A Yes, sir, this is a .223 shell casing with a distinctive  
 2 head stamped. It says 223 Rem and Wolf. And that is  
 3 the one that was found at the scene.  
 4 Q At the scene, kill scene number 2?  
 5 A Kill site number 2.  
 6 Q Exhibit number 4, that was admitted in evidence  
 7 yesterday.  
 8 A Yes, sir. Exhibit number 4 is a .223 shell casing with  
 9 the same distinctive head stamp, .223 Rem-Wolf.  
 10 Q Okay.  
 11 MR. LEADERS: The state seeks to admit Exhibit 35.  
 12 MR. ROBINSON: No objection.  
 13 MR. LEADERS: And seeks to....  
 14 THE COURT: 35.....  
 15 MR. LEADERS: And seeks to publish 35 and 4.  
 16 THE COURT: Any objection?  
 17 MR. ROBINSON: No objection.  
 18 THE COURT: Okay.  
 19 (Plaintiff's Exhibit 35 admitted)  
 20 (Pause)  
 21 Q Now were there any -- it sounds from what you observed  
 22 certainly there were no traps or snares, apparently  
 23 that....  
 24 A No, sir, there were no traps or snares at that site or  
 25 sign that there ever had been any.

- 357 -



1 Q How about at site number 1? We need to back up for a  
2 second.  
3 A Site number 1, absolutely no sign of any traps or snares  
4 or that there had ever been any.  
5 Q And at site number 1 could you tell how the wolf had  
6 been traveling prior to being shot?  
7 A He -- he traveled in an erratic pattern and it actually  
8 looked like the wolf had stopped at the time of  
9 shooting. Judging by the tracks it look like it was a  
10 large wolf that may have actually stopped, generally  
11 quartering broadside just prior to the shot. Wolves  
12 will sometimes do that, almost -- almost like the  
13 challenge that the big wolves don't always just run.  
14 They sometimes turn to kind of face you, and judging by  
15 that wolf track and how the -- the pellet marks were in  
16 conjunction with that track, I assumed that the -- the  
17 wolf at kill site 1 hadn't been -- hadn't been still  
18 running at the time he was shot. At kill site 2 the  
19 wolf appeared that it had been running all out at the  
20 time it was shot.  
21 Q Why is that?  
22 A The -- the tracks in the snow were spread out and  
23 distinctive and there were actually two or three other  
24 wolves traveling in close proximity to that wolf, and  
25 their tracks were erratic, as well, with abrupt

- 358 -

1 direction changes. A wolf in its normal course of daily  
2 business generally travels in straight lines, getting  
3 where he needs to go, so when you see a wolf track,  
4 specifically a running wolf track that comes to a stop  
5 and pivots and turns 180 or any abrupt direction change  
6 it's fairly indicative of being spooked by something,  
7 and in this case, judging by the lack of tracks on the  
8 ground, I would have to say an airplane.  
9 Q Okay. In fact, have you been involved in aerial taking  
10 of wolves?  
11 A Yes, sir I have.  
12 Q And what's been your involvement?  
13 A From the time I was a small boy I participated in land  
14 and shoot wolf hunting in -- mostly in game management  
15 units 21 and 19 with my father. And then as recently as  
16 -- actually from 1991 to 2004 I did not participate in  
17 any type of aerial or land and shoot wolf hunting, but  
18 in 2000 -- I can't remember if I was given a permit in  
19 -- the end of 2004 or the beginning of 2005 I did  
20 receive a aerial wolf hunting permit. Actually two  
21 permits. One as a pilot, one as a gunner for someone  
22 else for the program in 19-A.  
23 Q Okay. Not the local program here?  
24 A No, sir.  
25 Q Okay.

- 359 -

1 A I....  
2 Q And I guess your observations, were they consistent with  
3 what you've seen -- wolf behavior you've seen?  
4 A Yes, sir they are.  
5 Q If they're being chased from an airplane?  
6 A Yes, sir.  
7 Q Okay. Now kill site number 3. Any -- what did you  
8 observe there?  
9 A Kill site number 3 was the kill site that I opted not to  
10 land the state airplane at. I've got a state Supercub  
11 that I fly for my normal patrol duties and got to be  
12 fairly careful with it. This site was fairly limited in  
13 distance, with like I said, a big tree obstacle on one  
14 end and some open water on the other. That -- I just  
15 deemed it as too much of a risk with the state's  
16 airplane. So that's the site primarily that I had the  
17 helicopter come for was to help get me into that site.  
18 I had walked to that site the day before from farther  
19 but to work the scene we just landed right next to that  
20 site in the helicopter. At that site we found where the  
21 same type of ski tracks and tail wheel tracks were in  
22 the snow. A wolf had ran to that site and died. There  
23 was actually blood drips in the snow of the running wolf  
24 track leading up to that site. So we back tracked that  
25 wolf, I would estimate two to 300 yards, and found where

- 360 -

1 that wolf was initially shot from a very vertical angle.  
2 Q How could you tell very vertical angle?  
3 A The pellet pattern in the snow that was entered as the  
4 exhibit in the photograph showed a somewhat vertical  
5 angle, but not an acute vertical angle, judging by the  
6 direction the pellets entered the snow.  
7 Q You mean Exhibit 31 from site 1?  
8 A Yes, sir.  
9 Q Okay.  
10 A Whereas once we back tracked to this wolf, the wolf had  
11 made some abrupt direction changes and then we found  
12 some cardboard wadding from a -- from a shotgun shell in  
13 the snow, and then there were actually different sized  
14 buckshot pellets, copper plated number 4 buckshot  
15 pellets at a fairly vertical angle right down into the  
16 snow. Some of them were dug out of snow, probably 14,  
17 18 inches of snow and several inches almost straight  
18 down into some ice. And those were located -- the --  
19 the pellet pattern mark was located visually and then  
20 the pellets were recovered using a metal detector.  
21 Q Okay. Did you photograph those findings?  
22 A Yes, sir. Photos were taken at that scene.  
23 MR. LEADERS: May I approach?  
24 MR. ROBINSON: What's the kill site number?  
25 MR. LEADERS: This is kill site three.

- 361 -

1 (Whispered conversation)  
 2 Q Have you, again, I guess come up to the front of the  
 3 jury where they might be able to see what you're  
 4 depicting a little bit better. Here's two exhibits, 36  
 5 and 37. Please identify 36?  
 6 MR. ROBINSON: You want to admit them?  
 7 MR. LEADERS: 30 -- I'm just going to -- I'm going to  
 8 seek to have it admitted but I'm going to have him identify  
 9 what it is first.  
 10 MR. ROBINSON: They're (indiscernible)?  
 11 MR. LEADERS: No.  
 12 Q Go ahead.  
 13 A 36 is a photograph of a number buckshot pellet on some  
 14 snow crust. It was broken up snow crust with blood  
 15 drops in the snow next to it.  
 16 Q And it's a photograph from which kill site?  
 17 A Kill site number 3.  
 18 Q Okay. Go ahead. And that photograph, was that as you  
 19 saw the pellet on the scene or.....  
 20 A This.....  
 21 Q .....did you have to do some recovery?  
 22 A This -- this photograph was taken after the snow crust  
 23 was broken up on the scene, and it was not -- this  
 24 particular pellet wasn't dug out, this must have been a  
 25 low velocity pellet or something. As soon as we broke

1 the hard crust on the top of the snow this pellet became  
 2 visible so this photo was taken before we excavated the  
 3 other pellets out of the snow and ice farther down.  
 4 Q And the other pellets were excavated almost immediately  
 5 -- or directly below it or.....  
 6 A Fairly acute vertical angle, yes.  
 7 Q Okay.  
 8 MR. LEADERS: The state would seek to admit 36 and  
 9 publish that.  
 10 MR. ROBINSON: No objection.  
 11 THE COURT: Okay. 36 will be admitted. You can show  
 12 that to the jurors, give it to them.  
 13 (Plaintiff's Exhibit 36 admitted)  
 14 A And that's a different kind of buckshot pellet. It's  
 15 copper plated and it's -- as you'll see, it's a lot  
 16 smaller, as a.....  
 17 Q You're holding up Exhibit 37. What is that?  
 18 A Right. Exhibit number 37 is number 4 copper plated  
 19 buckshot pellets from kill site number 3, and these are  
 20 the ones that were recovered from the fairly acute angle  
 21 down in the snow and ice.  
 22 Q Now as part of the process, I mean you've talked about  
 23 different pellets recovered from different sites, et  
 24 cetera. Did you document those when you recovered them,  
 25 where they came from and report that?

1 A Absolutely; we documented where each pellets were  
 2 recovered and what type and size of pellets they were,  
 3 since there was different types used.  
 4 Q And did you document that how?  
 5 A Well, there was photographs taken and on the -- on the  
 6 -- each thing, as it was seized, each item at the  
 7 scenes, be it the pellets or the wads or anything that  
 8 we've looked at there so far, is documented on a -- on a  
 9 standard state trooper evidence tag and we document  
 10 where they came from and when.  
 11 Q Okay. So they weren't just put in these little ziplock  
 12 baggies when you recovered them?  
 13 A No, they're -- they're not just rattling around. They  
 14 were just placed in the bags actually last night in  
 15 preparation for today. I opened each of these bags  
 16 which had been sealed since the pellets were recovered  
 17 and placed them in these bags so that the jury could see  
 18 what we had.  
 19 Q So is that why you're confident as to identifying where  
 20 you obtained each of these items?  
 21 A Yes, sir.  
 22 MR. LEADERS: May Exhibit 37 be published?  
 23 MR. ROBINSON: Do you want it admitted?  
 24 THE COURT: You want to admit it first?  
 25 MR. ROBINSON: Oh, oh, it's already admitted.

1 THE COURT: Not.....  
 2 MR. LEADERS: Okay. It wasn't -- I seek to admit 37 and  
 3 then publish.  
 4 MR. ROBINSON: No objection.  
 5 THE COURT: Okay. It will be admitted and you can hand  
 6 it to the first.....  
 7 MR. LEADERS: Okay, so.....  
 8 (Plaintiff's Exhibit 37 admitted)  
 9 A I'd just note that those are a different type and size  
 10 of pellets.  
 11 Q At -- yeah, go ahead and be seated. Thank you. So at  
 12 kill site number 3 -- I mean I guess you've talked about  
 13 the almost vertical trajectory of the pellets. Anything  
 14 else that indicated this was an aerial killing?  
 15 A Just there was no -- once again, there was no trapping  
 16 or snaring evidence there whatsoever. There was no  
 17 footprints over to where the wolf was initially shot.  
 18 And -- and then the, you know, the airplane ski tracks  
 19 where the airplane recovered the wolf when it eventually  
 20 died. All led to indicate that it was taken aerially.  
 21 Q Okay. The -- do any further investigation that day?  
 22 A Yes, sir. We went from kill site number 3 we proceeded  
 23 on to kill site number 4, which is the one across, then  
 24 onto the south side of the Swift River and up in the  
 25 black spruce. And at kill site number 4 we found

1 airplane had landed and walked a short distance to  
 2 recover a wolf that had died in a bloody spot at the end  
 3 of his tracks. At -- at that scene photos were taken  
 4 and measurements and actual castings of some tracks.  
 5 Q Okay. Did -- were -- can you tell the method of travel  
 6 for the wolf up to the point it was shot or killed?  
 7 A That wolf was -- he wasn't running full out the whole  
 8 way from the river and he had changed directions a  
 9 couple of times. It -- it almost looked like he had  
 10 been shot at on other occasions before just where he  
 11 died, but I -- I couldn't access the area down where I  
 12 suspected that might have happened. We did find -- we  
 13 did find where he was shot the final time very near  
 14 where he died, just a few yards away. And.....  
 15 Q How were you able to find that -- the location he was  
 16 shot the final time?  
 17 A By back tracking the wolf's bleeding tracks and finding  
 18 pellet marks in the snow and then employing the metal  
 19 detector.  
 20 Q Did you recover any evidence?  
 21 A Yes, sir, there were pellets recovered at that scene  
 22 where that wolf was shot as well.  
 23 MR. LEADERS: May I approach with Exhibit 38?  
 24 THE COURT: Uh-huh.  
 25 Q Handed you Exhibit 38, what's that?

- 366 -

1 A Exhibit 38 is once again some -- some more of the last  
 2 type of pellets that were shown, the copper plated  
 3 number 4 buckshot pellets. These pellets were recovered  
 4 at kill site number 4 very near where that wolf died.  
 5 Q Is that the location -- that's the location as you've  
 6 identified, kind of the final shot?  
 7 A Yes, sir.  
 8 Q Okay. Could you determine the trajectory when you found  
 9 those?  
 10 A Due to the wind blown nature of the snow at that spot,  
 11 no, I can't really say as to the trajectory. They were  
 12 -- they were all -- they were all far enough down in the  
 13 snow that they weren't shot from horizontal. They were  
 14 shot at some -- something elevated beyond horizontal  
 15 because they were all recovered from down below the snow  
 16 crust level, but as far as how acute that shot was from  
 17 I can't say.  
 18 Q Okay.  
 19 MR. LEADERS: The state would seek to admit and publish  
 20 Exhibit 38.  
 21 MR. ROBINSON: No objection.  
 22 THE COURT: Okay. 38 will be admitted. You want to.....  
 23 (Plaintiff's Exhibit 38 admitted)  
 24 (Whispered conversation)  
 25 THE COURT: Yeah, hand that to Mr. Parker.

- 367 -

1 Q At this kill site, number 4, did you notice any signs of  
 2 traps or snares, or anything like that?  
 3 A No signs of any traps, snares or anything to indicate  
 4 anything other than an aerial take.  
 5 Q The -- any other areas you inspected on the 28th with --  
 6 what was it, Trooper Dobson and Trooper Roe(ph)?  
 7 A Trooper Dobson and Trooper Roe(ph). 28th. May I refer  
 8 to my notes real quick?  
 9 Q Did you take notes and write a report related to your  
 10 investigation.....  
 11 A Yes.  
 12 Q .....on the 28th?  
 13 A Yes, sir, I did.  
 14 Q You feel it would refresh your memory?  
 15 A Yes, sir, I do.  
 16 Q Is it (indiscernible).....  
 17 (Pause)  
 18 A The little -- the -- one area that we didn't talk about  
 19 as far as scene investigation on the 28th is what I  
 20 refer to as the staging area.  
 21 Q Where was the staging area located? You can use the  
 22 map.....  
 23 A The staging area is what I've got labeled as number 9.  
 24 It's relatively centrally located as far as the kills.  
 25 It's the spot where there were multiple sets of airplane

- 368 -

1 ski tracks and some blood in the snow. I spent time on  
 2 the ground trying to determine what had happened at  
 3 staging area number 9 and found where somebody had  
 4 walked around extensively in the woods and pulled some  
 5 old snares which had been hanging in there. The first  
 6 indication of that was the -- somebody was obviously  
 7 searching for snares that had been left there at some  
 8 time in the past. There were no -- I couldn't tell that  
 9 anyone had been there earlier in the winter before this  
 10 person had come to find these snares, and then when I  
 11 found the trees where the snares had been anchored with  
 12 number 9 wire -- you can tell where the trees had grown  
 13 and the wire -- wire marks were actually into the bark  
 14 of the trees where they had been removed, and I actually  
 15 found one old snare which was not active, it was closed.  
 16 But I found one old snare still hanging at that site.  
 17 So best as I could tell somebody had showed up there and  
 18 removed some snares and then had laid an animal out of  
 19 the airplane, and actually upon closer examination we  
 20 found some hair which appeared to be gray wolf hair, and  
 21 then the blood that was there. So those ski tracks were  
 22 photoed and measured there which showed the  
 23 consistence.....  
 24 Q Were they the same.....  
 25 A Yeah, they were consistent with the tracks at all of the

- 369 -

1 kill sites.  
 2 Q Did you do any further investigation in this case after  
 3 the 28th?  
 4 A Yes, sir, I did. One of the next phases was to apply  
 5 for search warrants for Trophy Lake Lodge.  
 6 Q Why Trophy Lake Lodge?  
 7 A Because of the close proximity to the kill sites, as  
 8 well as it's the location that had been listed as base  
 9 camp for Mr. Haeg, and I considered it likely that Mr.  
 10 Haeg was at Trophy Lake Lodge at the time.  
 11 Q Okay. The -- and why were you concerned with Mr. Haeg?  
 12 A Because after looking at the airplane ski and tail wheel  
 13 tracks closer on the 27th and 28th of March I believed  
 14 them to be consistent with tracks that would be made by  
 15 Mr. Haeg's Batcub, since I had had a good look at that  
 16 extra large tail wheel and his skis on the 21st while he  
 17 was in McGrath.  
 18 Q Where did you get the information about Trophy Lake  
 19 Lodge being associated with David Haeg?  
 20 A He listed it as his base of -- he listed McGrath/Trophy  
 21 Lake Lodge on one of the fish and game documents that I  
 22 had seen. Whether it was a sealing -- supplemental  
 23 sealing strip kit or his 19-D east predator control  
 24 permit. I don't recall. One of those two things he  
 25 listed that Trophy Lake Lodge was going to be his base

- 370 -

1 of operations.  
 2 Q Okay. And so you sought a search warrant for that?  
 3 A Yes, sir.  
 4 Q Did you receive one?  
 5 A Yes, sir, I did.  
 6 Q And what were you searching for? Or what did you apply  
 7 for a search warrant to search for?  
 8 A I applied for a search warrant for both November 4011  
 9 Mike, the Batcub, and then any wolf parts, hunting  
 10 equipment, trapping equipment, anything associated with  
 11 the take of wolves that -- that could be found there.  
 12 Q Okay. Did you actually serve that search warrant or  
 13 execute it?  
 14 A Yes, sir, I did.  
 15 Q When did you do that?  
 16 A I'd like to refer to my notes.  
 17 Q Okay. As to the specific date?  
 18 A Yes, sir.  
 19 Q Okay.  
 20 A (Pause)  
 21 (Whispered conversation)  
 22 A I believe that was March 31st that I applied with the  
 23 Aniak court for that.  
 24 Q Was it March 29th? Part of your report discusses  
 25 investigation in kill site number 4, correct?

- 371 -

1 A Yes, sir.  
 2 Q And doesn't it indicate after that -- following that  
 3 information, March 29th is when you sought the search  
 4 warrant?  
 5 A When we initially applied? I'd like to refer to this  
 6 exhibit. There was an additional application with the  
 7 -- through the Aniak court. (Pause)  
 8 MR. LEADERS: May I approach, Judge, to direct the  
 9 officer?  
 10 THE COURT: Uh-huh.  
 11 A (Indiscernible).....  
 12 Q Officer, does this appear to be a page out of your  
 13 report?  
 14 A Yes, sir, it is.  
 15 Q Following kill site investigation, kill site number 4,  
 16 does it indicate search warrant application?  
 17 A Yes, it does.  
 18 Q What date?  
 19 A 3-29 of 2004.  
 20 Q Okay. And does it indicate what the search warrant was  
 21 to search?  
 22 A Yes, sir. The lodge known as Trophy Lake Lodge and  
 23 November 4011 Mike.  
 24 Q Which was the plane, correct?  
 25 A Yes, sir.

- 372 -

1 Q Okay. So the 29th sought a warrant, and then you went  
 2 out and served that warrant or.....  
 3 A Yes, sir.  
 4 Q .....is that correct? Can you explain where Trophy Lake  
 5 Lodge is?  
 6 A Might I use the map?  
 7 Q Sure.  
 8 A It's -- Trophy Lake Lodge would be southeast of McGrath,  
 9 right here in the foothills of the Alaska Range.  
 10 Q Okay. So southeast of McGrath, south -- south or  
 11 southeast of the control area, correct?  
 12 A Yes, sir. Southeast of the control area.  
 13 Q Slightly north and east then of the kill sites you  
 14 investigated?  
 15 A Yes, sir.  
 16 Q And did you take any photographs of anything you  
 17 observed out at Trophy Lake Lodge?  
 18 A Yes, sir, photos were taken of the.....  
 19 (Whispered conversation)  
 20 Q Go ahead.  
 21 A Photos were taken of the carcass pile from the air and  
 22 from the ground that contained wolf carcasses near the  
 23 lodge. Photos were also taken of the lodge itself and  
 24 of items seized such as Ruger mini 14 magazines  
 25 containing .223 Rem-Wolf ammunition.

- 373 -

1 MR. LEADERS: May I approach with the exhibits?  
 2 THE COURT: Yes.  
 3 MR. LEADERS: Thank you.  
 4 Q I guess handing you Exhibits 39 through 42. Have you  
 5 look at those, and do you -- can you -- do you know what  
 6 they are?  
 7 A Yes, sir.  
 8 Q What are they?  
 9 A Number 39 is one of the newer buildings at Trophy Lake  
 10 Lodge which sits kind of on top of a hill, and there was  
 11 blood and hair and bloody paper towels outside the  
 12 lodge.  
 13 Q Outside the lodge -- was that kind of like the main  
 14 building for the lodge or why that (indiscernible).....  
 15 A It appeared that it was the building that had been being  
 16 used the most this winter.  
 17 Q Okay. Were there more buildings though then that at the  
 18 location?  
 19 A Yes, sir. Numerous outbuildings.  
 20 Q Okay. Were those searched also?  
 21 A Yes, sir.  
 22 Q Okay. And did you find anything at the lodge that I  
 23 guess you could associate with the kill sites that you  
 24 had observed the few days before?  
 25 A Yes, sir. First of all the airplane ski tracks on the

- 374 -

1 lake right in front of the lodge were the -- the same  
 2 type of airplane ski tracks which.....  
 3 Q That same unique tail -- or the ski configuration.....  
 4 A Yeah, the tail wheel pattern in -- in conjunction with  
 5 the ski tracks. And also the -- the fresh wolf blood  
 6 and hair outside the lodge had the appearance that  
 7 wolves had been being skinned either inside or near the  
 8 lodge. It was clean inside but there was blood and  
 9 bloody paper towels and wolf hair, bits of fat, and that  
 10 kind of stuff laying right in front of the front door of  
 11 the lodge off to the side of a porch, or a step there.  
 12 Inside the lodge we found Ruger mini 14 magazines which  
 13 is -- well, this is marked as Exhibit 40. It's three  
 14 different sizes of Ruger mini 14 magazines. There's 30  
 15 round magazines taped together that were fully loaded  
 16 with .223 Rem-Wolf ammunition.  
 17 Q Similar to the casings that you sent around earlier,  
 18 both Exhibit 4 and Exhibit 35?  
 19 A Yes, sir, the same type of head stamp and the casing.  
 20 And then the 20 round magazine and a smaller 10 round  
 21 magazine, also for the Ruger mini 14, and having .223  
 22 Rem-Wolf ammo in all three sets of magazines.  
 23 Q Okay. Did you find any actual wolf hides, carcasses,  
 24 anything like that?  
 25 A We found carcasses in a pile right -- right down the

- 375 -

1 hill behind the lodge with snowmachine tracks connecting  
 2 the carcass pile and the lodge. This is marked as  
 3 State's Exhibit 41, and it's an aerial photograph of a  
 4 pile of partially eaten carcasses, wolf carcasses, which  
 5 are connected to the lodge by snowmachine tracks.  
 6 Q Okay.  
 7 A State's Exhibit number 42 is a closeup photo of some of  
 8 the carcasses from that carcass pile.  
 9 Q Now as with the site -- the kill site investigations,  
 10 I'm assuming there were additional things observed,  
 11 photographs taken, is that correct?  
 12 A Yes, sir, photographs taken.  
 13 Q Trying to limit for the trial purposes what was most  
 14 relevant?  
 15 A Yes, sir.  
 16 Q Okay. Now what did you do with any of these items that  
 17 you observed?  
 18 A The -- the .223 Ruger mini 14 magazines that were  
 19 seized, or that were observed in the lodge were seized  
 20 as evidence. Blood and hair samples were seized as  
 21 evidence, and the carcasses, from the carcass pile, were  
 22 actually seized as evidence and brought back to McGrath.  
 23 Q What was the purpose of seizing of those carcasses?  
 24 A Further photographs were taken and I wanted to go over  
 25 the carcasses with a metal detector in a controlled

- 376 -

1 environment and identify how the wolves had died.  
 2 Q Okay. Anything else there at the search of the lodge?  
 3 A No, photographs were taken of the ski tracks on the lake  
 4 in front of the lodge also.  
 5 Q And those would have been the same as what you -- the  
 6 representative sample you've sent around?  
 7 A Yes, sir.  
 8 Q Okay. After searching the lodge what did you do?  
 9 A Well, after searching the lodge we -- we failed to make  
 10 contact with Mr. Haeg or see November 4011 Mike at the  
 11 lodge.  
 12 MR. LEADERS: One second before we go -- I'll seek to  
 13 admit Exhibits 39 through 42.  
 14 MR. ROBINSON: No objection.  
 15 THE COURT: Okay. 39, 40, 41 and 42 will be admitted.  
 16 (Plaintiff's Exhibits 39-42 admitted)  
 17 MR. LEADERS: And seek to publish.  
 18 THE COURT: Any objection to the publication?  
 19 MR. ROBINSON: No.  
 20 MR. LEADERS: Will you hand that.....  
 21 THE COURT: Okay. If you want to hand those photos to  
 22 Mr. Parker, please.  
 23 MR. LEADERS: I'll have you go ahead and proceed with  
 24 your testimony as those are being passed around.  
 25 Q What did you do next?

- 377 -

1 A Additional search warrants were applied for for the Haeg  
 2 residence in Soldotna, as well as November 4011 Mike.  
 3 Q Okay. And did you participate -- and what was your  
 4 participation in those search warrants?  
 5 A Application for the warrants.  
 6 Q You provided the information to the court?  
 7 A Yes, sir.  
 8 Q Okay. And were those warrants actually granted, issued?  
 9 A Yes, sir, they were.  
 10 Q What was done with them after they were granted?  
 11 A I believe the -- the warrants were executed by the  
 12 Soldotna ADF&G troopers and U.S. Fish and Wildlife  
 13 Service.  
 14 Q Did you relay the warrants and the information sought  
 15 down to the troopers?  
 16 A Yes, sir, I did.  
 17 Q You've heard a couple of them testify, Trooper Mountain,  
 18 Trooper Godfrey?  
 19 A Yes, sir.  
 20 Q Okay. And those were based on the warrants you had  
 21 obtained?  
 22 A Yes, sir.  
 23 Q Their testimony?  
 24 A Yes, sir.  
 25 Q Now beyond -- or other than these other warrants that

- 378 -

1 were being down in Soldotna, what -- was there any  
 2 further investigation that occurred?  
 3 A On the 2nd of April myself and Sergeant Dobson went back  
 4 to -- back to the moose kill site to actually walk in  
 5 and see what -- what traps or snares were set there, and  
 6 to basically do an investigation of that scene.  
 7 Q Okay. What did you observe when you went back to the  
 8 moose kill site?  
 9 A When I flew -- when I flew over before I even landed  
 10 there were now two wolverines caught in snares at the  
 11 moose kill site. One alive and I believe one dead. And  
 12 then there was a gray wolf, a small gray wolf caught  
 13 right near the moose, which was dead. I could also see  
 14 from the air that there was a Raven in a leg hold trap.  
 15 We landed and walked in there and started seeing -- the  
 16 -- the first thing we saw was a sprung trap where an  
 17 animal had gotten in and then made a large catch circle,  
 18 chewed down a lot of trees and stuff, and then somehow  
 19 had gotten out of the trap. We started then along the  
 20 different side trails seeing wolf snares, numerous wolf  
 21 snares. At this point -- on April 2nd the snaring  
 22 season for wolves was still open, so the snares at that  
 23 time were legal. Leg hold trapping, the last day of  
 24 legal leg hold trapping for wolves or wolverines was  
 25 March 31st. As -- as we came up out of the little side

- 379 -

1 slough and got closer to the moose kill I started to see  
 2 leg hold traps still set. They're known as MB-750 traps  
 3 are used a lot in Alaska now as a wolf trap. There were  
 4 six different MB-750 wolf traps located which were still  
 5 active and functional and covered with wax paper. And  
 6 then like I said, there was another one that was sprung,  
 7 another one with a Raven.  
 8 Q And those leg hold traps that were not legal to be set  
 9 at that time?  
 10 A They were not legal to be set. They were photographed  
 11 and actually those six leg hold traps which were still  
 12 actively trapping were seized as evidence. We didn't  
 13 follow every one of the trails down where all the snares  
 14 were. You could -- the wolves had major trails and you  
 15 could -- you could stand near the moose kill and look  
 16 down these lanes through the -- it was kind of mature  
 17 alder and cottonwood and you could look down through  
 18 these lanes where the wolves had been traveling and you  
 19 could actually see that there were multiple snares on  
 20 each of these wagon wheel wolf trails. That's -- when  
 21 you've got a moose kill you end up with a large number  
 22 of trails from the different animals that are feeding on  
 23 the moose and this was no exception. In fact in this  
 24 case there were probably more trails than usual. The --  
 25 it looked like a lot of wolverines had been coming in.

- 380 -

1 Wolves and foxes had still been coming in. And any --  
 2 but at any rate, we left the snares -- the operational  
 3 snares that were there were left operational because  
 4 they were still legal at the time. The two wolverines  
 5 were seized as evidence because they weren't legal. It  
 6 was -- wolverines -- wolverine season ends March 31st.  
 7 It was now April 2nd and these wolverines were caught.  
 8 Whether or not they were the target species or  
 9 incidental take, can't say, but they -- they couldn't  
 10 legally be possessed by whoever had the trap site.  
 11 For....  
 12 Q Did you pursue any charges then against those -- for  
 13 those wolverines?  
 14 A No, we did not.  
 15 Q And why is that?  
 16 A Because they could very well have been incidental take,  
 17 which does happen with wolf trapping.  
 18 Q Okay. So you made the assumption those -- or gave the  
 19 benefit of the doubt that those leg holds were set out  
 20 for wolves as opposed to wolverines?  
 21 A Yes.  
 22 Q Okay. Now did -- actually I guess I need to back up for  
 23 one moment. At the carcass piles, were there any --  
 24 when you were there, had there been any wol -- or traps  
 25 or anything set around that?

- 381 -

1 A Absolutely. At the carcass piles by the lodge there was  
 2 numerous traps set for wolverines. There were sections  
 3 of wolf carcass cut in thirds or quarters and then in  
 4 two spots they had been shoved down in snowbanks and  
 5 they were guarded by what's called a 330 ConaBear body  
 6 grip trap, and that's commonly used for wolverines in  
 7 Alaska. And then other parts of the wolf carcasses were  
 8 wired up in spruce trees with leg hold traps set  
 9 underneath them.  
 10 MR. LEADERS: May I approach?  
 11 THE COURT: Uh-huh.  
 12 MR. LEADERS: Exhibit 43.  
 13 (Whispered conversation)  
 14 MR. LEADERS: 43.  
 15 MR. ROBINSON: Photo of which -- leg hold traps at the  
 16 lodge? At lodge?  
 17 MR. LEADERS: Yeah, the.....  
 18 A This one's at.....  
 19 Q Would you identify what that photo is.....  
 20 A Prosecution Exhibit number 43 is a picture of me holding  
 21 up a trap which is near the lodge at a spot where there  
 22 was two whole wolf carcasses at the base of spruce tree  
 23 for bait, and then a -- one of these MB-750 wolf traps  
 24 was there. Actually on this day this trap was already  
 25 sprung. It had caught a wolverine and somebody had come

- 382 -

1 and got the wolverine out and the trap was still laying  
 2 there sprung. This trap was actually seized as a  
 3 representative sample from the lodge because of a unique  
 4 attaching fashion that these traps have. There's a lot  
 5 of ways to attach a trap to a tree. These traps, which  
 6 were near Mr. Haeg's lodge, had a large length of chain  
 7 and then had a dog quick-clip at the end of the chain.  
 8 The chain was run around the tree, tied in a half inch  
 9 and then clipped back to the loop on the chain. It was  
 10 something that in my lifetime of trapping experience in  
 11 Alaska I hadn't ever seen before. Certainly in western  
 12 Alaska it's not a common thing, and so it was unique.  
 13 This -- so this trap was seized and actually all six  
 14 traps that were seized at the moose kill site were  
 15 attached to the tree in the same fashion as this one  
 16 that was right near the lodge.  
 17 Q All right, but at the time that they're -- when was that  
 18 trap seized?  
 19 A This trap was seized April 2nd.  
 20 Q Okay. At that time it was -- it wasn't active though,  
 21 it wasn't.....  
 22 A It was not. It -- the -- the photo will show that a  
 23 wolverine has recently been dispatched. There's very  
 24 fresh blood splattered about on the top of the snow and  
 25 then a blood hole melted down in the snow where the

- 383 -

1 wolverine died after being shot, and the photo shows  
 2 very well the catch circle where the wolverine had done  
 3 his thing until he was dispatched.  
 4 Q Done his thing? What do you mean?  
 5 A Spun around, clawing and tearing up the snow as far as  
 6 he could reach on the trap chain until he was  
 7 dispatched.  
 8 Q Okay.  
 9 MR. LEADERS: May -- seek to admit Exhibit 43.  
 10 MR. ROBINSON: Yeah, admit it without (indiscernible).  
 11 (Whispered conversation)  
 12 MR. ROBINSON: No objection.  
 13 THE COURT: Okay. 43.....  
 14 MR. LEADERS: Judge.....  
 15 MR. LEADERS: 43 is admitted.  
 16 (Plaintiff's Exhibit 43 admitted)  
 17 MR. LEADERS: May it be published as well, Judge? May it  
 18 be published as well?  
 19 THE COURT: Any objection to that, Mr. Robinson? To the  
 20 publication?  
 21 MR. ROBINSON: No, I said no objection.  
 22 THE COURT: Okay.  
 23 Q And while that's being passed around, Trooper, I guess I  
 24 kind of digressed to some extent from what we were  
 25 talking about, the moose kill site.

- 384 -

1 A We'll go back to the moose kill site. So the six MB-  
 2 750's that were still actively trapping were seized.  
 3 Q And let me ask. The six MB-750's, are those similar to  
 4 what is in this photograph?  
 5 A The same trap, same chain set up, same dog clip at the  
 6 end.  
 7 Q Okay. So the -- but at the moose kill site, that's the  
 8 same day, April 2nd?  
 9 A Yes, sir.  
 10 Q At the moose kill site and at the lodge?  
 11 A Yes, sir.  
 12 Q Okay. The one at the lodge isn't active but the one at  
 13 the moose kill sites, those are?  
 14 A Yes, sir.  
 15 Q Okay. And there were six active?  
 16 A Yes, sir.  
 17 Q What else was observed there? You talked about some  
 18 wolverines, is that correct?  
 19 A Yes, sir. Which were both seized just -- there's --  
 20 there's not a.....  
 21 Q Okay. Not a charge relating to them but they were  
 22 seized because they couldn't be taken at that time?  
 23 A Yes, sir. Like -- if a wolverine is taken --  
 24 incidentally normally the -- the wolf trapper has to  
 25 turn it in, if it's after wolverine season closes. And

- 385 -

1 that's what we would (indiscernible). If they don't  
 2 turn it in then -- then it's chargeable, but.....  
 3 0036  
 4 (Tape change)  
 5 4MC-05-13/Side A  
 6 0036  
 7 THE COURT: Go ahead, Mr. Leaders.  
 8 (Whispered conversation)  
 9 MR. LEADERS: Oh, they're discussing.....  
 10 MR. ROBINSON: 30 -- 44 is going to be.....  
 11 (Whispered conversation)  
 12 MR. LEADERS: May I approach the witness?  
 13 THE COURT: Yes.  
 14 Q Exhibits 44 and 45 are being handed to you, can you  
 15 identify first 44?  
 16 A Exhibit number 44 shows a live wolverine caught by the  
 17 neck in a wolf snare which hadn't properly locked so it  
 18 hadn't killed the wolverine, so he was still very much  
 19 alive.  
 20 Q Okay.  
 21 A I think that's one of the wolverines that was seized.  
 22 Q Okay. And what is the next exhibit, 45?  
 23 A Exhibit 45 shows a set MB-750 wolf trap covered with wax  
 24 paper.  
 25 Q Okay.

- 386 -

1 A And that is from -- that was one of -- this is one of  
 2 the traps from the moose kill site with the same chain  
 3 and dog clip set up.  
 4 Q And so it's set and active at that time?  
 5 A Yes, sir, it is.  
 6 Q And that was after open season for leg hold traps?  
 7 A Yes, sir.  
 8 Q Were any of the leg hold traps or snares or anything  
 9 like that actually seized from that site?  
 10 A Yes, sir, the six MB-750's which were actively trapping  
 11 at the time were seized, as well as one representative  
 12 sample of the snares because if you'll recall earlier on  
 13 I said I had a snare from the staging area. An old  
 14 snare that I found on a tree at the staging area. I  
 15 seized one snare from this moose kill site as a  
 16 representative sample that was the same type of  
 17 attaching wire, the same type of lock, the same type of  
 18 cable, a very similar snare. Just to show the similar  
 19 snares at the two sites.  
 20 (Whispered conversation)  
 21 MR. LEADERS: May I approach?  
 22 THE COURT: Uh-huh.  
 23 Q Exhibit 46. I'll let you look at that and just.....  
 24 (Whispered conversation)  
 25 MR. LEADERS: May I -- I'll seek to admit 44 and 45 and

- 387 -

1 publish if they're admitted.  
 2 MR. ROBINSON: No objection.  
 3 THE COURT: Okay. 44 and 45.....  
 4 MR. ROBINSON: And the leg hold trap is from where? I  
 5 need to know where this thing is.....  
 6 MR. LEADERS: I'll have the officer -- or the trooper  
 7 testify, or identify.  
 8 Q Where was this item.....  
 9 A From the moose kill site.  
 10 THE COURT: And what is that?  
 11 A Leg hold trap.  
 12 THE COURT: Thank you.  
 13 (Plaintiff's Exhibits 44 & 45 admitted)  
 14 Q That's an MB-750 that you have identified as being one  
 15 of the photos?  
 16 A Yes, sir.  
 17 Q Okay. Do you want to show us what's unique about this  
 18 or what was.....  
 19 A Exhibit number 46 and just the -- the set up -- wolf  
 20 trappers set up their traps differently. A lot of guys  
 21 use different set ups between cable and chain and  
 22 swivels. This trap has a short bit of chain centrally  
 23 located instead of off to one side of the trap. It's  
 24 got a beefed up center plate with the central deal.  
 25 It's got a double welded box swivel right here so the

- 388 -

1 chain doesn't kink up and break when an animal is  
 2 caught. It's got -- it must be 10 or 12 feet of chain  
 3 and then the most unique thing about this particular set  
 4 up is the dog clip at the end. All six traps seized at  
 5 the moose kill site had about roughly the same amount of  
 6 chain and then a dog clip at the end. And like I said,  
 7 they were all attached the same, around the tree, up  
 8 through in a half inch and clipped to itself. A real  
 9 fast way, and probably a pretty strong way to attach a  
 10 trap. It's just not something that I have seen before.  
 11 Q But you also saw that at Mr. Haeg's lodge?  
 12 A I also saw that at the lodge on -- on the same kind of  
 13 trap, same set up there.  
 14 Q Now there's, I guess, some covering on the trap. Is  
 15 that.....  
 16 A This is wax paper. That's the film that you see  
 17 covering the trap in the photo. A lot of trappers use  
 18 wax paper to keep the trap from frosting up and becoming  
 19 non-functional due to too much frost under the pan or  
 20 freezing snow and ice conditions that can hamper the  
 21 functioning of the trap. The wax paper basically keeps  
 22 it going.  
 23 Q At the time you seized it it was an open active trap, is  
 24 that correct?  
 25 A Yes, sir, it was.

- 389 -



1 Q Of course it's not now?  
 2 A No, sir, it's not. We could make it that way if anybody  
 3 needed it that way in a hurry.....  
 4 THE COURT: No, please don't.  
 5 Q That's fine.  
 6 MR. LEADERS: Exhibit 46, the state would seek to have  
 7 admitted.  
 8 THE COURT: Any objection to 46?  
 9 MR. ROBINSON: No.  
 10 MR. LEADERS: I won't -- I don't think I'll  
 11 physically.....  
 12 THE COURT: 46 will be admitted.  
 13 (Plaintiff's Exhibit 46 admitted)  
 14 MR. LEADERS: .....publish that or pass it around at this  
 15 time.  
 16 THE COURT: Why don't you set it on the shelf there  
 17 behind, if you would.  
 18 (Whispered conversation)  
 19 MR. LEADERS: I guess (indiscernible).  
 20 THE COURT: It's going to be a while yet.  
 21 MR. LEADERS: There's -- I think if another break this  
 22 would be appropriate to.....  
 23 THE COURT: Okay. Let's come back in about 15 minutes.  
 24 Or not about. We'll come back in 15 minutes. Let's start at  
 25 quarter until. And if you're going to go get coffee, make

- 390 -

1 sure you take a list of everybody that wants.....  
 2 UNIDENTIFIED JUROR: Yeah, we'll bring.....  
 3 (Off record)  
 4 THE COURT: We're back on record. Mr. -- Trooper  
 5 Gibbens, you're still under oath.  
 6 A Yes, Your Honor.  
 7 THE COURT: Go ahead Mr. Leaders.  
 8 MR. LEADERS: Just -- thank you.  
 9 Q When we I guess left -- left off, we were talking about  
 10 you seized the leg hold trap from the moose kill site?  
 11 A Yes, sir.  
 12 Q And anything else there at the moose kill site that was  
 13 relevant.....  
 14 A Relevance.  
 15 Q Relevance, thank you. On April 2nd?  
 16 A Just that the ski tracks, once again, were the same, you  
 17 know.....  
 18 Q Those hadn't changed, right? Those are no new ski  
 19 tracks.....  
 20 A Uh-huh (Affirmative).  
 21 Q .....or anything?  
 22 A No. Nobody -- it appeared to me that no one had been  
 23 there since I overflowed the spot on the 27th for the very  
 24 first time, so the.....  
 25 MR. ROBINSON: Oh, but I thought you overflowed it on the

- 391 -

1 26th?  
 2 A Not the moose kill. On the night of the 26th all I flew  
 3 was where they landed and checked track direction.  
 4 Q Okay. So -- but you were at the moose kill site on the  
 5 27th of March? And that.....  
 6 A Yes, sir, that's the first time I overflowed it, and.....  
 7 Q You're back about five or six days later on the 2nd of  
 8 April?  
 9 A Right.  
 10 Q And you don't notice any new tracks?  
 11 A No new tracks. There's more critters there, along with  
 12 the critters that were already there and caught, so --  
 13 yeah, it appears nobody else has been there. The raven  
 14 is turned loose out of the trap. He's still mostly  
 15 happy and healthy, so he goes away.  
 16 Q Okay. The -- did -- what other investigation did you  
 17 do?  
 18 A After -- after -- after the moose kill site on April 2nd  
 19 myself and Sergeant Dobson.....  
 20 Q It's actually -- you go to Trophy Lake Lodge, right? We  
 21 started to talk about.....  
 22 A We went -- we went to Trophy Lake Lodge to see if --  
 23 actually I had seen -- when we served the search warrant  
 24 a couple of days previously at Trophy Lake Lodge I had  
 25 seen a wolverine in a leg hold trap near the lodge, and

- 392 -

1 one of the things we wanted to do was go to the trap  
 2 sites near Trophy Lake Lodge and insure that there were  
 3 not still active traps and if that wolverine was there  
 4 and was in a leg hold trap, the wolverine and the trap  
 5 were going to be seized. Upon getting there I could see  
 6 from the air that that wolverine had been removed from  
 7 that trap. He had been dispatched at some point between  
 8 the 31st and April 2nd. While we were up at that trap  
 9 site I discovered something I couldn't see earlier from  
 10 the air and that was that there were two whole wolf  
 11 carcasses that hadn't been chewed on by anything.  
 12 Skinned wolf carcasses minus the head, feet and tail.  
 13 But -- what's called a quick skin, wolf carcass. There  
 14 were two of them at the base of the spruce tree at the  
 15 wolverine trap site on the photograph we've already  
 16 circled, and.....  
 17 Q That was Exhibit 43, correct?  
 18 A Actually I don't have a list.  
 19 Q Is this the (indiscernible)?  
 20 A Yes -- yes, sir, this is 43 and this is where the two  
 21 pretty intact skinned wolf carcasses were found.  
 22 Whereas.....  
 23 Q Where are they? Can you point them out.....  
 24 A They -- they are right at the base of this kind of bushy  
 25 little spruce tree. They weren't real visible from the

- 393 -

1 air, but once we got up there from the ground they were  
 2 stacked one on top of each other. The top one had a  
 3 little bit of the meat removed from the neck by  
 4 scavengers. Other than that it was intact and the  
 5 bottom one was unscavenged at this point. So these --  
 6 these were pretty -- you know, I mean they were in good  
 7 condition as skinned carcasses go, like in comparison to  
 8 the ones at the carcass pile that the ravens, foxes,  
 9 wolverines, everything had been chewing on. These  
 10 carcasses were placed here for bait, and a wolverine got  
 11 caught, but apparently he was preoccupied with other  
 12 things and didn't sit down and feast on them. So these  
 13 carcasses were both seized from this scene. There was  
 14 what appeared to be pellet trauma to the carcasses  
 15 visible from the outside, so they were both seized to be  
 16 taken back to McGrath and necropsied at a later date.  
 17 Q And that's when you also seized the trap....  
 18 A That's when we seized this trap from the same spot, as  
 19 the representative sample.  
 20 Q Okay. The -- now I guess you said there -- the  
 21 carcasses were seized in order to be necropsied.  
 22 A Yes, sir.  
 23 Q What do you mean?  
 24 A I wanted to get the carcasses to McGrath, get them  
 25 thawed out because at this time they were frozen. And

- 394 -

1 then go over them, both with photographs and then with a  
 2 metal detector and see if we could positively identify  
 3 how they died.  
 4 Q Okay. Was it just those two carcasses there that you  
 5 intended to do this with?  
 6 A No, sir, we intended to do that with the carcasses that  
 7 were seized on the day of the Trophy Lake Lodge search  
 8 warrant execution. So I had a number of carcasses and  
 9 parts of carcasses already seized and transported to  
 10 McGrath and -- in the evidence that hadn't been  
 11 necropsied yet. And when I say parts of carcasses, part  
 12 of the reason that I had some sections of carcass was  
 13 like I said earlier, the wolves had been cut up to be  
 14 used for wolverine bait, so they had -- they had been  
 15 chopped it looked like with an axe after they had frozen  
 16 into halves or thirds and then used as wolverine bait,  
 17 so we had a couple of pieces like that, and then several  
 18 more intact carcasses like these.  
 19 Q Okay. So did you, in fact, perform necropsies on each  
 20 of these carcasses?  
 21 A Yes, sir, I did.  
 22 Q When did you do that?  
 23 A I believe it was April 6th.  
 24 Q And what's -- what -- where did you do it?  
 25 A Did it on a snowy area on the east ramp of the McGrath

- 395 -

1 airport.  
 2 Q Okay. And I guess what exactly did you do? What's a  
 3 necropsy?  
 4 A First I thaw the carcasses out overnight, and then one  
 5 by one took them out, photographed them, and then used a  
 6 metal detector to narrow down the search area on each  
 7 individual carcass for where I was going to look for  
 8 pellets. And then once I got a hit, that's an audible  
 9 hit with a metal detector, it gives a beeping sound if  
 10 you go across some type of metal. Once I get that I'd  
 11 start sectioning down that part of the wolf until I  
 12 located a pellet or multiple pellets.  
 13 Q Okay. And how many wolf carcasses in total did you  
 14 necropsy?  
 15 A I think we generally had six.  
 16 Q Okay. And did you find anything in these various wolf  
 17 carcasses?  
 18 A Yes, sir. We found pellets in most of them and  
 19 different sized -- different size and type pellets in  
 20 them. Actually the pellets were consistent with the two  
 21 different types of pellets we found at kill sites one  
 22 through four. And also we found an empty 12 gauge  
 23 shotgun hull. That's the fired shell casing from a 12  
 24 gauge shotgun in the stomach of one of the wolves with a  
 25 couple bite marks on it.

- 396 -

1 Q Okay. Did you document and record, you know, where the  
 2 various carcasses had come from?  
 3 A Yes, sir. When the carcasses were seized they were  
 4 labeled with evidence tags as to where they were seized  
 5 from. Example would be carcass pile, wolf one, would be  
 6 a way that -- you know, because there were several  
 7 wolves in the carcass pile, and so that's how those were  
 8 labeled. And then, you know, wolverine trap site three,  
 9 wolf one and two would be these two whole wolf carcasses  
 10 that were stacked on top of each other as bait. So the  
 11 carcasses were kept separate and the pellets or other  
 12 evidence recorded out of each carcass was labeled as it  
 13 was recovered and kept separate from each other. They  
 14 were sealed up in envelopes or bags and handled as  
 15 evidence with item numbers and evidence tape.  
 16 Q Okay. Now why don't we discuss that. Let's talk about  
 17 -- I'm going to hand you some exhibits.  
 18 (Whispered conversation)  
 19 (Pause)  
 20 A Scot, your sticker came off of that one and fell on the  
 21 floor.  
 22 MR. LEADERS: Thank you.  
 23 (Whispered conversation)  
 24 Q Officer, I'm handing you a bunch of exhibits, we'll go  
 25 through them one at a time and you can identify what

- 397 -

1 they are, if you would.  
 2 A Yes, sir.  
 3 THE COURT: Go ahead.  
 4 Q Let's start with 47 there, it's one.....  
 5 A Item number 47 is some copper plated number 4 buckshot  
 6 pellets out of wolf number 1 at the carcass pile.  
 7 Q Okay. And that was found during the.....  
 8 A During the necropsy.  
 9 Q .....necropsy that you performed? Okay.  
 10 A These were found, yes.  
 11 Q Okay. And where were they found in the wolf?  
 12 A (Indiscernible). I can't say for sure on that one.  
 13 Q Okay. Fair enough. The -- but they were recovered from  
 14 that wolf carcass?  
 15 A From the wolf carcass, yes, sir.  
 16 Q Okay. The next exhibit?  
 17 A Exhibit 48, this is one double-ought buckshot pellet  
 18 found out of the neck of wolf number 2 out of the  
 19 carcass pile.  
 20 Q And the carcass pile, that was the pile we saw the  
 21 photographs from afar and then close up of some  
 22 carcasses at Mr. Haeg's lodge?  
 23 A And half of the carcasses were pretty well scavenged.  
 24 Q Okay. Pretty well eaten up. Okay.  
 25 A Right.

- 398 -

1 Q All right.  
 2 A This was lodged in a vertebra in the top of the neck  
 3 on.....  
 4 Q One of those wolves?  
 5 A .....wolf number 2 out of the carcass pile.  
 6 Q Okay.  
 7 A Exhibit number 49 is three number 4 buckshot pellets,  
 8 one of which is grossly deformed. These pellets came  
 9 out of wolverine trap one at the lodge. This was one of  
 10 the wolf carcasses used for wolverine bait.  
 11 Q One of those that we saw in that most recent photo that  
 12 you recovered -- on number 3?  
 13 A No, sir. The -- this -- this is.....  
 14 Q Okay.  
 15 A .....out of one of wolverine traps on the other side of  
 16 the lodge.  
 17 Q Okay. So there were more wolverine traps with wolf  
 18 carcasses being used as bait?  
 19 A Yes, sir. At a minimum -- at a minimum four wolverine  
 20 trap sites with wolf meat for bait at the -- right near  
 21 the lodge. Exhibit number 50, these are number 4  
 22 buckshot pellets and these are out of one of those  
 23 intact skinned wolf carcasses from the photograph that  
 24 we saw, the two carcasses stacked on each other under  
 25 the spruce tree. This is going to be -- we call that

- 399 -

1 wolverine trap site three, wolf one.  
 2 Q Okay.  
 3 A Specifically one of those two wolf carcasses had very  
 4 visible pellet wounds entering the carcass right along  
 5 both sides of the spine towards the rear end of the  
 6 wolf, indicative of a aerial shot, and that's what had  
 7 us seize those two carcasses in the first place. Number  
 8 51 is two flattened out copper plated number 4 buckshot  
 9 pellets out of the second wolf at that site. Number 52  
 10 is a Winchester brand fired 12 gauge hull, chewed up and  
 11 recovered out of the stomach of wolf number 1 out of the  
 12 carcass pile. That's one of the same carcasses that we  
 13 found pellets in the carcass but also somehow that got  
 14 into that wolf's stomach.  
 15 THE COURT: I'm sorry, which wolf was that in?  
 16 A Wolf one, carcass pile.  
 17 THE COURT: Okay. Thank you.  
 18 Q And was that shell in -- similar to any other shells  
 19 found during this investigation?  
 20 A Yes, it was. It was similar to loaded ammunition which  
 21 was recovered during one of the search warrants.  
 22 Q Okay, which one?  
 23 A The search warrant that was executed at the Haeg  
 24 residence and hangar in Soldotna.  
 25 Q Okay.

- 400 -

1 MR. LEADERS: The state would seek to have admitted  
 2 Exhibits 47 through 51.  
 3 MR. ROBINSON: No objection.  
 4 THE COURT: 51 or 52?  
 5 MR. LEADERS: Oh, 52. Thank you, Judge.  
 6 THE COURT: Any objection?  
 7 MR. ROBINSON: No objection.  
 8 THE COURT: Okay. 47, 48, 49, 50, 51 and 52 will all be  
 9 admitted.  
 10 (Plaintiff's Exhibits 47-52 admitted)  
 11 MR. LEADERS: May they be published?  
 12 THE COURT: Okay. Just the bags, not the.....  
 13 MR. LEADERS: Right, we won't send the.....  
 14 (Pause)  
 15 Q These -- all these pellets that were recovered from the  
 16 -- during the necropsies, were they consistent with  
 17 pellets recovered during the site or scene  
 18 investigation?  
 19 A Yes, sir. They were con.....  
 20 Q Go ahead.  
 21 A They were consistent with the two types of pellets found  
 22 at the scenes, both the smaller pellets, the copper  
 23 plated number 4 buckshot pellets which were recovered  
 24 from several scenes, and also recovered out of many of  
 25 the carcasses, and then the larger gray colored pellet,

- 401 -

1 the double-ought buck pellet that was recovered from  
 2 scene number 1. If you remember back that's the scene  
 3 that we had the photo of the pellet pattern in the snow,  
 4 and then I recovered the 13 pellets out of the snow.  
 5 That was the same type of pellet.  
 6 Q Okay. Do -- other than recovering these pellets did you  
 7 document your findings in any other way?  
 8 A Yes, sir, I wrote it in the report and all the pellets  
 9 were logged according to where and how they were found.  
 10 Q Okay.  
 11 A Also I did have somebody taking photographs during the  
 12 necropsy process.  
 13 MR. ROBINSON: The necropsy photographs.....  
 14 (Whispered conversation)  
 15 (Pause)  
 16 MR. LEADERS: May I approach?  
 17 THE COURT: Uh-huh.  
 18 Q Handing you Exhibits 53, 54 and 55, can you identify  
 19 those, please?  
 20 A Yes, sir.  
 21 Q Start with 53.  
 22 A Exhibit 53 is generally the back half of a skinned wolf  
 23 carcass showing major trauma to the upper hind quarters  
 24 and back. The trauma is indicated by area of bloodshot  
 25 or darker discoloration. This is a photo of the carcass

- 402 -

1 before -- before it was.....  
 2 MR. LEADERS: Can I have the officer -- or Trooper  
 3 approach the jury to testify about these photos, just because  
 4 it's maybe hard to see what he's discussing.  
 5 THE COURT: Any objection, Mr. Robinson?  
 6 MR. ROBINSON: No, not -- if he can I'd like him to tell  
 7 me whether that's wolf one, two, three, four.  
 8 THE COURT: Okay. Can you identify which one it is?  
 9 A I cannot tell you which wolf this was. I hope that  
 10 everybody can see this. Back portion of the wolf,  
 11 starting up here on the top of the back. This would be  
 12 right next to the spine on the top of the back, you can  
 13 see blood -- the big bruising, bloodshot areas. Right  
 14 here at the base of the tail there's a whole bunch of  
 15 that, and then on down the hind quarter. That is  
 16 indicative of a wolf hit from above and behind, which is  
 17 a pretty common angle of trajectory when shooting wolves  
 18 from the air.  
 19 Q Now there were some wolves carcasses that were less  
 20 intact than others, right?  
 21 A Yes, sir.  
 22 Q How did that one -- how does that carcass from Exhibit  
 23 number 54 fit into -- or 53 fit into that scheme? To  
 24 the ones that was more intact or less intact?  
 25 A Definitely it was one of the more intact ones.

- 403 -

1 Q Okay.  
 2 A This -- this wolf was cut by me because of the load in  
 3 the airplane and it couldn't fit. It was froze at a  
 4 funny angle so I cut -- I'm the one that cut it, but it  
 5 was an intact carcass.  
 6 Q So it didn't come from the carcass pile then?  
 7 A No, it didn't. It would be -- it was very clearly one  
 8 of the freshest and most intact looking ones that we  
 9 necropsied which would lead me to believe it was one of  
 10 the two that we saw in the photos stacked on top of each  
 11 other under the spruce tree.  
 12 Q Which -- with the trap that was closed at the time?  
 13 A Specific -- yes. I -- I remember that one of them had a  
 14 lot of trauma, like I already said, to the -- to the  
 15 back and hind quarter area, which is why I seized those  
 16 two carcasses.  
 17 Q Those were seized from.....  
 18 A It was easily visible from the wolverine trap site  
 19 three.....  
 20 Q Near Mr. Haeg's lodge?  
 21 A Near his lodge, yes.  
 22 Q Okay.  
 23 A This is a photo of the same wolf once.....  
 24 THE COURT: Which -- what do you mean this?  
 25 Q Which exhibit?

- 404 -

1 A Number 54.  
 2 THE COURT: Thank you.  
 3 A Is a photo of the same carcass now being opened, cut  
 4 open, and that's one of the pellets that's being found  
 5 in the hind quarter. You can tell by the front of these  
 6 hind quarters there's a lot of bloodshot or bruising  
 7 within the meat, and that's all the dark discoloration.  
 8 Specifically in this hind quarter a femur was broken and  
 9 there's a lot of that bloodshot or bruising in between  
 10 the muscle groups. And you can see by the point of this  
 11 knife blade it's indicating a -- one of the copper  
 12 plated number 4 buckshot pellets which are consistent  
 13 with what we found at some of the kill sites, some of  
 14 the other carcasses. Number 55 is a double-ought buck  
 15 pellet. That's one of the big gray ones. That's a  
 16 double-ought buck pellet found -- there's a close up so  
 17 you can see the overall of the wolf carcass but this is  
 18 in the spine near the base of the neck, up high, right  
 19 up against the vertebra. That's the single large  
 20 double-ought buck pellet that we just passed around, out  
 21 of wolf one, out of the carcass pile. The.....  
 22 (Whispered conversation)  
 23 Q Just confirming.  
 24 MR. LEADERS: Judge, seek to have those admitted and I  
 25 guess they can be passed -- or I'd ask for publishing if

- 405 -

1 anyone wants to see them further.

2 MR. ROBINSON: I have no objection. That's 53 through  
3 55?

4 THE COURT: 53, 54 and 55 will be admitted. You can give  
5 them to Mr. Parker and if they want to look at them they can  
6 pass them around. The jurors can pass them around and look  
7 at them.

8 (Plaintiff's Exhibits 53-55 admitted)

9 Q I've handed Trooper Gibbens then Exhibit 56. Sir, can  
10 you identify what that is?

11 A Exhibit number 56 is a moose -- or a -- excuse me, a  
12 wolf stomach which is full of moose hair and partially  
13 digested other stuff, and a fired Winchester 12 gauge

14 hull with tooth marks in it. That was detected by the  
15 metal detector. Instead of cubing up the stomach at  
16 that point once I got an indication that there was  
17 something in the gut cavity I cut open the top layer of  
18 the stomach and just laid it open, and so that's what  
19 we're looking at right here, is the contents of this  
20 wolf's stomach.

21 Q All right.

22 A To include the Winchester 12 gauge hull.

23 Q The one you previously testified about?

24 A Yes, sir.

25 Q That was Exhibit 52?

- 406 -

1 A Yes, sir.

2 MR. LEADERS: Seek to admit and publish -- Mr. Robinson,  
3 I'd seek to admit and publish that.

4 MR. ROBINSON: No objection.

5 THE COURT: Okay. 56 will be admitted. Do you want to  
6 hand that to Mr. Parker also.

7 (Plaintiff's Exhibit 56 admitted)

8 (Pause)

9 Q The.....

10 A Do you want me to bring those back?

11 Q Did you conduct any further.....

12 THE COURT: You can lay those.....

13 Q .....investigation?

14 A Yes, sir, I did. On May the -- I want to say May the  
15 5th, but I'd like to refer to my notes as far as when I  
16 went back and went to the kill site, the moose kill  
17 site.

18 Q Okay. So you don't have a recollection of the exact  
19 date.....

20 A The exact day, May 4th or May 6th.

21 Q If it would refresh your memory, just -- but before we  
22 do that I want to know if there was anything between the  
23 necropsies and going back to the kill site that you did?

24 A Oh, yes, sir, there was. On about April 6th I went into  
25 Anchorage, as you've already heard, Sergeant Waldron

- 407 -

1 testified about getting the wolf hides from Alpha Fur  
2 Dressers. Those were in the state's evidence and I  
3 wanted to go and do examinations on the wolf hides, as  
4 well as photograph them. So on April 6th, 2004 I did  
5 that.

6 Q Okay. So where is it that you went to?

7 A I went to -- I flew into Anchorage and went to the  
8 Alaska State Troopers headquarters at 5700 East Tudor  
9 where we had the wolf hides stored in a large evidence  
10 freezer. We had a garage right in that same -- the  
11 evidence freezer was actually in a garage, so that's  
12 where those hide examinations were performed.

13 Q Who all was there?

14 A Myself and Sergeant Burke Waldron.

15 Q And what did you do?

16 A We rolled out the hides which had been removed from the  
17 freezer the night before and thawed out in a locked  
18 cage. Rolled out the hides on a tarp, spread each one  
19 out individually and examined each individual hide for  
20 pellet marks, bullet trauma and photographed them at the  
21 same time.

22 Q Okay. And did you find evidence of bullet trauma on  
23 these?

24 A Yes. That all of the wolves had been shot. There were  
25 nine wolf hides seized. All of the wolves appeared to

- 408 -

1 have been shot. Eight of which appeared to have -- I  
2 could -- I could say in my mind been shot with a  
3 shotgun. And many of them had wounds very indicative of  
4 being shot from above with a shotgun.

5 Q Okay. And did you document this in any way?

6 A I did. We -- we numbered the wolves by evidence number.  
7 It was 700 series numbers I think. 700 through 708.

8 And each wolf was photographed as far as the wounds to  
9 the hide with the item numbers in a 700 series, and two  
10 of the wolf hides had actually buckshot pellets caught  
11 in the membrane of the hide still. Those pellets were  
12 photographed still trapped in the membrane under the  
13 hide, and then photographs were taken of the pellets as  
14 they were extracted from the hide. The -- that was wolf  
15 number 703 and wolf number 705. Both of the -- the --  
16 the pellets removed from both of those wolf hides were  
17 copper plated number 4 buckshot pellets consistent with  
18 what's been found in some of the carcasses and at some  
19 of the scenes, and some of the ammunition type  
20 recovered, loaded ammunition.

21 Q Okay.

22 (Whispered conversation)

23 (Pause)

24 MR. ROBINSON: Tell me what this is?

25 (Whispered conversation)

- 409 -

1 MR. ROBINSON: Okay.  
 2 MR. LEADERS: May I approach with exhibits -- make sure I  
 3 have the numbers, 57 through 65.  
 4 THE COURT: Okay.  
 5 Q Officer, you've testified that you took photos during  
 6 this examination of the hides. I've handed you a bunch  
 7 of photos. I'd ask you to flip through them quickly,  
 8 just -- do those-- are those photos of your examination  
 9 of the hides?  
 10 A (Pause) Yes, sir, they are.  
 11 Q Okay. You were present when those photographs were  
 12 taken?  
 13 A Yes, sir, I was.  
 14 Q Okay, great. Let's talk about what's depicted in these  
 15 photographs then if you could. Let's start with the  
 16 first.....  
 17 A Okay.  
 18 Q .....exhibit there.  
 19 A Exhibit 57 is a photograph of a case skinned wolf hide,  
 20 that being a wolf hide that is opened up between the  
 21 rear legs and the vent, and peeled inside out like a  
 22 sweater. Some of these wolf hides you'll see are  
 23 skinned in a different manner, but this one is a case  
 24 skinned wolf hide and this photo depicts the angle at  
 25 which this wolf was shot. There are multiple bloodshot

1 and bruised areas on the hide. Basically right along  
 2 the spine and towards the rear of the wolf. That's.....  
 3 MR. LEADERS: Judge, what I'm going to do is.....  
 4 Q Trooper, each of these photographs, 57 through 65, do  
 5 they each depict one of the wolves you inspected in  
 6 Anchorage at the Trooper post?  
 7 A Yes, sir, they do.  
 8 Q Okay.  
 9 MR. LEADERS: The state's going to seek to admit the  
 10 photographs and then ask the officer to approach and testify  
 11 closer to the jury.  
 12 THE COURT: Any objection, Mr. Robinson?  
 13 MR. ROBINSON: No objection.  
 14 THE COURT: Okay. 57, 58, 59, 60, 61, 62, 63, 64 and 65  
 15 will be admitted and you can.....  
 16 (Plaintiff's Exhibits 57-65 admitted)  
 17 MR. LEADERS: Approach and -- so that maybe the jury.....  
 18 A Item number 57. This is one of the wolves -- it may --  
 19 if I recall, this being obviously the rear end of the  
 20 wolf and this being up towards the head. So this being  
 21 along the spine area towards the back of the wolf. You  
 22 can see one, two, three, four, five circular kind of  
 23 purplish marks right there. Those are indicative of  
 24 pellet wounds to the -- near the spine towards the rear  
 25 end of the wolf, and this wolf also had a large wound up

1 near the shoulder which I don't know if that was a  
 2 multiple pellet hit or a -- or a rifle shot at that  
 3 point. But these back here are pellet wounds from above  
 4 and behind. One at a time? Do you want me to.....  
 5 Q Why don't you go ahead.....  
 6 A Go through the whole stack.....  
 7 Q .....and pass them around. Actually, I -- why don't we  
 8 -- because some of them I think you have to relate to  
 9 the previous photo. Once you've testified about all of  
 10 them then we'll pass them around.  
 11 A Oh, okay.  
 12 Q Mr. Parker's got that started, everyone else  
 13 (indiscernible).  
 14 A This is an overall photo of wolf.....  
 15 THE COURT: Wait, what.....  
 16 Q Which exhibit?  
 17 A Item -- Exhibit number 58.  
 18 THE COURT: Thank you.  
 19 A Is a photo of an open skinned wolf. That being a wolf  
 20 that's split down each of its four legs and from the --  
 21 the vent all the way up to the throat and opened up to  
 22 lie like a blanket. Different style of skinning. This  
 23 wolf had several pellet marks. In this overall shot you  
 24 can't see it so much but there's one just forward of the  
 25 tail and then it appeared there was one obvious one in

1 the head of this wolf, but specifically the importance  
 2 of this wolf is this bloodshot area along the shin back  
 3 here. Because that's where there's a number -- a copper  
 4 plated number 4 buckshot pellet caught in the membrane  
 5 of the skin.  
 6 THE COURT: Now you've -- wait.....  
 7 A Item number 59.  
 8 THE COURT: Okay.  
 9 A Exhibit 59 is the copper plated number 4 buckshot pellet  
 10 trapped under that membrane. That's wolf 703. Exhibit  
 11 number 60 is that pellet laid out on a piece of white  
 12 paper. Very consistent with what we found both out of  
 13 the carcasses found at the lodge and at some of our kill  
 14 sites. Exhibit number 61. Now we've moved on to a  
 15 different wolf. It's a case skinned wolf and as you can  
 16 see by all the ice crystals, this skin was fairly frozen  
 17 and couldn't be laid all the way out at the time of this  
 18 examination, but once again I found another pellet under  
 19 the membrane. That's what the tip of that knife blade  
 20 is indicating is a number -- another one of those number  
 21 4 copper plated buckshot pellets. Exhibit 62 shows the  
 22 pellets that I found out of that hide. That was the  
 23 wolf item -- is evidence, state evidence number 705.  
 24 Found the pellet that I showed you at first, and I found  
 25 another whole pellet and then about a third of a smashed

1 pellet. So all of those came out of -- trapped in the  
 2 membrane on that hide. Exhibit 63.....  
 3 0653  
 4 (Tape change)  
 5 4MC-05-13/Side B  
 6 0693  
 7 THE COURT: Okay, we're back on record. Go ahead,  
 8 Trooper Gibbens.  
 9 A Okay, item number 63 is a different wolf. This is one  
 10 of the case skinned wolves, inside out like a sweater.  
 11 This being his head up here, front legs and a tail, so  
 12 we're looking at the top of this wolf's back. There's  
 13 multiple pellet holes right here indicated by the  
 14 bloodshot areas under the hide, and then we've got a  
 15 close up. Item number 64 is then going to be a close up  
 16 of that spot, right basically between the shoulder  
 17 blades and a little (indiscernible) where we've clearly  
 18 got one, two, three, four, five pellet holes all fairly  
 19 close together right in the middle of the back, between  
 20 the shoulder blades and hitting the head from above with  
 21 a shotgun. Item number 65 is a different wolf, and  
 22 there was one clearly visible pellet hole right in the  
 23 spine, just right in the middle of the back and that's  
 24 that dark hole right there. Indicating shot from above.  
 25 I think that was all of those (indiscernible) with that

- 414 -

1 Q Are those the same type of buckshot pellets that you  
 2 recovered from the carcasses found at Mr. Haeg's lodge  
 3 in the carcass piles?  
 4 A The same as all but one of the carcasses and the same as  
 5 multiple kill sites, yes.  
 6 Q Okay.  
 7 A The same pellets.  
 8 Q And you say all but one of the carcasses. One of the  
 9 carcasses had double-ought buck?  
 10 A One of the carcasses had the big gray buckshot, double-  
 11 ought buck in it.  
 12 Q Okay.  
 13 MR. LEADERS: The state would seek to have admitted and  
 14 published Exhibits 66 and 67.  
 15 THE COURT: Mr. Robinson, any objections to 66 and 67?  
 16 MR. ROBINSON: No objection.  
 17 THE COURT: Okay. You want to go ahead and hand those to  
 18 Mr. Parker, please. 66 and 67 are both admitted.  
 19 (Plaintiff's Exhibits 66 & 67 admitted)  
 20 (Whispered conversation)  
 21 (Pause)  
 22 MR. LEADERS: Judge, while those are being passed around  
 23 can I have a further exhibit -- can I go copy a further  
 24 exhibit list? We're up to the bottom of the list.  
 25 THE COURT: Sure.

- 416 -

1 order.  
 2 Q Go ahead and you can publish those, they've been  
 3 admitted to.....  
 4 THE COURT: Uh-huh.  
 5 Q ....Mr. Parker.  
 6 A You're welcome.  
 7 Q While that's occurring -- you identified in a couple of  
 8 those wolf hides, number 703 and 705 that there was  
 9 buckshot pellets. Number 4 buckshot?  
 10 A Yes, sir, I did.  
 11 Q What did you do with that buckshot?  
 12 A It was collected separately, entered in as new evidence  
 13 items and labeled as far as which wolf it came from and  
 14 taken into evidence.  
 15 MR. LEADERS: May I approach the witness?  
 16 THE COURT: Uh-huh.  
 17 MR. LEADERS: Exhibit 66 and 67.  
 18 Q Handing you Exhibit 66 and 67 then?  
 19 A Yes, sir.  
 20 Q What are those? Start with 66.  
 21 A Item number 66 is one buckshot pellet. It's copper  
 22 plated, number 4 buckshot recovered out of wolf number  
 23 703 that you see in the photos. Item number 67 is two  
 24 copper plated number 4 buckshot pellets recovered out of  
 25 wolf number 705 in the photos.

- 415 -

1 MR. LEADERS: I'll be right back.  
 2 THE COURT: Yeah, while everybody is still looking at  
 3 those.  
 4 (Pause)  
 5 (Whispered conversation)  
 6 THE COURT: Everybody done looking at those?  
 7 MR. LEADERS: We're close.  
 8 THE COURT: Okay.  
 9 (Pause)  
 10 THE COURT: Mr. Leaders, why don't you put those over on  
 11 the -- yeah, so they should be -- thank you.  
 12 (Pause)  
 13 MR. LEADERS: May I?  
 14 THE COURT: Oh, yeah, I'm sorry. Don't wait for me, I'm  
 15 ready.  
 16 MR. LEADERS: (Indiscernible). Okay.  
 17 THE COURT: I can multi-task.  
 18 Q Trooper Gibbens, did you do -- let me ask you. During  
 19 this time frame you're doing this investigation, during  
 20 that time frame was there any open aerial hunting for  
 21 wolves in the area of these kill sites you investigated  
 22 and seized evidence from?  
 23 A No, sir, none whatsoever.  
 24 Q Okay. Is there an open season for aerial taking or land  
 25 and shoot taking of wolves in those-- that area?

- 417 -

1 A No, sir, there's not.  
 2 Q What -- you were at the scene. You're familiar with  
 3 those areas? I guess it's in your enforcement area,  
 4 correct?  
 5 A Yes, sir, it is.  
 6 Q There's game management unit 19 split up into several  
 7 subsections, correct?  
 8 A Yes, sir.  
 9 Q What's -- what are those subsections?  
 10 A 19-A, 19-B, 19-C and 19-D, and then 19-D also has the  
 11 sub-subsection of 19-D east. That's where the predator  
 12 -- that's the highlighted area on the map.  
 13 Q Okay. So A, B, C and D and then a subsection of D, so  
 14 kind of five sections?  
 15 A Yes, sir.  
 16 Q Okay. And the predator control program was taking place  
 17 in what area?  
 18 A 19-D east.  
 19 Q In that area only?  
 20 A Yes, sir.  
 21 Q These wolf kills that you investigated there, they were  
 22 where?  
 23 A 19-C and B.  
 24 Q 19-C and B?  
 25 A Yes.

- 418 -

1 Q And was there any open season for wolves there at that  
 2 time for hunting wolves?  
 3 A With an airplane, no.  
 4 Q Okay. But you could take them by land?  
 5 A Yes, on snowshoes the day after you flew or via  
 6 snowmachine if you hadn't flown (indiscernible).....  
 7 Q I guess that raises a question. If you had flown in  
 8 what would the requirements have been?  
 9 A To wait -- after 3:00 a.m. following any day in which  
 10 you've flown.  
 11 Q The -- did -- at these kill sites that you inspected,  
 12 sites one, two, three and four, was there any indication  
 13 of prolonged stays at any of those kill sites?  
 14 A No, sir. There was not. Other than kill site two where  
 15 somebody stuck a gun butt in the snow, paced around a  
 16 little bit and relieved themselves. There's nothing  
 17 further than that at any of these scenes.  
 18 Q Okay. The -- no fire circle or anything like that,  
 19 no.....  
 20 A No, sir, nothing.  
 21 Q ....tent area or anything?  
 22 A No, sir.  
 23 Q Okay. The.....  
 24 A Sir, I'd like to refer to the map as far as the sub  
 25 units where the wolves were taken as far as if part of

- 419 -

1 it.....  
 2 Q That may be of assistance.....  
 3 A ....occurred in A or B.  
 4 Q Let me ask you if -- did you -- are the -- I guess sub  
 5 units noted on the map that you've worked here?  
 6 A Yes, I've got some of the boundaries put in there.  
 7 Q Okay.  
 8 MR. LEADERS: May the officer approach the map? Maybe  
 9 bring the map -- I think you might have to bring that a  
 10 little closer because they're faint. Is that.....  
 11 A Okay. And there's one boundary, I think,  
 12 (indiscernible) it's unclear. I may have to go look  
 13 (indiscernible) really where the meet boundary is there.  
 14 It's -- (pause). Yeah, some of it occurred in 19-C, and  
 15 I would actually have to look up the legal definition  
 16 and make positive before I go on record as far as A or  
 17 B. As far as the sub unit.  
 18 Q Okay.  
 19 A Where that exact site is.  
 20 Q Okay. So some of it's in 19-C?  
 21 A Yes.  
 22 Q And the rest of it's in either 19-A or B?  
 23 MR. ROBINSON: Could we -- could we see where he's.....  
 24 MR. LEADERS: Sure. I'm sorry. He's just trying to get  
 25 it closer, it's really faint.

- 420 -

1 MR. ROBINSON: Yeah, but I want to see what he's talking  
 2 about.  
 3 (Whispered conversation)  
 4 THE COURT: Yeah, stand -- just stand to the side.....  
 5 A Oh, I'm sorry.  
 6 THE COURT: .....so everybody can see.  
 7 A 19-D is up here, 19-C is over here, and as far as the A  
 8 and B boundary we can look up the legal definition and  
 9 show people where that boundary over in here is, because  
 10 this is fairly close to an A/B boundary.  
 11 Q Do you have that readily accessible?  
 12 A I can come up with it in five minutes. Right. See,  
 13 this is the C boundary running east there. D up here.  
 14 This is going to be A or B.  
 15 Q Were -- whether it's 19-A or B, were either of those --  
 16 let me back up. Were either of those areas open for the  
 17 aerial taking of wolves?  
 18 A No, they were not.  
 19 Q Okay. The -- what was the closest -- there was, as  
 20 we've discussed, this area in 19-D east that was open  
 21 for aerial taking of wolves if you had a permit?  
 22 A Yes, sir, there was.  
 23 Q And that was under a specified predator control program  
 24 by the Board of Game and Department of Fish and Game,  
 25 correct?

- 421 -



1 A Yes.

2 Q The -- what was the closest point these kill sites that

3 you've located -- that you located, to the permitted

4 area?

5 A It's -- it's marked on the map. Can I point it out?

6 Q Okay.

7 A The closest point is this little jog down, and this

8 being 19-D east, was in the predator control boundaries.

9 This point right here marked as number 7 on the map is

10 the very closest point where it could have been legal up

11 here, from the scenes where the wolf kill sites were.

12 Down here to the south.

13 Q Do you know what the distance was?

14 A Greater than 40 miles, less than 60. I didn't -- I'd

15 have to refer -- I'd have to plot it out again.....

16 Q Somewhere between 40 to 60 miles?

17 A Yeah, we've come up with the number before and I'd have

18 to replot it to do that.

19 Q Okay. Did -- the -- now whether -- when wolves are

20 killed with the hunting or the predator control program

21 there's requirements for them to be sealed, correct?

22 A Yes, sir.

23 Q Now Exhibit 24 was admitted yesterday.

24 MR. LEADERS: May I approach?

25 Q Admitted yesterday as Mr. Boudreau testified. That was

- 422 -

1 a sealing certificate filled out by Mr. Haeg?

2 A Yes, sir.

3 Q Okay. Does that relate to any of these wolves taken?

4 Does the information correlate to any of the wolves

5 taken here?

6 A No.

7 Q Okay. Did you try to locate a sealing certificate for

8 these wolves?

9 A Yes, I did.

10 Q Do that through the Department of Fish and Game?

11 A Yes, I do.

12 Q Okay. Now you had essentially -- it was your belief

13 that these were -- wolves were taken by Mr. Haeg, is

14 that correct?

15 A Yes.

16 Q And why was that?

17 A Because of the airplane tracks at the scene and the

18 evidence gathered both at his lodge and at his home and

19 garage.

20 Q Okay. But I assume you sought the information regarding

21 to sealing certificates by Mr. Haeg and/or his -- he--

22 there was someone assisting him in this predator control

23 program, right?

24 A Mr. Haeg had Mr. Zellers traveling in his airplane and

25 acting as his gunner, and listed on the permit as his

- 423 -

1 gunner.

2 Q Did you obtain any sealing certificates relating to

3 wolves from either Mr. Haeg or -- additional for Mr.

4 Haeg or for Mr. Zellers from the Department of Fish and

5 Game?

6 A Yes, sir. Yes, sir, I did locate a additional sealing

7 certificate for six more wolves under the name of Tony

8 R. Zellers.

9 Q Six in addition to the three on Mr. Haeg's?

10 A Yes, sir.

11 (Whispered conversation)

12 MR. LEADERS: May I approach, Judge, with the exhibit?

13 THE COURT: Uh-huh.

14 Q Handing you what's marked on the back as Exhibit 68,

15 correct?

16 A 68, yes, sir.

17 Q What is that?

18 A This is a Alaska Department of Fish and Game fur bearer

19 sealing certificate and a temporary certificate. On a

20 temporary a hunter or a trapper can fill in all the

21 information just to make sure they meet a time deadline

22 under sealing, sometimes. And then bring that temporary

23 in and have their hides sealed with it. Which that --

24 that's what was done in this case. For what reason I

25 don't know, but this certificate is in the name of Tony

- 424 -

1 R. Zellers, 9420 Swan Circle, Eagle River. It says that

2 on the bottom.....

3 Q Let me ask. Does it relate to wolves that were taken

4 prior to you finding these wolf kill sites?

5 A Yes, it does.

6 Q Okay. Does it -- from the information provided does it

7 appear to relate to these wolves that you -- or these

8 kill sites that you observed?

9 A Yes, it does.

10 Q Does it disclose those locations?

11 A No, it does not.

12 Q Why is it then that you say that it appears to relate to

13 those wolves?

14 A Because to me I would say it does just because it's

15 wolves sealed by Tony Zellers, and I suspected that he

16 and Mr. Haeg had harvested wolves in this area.

17 There's nothing on this form that would indicate that

18 these are the wolves we're talking about.

19 Q Okay. So nothing other than your suspicion based on the

20 investigation?

21 A Yes, sir.

22 Q Okay. So the form doesn't indicate that they are taken

23 from that site?

24 A Correct.

25 Q Okay. The -- and you obtained that form from whom --

- 425 -

1 from where?  
 2 A Jim Holmes at fish and game sealed them and the  
 3 Department of Fish and Game sealing records personnel  
 4 sent them to me.  
 5 Q Okay. Is that....  
 6 A And this is the actual sealing certificate from fish and  
 7 game on the front, and a copy.  
 8 Q Okay. Thank you.  
 9 MR. LEADERS: The state would seek to admit Exhibit 68.  
 10 MR. ROBINSON: No objection.  
 11 THE COURT: 68 is admitted.  
 12 (Plaintiff's Exhibit 68 admitted)  
 13 Q Well, you can just put it on the table and we'll hold  
 14 publication. Trooper, did you do any other field  
 15 investigation relating to this case?  
 16 A Yes, sir, I -- yes, sir, I did. On May 5th I returned  
 17 to the moose kill location where there had been numerous  
 18 snares that I did not seize the last time because wolf  
 19 season was still open. I wanted to return to that scene  
 20 and see if anyone had ever come and pulled those wolf  
 21 snares.  
 22 Q And that was moose kill -- the site number 5 as  
 23 identified on the record?  
 24 A Yes, sir, site number 5.  
 25 Q Okay. And so you were there for what purpose?

1 May 1st. April 30th is the last day of legal wolf  
 2 snaring in that area.  
 3 Q Okay. So you're there May 5th, what did you observe?  
 4 A May 5th observed a -- from the air I could see that  
 5 there was one wolf caught in a snare. All the snow had  
 6 melted but I could see numerous torn up areas where  
 7 there were trees both torn up, chewed down, just big  
 8 circles where it's an indication to me that other  
 9 animals had been caught. I couldn't tell from the air  
 10 what else beyond the one wolf that I clearly saw laying  
 11 there on the ground. Landed either the following day  
 12 with a helicopter there because it was a less than  
 13 adequate spot and went and actually did the hands-on on  
 14 the ground investigation.  
 15 Q What did that show?  
 16 A That showed that someone had been there once after I was  
 17 there and salvaged a wolf which I had seen caught back  
 18 on April 2nd right near the moose kill. It also showed  
 19 that there was one wolf which had been caught in a snare  
 20 since I was there last, and mostly eaten. All that was  
 21 remaining was a head hanging in a snare. There was  
 22 another wolf which had been caught more recently at some  
 23 point. The wolf was still generally intact, except for  
 24 one foot that had been eaten and a little bit up under  
 25 the groin area that had been chewed up. That wolf was

1 A I was there to determine if the numerous wolf snares  
 2 which -- the last time I was there in April they were  
 3 still active, I wanted to determine if in fact someone  
 4 had come and pulled those snares and salvaged the game  
 5 that I had seen in them.  
 6 Q Why?  
 7 A Just to further determine whose set it was as far -- and  
 8 also as far as the snares being left out, not only take  
 9 the target species but also snares that are set in the  
 10 winter for a wolf and then the snow melts are  
 11 appropriately at a height which kills moose and caribou  
 12 if they're left out over the summer. So I just wanted  
 13 to make sure that the snares had been pulled and that  
 14 they weren't still out there catching stuff.  
 15 Q Were they required to be pulled?  
 16 A They were required to be sprung or pulled before that  
 17 point. I mean they -- you wouldn't have to physically  
 18 remove the snare from where it's attached to the tree  
 19 but you have to go and close the loops all the way so  
 20 that it couldn't -- it -- it was no longer functional.  
 21 It couldn't catch anything.  
 22 Q So it was -- okay, so it was no more active and....  
 23 A Yes.  
 24 Q ....couldn't catch anything?  
 25 A Right. And that would have had to have occurred before

1 caught in a snare and dead. There were numerous other  
 2 catch circles where other animals had been caught.  
 3 There were three spots where moose had been caught. At  
 4 one site the moose broke the snare lock and freed itself  
 5 basically. At the other two sites the moose I would say  
 6 fought for some period of time, just judging by the  
 7 cable marks up really high on the trees and the torn up  
 8 trees and turf around there, and eventually you can see  
 9 where the tree that the -- in one case the whole tree  
 10 got pulled up that the snare was anchored to, and the  
 11 snare was just gone. There was just devastation all  
 12 around from where the animal had fought hard, and  
 13 judging by the -- the height of some of the bark removed  
 14 from the trees and stuff like that, and the hair caught  
 15 in some of the trees where the fight happened, that was  
 16 indicative of a moose being caught and then getting away  
 17 while dragging a tree on a snare. Another location  
 18 where a moose had been caught and fought for a long time  
 19 in the snare and eventually broke off a four inch alder  
 20 and got away. But again, had been in there for a  
 21 prolonged period of time. And that moose, even though  
 22 it got away, obviously still had six feet of snare cable  
 23 and six feet of heavy gauge nine wire which we'll show  
 24 you in a little bit dragging behind it. There had been  
 25 additional -- there was sign that two additional

1 wolverines had been caught. One of which looked like it  
 2 might have been salvaged by someone. It -- it looked  
 3 like it was removed from a snare. And another one  
 4 chewed off a tree and ran off with the snare hooked to  
 5 it, but it had been there for a long period of time.  
 6 Chewed down numerous trees in a large area, and then got  
 7 away. While at the scene I photographed the -- the wolf  
 8 that was still generally intact, as well as the head  
 9 hanging in a snare. And then I began to find snares  
 10 that were still set and were functional except now they  
 11 were way too high to catch wolves anyway. Now they were  
 12 about head high to a human at a pretty ideal height to  
 13 be catching moose and caribou. That's why we don't like  
 14 them left out, obviously. I don't.....  
 15 Q How many snares did you find open?  
 16 A 19 still open and fishing, or open and functional we'll  
 17 say. Able of catching more critters. That's not  
 18 counting ones that had either been chewed off, broke off  
 19 or had animals in them. There were 19 open, active  
 20 loops at the time I went back on May 5th.  
 21 Q Any -- other than snares were there any traps?  
 22 A No, there were not. We had seized the active traps on  
 23 April 2nd. There was.....  
 24 Q You had already seized those?  
 25 A There was still I believe two sprung traps. The one

1 that the raven had been caught in and the one that  
 2 another animal had been caught in and got out that we  
 3 hadn't seized because they weren't active the last time  
 4 we were there. Those were still laying there.  
 5 Q Okay. What did you do with all the active snares?  
 6 A Photographed a representative sample and then closed all  
 7 the loops, coiled up, seized them as evidence. I  
 8 believe we have some here. Skinned the wolf that was  
 9 laying there unsalvaged. Photographed it as evidence.  
 10 After photographing the scene and seizing all the snares  
 11 and the wolf, loaded back up and left.  
 12 Q Okay. You said you photographed these.....  
 13 MR. LEADERS: May I approach with Exhibits 69 through 72?  
 14 THE COURT: Okay.  
 15 (Whispered conversation)  
 16 Q What are those photos of?  
 17 A Just from the chair?  
 18 Q Yeah, that's fine.  
 19 A Okay. Item number 69 is a photograph of me holding up a  
 20 wolf head which was hanging in the snare from the tree.  
 21 I've got the snare cable kind of coiled in my hand in  
 22 this photo, but the snare loop and lock are closed down  
 23 around the wolf's vertebra on his neck.  
 24 Q So that head's still in the snare as it was snared?  
 25 A Yes. Still -- at this point still attached to the

1 snare, as it was fed on by whatever ate it, the snare  
 2 continued to tighten down around the neck and so the  
 3 snare was still caught on the exposed vertebra.  
 4 Q Was the rest of that wolf there still?  
 5 A There was some hair and stuff. It was gone, had been  
 6 eaten.  
 7 Q Okay. What's the next exhibit?  
 8 A The next exhibit is number 70. This is a photograph of  
 9 the gray wolf that was in the snare and other than the  
 10 pads off of one foot eaten off it, and the groin chewed  
 11 on a little bit this wolf was -- oh, and the eyes I  
 12 think were sunken and maybe pecked out. This wolf was  
 13 still generally intact. And in this photo the snare  
 14 cable -- the snare is still on the wolf's neck and the  
 15 cable is visible going up to the tree that it's still  
 16 attached. Item number 71 is a closer photo, just  
 17 showing that part of one of those feet on that wolf was  
 18 chewed up and a small area in the groin. And all of  
 19 these photos indicate the time of year. I mean there's  
 20 -- there's no snow on the ground any more. Looks like  
 21 spring. Photo number 72 is one of the 19 set and active  
 22 snares that were still there on May 5th.  
 23 MR. LEADERS: Judge, I'm going to ask to admit these  
 24 exhibits then.  
 25 MR. ROBINSON: No objection on admission.

1 MR. LEADERS: May I have the officer approach then to  
 2 better demonstrate some of the.....  
 3 THE COURT: Right. 69, 70, 71 and 72 will all be  
 4 admitted.  
 5 (Plaintiff's Exhibits 69-72 admitted)  
 6 Q The -- let's -- I guess the last one you talked about,  
 7 the open snare. Hold that up maybe.  
 8 A This is fairly hard to see from across the room and  
 9 you've got to be up pretty close to see that cable and  
 10 that's the nature of snares, they're hard to see, but  
 11 here we've got nine gauge wire attached to this tree,  
 12 wrapped around. It's sitting up here and it's holding a  
 13 wolf cable loop, that's the lock of the snare visible,  
 14 opened all the way up, but that loop is still open and  
 15 active.  
 16 Q About what height was that loop?  
 17 A Generally the bottom of that loop, now that the snow was  
 18 gone, was at about this height, right here.  
 19 THE COURT: Which is what?  
 20 MR. ROBINSON: (Indiscernible).  
 21 THE COURT: One -- I mean besides the fact I couldn't see  
 22 it, but the records not going to be able to see you hold your  
 23 hand up.....  
 24 A Generally the bottom of -- the bottom of these loops,  
 25 now that all the snow was gone, were I'd have to say

1 four feet, four and a half feet high. Be at about upper  
 2 chest on me and I'm 6'2". The -- there was a lot of  
 3 snow in that area in March or whenever the snares must  
 4 have been set, and so I'm sure at that time when they  
 5 were set they were where they would be to catch a wolf,  
 6 you know, the bottom of the loop would have been about  
 7 knee high as you're up on the snow. But now that the  
 8 snow melted the loops were hanging much higher.  
 9 Q Okay. So the bottom of the loop was, I guess you said  
 10 about upper chest height on you?  
 11 A Yes, sir.  
 12 Q And it would go up from that about how big of a....  
 13 A It -- it would go up from that -- these loops are made  
 14 out of anywhere between 60 and 72 inches of cable, and  
 15 so we're talking about a loop that's generally a foot  
 16 and a half or so across and a couple feet tall. I -- I  
 17 -- I'd sure gladly demonstrate it with that one real  
 18 quick.  
 19 Q I may have you do that, we'll see -- we'll have you  
 20 further....  
 21 A Did you want me to go through all the photos up close?  
 22 Q The -- I -- up close up. The -- there was -- the wolf  
 23 -- intact wolf you indicated that it was still in the  
 24 snare. Is that something you can show?  
 25 A Yeah. This -- this wolf had -- you can see the silver  
 - 434 -

1 or gray snare cable coming up from his neck right here.  
 2 You can also see the sunk in dark loop around the hide  
 3 area. It was a very pale wolf and hadn't been heavily  
 4 scavenged at that point.  
 5 Q Okay. And then Exhibit 69 I believe was a head still in  
 6 the snare?  
 7 MR. ROBINSON: (Indiscernible).  
 8 A This is a wolf head, the snare is still attached to the  
 9 vertebra right there. The hair has since slipped off of  
 10 the nose due to the heat and decomposition. There's a  
 11 bunch of fly eggs laid it and stuff. I believe that was  
 12 -- and this snare was still attached up on this tree.  
 13 Actually while I was walking around looking for set  
 14 snares the head was actually hanging down at about this  
 15 height from the snare cable, about a foot and a half.  
 16 Q Two feet off the ground?  
 17 A Yeah, about a foot and a half to two feet off the  
 18 ground.  
 19 THE COURT: Thank you.  
 20 A And there was -- the photo lightly shows that there's  
 21 light colored wolf hairs scattered around there.  
 22 Q Go ahead and publish those, if you would, to Mr. Parker.  
 23 THE COURT: Just -- yeah, hand those back to Mr. Parker.  
 24 MR. LEADERS: Excuse me.  
 25 THE COURT: Because you want them to look at all of them?  
 - 435 -

1 A There's only -- there's four. Your Honor.  
 2 THE COURT: Yeah. Give them all....  
 3 MR. LEADERS: Yes. I'd ask....  
 4 THE COURT: Give them all to Mr. Parker then.  
 5 A Yes, Your Honor.  
 6 Q You said you seized then the snares?  
 7 A Yes, sir, I did.  
 8 Q Okay. All of them that were open?  
 9 A Yes, sir, I did.  
 10 Q Okay. Were all the snares that you found there  
 11 identical?  
 12 A No, sir, there were two -- two slightly different  
 13 variations of the same kind of snares.  
 14 Q And I guess you said you seized them all. Well, there's  
 15 a -- what are these objects that I brought in?  
 16 A These are the two wolf snares. Number 73 is -- can I  
 17 uncoil them and show them?  
 18 Q Yes.  
 19 A Number 73 is....  
 20 THE COURT: Please stand where nobody is going to get  
 21 hurt.  
 22 A Nobody will get hurt.  
 23 THE COURT: Okay.  
 24 A Number 73 is a wolf snare consistent -- this actual one  
 25 was seized from the moose kill site actively open on May  
 - 436 -

1 5th. It's consistent with snares recovered during the  
 2 search warrant execution at the Haeg residence as well  
 3 as snares seen at the Haeg lodge. And it's consistent  
 4 with a snare that I found at the staging area. A little  
 5 bit distinctive in the tightness of wraps on the nine  
 6 gauge wire, the copper in the farrel(ph) instead of  
 7 aluminum, or instead of a crushed nut like some people  
 8 use. And this particular -- a lot -- the snares were  
 9 kind of two different ages it looked like. There was  
 10 one -- a lot of the snares had been used before and this  
 11 is one of those. And they're a little bit limper kind  
 12 of cable, that's just a little different style. And  
 13 standard Thompson style lock this is called. At the  
 14 time that we went back on May 5th the snares would have  
 15 generally been at a height about like this.  
 16 MR. ROBINSON: And how high is this?  
 17 A About with the bottom of the loop generally chest high  
 18 to me, four, four and a half feet off the ground. The  
 19 -- this is one of the snares....  
 20 THE COURT: This being?  
 21 Q When you say this....  
 22 A This item number 74, and I don't really need to take it  
 23 out. It's -- it's a snare that looks to me like this  
 24 was its first year of use. Still kind of oily, hasn't  
 25 been rusted up or anything yet. It's a slightly  
 - 437 -

1 different type of cable, and very light duty lock.  
 2 lighter than most would use for wolves. This is the  
 3 type of lock that one wolverine broke and one moose  
 4 broke at the moose kill site.  
 5 MR. LEADERS: The state would seek to admit Exhibits 73  
 6 and 74.  
 7 MR. ROBINSON: No objection.  
 8 THE COURT: 73 and 74 will be admitted.  
 9 (Plaintiff's Exhibits 73 & 74 admitted)  
 10 MR. ROBINSON: Are we going to have lunch.....  
 11 MR. LEADERS: Can we go on break?  
 12 THE COURT: How much longer do you have with Trooper  
 13 Gibson -- Gibbens?  
 14 MR. LEADERS: I don't know if it's going to be  
 15 significant but.....  
 16 THE COURT: What is significant? Five or 10 minutes,  
 17 let's go. If it's going to be more than that we might as  
 18 well break for lunch.  
 19 MR. LEADERS: It probably will.  
 20 THE COURT: It will be. Okay. Before we break for lunch  
 21 let me -- I talk briefly. We're going to break for lunch  
 22 now. Either way. No matter what anybody tells me. But what  
 23 -- I wanted to make a decision before we go to lunch just so  
 24 we can plan ahead. And I had asked if you all want to go  
 25 after dinner tomo -- this evening. I don't know of anything

1 If you have any concerns, obviously you can still address the  
 2 three of us with the court, but not to discuss the evidence  
 3 or anything you've heard at the trial with each other or with  
 4 anybody else at this point. Okay. All right, we'll see you  
 5 back here at 1:30 ready to go. Thank you.  
 6 (Off record)  
 7 THE COURT: We're back on record, and Trooper Gibbens, I  
 8 need to remind you again you are still under oath.  
 9 A Yes, Your Honor.  
 10 THE COURT: Okay. Mr. Leaders?  
 11 MR. LEADERS: Thank you.  
 12 Q Trooper Gibbens, there's been a lot of talk -- I guess  
 13 you've testified about a lot of traps and snares had  
 14 been set out in the same areas that some of these wolves  
 15 were taken.  
 16 A Yes, sir.  
 17 Q And I guess let's be clear, too. You were able to  
 18 identify, under oath, four kill sites, is that correct?  
 19 A Yes, sir.  
 20 Q For wolves?  
 21 A Yes, sir. Four wolf kill sites and an area where a  
 22 moose was being fed on by predators.  
 23 Q Okay. They were ultimately found, however, nine wolf  
 24 hides or based on the.....  
 25 A Yes, sir.

1 going on. If you want to, that's -- have you all thought  
 2 about that, whether you'd like to, not like to? Is there a  
 3 consensus among the eight of you as to whether you'd like to  
 4 or not? I see two over here actively shaking their heads  
 5 yes, as to, yes, you'd like to go after dinner? Three, four,  
 6 five, six.....  
 7 UNIDENTIFIED JUROR: Absolutely.  
 8 THE COURT: I see two that aren't moving. Is that a you  
 9 don't want to or a no?  
 10 UNIDENTIFIED JUROR: I don't care.  
 11 THE COURT: It doesn't matter?  
 12 (Indiscernible conversation by jurors)  
 13 THE COURT: Okay. Because -- the reason I ask is because  
 14 what I'd like to do then is -- what I was thinking is we  
 15 could take lunch now until about -- so we get everybody out  
 16 of here. Probably until 1:30. Come back and go until 5:00,  
 17 5:30 and then take a lunch break from like 5:30 or so until  
 18 7:00 and then come back for an hour or two, see where we  
 19 stand at that point. Does that sound -- I don't -- I mean  
 20 I'm not talking about going to midnight or anything. I know  
 21 everybody is going to need their sleep, but it will be a long  
 22 day as it is, but see where we stand about that point. Does  
 23 that sound feasible? Okay. All right, let's go ahead. I do  
 24 need to admonish you once again not to talk to each other,  
 25 not to talk to anybody else associated with the trial at all.

1 Q Okay. Did -- and you inspected those and we've talked  
 2 about some of the trauma or injur -- or damage to the  
 3 hides by buckshot?  
 4 A Yes, sir.  
 5 Q Did you inspect them for any trauma or damage from traps  
 6 or snares?  
 7 A Yes, sir, I inspected all nine hides to determine if  
 8 there was any damage consistent with being caught in a  
 9 trap or a snare at all, and was able to determine that  
 10 on all nine hides I inspected I couldn't find any trap  
 11 or snare damage or indication they had been harvested  
 12 that way.  
 13 Q Okay. Now from your investigation were you able to  
 14 conclude whose traps set -- or trapper's snare set that  
 15 was that you've kind of identified by they're around the  
 16 kill site? That is number 5 on the map, the moose kill  
 17 site?  
 18 A Yes, sir, I was.  
 19 Q Okay. Whose trapper snare set were you able to identify  
 20 that as?  
 21 A David Haeg's.  
 22 Q And why was -- how was that?  
 23 A Based upon the ski impressions and tail wheel marks at  
 24 the trap site, as well as the type of traps and snares  
 25 located and seized at that site, and their consistency

1 with the types of traps and snares observed at his lodge  
 2 and snares seized at his airplane hangar during the  
 3 execution of the Soldotna search warrant.  
 4 Q Now as to the nine wolves that you inspected, were you  
 5 able to determine how -- the wolf hides, excuse me, that  
 6 you inspected as to how they were killed?  
 7 A Yes, sir. All nine were shot at some point, and eight  
 8 of the nine had pellet trauma consistent with being shot  
 9 with a shotgun from above.  
 10 Q And the -- you actually -- there were several carcasses  
 11 that you also inspected, is that correct?  
 12 A Yes, sir. Six. Six carcasses, one of those was a half  
 13 a carcass, but.....  
 14 Q And let me clear as well. I mean the hides you  
 15 inspected were all the hides that were seized from Alpha  
 16 Fur Dressers, delivered under David Haeg's name?  
 17 A Yes, sir.  
 18 Q The carcasses that you inspected, where did you obtain  
 19 them from?  
 20 A The carcasses were recovered from around the Haeg lodge  
 21 at his carcass pile and at his wolverine trap sites,  
 22 where the carcasses were being used as bait.  
 23 Q And were you able to determine how -- from an  
 24 examination of the carcasses how the -- those animals  
 25 had been killed, those wolves?

1 recovered out of the spine.  
 2 Q Were those -- I guess from the carcasses were you able  
 3 to determine a method or how those animals were shot?  
 4 A Yes. The -- of the six carcasses examined they all  
 5 appeared consistent with the skinned carcasses that I've  
 6 looked at off of many, many wolves that have been  
 7 harvested with shotgun from the air.  
 8 Q When you say consistent with, by (indiscernible)?  
 9 A Trauma from an above angle and in the top and back end  
 10 of the carcasses, specifically.  
 11 Q Now the -- there were four -- to kind of narrow it down  
 12 from nine hides, the six carcasses, there were four kill  
 13 sites that you located?  
 14 A Yes, sir.  
 15 Q The -- was there anything particular about any of the  
 16 wolf carcasses or hides that you inspected that  
 17 correlated to the kill sites?  
 18 A One -- specifically that being kill site one, which was  
 19 the kill site that had the distinctive double-ought buck  
 20 pellets in the snow and where we recovered the 13  
 21 double-ought buck pellets, one of which had tissue on  
 22 it. I believe that the evidence shows which carcass  
 23 came from the wolf that was shot at that site, kill site  
 24 one; and then saw wounds which could tie one hide with  
 25 that carcass and that kill site.

1 A Yes. Out of the six carcasses all six were shot and  
 2 pellets were recovered out of five of the six.  
 3 Q Okay.  
 4 A And once again, those pellets that came out of the  
 5 carcasses which were located at or near the lodge were  
 6 consistent with pellets recovered from the scenes and  
 7 pellets recovered from two of the hides that had been  
 8 turned in in Mr. Haeg's name to Alpha Fur Dressers.  
 9 Q Okay. Were the locations of.....  
 10 0273  
 11 (Tape change)  
 12 4MC-05-14/Side A  
 13 0273  
 14 THE COURT: Mr. Leaders, do you want to repeat your last  
 15 question just for the record.  
 16 MR. LEADERS: Thank you.  
 17 Q Were the locations of pellets located in the carcasses  
 18 consistent with the location of pellets -- or pellet  
 19 trauma on the hides?  
 20 A Yes, sir, they were. That being that most of the hides  
 21 had trauma to the back and/or the rear end and that was  
 22 consistent with most of the carcasses that we found,  
 23 except for one which was shot from a -- either broadside  
 24 or frontal angle, and that was the one that was shot  
 25 with double-ought buck from above, and had the pellet

1 Q Can you explain that?  
 2 A That being most of the wolves or many of the wolves were  
 3 killed with the smaller sized buckshot pellets, the  
 4 number 4 buckshot. This particular wolf was shot with  
 5 the larger pellet size, double-ought buck, and judging  
 6 by the number of pellets that were found in the snow,  
 7 that being 13 out of a likely load of 15 pellets in the  
 8 gun, evidently not too many of those double-ought buck  
 9 pellets stayed in that wolf. That being that most of  
 10 them were recovered out of the snow and one of them was  
 11 recovered out of the snow had tissue and hair on it  
 12 indicating a pass-through shot. One of the carcasses,  
 13 which would be wolf one out of the carcass pile had a  
 14 pass-through shot right behind the shoulders with a  
 15 large pellet hole, and then it had another pellet lodged  
 16 in the spine that had come in from a top angle close to  
 17 where the neck and shoulder came together. And that --  
 18 putting that.....  
 19 Q Those would also correlate to any one the particular  
 20 hides?  
 21 A Yes, they did. There was one hide from an adult male  
 22 wolf in the bunch. I don't have the number of which  
 23 wolf it was in front of me, but one wolf it just had a  
 24 couple of larger pellet holes basically from behind the  
 25 shoulders forward. Kind of more in the front upper part

1 of the body as opposed to many of the other wolves which  
 2 were shot down and from the rear.  
 3 Q From any other of the scenes -- so that would have been  
 4 consistent with your determination of a wolf shot from  
 5 the air above as well?  
 6 A Absolutely, yes, sir.  
 7 Q Any of the other scene investigations specifically  
 8 showed wolves shot from the air?  
 9 A Yes, sir. All -- all four of the kill sites indicate  
 10 wolves shot from the air in that there was no -- there  
 11 had been no ground traffic at -- at any of the four kill  
 12 sites. There hadn't been anybody hunting from the  
 13 ground. They would have left footprints. The snow  
 14 conditions were still such that I would have been able  
 15 to tell. No snowmachine tracks. Just nothing to  
 16 indicate ground shooting. And then, there again, from  
 17 the direction that most of the pellets came from and the  
 18 trajectory, how they were recovered out of the snow,  
 19 very indicative of aerial shooting. The.....  
 20 Q In particular site number 3?  
 21 A In particular, site number 3 showed a very acute  
 22 vertical angle. That's the site where the pellets had  
 23 to be dug out of the ice at a almost vertical angle.  
 24 Q Did you find any sign of land and shoot?  
 25 A No, sir.

1 Q No shotgun shells.....  
 2 A There.....  
 3 Q .....or -- you found one casing?  
 4 A We -- we found one casing where someone had landed and  
 5 finished off an already wounded wolf, and that was  
 6 pretty clear that's what occurred there. I'm pretty  
 7 familiar with what land and shoot airplane tracks as  
 8 well as the foot tracks or snowshoe tracks that then get  
 9 associated with that look like, and there was no  
 10 indication that any land and shoot occurred, other than  
 11 to finish off an already wounded wolf that's been shot  
 12 from the air.  
 13 Q Anywhere the planes landed, what were the foot tracks  
 14 from the plane?  
 15 A Usually just for wolf recovery, or.....  
 16 Q Directly to the wolf (indiscernible)?  
 17 A Yes. And then, like I said, the one time when someone  
 18 relieved themselves and put the gun down in the snow.  
 19 Q From all that you observed then you -- were you able --  
 20 you -- it sounds like, did you conclude that these  
 21 wolves, sites one, two, three and four kill sites that  
 22 wolves had been shot from the air?  
 23 A Yes, sir, I did.  
 24 Q Did you conclude as to who was involved in that  
 25 shooting?

1 A Yes, sir, I did. That being David Haeg and Tony  
 2 Zellers.  
 3 Q And why was that? How did you conclude that?  
 4 A Both through -- like I already said, the airplane ski  
 5 tracks and tail wheel impressions, as well as the pellet  
 6 types recovered from the scenes, carcasses and hides.  
 7 and the types of ammo recovered from Mr. Haeg's airplane  
 8 hangar during his -- during the execution of the search  
 9 warrant in Soldotna. Also the distinctive .223 Rem-Wolf  
 10 casing that was found at kill site number 2, and then  
 11 having found the same type of ammo loaded into mini 14  
 12 magazines both at Mr. Haeg's lodge and at his residence.  
 13 Q Now this area then that these wolves that you conclude  
 14 they were shot from the air by Mr. Haeg or Zellers, what  
 15 type of permit would have authorized that area?  
 16 A Nothing. There is no permit that would authorize the  
 17 take of those wolves aerially in that area.  
 18 Q How about even if it was land and shoot?  
 19 A No, sir. No -- nothing that could authorize land and  
 20 shoot harvest of wolves in that area.  
 21 Q The permit that they were -- now Mr. Haeg had a permit  
 22 though to take wolves from the air?  
 23 A Yes, sir, he sure did.  
 24 Q Did that permit apply out -- or in this area where he  
 25 was.....

1 A No, sir, it did not. It applied to.....  
 2 Q Did it have any authority -- did it grant him any  
 3 authority in this area that he took these wolves in?  
 4 A No, sir, it did not.  
 5 Q Did it place any restrictions on that area?  
 6 A No, sir.  
 7 Q The -- was there any predator control program at that  
 8 time in that area?  
 9 A In the area where the wolves were taken?  
 10 Q Yes.  
 11 A No, sir.  
 12 Q If there was no predator control program and someone  
 13 took those wolves from the air what would they have been  
 14 doing?  
 15 MR. ROBINSON: Objection.....  
 16 A They would have.....  
 17 THE COURT: Oh, just a minute.  
 18 MR. ROBINSON: Calls for a legal question.  
 19 (Indiscernible).  
 20 MR. LEADERS: I'll.....  
 21 Q What regulations would apply to them as an enforcement  
 22 officer?  
 23 A Regulations.....  
 24 MR. ROBINSON: Objection, that still calls for a legal  
 25 determination.

1 THE COURT: Well, it's -- that's overruled.  
 2 (Indiscernible).  
 3 Q What regulations or statutes apply to the taking of  
 4 those wolves?  
 5 A The regulations governing the same day airborne take of  
 6 wolves.  
 7 Q Is there regulations that specifically regulates same  
 8 day airborne taking of wolves?  
 9 A Yes, sir.  
 10 Q Okay. Now wolf is categorized as what? I mean there's  
 11 different classifications of different types of game, is  
 12 that correct?  
 13 A Yes, sir, and it's categorized in two categories. Both  
 14 as a big game animal and fur bearer.  
 15 Q Okay. Big game and fur bearer?  
 16 A Yes, sir.  
 17 Q Okay. For -- there's -- is there a specific statute or  
 18 regulation that applies to -- or that prohibits taking  
 19 same day airborne big game animals, including wolves?  
 20 A Yes, sir, there sure is.  
 21 Q And what is that regulation?  
 22 A I would need to look and see what the regulation number  
 23 is.  
 24 Q Okay. And you're familiar with what this is?  
 25 A Yes, sir.

1 3:00 a.m. following the day that the person has been  
 2 airborne.  
 3 Q So if you flew today you'd have to wait until after 3:00  
 4 a.m. tomorrow before you could take a wolf?  
 5 A Yes, sir.  
 6 Q Provided it's not on a commercial flight, right?  
 7 A Yes, sir.  
 8 Q Okay.  
 9 MR. LEADERS: I have no further questions.  
 10 THE COURT: Do you want to get your book back. Thank  
 11 you, Mr. Leaders. Mr. Robinson?  
 12 MR. ROBINSON: Yeah. Can I remain seated?  
 13 THE COURT: Sure.  
 14 A Can I move this so I can see him?  
 15 THE COURT: Sure.  
 16 MR. ROBINSON: Yeah, that would be great, thank you,  
 17 Trooper.  
 18 THE COURT: Mr. Wodnisky(ph) can (indiscernible)....  
 19 BRETT SCOTT GIBBENS  
 20 testified as follows on:  
 21 CROSS EXAMINATION  
 22 BY MR. ROBINSON:  
 23 Q Trooper Gibbens, you said a wolf can be both big game  
 24 and fur bearer?  
 25 A Yes, sir, I did.

1 Q You don't remember it off the top of your head then?  
 2 A I don't off the top of my head remember that regulation  
 3 number.  
 4 (Pause)  
 5 Q Let me ask you if you're familiar with 5 AAC 92.085?  
 6 A I'm familiar with it but I need to look it up before  
 7 I....  
 8 Q I'll ask you if that's the regulation that you would be  
 9 referring to?  
 10 A (Pause) 5 AAC 92.085 is a regulation that covers  
 11 unlawful methods of taking big game and the exceptions.  
 12 Q Under subsection -- is there a subsection (8)?  
 13 A (Pause) Yes, sir, there is.  
 14 Q I'll have you read that to yourself.  
 15 A (Pause) Yes, sir.  
 16 Q Is that a regulation that would apply to the hunting of  
 17 wolves in that area?  
 18 A Yes, sir.  
 19 Q What does the regulation -- what are the restrictions?  
 20 A That -- without reading it?  
 21 Q Well, if you can tell us what -- what does the  
 22 regulation prohibit?  
 23 A Prohibits the taking of a wolf the same day airborne.  
 24 Q All right.  
 25 A And what -- prohibits the taking of a wolf until after

1 Q When is it a fur bearer?  
 2 A When it's taken in the -- in -- in -- in the course of  
 3 trapping.  
 4 Q So at the time that these wolves that you've identified  
 5 in your testimony taken outside of 19-D east, you knew  
 6 that Mr. Haeg had a trapping license, didn't you?  
 7 A I hadn't seen his permit. I -- so the answer....  
 8 Q You know now? But you know now?  
 9 A The answer would be no. I didn't know that he had a  
 10 trapping license.  
 11 Q But you know now?  
 12 A Yes, sir, I do.  
 13 Q That he had a trapping license?  
 14 A Yes, sir, I do now.  
 15 Q And you knew that in order to get the predator control  
 16 license he had to have a trapping license?  
 17 A Yes, I did know that.  
 18 Q And you also knew that when he set those leg holds and  
 19 snares for wolves that he had a trapping license for  
 20 that, right?  
 21 A I -- I know now that he had a trapping license for that,  
 22 yes, sir.  
 23 Q Well, you know now that he had a trapping license for  
 24 that?  
 25 A Yes, sir.



1 Q So then if he was trapping wolves then they would have  
2 been fur bearers, right?  
3 A Yes, sir.  
4 Q Not big game?  
5 A Yes, sir.  
6 (Pause).  
7 Q Now I'm trying to figure out -- it's a little confusing  
8 as to how many leg hold traps you found in your  
9 investigation. I thought you testified that there were  
10 six of them. Not including whatever you saw at the  
11 lodge but at the -- out of 19-D at the -- whatever the  
12 area was where the kill sites were. You said you saw  
13 the traps there. One had a wolverine in it?  
14 A No, sir.  
15 Q No.  
16 A One trap did not have a wolverine in it.  
17 Q Okay. Well, let's go through that again, because you  
18 need to explain -- I got a little confused in the  
19 introduction.....  
20 A Okay.  
21 Q .....of the photographs of the snares and the leg holds  
22 and the animals involved, what we had.  
23 A Absolutely.  
24 Q There were six leg hold traps, correct?  
25 A Six set and operational leg hold traps which were

- 454 -

1 seized. There were more than six traps there. Some had  
2 already been sprung by other means.  
3 Q All right. Six that were operational and seized. That  
4 means there was nothing in it?  
5 A Yes, sir.  
6 Q And they were still open?  
7 A Yes, sir.  
8 Q And where were they located?  
9 A Near the moose kill site.  
10 Q You don't -- you didn't take photographs of all six of  
11 those?  
12 A No, sir.  
13 Q Why not?  
14 A I took tra -- photographs of a couple of them as  
15 representative samples. I could certainly go get some  
16 more pictures. We have pictures of several of them.  
17 Q You have pictures of six of them opened?  
18 A No, I do not.  
19 Q You have pictures of six of them that were actively  
20 open?  
21 A No, sir, I told you I had pictures of several of them.  
22 Q But you said there was six of them that were open and  
23 actively operating as leg hold traps, that was -- you  
24 just said that two minutes ago?  
25 A To the best of my recollection, yes, sir.

- 455 -

1 Q All right. So do you have pictures of six of those?  
2 A No, sir.  
3 Q So you don't have pictures of all six of those?  
4 A No, sir, I sure don't.  
5 Q In fact, you only introduced a picture one of those  
6 today?  
7 A Yes, sir.  
8 Q So if we wanted to corroborate your story that there was  
9 six open leg holds with photographs we wouldn't be able  
10 to do that, right?  
11 A No, sir, with photographs you would not. You'd probably  
12 have to get Sergeant Dobson up here because he was there  
13 and saw the same thing.  
14 Q Well, didn't Sergeant Dobbs(ph) say that he saw six  
15 total traps there?  
16 A I don't know, I'd have to.....  
17 Q Some of which were not operational?  
18 A I don't know, I'd have to look at his report.  
19 Q Well, -- but it seems like you took a lot of photographs  
20 and you entered them today?  
21 A I've got a box full, sir.  
22 Q Photographs and -- you have the photographs of the  
23 photograph, it seems like it would have been extremely  
24 important if you wanted to establish that there was six  
25 of these leg holds that were operational and active,

- 456 -

1 that would have been important to take pictures of all  
2 six laying out there in the field open; don't you think?  
3 A I didn't take pictures of six.  
4 Q But now you said you saw -- one had a raven in it?  
5 A Yes, sir.  
6 Q One was closed where you thought that an animal had  
7 gotten out of it?  
8 A Yes, sir.  
9 Q And what were the other? There was a wolf in one?  
10 A No, sir.  
11 Q What was in the other ones?  
12 A Nothing was in the other ones at that time, sir.  
13 Q Oh, they were all closed?  
14 A No, they were all open.  
15 Q Well, how many total were there? Absolutely, total  
16 number of leg holds that would have made up a total of  
17 both ones that were not operational and ones that were  
18 operational, how many?  
19 A I don't know that, sir. I could sure refer to my report  
20 and see though.  
21 Q Refer to your report and tell us exactly how many there  
22 were, both operational and non-operational.  
23 A Okay. I'd be happy to. (Pause) Like I said, my report  
24 reflects that I found six MB-750's set and operational  
25 and I know of two -- like I said, the one had the raven

- 457 -

1 and the one had an animal that got away that were at the  
2 site and weren't operational.  
3 Q Does that answer my question? How many leg holds were  
4 there all together, total?  
5 A To the best of my knowledge I guess that would make  
6 eight.  
7 Q So there were eight -- two that were closed and six that  
8 were open?  
9 A To the best of my recollection, yes, sir.  
10 Q Was it your testimony that you found a wolverine in a  
11 trap? In Item -- in Exhibit 44?  
12 A I'd have to see which item that is, sir.  
13 Q That one.  
14 A No, sir, certainly not.  
15 Q That was one in a snare?  
16 A Yes, sir.  
17 Q And this was the one that was in the snare during open  
18 season?  
19 A No, sir.  
20 Q There was -- you found a wolverine that had been either  
21 trapped or snared in open season, didn't you?  
22 A I found a wolverine -- earlier I saw a wolverine in a  
23 trap near the Haeg Lodge while the season was still  
24 open. On the day that I found the wolverine -- are we  
25 still talking about the one in that picture that you

- 458 -

1 just talked about?  
2 Q Yeah.  
3 A Wolverine season was closed. It closes March 31st.  
4 That photo was taken on April 2nd of that wolverine.  
5 Q And when -- that photo was taken on April 2nd?  
6 A Yes, sir.  
7 Q And when -- you were there at the site on the 27th and  
8 28th?  
9 A Of March.  
10 Q Of March, correct?  
11 A I -- I overflowed it, I did not walk in there on that  
12 date.  
13 Q What day were you on the ground, on the 29th?  
14 A I was on the ground at that site on the 2nd. I never  
15 walked into that trap site until April 2nd.  
16 Q That was the first time you were there?  
17 A First time I walked in there.  
18 Q So you don't know when that wolverine was actually  
19 snared?  
20 A No, sir.  
21 Q So it could have been snared before the season was  
22 closed?  
23 A It could have been caught initially before the season  
24 was closed.  
25 (Whispered conversation)

- 459 -

1 Q When you went out with Trooper Roe(ph) on the 28th of  
2 March....  
3 A Yes, sir.  
4 Q ....you didn't go on the ground that day?  
5 A No, sir. I was in a fixed wing by myself and then with  
6 a -- in a helicopter with Trooper Roe(ph).  
7 Q You were in a fixed wing plane earlier?  
8 A Yes, sir.  
9 Q Then you got into a helicopter with Trooper Roe(ph)?  
10 A On the 20 -- no, sir, I believe I misspoke. On the 26th  
11 by myself -- (whispering) yes, I got to the Swift River  
12 in November 82732, the State PA-18, and then got into a  
13 helicopter with Trooper Roe(ph).  
14 Q Okay. And you refueled at McGrath, or did you make --  
15 Trooper Dobson -- didn't Trooper Roe(ph) meet you and  
16 Trooper Dobson at McGrath?  
17 A No, sir.  
18 Q No?  
19 A No, sir.  
20 Q He met at Swift River?  
21 A Yes, sir.  
22 Q Okay. And where you had landed your aircraft already?  
23 A Yes, sir.  
24 Q So you were on the ground, at least on the 28th of  
25 March. And where was that area located?

- 460 -

1 A That was -- would you like me to show you on the map?  
2 It's numbered, the staging area.  
3 Q Sure. At the staging area?  
4 A Yes, sir.  
5 Q And that's where you saw the snares and traps, right?  
6 A That's where I saw one old snare and signs that other  
7 snares had been pulled.  
8 Q Okay.  
9 A The moose kill site is where I saw snares and traps.  
10 Q Are you saying now that where you landed and you met up  
11 with Trooper Roe(ph) was not at -- was at a -- was at  
12 the staging center? But you saw no traps or snares  
13 there?  
14 A No, sir.  
15 Q Well, then what are you saying?  
16 A I'm saying what I just said, sir. That I did find one  
17 old snare at that site. And signs that others had been  
18 pulled.  
19 Q Well, isn't it true, Trooper Gibbens, that when you flew  
20 to the location on the Swift River that had ski plane  
21 and wolf tracks, went over a moose kill site which had  
22 live wolves and live wolverine caught in traps, right?  
23 A Yes, and as it turned out they were both caught in  
24 snares. But that is true, they were....  
25 Q Not traps, they were in snares?

- 461 -

1 A As it turns out, yes.  
 2 Q Okay.  
 3 A From the air that day I couldn't tell that, but they  
 4 were alive that day.  
 5 Q When you hit the ground?  
 6 A Pardon me?  
 7 Q When you flew with Trooper Roe(ph) or you land -- met up  
 8 with Trooper Roe(ph) on the ground?  
 9 A At a different site. Those animals were seen from the  
 10 air. I was never on the ground where those animals were  
 11 caught that day.  
 12 Q So if Trooper Roe(ph) says we flew to a location on the  
 13 Swift River that had ski plane and wolf tracks, and then  
 14 over a moose kill site -- oh, flew over the moose kill  
 15 site?  
 16 A Yes, sir.  
 17 Q Okay.  
 18 A Flew right by it.  
 19 Q Which had live wolf and live wolverine caught in traps.  
 20 He actually meant snares, correct?  
 21 A Yeah, they -- sure.  
 22 MR. LEADERS: Objection, calls for speculation as to what  
 23 Trooper Roe(ph) meant (indiscernible).  
 24 MR. ROBINSON: Well.....  
 25 Q You were together with him, right? We.....

- 462 -

1 was for sure the same one. There were over several  
 2 dozen snares and roughly eight leg hold traps set there,  
 3 and there were multiple catch circles and lots of  
 4 wolverine tracks, lots of animals coming and going.  
 5 Whether or not that wolverine that was still alive on  
 6 April 2nd is for sure the exact wolverine I can't say  
 7 that I'm positive. It -- it could have been.  
 8 Q So you can't say for sure that there was a wolverine  
 9 caught after the close of the season?  
 10 A Could you speak up, please.  
 11 Q You can't say with certainty that the -- that a  
 12 wolverine was caught in a snare after the season?  
 13 A What I can say with certainty is that the wolverines  
 14 were laying there, one alive and one dead, after the  
 15 season and had not been removed.  
 16 Q You don't know when they were caught?  
 17 A When they entered the set, I don't know that.  
 18 Q You didn't take pictures of this -- you didn't take a  
 19 picture of the leg hold that had the raven in it, did  
 20 you?  
 21 A I did, sir.  
 22 Q Oh, you have that photograph?  
 23 A Absolutely. Would you like it?  
 24 Q Well, sure, if you have it.  
 25 A Okay.

- 464 -

1 MR. LEADERS: It's not Trooper Gibbens' report though.  
 2 Q We flew. I'm asking whether you flew with him. You met  
 3 up with him, you got in the.....  
 4 A I did.....  
 5 Q .....helicopter, you flew with him, didn't you?  
 6 A I did fly with him, yes.  
 7 Q All right, so. And you did see, did you not, live wolf  
 8 and live wolverine in a snare?  
 9 A I saw live wolf and live wolverine caught.  
 10 Q In a snare, not a trap?  
 11 A Didn't know that at the time. I know that now.  
 12 Q You thought it was a trap but it turned out to be a  
 13 snare?  
 14 A I -- I knew it was one or the other and I didn't even  
 15 speculate as to which it was.  
 16 Q Okay. But regardless, they were both caught during open  
 17 season?  
 18 A The -- those two animals were caught during open season.  
 19 Q Okay. Did you ever go to those locations and seize any  
 20 of those traps or snares, or whatever you thought  
 21 (indiscernible)?  
 22 A On April -- on April 2nd.  
 23 Q So on April 2nd you went back there and you saw the same  
 24 wolverine or a different one?  
 25 A For sure one different one, and I can't say whether that

- 463 -

1 THE COURT: Do you have it here?  
 2 MR. LEADERS: No, do you have it with you or is it  
 3 downstairs in the office?  
 4 A It's downstairs.  
 5 MR. LEADERS: Which photo?  
 6 MR. ROBINSON: The raven photo.  
 7 THE COURT: Do you want it this second or can we wait  
 8 until the break and.....  
 9 MR. LEADERS: If you want do it now -- we can get it now  
 10 or we can get it at a break.  
 11 MR. ROBINSON: We can get it at a break.  
 12 THE COURT: Okay.  
 13 Q This -- you gave this -- you gave a wolf pack a name  
 14 called the Venesaly(ph) pack.  
 15 A Local name, Venesaly(ph).  
 16 Q Venesaly(ph) pack. I'll have to put an accent mark on  
 17 that and I'll add an A there. So the Venesaly(ph) pack,  
 18 you saw that pack -- it was in the predator control area  
 19 at one time?  
 20 A Yes, I did.  
 21 Q When was that?  
 22 A I don't know the exact date. I saw that pack no less  
 23 than three times at different times within a month and a  
 24 half.  
 25 Q Of what month?

- 465 -

1 A Of March. So....  
 2 Q Of March of 2004?  
 3 A Of March of 2004. So I could with confidence say that I  
 4 saw them three times after January, 2004.  
 5 Q Okay. And how did you get the -- determine that this  
 6 was the Venesaly(ph) pack?  
 7 A Because the permit -- permitted predator control area in  
 8 19-D east is generally right in the heart of my patrol  
 9 zone, and a lot of the places that I go during patrol  
 10 and in response to different areas I'm crossing parts of  
 11 this area. I'm seeing tracks, I'm seeing where the  
 12 packs travel, and some days I'm seeing the packs.  
 13 Q And so I'm -- I guess I'm asking you how do you know  
 14 that it is this pack instead of an Alpha pack or some  
 15 other pack?  
 16 A It's just through local knowledge. If you're spending  
 17 500 hours a year in the air in this area right around  
 18 here and -- and getting a pretty good feel for what  
 19 local wolf packs we had.  
 20 Q So you've seen it more than three times?  
 21 A Ever, absolutely?  
 22 Q How many?  
 23 A Probably three or four times the previous winter, that  
 24 same pack.  
 25 Q In the same area?

1 A Generally, within -- within 15 miles of there.  
 2 Q 15 miles north boundary, 15 miles south boundary, 15  
 3 miles east boundary, what area?  
 4 A Actually the times I've seen that pack they were right  
 5 in the heart of the predator control area.  
 6 Q Well, this is the predator control area. And I'm just  
 7 going to presume if we looked and that this would be the  
 8 right side and this would be the left side?  
 9 A Yes, sir.  
 10 Q So....  
 11 A May I point?  
 12 Q Yeah, tell me what you mean by the heart of the area?  
 13 A I mean I've seen that pack of wolves -- the pack that I  
 14 refer to as the Venesaly(ph) pack. It's not an official  
 15 names, it's not what fish and game calls them.  
 16 Q I know, the one you refer to as Venesaly(ph) pack.  
 17 A Okay. I refer to as the Venesaly(ph) pack. This being  
 18 McGrath.  
 19 Q Right.  
 20 A I've seen that pack of wolves here, and right out in  
 21 here, right -- right -- Kuskokwin. I've seen them along  
 22 the Kuskokwin here, twice. And then farther right out  
 23 in this swamp right out in here.  
 24 Q And how many are there in the pack that you've seen?  
 25 A I believe that at that time there were 11 in the pack as

1 of March. Earlier in the fall, from talking to other  
 2 people that fly a lot in the area, I heard that somebody  
 3 else did see 13, and two either were killed or went  
 4 elsewhere because each time that the other local hunters  
 5 kind of look at that pack, or the traps where they would  
 6 spread out. Wolves predominantly travel in a trail in  
 7 the deep snow but when they get out on a lake or  
 8 something they get playful. They spread out, you can  
 9 count tracks. And at the time....  
 10 Q So somewhere between 11 and 13?  
 11 A No.  
 12 Q In that pack?  
 13 A Oh, had there been?  
 14 Q Yeah.  
 15 A Had there been that many?  
 16 Q Right.  
 17 A Yes.  
 18 Q Somewhere between 11 and 13 in that pack?  
 19 A There had been within the last year, yes, sir.  
 20 Q Are there other packs of wolves besides the Venesaly(ph)  
 21 pack in 19-D east?  
 22 A Yes, sir.  
 23 Q Do you give them names?  
 24 A Sure, we've got the rainbow pack, we've got....  
 25 Q Let's stop at the rainbow pack.

1 A Okay.  
 2 Q Where is that pack located that you've seen?  
 3 A That pack -- my finger -- there are no more, but they  
 4 used to be this....  
 5 Q Well, where -- when were they?  
 6 A They were that winter, '04, and between trapping and  
 7 predator control efforts by legally permitted hunters  
 8 they were all legally harvested.  
 9 Q They were eliminated? Exterminated?  
 10 A They were eliminated and/or went away. They're not  
 11 there any more. The rainbow pack -- this being McGrath,  
 12 the rainbow pack ran along these little hills right back  
 13 in here and did a loop right along the Kuskokwim and  
 14 were seen running that loop on a regular basis.  
 15 And....  
 16 Q When was the last time you seen that rainbow pack?  
 17 A The last time I've seen the rainbow pack? The last time  
 18 I saw part of that rainbow pack was probably March --  
 19 some time in March, 2004. There were two members left  
 20 that I -- I saw.  
 21 Q Were they gray wolves?  
 22 A Yes. Generally. One was kind of orange.  
 23 Q All right. So we have the Venesaly(ph), the rainbow.  
 24 What else?  
 25 A That's probably about it for packs that are locally

1 known enough to have names.  
 2 Q Just those two?  
 3 A As far as packs that have names?  
 4 Q Well, that you've given names to -- as you've identified  
 5 them.  
 6 A Yeah. Right.  
 7 Q So you only identified two packs instead of the several  
 8 that you said earlier, you've really only been able to  
 9 identify the rainbow and the Venesaly(ph) packs?  
 10 A Right. Well, other people have other names for packs  
 11 that have been -- that have existed in the past.  
 12 Q But my question was for you, the ones that you knew by  
 13 name, or identified by name?  
 14 A Right. There's -- there's a North Fork pack, there's a  
 15 South Fork pack and both of those predominantly run  
 16 right up and down the two -- those two drainages, and  
 17 predominantly don't come into the legally permitted  
 18 area.  
 19 Q So of the packs that you just named which ones come in  
 20 -- that you know of, that come into the -- what was the  
 21 legally permitted area?  
 22 A At some time or another all of those wolves have been in  
 23 the legally permitted area.  
 24 Q I thought you just said one of them generally don't?  
 25 A I said predominantly they don't.

1 Q Well, what I'm asking.....  
 2 A You said have they ever come in, and they have.  
 3 Q I'll rephrase the question. Of the packs that you know  
 4 of or have named or have heard of names for, which ones  
 5 are predominantly in the permit area?  
 6 A Predominantly rainbow pack, Venesaly(ph) pack. The  
 7 North Fork pack comes in maybe -- maybe half dozen times  
 8 a year. They come about a mile and a half in, and then  
 9 they go away. South Fork -- the South Fork pack  
 10 probably comes down into the area a couple times a  
 11 year.....  
 12 Q (Indiscernible) were present -- I'm just talking about  
 13 predominantly present?  
 14 A Predominantly present, okay. Rainbow pack and  
 15 Venesaly(ph) pack are the only.....  
 16 Q Predominantly?  
 17 A ....ones that I am familiar with that spend a lot of  
 18 time inside the area.  
 19 Q That you would say that are predominantly in the patrol  
 20 -- the predator control permitted area?  
 21 A Yes, and then there's -- there was a pack of five wolves  
 22 that lived on the Nixon Fork that stayed in the predator  
 23 control area. I don't have a name for them, and I never  
 24 saw that wolf pack.  
 25 Q So let's count them up. There are five in this last

1 pack you've identified?  
 2 A Right. Up the Nixon Fork.  
 3 Q 11 to 13 in the Venesaly(ph) pack?  
 4 A Okay.  
 5 Q How many in the rainbow pack are there?  
 6 A Up to six.  
 7 Q Up to six. So we have -- if we took the high number of  
 8 13 for the Venesaly(ph) that would be 19?  
 9 A Right.  
 10 Q And then another five, that would be 24?  
 11 A Right.  
 12 Q Well, maybe you can help me figure out how Toby Boudreau  
 13 would have had an objective of taking 55 wolves out of  
 14 that area if there was predominantly only 24?  
 15 A Okay. Because we were talking about.....  
 16 MR. LEADERS: Speculation.  
 17 Q Well, you and Toby work together, right? I mean you  
 18 were part of the enforcement for the program, you were  
 19 working with ADF&G regarding this predator control  
 20 program, correct?  
 21 A Yes, sir, I was.  
 22 Q So you must have known about the objective of 55?  
 23 A Yes, sir.  
 24 Q All right. So if there was only predominantly 24.....  
 25 MR. HAEG: Can I.....

1 A I heard the objective was 44, not 55.  
 2 Q 45 -- 45 to 54.  
 3 A Oh, okay.  
 4 Q 45 to 55 is what Mr. Boudreau testified to yesterday.  
 5 A Okay, yeah. Objective numbers really aren't my thing.  
 6 I thought I had heard 44.  
 7 Q Well, even if it was 44.....  
 8 A If -- if -- yeah.  
 9 Q And there was only predominantly 24, how was that going  
 10 to handle?  
 11 A Well, we were talking about packs. There are singles  
 12 and doubles roaming around and there's other wolves that  
 13 come in.....  
 14 Q How many singles and doubles in your experience are  
 15 roaming around? Another 30?  
 16 A It totally depends on the time. You can go fly the  
 17 whole area on one time and there not be wolves in the  
 18 box as it's called, and you can go another time and  
 19 there would be three or four packs.  
 20 Q I'm talking about -- now we're talking about singles and  
 21 doubles.  
 22 A Right.  
 23 Q Up to 30?  
 24 A Not up to 30. Well, I -- I can't say what fish and  
 25 game's population estimates are, I can only speak to

1 what I've seen, and I -- there's a fair number of  
 2 singles and doubles, and there's a fair number of wolves  
 3 that travel through the area.  
 4 Q Have you seen 55?  
 5 A 55 in the area?  
 6 Q Yeah.  
 7 A No, sir.  
 8 Q Now how close is Lime Village to the four kill sites  
 9 that you identified that you saw?  
 10 A Pretty close. I -- I can show on the map how close it  
 11 is.  
 12 Q Yeah.  
 13 A I can get a piece of string or a straight edge that tell  
 14 (indiscernible).....  
 15 Q Well, maybe you could -- if you know the legend in terms  
 16 of its scale for purposes of miles or kilometers you  
 17 might be able to tell us that way?  
 18 A I could find it pretty quick.  
 19 Q It's right there on the left-hand side.  
 20 THE COURT: No, that's.....  
 21 A This is my typed legend over on.....  
 22 Q No, no, I think there's one right there.  
 23 A Oh, yeah, there's -- what would you like? From the  
 24 center location of the kill sites or the closest kill  
 25 site to Lime Village or, what would you like me to plot?

- 474 -

1 Q Well, why don't you take the furthest one because then  
 2 that would include the -- all those that are below that.  
 3 A So the furthest of the kill sites.....  
 4 Q So if if you would take the furthest kill sites.....  
 5 A .....that I actually worked on the ground?  
 6 Q Yeah, that you worked, right.  
 7 A Okay.  
 8 Q The furthest one away from the other three, and then  
 9 we'd be able to see how -- we'd know the other three  
 10 were closer but that would be the one that would be the  
 11 furthest.  
 12 A (Pause) It would be 16, 17 statute miles.  
 13 Q Okay. That would be the one -- that would be the kill  
 14 site that was furthest away from the other three, right?  
 15 A Yeah, they're all within a couple miles.  
 16 Q And how dependent is Lime Village on subsistence hunting  
 17 of moose?  
 18 MR. LEADERS: Objection as to relevance.  
 19 Q If you know.  
 20 A Don't know.  
 21 THE COURT: What -- what.....  
 22 A Don't know that.  
 23 Q You don't know.  
 24 THE COURT: This.....  
 25 Q You didn't have any evidence, did you, Trooper Gibbens,

- 475 -

1 that at the time that these moose were -- I'm sorry,  
 2 that these wolves were killed at the four sites that you  
 3 identified or the nine hides that you eventually got a  
 4 hold of from Alaska Fur -- which were eventually gotten  
 5 a hold of by Alaska Fur Dressers and you examined for  
 6 pellet shots and all that stuff, you don't have any  
 7 evidence that any of those wolves were taken as part of  
 8 a guiding operation do you?  
 9 A No, sir. As part of an active guiding operation at that  
 10 time?  
 11 Q Right.  
 12 A Not directly, no, sir.  
 13 Q And not directly, you don't know or?  
 14 A I mean not directly as a part of an actively guided  
 15 hunt.  
 16 Q So I take it that whenever Mr. Boudreau told you of  
 17 wolves being killed under the program you went out and  
 18 you did the same kind of determination as to whether all  
 19 the other permittees had taken wolves within the  
 20 permitted area?  
 21 A Usually, yes.  
 22 Q And then usually -- and then other than usually,  
 23 sometimes you didn't?  
 24 A Yes, that's correct. I -- I did not go to every single  
 25 kill site immediately. I did look at every single kill

- 476 -

1 site but not immediately.  
 2 Q So were you able to confirm that there were 17  
 3 taken.....  
 4 A Yes.  
 5 Q .....from the permitted area under the predator control  
 6 program that Mr. Boudreau.....  
 7 A Yes, sir, I looked at every reported kill site and  
 8 confirmed that.  
 9 Q That there was 17?  
 10 A Yes, sir.  
 11 Q And when was the last time you saw the Venesaly(ph)  
 12 pack?  
 13 A The Venesaly(ph) pack.....  
 14 Q The Venesaly(ph) pack, I'm sorry.  
 15 A Them or where they were hiding in the trees?  
 16 Q No, the pack wherever you -- you've seen this pack,  
 17 you've identified this pack and you say you know it.  
 18 When was the last time you've seen them?  
 19 A Like I said, some time between January and March. I  
 20 don't remember the exact date.  
 21 Q Of 2005, 2004?  
 22 A 2004. That pack no longer is with us.  
 23 Q So it's been totally eliminated?  
 24 A Nine of them were legally harvested within the area.  
 25 Q They've been eliminated?

- 477 -

1 A No, they haven't.  
 2 Q Nine of them have been eliminated?  
 3 A Nine of them have been eliminated.  
 4 Q That's what I said.  
 5 A Okay. I thought you meant the pack.  
 6 Q No, nine of them.....  
 7 A Nine.....  
 8 Q The nine that you talk about have been eliminated?  
 9 A Yes, sir.  
 10 Q Exterminated?  
 11 A Exterminated.  
 12 Q When's the last time you've seen the rainbow pack?  
 13 A I told you probably March '04. They're no longer there.  
 14 Q The whole pack?  
 15 A They've been -- they've been harvested.  
 16 Q The whole pack?  
 17 A Most of the pack was harvested and the others either  
 18 left or didn't survive after being shot at.  
 19 Q So the ones that were harvested were exterminated?  
 20 A Yes, sir.  
 21 Q Now it's your testimony that all four of those kill  
 22 sites part of which were in 19-D and part of which was  
 23 in 19-B?  
 24 A No, sir. Actually I'll -- I'll correct that if you  
 25 like.

- 478 -

1 Q Sure.  
 2 A Those -- those four kill sites are in the corner of 19-  
 3 D.  
 4 Q All right. So they're all within 19-D?  
 5 A 19-D -- not 19-D east, 19-D.  
 6 Q I understand, but within 19-D?  
 7 A Yes, sir.  
 8 Q Not 19-C, not 19-B, not 19-A, correct?  
 9 A No, sir.  
 10 Q Correct?  
 11 A Correct.  
 12 MR. ROBINSON: That's all I have, Trooper, thank you.  
 13 A Thank you.  
 14 THE COURT: Picture?  
 15 MR. LEADERS: Yeah, you've.....  
 16 A Oh, I've got that. Sorry.  
 17 THE COURT: Mr. Leaders, you have redirect?  
 18 MR. LEADERS: Thank you.  
 19 BRETT SCOTT GIBBENS  
 20 testified as follows on:  
 21 REDIRECT EXAMINATION  
 22 BY MR. LEADERS:  
 23 Q The -- so you didn't know at the time whether or not Mr.  
 24 Haeg had a trapping license, at the time when you first  
 25 began investigating this?

- 479 -

1 A As far as know versus assume, no, I didn't know.  
 2 Q Okay. Probably assumed he did?  
 3 A I assumed he did. Most of.....  
 4 Q He had a permit, right?  
 5 A He had a permit.  
 6 Q And that was a requirement?  
 7 A Yes, it was.  
 8 Q Assume you also said that he had a hunting license then,  
 9 too, correct?  
 10 A Yes, sir, I did.  
 11 Q Why was that?  
 12 A Because I know he's a registered.....  
 13 884  
 14 (Tape change)  
 15 4MC-05-14/Side B  
 16 0906  
 17 THE COURT: Go ahead, Mr. Leaders.  
 18 Q Why was it that you assumed he had a hunting license?  
 19 A Because I knew that he was a master guide and as a  
 20 requirement to hold that license you have a valid --  
 21 valid hunting license also.  
 22 Q And you confirmed that he was active -- he was an active  
 23 guide during that time through the.....  
 24 A Yes, sir.  
 25 Q .....certification of licensure?

- 480 -

1 A Yes, sir.  
 2 Q Okay. The -- now simply because you have traps set in  
 3 an area, does that mean if you go out for a species that  
 4 may both be a fur bearer and a big game animal you go  
 5 out to attempt to shoot them, that you cannot be hunting  
 6 or are not hunting?  
 7 A No, sir, not at all.  
 8 Q Okay. So you can still hunt even though you may have  
 9 traps in the area?  
 10 A Yes, sir.  
 11 Q For the same species?  
 12 A Yes, sir.  
 13 Q What's the -- is there a form of distinction in your  
 14 mind or enforcement in your mind?  
 15 A Well, an enforcement mind, in -- in this case there's  
 16 not a legal -- on a -- on a snowmachine you could hunt a  
 17 wolf in that area the same place you had a trap set.  
 18 Q Uh-huh.  
 19 A Or you could be up on a hilltop predator calling and  
 20 hunt a wolf in the same place you had a wolf trap set.  
 21 But if you're using an airplane to tend your wolf traps  
 22 that adds the aerial aspect into it and you cannot shoot  
 23 a wolf until after 3:00 a.m. after the day you have  
 24 flown unless it is in a trap. So as long as you're  
 25 dispatching a trapped animal it's trapping. If you're

- 481 -

1 not and you're using an airplane it's hunting.  
 2 Q Okay. And if you're not -- I assume there's the -- to  
 3 me it seems logical that a distinction between hunting  
 4 and trapping is the use of traps versus guns?  
 5 A Usually, yes, sir.  
 6 Q Okay. However, there's this exception you can use a gun  
 7 to dispatch a trapped animal?  
 8 A Yes, sir, and -- and there -- there are exceptions as to  
 9 using a firearm as a method of trapping in some cases.  
 10 Q Okay. Okay. And any that apply in this context of this  
 11 aerial taking of wolves?  
 12 A No, sir.  
 13 Q The -- so generally shooting it with a gun both trying  
 14 to get it into the trap at that time you're hunting?  
 15 A Specifically with an airplane, yes. You could -- if you  
 16 want to.....  
 17 MR. ROBINSON: Objection, Your Honor, this is all a legal  
 18 determination.  
 19 MR. LEADERS: This is also a line of questioning  
 20 regarding the license.....  
 21 MR. ROBINSON: Oh, I'm just asking about licensing. I'm  
 22 just asking you to draw conclusions to whether the activity  
 23 was trapping or hunting.  
 24 THE COURT: (Indiscernible).  
 25 MR. LEADERS: It's enforcement related. The officer's

- 482 -

1 enforcement related duties to terminate the method of taking,  
 2 what he's enforcing.  
 3 THE COURT: Make sure that the questions are clear that  
 4 it's related to his views on enforce -- or what.....  
 5 MR. LEADERS: Okay.  
 6 Q Your views.....  
 7 THE COURT: For enforcement purposes.  
 8 Q Your position as enforcement officer, go over the  
 9 distinction between the use of guns to trap and what  
 10 you're -- if you're using a gun to take wolves, use an  
 11 airplane.....  
 12 A If you're using a gun to take wolves using an airplane  
 13 you're hunting. If you're using a gun to take wolves  
 14 and you've either walked, skied, snowshoed, snowmachined  
 15 or four-wheelered you may do it under a trapping license  
 16 if it's during the open trapping season. If I might  
 17 cite an example. For example, I have landed.....  
 18 MR. ROBINSON: That's (indiscernible).  
 19 A I have landed at a trap site of my own, in my off time  
 20 where I have a wolf caught. There's been another wolf  
 21 standing next to it not caught, looking at me walk up to  
 22 it. I've had a rifle in my hands. I cannot legally  
 23 shoot the second wolf that's not in a trap because I  
 24 just went to check my traps with my airplane. That's  
 25 the way the law is.

- 483 -

1 Q Okay. That would be same day airborne?  
 2 A I would be hunting same day airborne so I have watched a  
 3 wolf run away from that trap set where it was hanging  
 4 out with its buddy that was caught, because I know that  
 5 I can't legally shoot that wolf.  
 6 Q You can legally shoot the one that's caught in the trap?  
 7 A I walk up there and shoot the one that was in the trap  
 8 or snare, but the -- the one that was not trapped gets  
 9 to go away because I showed up in an airplane.  
 10 Q Now these -- of these wolverines that -- on April 2nd  
 11 when you go to the moose kill site.  
 12 A Yes, sir.  
 13 Q Not to fly -- you fly over a few days earlier, the 28th?  
 14 A Right.  
 15 Q And you see a wolverine in the -- in a -- on the set  
 16 somewhere?  
 17 A Right.  
 18 Q You go there, what, three days later or four days later  
 19 and you land and you walk up and inspect?  
 20 A Yes, sir.  
 21 Q Now there's two wolverines?  
 22 A Yes, sir.  
 23 Q Do you know if the first one -- or one of those two was  
 24 the same one you had seen from the air four days  
 25 earlier?

- 484 -

1 A I -- I don't know that it was, but it was in the same  
 2 area and it could have been.  
 3 Q Okay. And the other one you don't know what -- so then  
 4 you don't know at what point in time when the snare,  
 5 trap, whatever, closed around that wolverine -- either  
 6 one of those two wolverines?  
 7 A No, sir, sure don't.  
 8 Q What's the implication of them being out there on April  
 9 2nd?  
 10 A The implication of the wolverines being out there?  
 11 Q Right.  
 12 A Just that now they may have been taken in the closed  
 13 season, they haven't been -- for example, somebody who  
 14 is trapping wolverines or even actively trapping wolves  
 15 and thinks that they may reasonably catch wolverines,  
 16 make sure and check their traps on the 31st of March or  
 17 before and cleans out any incidental take of wolverines  
 18 or any targeted wolverines and pulls any sets that are  
 19 likely to catch wolverines after that. In this case,  
 20 we've got wolverines that we can't -- now -- now it's  
 21 one of those things. It's caught in the closed --  
 22 closed season. You know, there it is. When -- when did  
 23 the loop close around its neck. I don't know.  
 24 Q There's no -- so there's that -- the trapping or the  
 25 snaring I guess it's closed around the neck of that

- 485 -



1 animal is the taking of that animal, right?  
 2 A Yes, sir.  
 3 Q From the information you have that animal was taken --  
 4 was in a taken status on April 2nd from a snare?  
 5 A Yes, sir, and it has not been salvaged yet, so.  
 6 Q And that's what trapping is, basically the taking of fur  
 7 bearers?  
 8 A Yes, sir.  
 9 Q Such as wolverines?  
 10 A Yes, sir.  
 11 Q The -- so this Venesaly(ph) pack doesn't really exist  
 12 any more?  
 13 A No, sir. One -- one gray and one black did not get  
 14 harvested in 2004. The black was hit multiple times and  
 15 was unable to be recovered, and hasn't been seen since  
 16 then. The gray did survive.  
 17 Q Okay. Is it -- but it's no longer a pack now, it's a  
 18 single?  
 19 A Single.  
 20 Q Okay.  
 21 A And it left.  
 22 Q It's not in the same area?  
 23 A Unh-unh (negative).  
 24 Q So it sounds like the -- and I guess you've said you --  
 25 and so the others, the nine out of the 11 that were

- 486 -

1 harvested through the program, were those nine wolves  
 2 that you were informed of the kill site and you went out  
 3 if not immediately, but at some point, inspected the  
 4 kill sites?  
 5 A Yes, sir. Absolutely.  
 6 Q Okay. Were those kill sites -- you actually inspected  
 7 nine kill sites of this Venesaly(ph) pack?  
 8 A Yes, sir.  
 9 Q Were they in the same location Mr. Haeg reported his  
 10 wolves being taken?  
 11 A No, sir.  
 12 Q What area were they? You can refer to the map.  
 13 A Yeah, that -- the wolves had spent about -- let's see,  
 14 this being Big River, the wolves had spent about a week  
 15 or so in some heavy spruce right here. The legally  
 16 permitted hunters were checking on them probably too  
 17 much, multiple times a day. The wolves wouldn't come  
 18 out of the trees. Finally everybody backed off, left  
 19 them alone and it was late March or early April they  
 20 looped down here to the Kuskokwim and actually at first  
 21 some of them crossed the Kuskokwim onto the side that is  
 22 closed. You can see there's a boundary right here. The  
 23 bank of the river is a boundary. Some of them crossed.  
 24 The pilot who found them backed off and went away and  
 25 waited until those came back over and joined in with the

- 487 -

1 pack. Two local teams coordinated on a two day effort  
 2 and got nine.  
 3 Q Okay. Two local teams?  
 4 A Yes, sir.  
 5 Q Who's that?  
 6 A Robert Magnuson was one of the pilots and he -- I can't  
 7 remember if he had Allan Anderson -- I think he had  
 8 Allan Anderson for part of -- part of the gunning time  
 9 with him, and then Bud Magnuson for part of the gunning  
 10 time with him for one of his wolves, and then Lucky and  
 11 Gary Egress were the other team.  
 12 Q Now you said there was no evidence that these were taken  
 13 as part of an acting guiding operation. What do you  
 14 mean?  
 15 A Well, there was evidence that they were taken by a guide  
 16 and that that guide does guide wolf hunting and trapping  
 17 trips and that he does advertise on the Internet wolf  
 18 hunting and trapping excursions and guarantees his wolf  
 19 trapping and hunting clients that even if they don't get  
 20 a wolf he'll send them home with a wolf hide. So as --  
 21 in conjunction with that, that guide would have to have  
 22 wolf hides on hand for if these clients don't get wolves  
 23 because he's now guaranteed them to take home a hide.  
 24 Q That guide is Mr. Haeg, correct?  
 25 A Yes, sir, it is.

- 488 -

1 Q You said you saw that on the Internet?  
 2 A Yes, sir, I did.  
 3 Q Did you make copies of that?  
 4 A I did.  
 5 Q Do you have those?  
 6 A I do. They were on a guiding website that advertizes  
 7 moose hunts, bear hunts, caribou hunts and there was an  
 8 icon to click on reference wolf hunts. I printed this  
 9 out off of that, I saved it to a disc and then it  
 10 disappeared of the Internet within a couple days.  
 11 Q That was during -- so it disappeared off the Internet  
 12 during the course of the investigation?  
 13 A Shortly after the warrant services.  
 14 Q And this is what you're referring to, this is what you  
 15 printed out, what you handed me?  
 16 A Yes, sir.  
 17 Q So when you said not an active guiding operation you had  
 18 no information that, what, he was guiding clients to  
 19 take these wolves?  
 20 A Exactly. I have no information that he had a client in  
 21 the airplane with him. In fact, I believe he had Tony  
 22 Zellers who is one of his assistant guides with him in  
 23 the airplane when he took the wolves.  
 24 Q That's -- in fact, that's who you saw.....  
 25 A Right.

- 489 -

1 Q .....when you talked about these three wolves....  
 2 A Right.  
 3 Q .....that were sealed?  
 4 A Right; that's who I met was Tony Zellers, and that's who  
 5 is recorded as being the gunner.  
 6 MR. LEADERS: Mark this Exhibit 75.  
 7 MR. ROBINSON: Can I read it before you move to....  
 8 MR. LEADERS: Yes, you can.  
 9 MR. ROBINSON: .....do with anything with it?  
 10 MR. LEADERS: I'm just marking it and bringing it to you,  
 11 sir.  
 12 (Pause)  
 13 (Whispered conversation)  
 14 MR. LEADERS: Judge, while Mr. Robinson is reviewing that  
 15 should I have Trooper Gibbens go get the raven photo that was  
 16 requested?  
 17 MR. ROBINSON: Well.....  
 18 A Did he say no?  
 19 MR. ROBINSON: (Indiscernible).  
 20 THE COURT: Is that what he said, no?  
 21 A I -- I thought he said no.  
 22 MR. ROBINSON: (Indiscernible).  
 23 MR. LEADERS: I don't know -- he was referring -- but  
 24 we're at a break. I mean.....  
 25 THE COURT: Yeah, why don't.....

- 490 -

1 MR. ROBINSON: (Indiscernible) wolf.  
 2 THE COURT: Mr. -- well, let's see. Wait a minute,  
 3 let's see.....  
 4 MR. LEADERS: You're still on the wolf. You may have  
 5 questions if you want.  
 6 MR. ROBINSON: (Indiscernible).  
 7 THE COURT: Mr. Robinson, are you going to need a minute  
 8 to do -- to go.....  
 9 MR. ROBINSON: Yeah, I do.  
 10 THE COURT: Why don't we go ahead and take a 10 minute  
 11 break right now, come back at 10 til and -- and in that  
 12 meantime you can get the photo.  
 13 A Absolutely.  
 14 (Whispered conversation)  
 15 THE COURT: And Mr. Leaders staple that together rather  
 16 than paper clip it.  
 17 MR. LEADERS: Yeah, well, I just didn't have a staple  
 18 gun.....  
 19 THE CLERK: Off record?  
 20 THE COURT: Yeah, off record.  
 21 (Off record)  
 22 0130  
 23 (Tape change)  
 24 4MC-05-9/Side C  
 25 0172

- 491 -

1 (Anteroom conference as follows:)  
 2 THE COURT: We're on record, the parties are present, the  
 3 jury is absent. Mr. Robinson?  
 4 MR. ROBINSON: What number are we up to?  
 5 THE COURT: 75 is this one.  
 6 MR. LEADERS: 75.  
 7 MR. ROBINSON: 75.  
 8 MR. LEADERS: Yes.  
 9 THE COURT: Yeah, 75 is the.....  
 10 MR. ROBINSON: I want to object to the introduction of 75  
 11 in order to -- for the purpose of corroborating Trooper  
 12 Gibbons'[sic] testimony, which I had you play back and  
 13 reflected in the log notes when he says that he advertizes on  
 14 the Internet that if a client doesn't get a wolf, he  
 15 guarantees the client a wolf hide.  
 16 THE COURT: Uh-huh.  
 17 MR. ROBINSON: And that in order to have it he must have  
 18 wolf hides on hand in order to make that guarantee that he  
 19 has a wolf available hide. And you asked him for purposes of  
 20 Exhibit 75 if this is the Internet advertisement. So you are  
 21 now showing the court the Internet advertisement which has  
 22 absolutely no language in it at all that guarantees any  
 23 client a wolf hide at any time, if they don't get a wolf.  
 24 (Pause)  
 25 THE COURT: It does say that they're guaranteed to be

- 492 -

1 able to take home at least one wolf. I'm assuming that that  
 2 may have been cut off or (indiscernible).....  
 3 MR. ROBINSON: But not a hide.  
 4 THE COURT: Yeah, it doesn't say a hide. It does have on  
 5 the second page that there's hides for sale, but.....  
 6 MR. ROBINSON: I -- but not to guarantee one under the  
 7 package.  
 8 MR. LEADERS: (Indiscernible).  
 9 MR. ROBINSON: No.  
 10 MR. LEADERS: Whether it's a wolf hide and a wolf, it's  
 11 still -- that's the whole issue that that was the connection  
 12 the trooper drew, Judge, is that connection, -- he just said  
 13 there wasn't an active guiding connection, he explained that.  
 14 If Mr. Robinson opens the issue as to whether or not there  
 15 was a guiding connection -- this -- there was a guiding  
 16 connection, it's verified by his website. He's advertising  
 17 their -- each hunter/trapper has their own pilot guide  
 18 airplane with at least six hours plane time is guaranteed to  
 19 be able to take home at least one wolf or wolverine.  
 20 MR. ROBINSON: No.  
 21 MR. LEADERS: I agree it doesn't say hide, but it doesn't  
 22 -- you know, they have to have a wolf -- I mean to be able to  
 23 give them a wolf -- they have to have a wolf to be able to  
 24 give them a wolf hide, that's the issue.  
 25 MR. ROBINSON: But they could hunt or trap a wolf and

- 493 -

1 that costs \$4,000, not that if you don't get a wolf or you  
2 don't get a wolverine then we'll give you a hide. That was  
3 his testimony. That is.....  
4 MR. LEADERS: Well.....  
5 MR. ROBINSON: .....misrepresentation to the highest  
6 degree. This should not come in.  
7 MR. LEADERS: Judge, it's -- what I'm assuming is that  
8 Mr. Haeg is not guaranteeing that his clients will kill a  
9 wolf because that's the legal -- to guaran -- to make a  
10 guarantee for your client's success, so I think a  
11 reasonable.....  
12 MR. HAEG: I can guarantee them a carcass.  
13 THE COURT: Wai.....  
14 MR. LEADERS: A reasonable interpretation of this.....  
15 MR. ROBINSON: No.  
16 MR. LEADERS: .....is the taking of a wolf.....  
17 MR. ROBINSON: I specifically wanted the court to hear  
18 the playback and for me to hear the playback to see what the  
19 testimony was of Trooper Gibbens. The testimony was of  
20 Trooper Gibbens to impress this jury that he was indirectly  
21 guiding because he was guaranteeing wolf hides to his clients  
22 if they didn't get a wolf. That was -- he said he found that  
23 on the Internet advertisement which is purported to be  
24 Exhibit 75, and it just doesn't exist.  
25 THE COURT: That's the -- the advertisement -- that's the

- 494 -

1 advertisement (indiscernible) that Trooper Gibbens referred  
2 to. I mean that's not -- you're not disputing that?  
3 MR. ROBINSON: No.  
4 THE COURT: But it's whether it's just what it says  
5 versus what his testimony was, which seems to be -- the -- it  
6 can be admitted into evidence or -- I mean it hasn't been  
7 offered but if it is, you can inquire as to where he found it  
8 and where he read it. That's what recross (indiscernible)  
9 case. The door was opened when you opened -- asked about --  
10 I'm not going to dispute what he said, that's what my notes  
11 say, that's what I heard on the tape was hides. It doesn't  
12 say that, but that's what the examination is about.....  
13 MR. ROBINSON: Well, it says that pelts are for sale, not  
14 that they're guaranteed anybody.  
15 THE COURT: Well, -- and that's exactly what you can  
16 inquire about, hist testimony on re -- or recross. But I  
17 don't want -- think it's admissible on the other aspects of  
18 his testimony as to the advertisement he read. You can  
19 inquire as to what he saw and what he said he's saying. Said  
20 he saw on recross. Okay. Anything else?  
21 MR. LEADERS: I was just going to show these to Mr.  
22 Robinson so.....  
23 MR. ROBINSON: Yeah, I would like to have the clerk mark  
24 that or at least get ready to play that. Because before I  
25 cross examine him, I'd like the jury to hear what his

- 495 -

1 testimony was.  
2 THE COURT: Yeah.....  
3 MR. ROBINSON: I don't want any fudging here. I don't  
4 want -- I want them to remember.....  
5 MR. LEADERS: Do you want to play it for him now?  
6 MR. ROBINSON: No, I want to play it so the jury can hear  
7 what he's testified.  
8 MR. LEADERS: That's fine, I was just offering a  
9 suggestion because I think you're (indiscernible).....  
10 THE COURT: A playback is (indiscernible).....  
11 MR. LEADERS: We can't play.....  
12 MR. ROBINSON: I understand that but the defendant's  
13 rights are at stake here, so.  
14 THE COURT: We can work it out. We'll work it out. I'm  
15 just.....  
16 MR. LEADERS: Yeah, Judge.  
17 THE COURT: I was only hesitating to try and figure out  
18 how to do it, not that we can't do it. We'll just -- we'll  
19 make that happen.  
20 MR. LEADERS: While that's being accommodated, Mr.  
21 Robinson, those are the additional exhibits that -- you know,  
22 they're.....  
23 MR. ROBINSON: Which are those.....  
24 THE COURT: And I presume you've got the picture of....  
25 MR. ROBINSON: Oh, these are of the raven.

- 496 -

1 MR. LEADERS: Yeah, you've got the raven and a -- the  
2 other.....  
3 A And the other.....  
4 MR. LEADERS: .....leg holds that were in dispute, so.  
5 THE COURT: Okay. All right, I told them 15 minutes. It  
6 should be just about up, but it will take us a couple minutes  
7 to get set up for a playback, so.....  
8 MR. LEADERS: I'll get some fresh air and then I'll come  
9 back up.  
10 THE COURT: Yeah, let's.....  
11 MR. LEADERS: If you can give us five or something.  
12 THE COURT: Yeah. 10 after by the clock down there which  
13 I think is about the same as this one.  
14 MR. LEADERS: Okay.  
15 THE CLERK: Off record.  
16 (Anteroom conference concluded)  
17 0270  
18 (Tape change)  
19 4MC-05-15/Side A  
20 0064  
21 THE COURT: Okay. We're back on record, and the parties  
22 are present. Trooper Gibbens, I need to remind you that you  
23 are still under oath.  
24 A Yes, Your Honor.  
25 THE COURT: I apologize for the delay. Sometimes these

- 497 -

1 technical things take me a while, so -- but I think we're  
 2 ready to begin now. Mr. Leaders?  
 3 MR. LEADERS: Thank you. Judge, may I approach with  
 4 Exhibit number 20 -- or excuse me, 75?  
 5 THE COURT: Uh-huh.  
 6 Q Trooper, this is, I guess, what you handed me from your  
 7 case report, correct?  
 8 A Yes, sir.  
 9 Q Now marked as Exhibit 75.  
 10 A Marked as Exhibit 75, yes, sir.  
 11 Q Where did you obtain that?  
 12 A Printed it off the Internet.  
 13 Q Okay. When did you do that, do you recall?  
 14 A It would have been either the 31st of March or the 1st  
 15 of April.  
 16 Q Okay.  
 17 A That's -- I -- I learned about it during a phone call to  
 18 Soldotna ABWE in relation to the search warrants that I  
 19 was going to get -- headed their way, and one of those  
 20 fellows mentioned that he had seen his website before so  
 21 I opened it, and printed it out and saved a copy of the  
 22 entire website to a disc.  
 23 Q Okay. So Soldotna ABWE is Alaska Bureau of Wildlife  
 24 Enforcement?  
 25 A Yes, sir.

- 498 -

1 Q The troopers that you had assist with the search  
 2 warrants in Soldotna?  
 3 A Yes, sir.  
 4 Q Okay. And so bas -- you didn't know about it until som  
 5 -- during those phone calls, that was the 29th, 30th or,  
 6 excuse me, the 31st or 1st....  
 7 A 31st or 1st, right in there, yes, sir.  
 8 Q 2004?  
 9 A 2004.  
 10 Q Okay. So upon hearing of it you then re -- or  
 11 immediately or within a short time after  
 12 (indiscernible)....  
 13 A Within a very short time looked it up on the Internet,  
 14 saw what it was, printed off a hard copy and then at the  
 15 suggestion of my boss saved it on disc in case it were  
 16 to disappear off the Internet, which it did shortly.  
 17 Q And when you say disappeared off the Internet, meaning  
 18 you tried to access that again?  
 19 A I did.  
 20 Q Same website?  
 21 A I did.  
 22 Q And what -- the information was no longer available?  
 23 A This portion of the website advertising for Dave Haeg's  
 24 Alaskan hunts, the wolf hunting/trapping section, I  
 25 couldn't open it any more. Maybe it was still there and

- 499 -

1 I couldn't open it, but my thought was it was removed  
 2 from the website.  
 3 Q Could you open other aspects of the website?  
 4 A I could open the others. Moose hunts, bear hunts,  
 5 caribou stuff, sure.  
 6 Q What was the website that you went to?  
 7 A Http://www.DaveHaeg.com/wolf\_hunt.htm. And that last  
 8 portion must be the portion that gets entered  
 9 automatically when you click the little side icon  
 10 because I initially just went to the DaveHaeg.com site  
 11 and there it said something to the effect of bear --  
 12 bear hunts, moose hunts, ask about our winter wolf  
 13 special, or something like that. And that's when I  
 14 popped this.  
 15 Q Okay. And you say -- so you -- your testimony earlier  
 16 is that you didn't -- on cross examination, you didn't  
 17 see any evidence that it was directly -- these wolves,  
 18 the taking of these wolves directly related to active  
 19 guiding activities?  
 20 A True. I -- I did not see that they were directly  
 21 related to active guiding activities.  
 22 Q We discussed that, no guide, no client on board, right?  
 23 A No client on board the airplane when it happened.  
 24 Q But you believed it -- but did you believe or do you  
 25 believe it was related to guiding activities in some

- 500 -

1 form?  
 2 A Yes, sir, I do.  
 3 Q And what was your basis for that?  
 4 A My basis for that -- one of my basises for that is some  
 5 of the language in this which advertizes for \$4,000 a  
 6 wolf hunting and trapping excursion. It goes on to  
 7 guarantee that each hunter will take home a wolf. I --  
 8 I could read the.....  
 9 Q What is the language that you relied on in making that  
 10 connection?  
 11 A It's only a few paragraphs. Could I read the entire  
 12 thing?  
 13 MR. ROBINSON: Well, not until it's admitted  
 14 (indiscernible).  
 15 MR. LEADERS: At this time, Judge, we'll seek to have  
 16 Exhibit 75 admitted.  
 17 MR. ROBINSON: Objection.  
 18 THE COURT: The objection is noted and overruled. It  
 19 will be admitted into -- 75 is admitted into evidence.  
 20 (Plaintiff's Exhibit 75 admitted)  
 21 A May I read it, Mr. Leaders?  
 22 Q Would you please read it.  
 23 A There are four pictures on this front page. There's a  
 24 big header in the middle, Dave Haeg's Alaskan Hunts,  
 25 winter wolf special, exclamation points. Alaskan

- 501 -

1 wolves. exclamation point. Four different pictures of  
 2 people with wolves. A couple of which look like Dave  
 3 Haeg with two of his airplanes, one of which is the  
 4 Batcub. Seven day winter wolf hunting and trapping  
 5 expedition by sque -- ski ekipt(ph) -- equipped Bush  
 6 planes out of Trophy Lake Lodge. A beautiful fly-in  
 7 only wilderness lodge located on the west side of the  
 8 towering Alaska Range. Each hunter or trapper has their  
 9 own pilot, guide and airplane with at least six hours of  
 10 flight time and is guaranteed to be able to take home at  
 11 least one wolf or wolverine. We have on several  
 12 separate occasions shot or snared five wolves in a  
 13 single day. Other animals normally taken on expeditions  
 14 include lynx, martin, coyote, fox. Hunter and trapper  
 15 -- hunter/trapper has choice of one each of every  
 16 species taken. Ptammigan hunting is also fantastic at  
 17 times. Hunter and trapper is responsible for airfare to  
 18 Kenai, Alaska, 100 round trip from Anchorage. They're  
 19 also responsible for their hunting and trapping  
 20 licenses, \$250, cold weather clothing including a  
 21 sleeping bag and hunting equipment. Everything else  
 22 from snowshoes to satellite phones and food are included  
 23 in the package price of \$4,000. David Haeg has been an  
 24 Alaska hunter and trapper since a child and has over 25  
 25 years experience for providing the best brown bear and

- 502 -

1 moose and -- and there's a word missing the way it  
 2 printed out -- hunts in Alaska. Winter expeditions are  
 3 conducted from November 1st through April 30th. If  
 4 you're interested in this please let us know. And it  
 5 goes on to talk about tanned pelts for sale on his  
 6 guiding site, indicating that wolves, gray and/or black,  
 7 \$650 each. Wolverines \$400 each, lynx \$250, martin or  
 8 sable \$50 each, red fox \$75 each. And then it lists a  
 9 contact phone number and a contact e-mail address as  
 10 well as the -- going back to the home page for the  
 11 guided site, as well.  
 12 Q So from that information why did you draw a connection  
 13 to his guiding activities?  
 14 A Because by -- by guaranteeing that each -- each hunter  
 15 is guaranteed to be able to take home at least one wolf  
 16 or wolverine, that means to me that whether or not the  
 17 hunter harvests a wolf or wolverine, they're getting to  
 18 take one home. So in order for them to take one home  
 19 Mr. Haeg would have to have a wolf or a wolverine to  
 20 provide them with to take home if they didn't harvest  
 21 one on their trip.  
 22 Q So ostensibly those could have been produced for that  
 23 purpose?  
 24 A Absolutely they could.  
 25 Q In fact they were sent -- they were seized from a

- 503 -

1 tanner, right?  
 2 A They were seized from Alpha Fur Dressers which is a fur  
 3 tannery, and we heard that the lips and ears and  
 4 everything were going to be done there.  
 5 Q The....  
 6 MR. LEADERS: State seeks to publish 75.  
 7 THE COURT: Okay.  
 8 MR. LEADERS: Thank you.  
 9 (Pause)  
 10 (Whispered conversation)  
 11 MR. LEADERS: Just one issue about that I'll discuss  
 12 while it's getting passed around.  
 13 Q You -- earlier you said you drew the connection because  
 14 you -- before you were looking at it that it guaranteed  
 15 wolf hides, is that correct?  
 16 A Yes. Yes, sir, that's what I said earlier.  
 17 Q Is that, in fact, what the website guaranteed?  
 18 A It does not say that it guarantees a wolf hide. It says  
 19 it guarantees a wolf or a wolverine for each  
 20 hunter/trapper.  
 21 Q And -- but on the back it sells tanned pelts, is that  
 22 correct?  
 23 A Yes, sir.  
 24 Q Okay. Doesn't sell mounts?  
 25 A It doesn't sell mounts, doesn't sell....

- 504 -

1 Q Carcasses?  
 2 A ....carcasses, no, sir. It sells hides.  
 3 MR. LEADERS: May I continue while that's being passed  
 4 around, Judge?  
 5 THE COURT: Yeah.  
 6 Q Officer, one of the other -- there was an issue about a  
 7 raven in a trap and whether or not you had taken a  
 8 picture of that?  
 9 A Yes, sir, there was.  
 10 Q There was also an issue about -- with Mr. Robinson's  
 11 questioning about how many leg hold traps there actually  
 12 were at the moose kill site?  
 13 A Yes, sir, there was.  
 14 Q And whether or not you took pictures of those to  
 15 document them?  
 16 A Yes, sir, there was.  
 17 Q Now you only brought up one picture of one....  
 18 A I had one.  
 19 Q Is that correct?  
 20 A Yes, sir, initially that's true.  
 21 Q Why was that?  
 22 A First of all, we were downsizing. I have box loads of  
 23 -- of photos from this case. We were minimizing. I  
 24 figured a representative sample would do. Second of  
 25 all, during the questioning I didn't remember whether or

- 505 -

1 not a photo was taken of every single trap. I walked  
 2 downstairs and talked to Sergeant Dobson and he  
 3 said.....  
 4 Q Oh, let's back -- did you review some photos taken in  
 5 your case file further?  
 6 A I did end up reviewing the set of original photos and  
 7 found that there were photos of the catch circle with no  
 8 animal in it, where an animal had got away. There's a  
 9 photo of the raven in the trap and there was a photo of  
 10 the other five set traps. And then there's one photo in  
 11 there that appears to be a -- a second photo after one  
 12 of the set traps was set off. So there -- there is one  
 13 photo in there that's of a trap both in its set and  
 14 fired configuration.  
 15 Q Okay.  
 16 A But the -- it brings to total the photos of separate set  
 17 traps to six.  
 18 MR. LEADERS: May I approach with Exhibits -- make sure I  
 19 have the right numbers, 76 through 83?  
 20 THE COURT: 76.....  
 21 MR. ROBINSON: No objection. You can admit them  
 22 (indiscernible).  
 23 THE COURT: Okay. We'll admit 76, 77, 78, 79, 80, 81, 82  
 24 and 83.  
 25 (Plaintiff's Exhibits 76-83 admitted)

1 THE COURT: Yeah, there's a brief interlude where there's  
 2 nothing but then I think it (indiscernible) you can't hear  
 3 anything else.  
 4 0298  
 5 (Audio tape played for the jury)  
 6 0310  
 7 THE COURT: Is that all you wanted to.....  
 8 MR. ROBINSON: Yes.  
 9 THE COURT: Okay.  
 10 BRETT SCOTT GIBBENS  
 11 testified as follows on:  
 12 RE CROSS EXAMINATION  
 13 BY MR. ROBINSON:  
 14 Q Now when you took the oath, Trooper Gibbens, you took  
 15 the oath to tell the truth didn't you?  
 16 A Yes, sir.  
 17 Q But what you just testified to you just heard right  
 18 there wasn't the truth, was it?  
 19 A It was the truth to the best of my recollection without  
 20 reading the document before it was published, sir.  
 21 Q You brought the document out of your book, didn't you?  
 22 A I did, sir.  
 23 Q You gave it to the prosecutor, didn't you?  
 24 A I did, sir.  
 25 Q You testified with -- under oath that Mr. Haeg

1 Q I'm handing you those exhibits. Please identify them.  
 2 A Number 76, raven in a trap; number 77, MB-750 leg hold  
 3 trap set with wax paper on it; number 78, MB-750 leg  
 4 hold trap set with wax paper on it; number 79, MB-750  
 5 leg hold trap set with wax paper on it; number 80, MB-  
 6 750 leg hold trap set with wax paper on it; number 81,  
 7 MB-750 leg hold trap set with wax paper on it; number  
 8 82, one of those previous traps after it was fired,  
 9 either intentionally or unintentionally I don't know  
 10 that. Number 83, one of the traps that was -- had  
 11 caught something. Something chewed down a lot of trees  
 12 and brush, bled a lot and then either pulled out or  
 13 chewed out of the trap. There's a large catch circle  
 14 and the sprung trap. That was sprung when we got there  
 15 on April 2nd. Bringing to total the number of traps  
 16 there, eight that I've got photos of.  
 17 MR. LEADERS: Would you publish those to the jury.  
 18 MR. ROBINSON: (Indiscernible).  
 19 THE COURT: Go ahead and give them to Mr. Parker.  
 20 MR. LEADERS: And I have no further questions.  
 21 MR. ROBINSON: Your Honor, at this time I'd like to  
 22 request the playback of Trooper Gibson's[sic] testimony  
 23 regarding the wolf hides.  
 24 THE COURT: Okay.  
 25 MR. ROBINSON: Including the questions of Mr. Leaders.

1 guaranteed his clients wolf hides if they didn't get a  
 2 wolf, right?  
 3 A Yes, because that's my understanding when you guarantee  
 4 someone a wolf that you would be guaranteeing them.....  
 5 Q Well, you said wolf.....  
 6 A .....a hide.  
 7 Q What's a pelt?  
 8 A The same thing as a hide.  
 9 Q All right.  
 10 MR. ROBINSON: Can I see Exhibit 75 (indiscernible)?  
 11 Q So a pelt is a hide, right?  
 12 A Yes, sir.  
 13 Q Well, you said that in this advertisement that you got  
 14 out of the Internet that it was the pelt or the hide  
 15 that he guaranteed to give to somebody if they didn't  
 16 get a wolf, right?  
 17 A He guaranteed they'd take one home.  
 18 Q Now the second page of this -- well, on the first page  
 19 the wolf hunt or trapping expedition for the total price  
 20 of \$4,000 included what was said about guaranteed to be  
 21 able to take home a wolf, at least one wolf, or  
 22 wolverine, right?  
 23 A Yes, it did. That was.....  
 24 Q Not a hide or pelt, but the animal itself, right?  
 25 A A wolf or a wolverine, yes.

1 Q Right. Then on the second page it says tanned pelts for  
 2 sale?  
 3 A Yes, sir, it does.  
 4 Q Now that's not a guarantee, is it?  
 5 A That is not a guarantee, right, sir.  
 6 Q So the hides, if you wanted one, you'd have to buy it?  
 7 A Unless it was provided to you because you didn't harvest  
 8 an animal.  
 9 Q But it doesn't say that anywhere on this Internet  
 10 advertisement, does it? Does it say one word on this  
 11 Internet advertisement, Trooper Gibson [sic], that  
 12 Mr.....  
 13 A Gibbens, sir.  
 14 Q Trooper Gibbens, that David Haeg guarantees a hide to  
 15 anybody?  
 16 A No, sir, but he guarantees a wolf or a wolverine.  
 17 Q Not a hide.....  
 18 A I think it would be fair to say.....  
 19 Q My question is does it say hide?  
 20 A No, sir.  
 21 Q But it says on the same advertisement something about  
 22 pelts, which are hides, which are for sale?  
 23 A It does.  
 24 Q Right?  
 25 A Yes, sir.

1 A Yes, sir.  
 2 Q Including somebody who might become part of his guide  
 3 services?  
 4 A Yes, sir, he sure could.  
 5 Q Isn't it true, also, Trooper Gibbens, that you can hunt  
 6 -- I mean you can trap for fur bearers with a firearm?  
 7 A That is true, we've already talked about that earlier,  
 8 dependent upon method of transportation.  
 9 Q But are you familiar with 5 AAC 92.095?  
 10 A I've read it, yes, sir.  
 11 Q Unlawful methods of taking fair [sic] bearers?  
 12 A Fur bearers, yes, sir.  
 13 Q Fur bearers, not big game?  
 14 A Yes, sir.  
 15 Q And so it allows for the taking of fur bearers, doesn't  
 16 it, with a firearm?  
 17 A Yes, it does.  
 18 Q Now with regard to airborne taking with a firearm, fur  
 19 bearers not a big game. It says that a person who has  
 20 been airborne may not use a firearm to take or assist in  
 21 taking of a wolf or a wolverine until 3:00 a.m. on the  
 22 day following the day on which the flying occurred,  
 23 correct?  
 24 A Yes, sir, that is what it says.  
 25 Q But this could be for trapping purposes instead of

1 Q Now you remember that wolf that you saw live in the  
 2 snare when you were in the helicopter flying over a  
 3 moose kill site back on March 28th.....  
 4 A I remember that.....  
 5 Q .....the wolf.  
 6 A .....wolf, sir, yes.  
 7 Q Now that was a legally snared wolf wasn't it?  
 8 A Yes, it was.  
 9 Q Did you seize it?  
 10 A No, sir.  
 11 Q So could -- that was a trapped wolf, right?  
 12 A Snared.  
 13 Q Well, that's a trapping technique, isn't it?  
 14 A Yes.  
 15 Q So if Mr. Haeg had legally trapped a wolf in that snare  
 16 he could sell the pelt from it, couldn't he?  
 17 A Yes, sir.  
 18 Q Lawfully?  
 19 A Yes, sir.  
 20 Q Do you know whether this wolf was part of the guiding  
 21 operation, the one that was in the snare?  
 22 A No, sir, I don't. I don't think that it was.  
 23 Q So then Mr. Haeg, as a trapper, could trap a wolf  
 24 lawfully, have it tanned at Alaska Fur Dressers and sell  
 25 its pelt or hide lawfully to anybody?

1 hunting purposes, correct? Because fur bearers.....  
 2 A It -- yes, it could if the animal was going to be --  
 3 would you mind reading it again, please.  
 4 Q Yeah. It comes under the heading of unlawful methods of  
 5 taking fur bearers.  
 6 A Right.  
 7 Q Not hunting?  
 8 A Right.  
 9 Q A person who has been airborne may not use a firearm to  
 10 take or assist in taking of wolves or wolverine until  
 11 3:00 a.m. on the day following the day on which the  
 12 flying occurred?  
 13 A Yes, sir, that could apply to a trapping license and a  
 14 trapping license using a firearm following 3:00 a.m. the  
 15 day the person had flown.  
 16 Q So it could apply to a wolf as a fur bearer, not as big  
 17 game, correct?  
 18 A It could. It could, that's correct.  
 19 Q So it doesn't mean that just because somebody outside  
 20 the permitted area, in this case, flew and shot before  
 21 it appeared that they had to wait, was necessarily  
 22 hunting; it could have been trapping, correct?  
 23 A Not.....  
 24 Q For wolves.  
 25 A .....in my experience.

1 Q Well, but the regulation apparently applies for things  
2 even beyond your experience?  
3 A I -- I don't believe it does, sir. I don't believe that  
4 that falls under the definition of trapping.  
5 Q You do -- you agree that it falls under the definition  
6 of fur bearer though, don't you?  
7 A Yes, sir, that's one of the definitions that a wolf is.  
8 Q And you do believe, don't you, or do you know that if  
9 you shoot a wolf with a trapping license, then you're  
10 governed by trapping regulations, aren't you?  
11 A Yes, sir. If you legally harvest a wolf under a  
12 trapping license you are operating under the trapping  
13 regulations.  
14 (Whispered conversation)  
15 MR. ROBINSON: Just a second, Trooper.  
16 (Whispered conversation)  
17 Q Are you familiar with handbooks that are given out by  
18 the Department of Fish and Game to the general public?  
19 A Yes, sir.  
20 Q Have you ever seen one like this one?  
21 A I have, back in 2002 and 2003.  
22 Q And when it comes to -- have you read the general  
23 information regarding fur bearers?  
24 A I have. If I'm going to quote anything I'd sure need to  
25 read it again, sir.

- 514 -

1 Q Okay. I'm just asking you for the moment whether you  
2 agree with the things that are in this book, okay?  
3 A I have read the book.  
4 Q It says fur bearers that may be taken with a trapping  
5 license include, and then it gives a lot of names, but  
6 wolf is one of them....  
7 A Yes, sir.  
8 Q .....right?  
9 A Yes, sir, that is....  
10 Q And then it says some of these fur bearers are also  
11 classified as fur animals like beaver and coyote and  
12 wolf, correct? That's also a fur animal?  
13 A Is he under fur animal and fur bearer?  
14 Q Well, it says some of these....  
15 A I'd need to read that (indiscernible)....  
16 Q .....fur bearers are also classified as fur animals and  
17 then it lists -- oh, I'm sorry.  
18 A It doesn't list wolf under fur animals.  
19 Q Or big game animals and then it lists wolf.  
20 Q Big game animal it does.  
21 Q Okay.  
22 A Two categories in there that list wolf.  
23 Q All right. And it says -- do you agree with that?  
24 A Big game animal and fur bearer.  
25 Q Yeah, big game -- do you agree.....

- 515 -

1 A Yes, sir.  
2 Q That it's either -- it can be a fur bearer or a big game  
3 animal?  
4 A Yes, sir.  
5 Q You agree. These species listed also as fur animals or  
6 big game animals may be taken under the trapping  
7 regulations using a trapping license; do you agree with  
8 that?  
9 A Yes, sir. When....  
10 Q Or the fur -- or under the hunting regulations using a  
11 hunting license; do you agree with that?  
12 A Yes, sir.  
13 Q It says those species listed only as fur bearers may be  
14 taken only with a trapping license, do you agree with  
15 that?  
16 A As fur -- only as fur bearers?  
17 Q Right.  
18 A Yes, sir, that's true.  
19 Q And then it says, if, for example, you want to shoot a  
20 wolf and you have a trapping license then you would  
21 follow the regulations in this booklet, which is the  
22 Alaska trapping regulations, correct?  
23 A If that's all you had was a trapping license, that  
24 should be correct.  
25 Q But if you have a hunting license and you wanted to

- 516 -

1 shoot a wolf then you would follow the regulations in  
2 the Alaska state hunting regulations, number 43, do you  
3 agree with that?  
4 A Yes, sir.  
5 Q So for purposes of methods of taking fur bearers, you  
6 can shoot with a trapper's license a wolf if you wait  
7 until 3:00 a.m. on the following day after your flying  
8 has occurred, correct?  
9 A Correct statement, sir.  
10 Q But if you do it before that time then you've taken a  
11 fur bearer unlawfully, correct?  
12 A Or a big game animal unlawfully.  
13 Q But if you had a trapping license, and this is the  
14 trapping regulations and you shot it with a trapping  
15 license then it would be unlawful taking of a fur  
16 bearer, wouldn't it?  
17 A If that's the only license you had and that's what  
18 you're operating under at the time.  
19 Q Well, if you shot one and you had a trapping license you  
20 would be regulated by the trapping license, right?  
21 A Unless it was superseded by something under the hunting  
22 regulations.  
23 Q Now the predator control program required not a hunting  
24 license, did it?  
25 A No, sir.

- 517 -



1 Q It required a trapping license didn't it?  
 2 A Yes, sir, it did.  
 3 Q Do you know why?  
 4 A No idea, sir.  
 5 Q You don't have any idea either?  
 6 A I've got some guesses, but.....  
 7 Q So you don't know for sure?  
 8 A No, sir.  
 9 Q And Mr. Haeg was also using snares and leg holds to trap  
 10 wolves and wolverines, correct?  
 11 A Yes, sir.  
 12 Q During the same time that the PC, or the predator  
 13 control program was -- season was going on?  
 14 A Yes, he was.  
 15 Q Now I thought I heard you testify earlier under cross  
 16 examination that you had no certainty that the second  
 17 wolverine -- or even the two wolverines that you saw the  
 18 second time you were around the area where you saw the  
 19 first one that was trapped on March 28th, were taken in  
 20 closed season. Are you changing your story now, Trooper  
 21 Gibbens?  
 22 A I have never said that I have certainty that they  
 23 entered the set after the closed season.  
 24 Q Well, I thought that you said on redirect examination  
 25 that the wolverine was caught in the closed season. Did

1 stays in there for a week, it's caught.  
 2 Q But what you were saying was in the present tense when  
 3 you saw it on March 28th? I mean when you saw it on  
 4 April 2nd, that it was caught?  
 5 A It -- it was still caught in the noose.  
 6 Q No, can you say beyond a reasonable doubt, Trooper  
 7 Gibbens, that it had been caught after the season  
 8 closed?  
 9 A The wolverine in the snare?  
 10 Q Right.  
 11 A No, I don't know when it entered the set. It just was  
 12 still caught.  
 13 Q Where did that single wolf from the Venesaly(ph) pack  
 14 go? Do you know where it went?  
 15 MR. LEADERS: Beyond the scope.....  
 16 MR. ROBINSON: No, it isn't beyond the scope.  
 17 THE COURT: No you -- isn't.  
 18 A The last time I saw any sign of it was down closer to  
 19 the Salatna River, just outside the permit hunt  
 20 boundary.  
 21 Q Where was that? Show that in the .....  
 22 A Absolutely.  
 23 Q Yeah.  
 24 A Kuskokwim River, right here. And this being McGrath  
 25 once again. Salatna River comes in right here. The

1 I get that wrong?  
 2 A It -- it's still caught in a closed season.  
 3 Q But I didn't -- no, but you saw it out there in the  
 4 closed season but you don't know when it was caught,  
 5 right?  
 6 A I saw it out there and caught. It's caught, it's  
 7 spinning around in a snare, it's caught.  
 8 Q Oh, so let me get this straight. What you mean was the  
 9 past tense of caught as opposed to the present tense of  
 10 caught. I mean what I'm trying to figure out here is  
 11 whether or not you meant to say that based on what you  
 12 observed that that particular wolverine had been caught  
 13 after season closed? Are you saying that?  
 14 A I'll -- I'll break it down a little bit. What I meant  
 15 to say was the wolverine was still caught in the set  
 16 well after the season had closed. As to when we  
 17 knew.....  
 18 Q You mean it was trapped in there after the season was  
 19 closed?  
 20 A He was still caught, he's caught in a snare. When you  
 21 -- when you catch something in a snare you -- you're  
 22 catching it. When the noose closes around its neck,  
 23 it's caught.  
 24 Q All right. So you're.....  
 25 A Whether it stays in there for a half hour, whether it

1 Salatna is the downstream boundary on one side for the  
 2 permit hunt, the predator control. The last time I know  
 3 of what I believe to be that same surviving wolf being  
 4 around -- actually the last presence I know -- it wasn't  
 5 a sighting by me, it was a sighting by another hunter a  
 6 couple miles outside the area, and then I saw the tracks  
 7 that I still believe are that same wolf, and I saw its  
 8 tracks several times during the summer.  
 9 Q All right. Let me get this -- and this is something you  
 10 heard, not something you observed, as far as actually  
 11 seeing the single itself?  
 12 A Correct.  
 13 Q So where's the last time you saw the single?  
 14 A I haven't seen that single since it went by itself, only  
 15 its tracks. I think it's afraid of airplane engines  
 16 now.  
 17 Q And that's just a guess that it's its tracks?  
 18 A Educated guess, but, yes, I guess.  
 19 Q And could you tell from the air -- you didn't land to  
 20 look at the tracks, did you?  
 21 A I was actually in a boat and saw tracks.....  
 22 Q Oh, so you were in a boat and went downstream and you  
 23 saw tracks?  
 24 A I was actually coming up from Aniak, yes, sir.  
 25 Q You walked -- did you walk -- did you stop your boat, go

1 down.....  
 2 A Walked.....  
 3 Q ..... walk over and look at the tracks you saw?  
 4 A Yes, sir.  
 5 Q And are you telling me that you're experienced enough to  
 6 be able to tell the difference between one wolf track  
 7 and another?  
 8 A No, sir. Individual wolves, no.  
 9 Q All right. So you don't know for sure that that's this  
 10 last single (indiscernible).....  
 11 A I -- I don't know -- don't know with certainty that  
 12 that's the last single.  
 13 Q That's just your speculation and guessing, right?  
 14 A Yes.  
 15 MR. ROBINSON: No further questions.  
 16 MR. LEADERS: Very briefly.  
 17 BRETT SCOTT GIBBENS  
 18 testified as follows on:  
 19 REDIRECT EXAMINATION CONTINUED  
 20 BY MR. LEADERS:  
 21 Q This issue of if you have both a hunting and a trapping  
 22 license, under both licenses you're prohibited from  
 23 taking either -- a wolf, which is both big game and a  
 24 fur bearer?  
 25 A Yes, sir.

- 522 -

1 Q Trooper, if you have two licenses, you have a trapping  
 2 license and you have a hunting license. where's the  
 3 bright line to determine what activity you're doing at  
 4 any particular time?  
 5 A Well, if you're violating both licenses then you're  
 6 outside the realm of the -- the authority of either one.  
 7 Q Yeah, but what -- where's the bright line to say whether  
 8 you're hunting or trapping?  
 9 A In this case or any specific one?  
 10 Q Any case.  
 11 A I don't know where that bright line is unless through  
 12 the method of take you just couldn't be able to legally  
 13 be doing it anyway because of the mode of  
 14 transportation, which is the case in this case.  
 15 Q Well, I guess the question is where's the bright line to  
 16 determine whether the wolf in that particular  
 17 circumstance was to be considered big game or fur  
 18 bearer?  
 19 A Don't know that.  
 20 MR. ROBINSON: No further questions.  
 21 THE COURT: Trooper Gibbens, do you want to take your  
 22 seat back at the table.  
 23 (Pause)  
 24 THE COURT: You want to call your next witness.  
 25 MR. LEADERS: Sure.

- 524 -

1 Q Under either the hunting or the trapping regulations  
 2 until after 3:00 a.m. which is the day on which you  
 3 have been airborne, isn't that correct?  
 4 A Absolutely correct. Unless it's caught in a trap.  
 5 Q Unless it's caught in a trap, that's the exception.....  
 6 A Right.  
 7 Q .....in trapping?  
 8 A Right.  
 9 Q So you'd be violating both statutes.....  
 10 A Yes, sir.  
 11 Q .....regulations?  
 12 A Yes, sir, you would.  
 13 Q At the time -- during the time frame that these wolves  
 14 -- I guess -- let me ask you. In March of 2004 Mr. Haeg  
 15 had both a trapping and a hunting license?  
 16 A I believe so, yes, sir.  
 17 Q Which would be both regulations applied?  
 18 A Yes, sir.  
 19 MR. LEADERS: No further questions.  
 20 MR. ROBINSON: I have one.  
 21 THE COURT: Okay.  
 22 BRETT SCOTT GIBBENS  
 23 testified as follows on:  
 24 RECROSS EXAMINATION CONTINUED  
 25 BY MR. ROBINSON:

- 523 -

1 (Witness summoned)  
 2 THE COURT: Thank you. Do you want to get Exhibit 75,  
 3 please.  
 4 MR. ROBINSON: Don't know whether Mr. Parker  
 5 (indiscernible).....  
 6 THE COURT: Yeah, I think it was.....  
 7 UNIDENTIFIED SPEAKER: (Indiscernible).  
 8 THE COURT: I don't know if they saw that in the back  
 9 there.  
 10 (Pause)  
 11 (Whispered conversation)  
 12 MR. LEADERS: This seat's for you, Mr. Zellers.  
 13 MR. ZELLERS: Thank you.  
 14 MR. LEADERS: We'll be just a moment for swearing you in  
 15 for testimony.  
 16 THE COURT: Well, if we need to pick it up -- or if we  
 17 need to pick it up down here.  
 18 THE CLERK: Ready to swear him in?  
 19 THE COURT: Yes. Why don't you Go ahead.  
 20 THE CLERK: Stand and raise your right hand.  
 21 (Whispered conversation)  
 22 (Oath administered)  
 23 MR. ZELLERS: I do.  
 24 THE CLERK: And you may be seated.  
 25 TONY RUSSELL ZELLERS

- 525 -

1 called as a witness on behalf of the plaintiff, testified as  
 2 follows on:  
 3 DIRECT EXAMINATION  
 4 THE CLERK: Please state your full name and spell your  
 5 last name for the record.  
 6 A Tony Russell Zellers, Z-e-l-l-e-r-s.  
 7 THE CLERK: Your occupation?  
 8 A Currently I'm a dispatcher for Matanuska Electric  
 9 Association.  
 10 THE CLERK: And what town do you live in?  
 11 A Eagle River, Alaska.  
 12 THE CLERK: Thank you.  
 13 THE COURT: Go ahead, Mr. Leaders.  
 14 MR. LEADERS: Thank you, Judge.  
 15 BY MR. LEADERS:  
 16 Q Mr. Zellers, you -- how long have you lived in the state  
 17 of Alaska?  
 18 A 11 and a half years.  
 19 Q Okay. You are currently a dispatcher for Matanuska  
 20 Electric. How long has that been?  
 21 A I started there in March.  
 22 Q Okay. Previous employment?  
 23 A Previous employment for approximately five years as a  
 24 guide for Dave.  
 25 Q Mr. Haeg here?

- 526 -

1 A Yeah, Mr. Haeg here. Before that, before '98 and all  
 2 the way through '85 I was in the United States Air  
 3 Force.  
 4 Q Okay. And so from '98 until I guess just recently you  
 5 acted as a guide for Mr. Haeg?  
 6 A From '99.  
 7 Q '99.  
 8 A Right.  
 9 Q Okay. For approximately five years?  
 10 A Correct.  
 11 Q When did you, I guess, terminate or end doing that?  
 12 A Really haven't terminated.  
 13 Q Oh. Just not actively.....  
 14 A Just -- yeah. We haven't been active for -- because of  
 15 all this.  
 16 Q Okay. Because of all this. And I guess we're going to  
 17 kind of get to that.....  
 18 A Right.  
 19 Q .....in just a little bit. You hold a guide license?  
 20 A Yes, I do.  
 21 Q What class?  
 22 A I'm a registered big game guide.  
 23 Q Okay. How long have you been a registered big game  
 24 guide?  
 25 A Approximately a year and a half.

- 527 -

1 Q And there's a process to go through to become a  
 2 registered big game guide, is that correct?  
 3 A That's correct.  
 4 Q And part of -- there's other classes of guides as well?  
 5 A Yes, you have your assistant guide and you have to be an  
 6 assistant guide I believe for three years prior to  
 7 becoming eligible to take the test for big game guide.  
 8 Q There's assistants, class A assistants.....  
 9 A Right.  
 10 Q .....registered, master guides?  
 11 A Correct.  
 12 Q And how long have you been guiding then or as -- how  
 13 long have you been a registered guide? In any class?  
 14 A Well, I've been guiding since '99 and when you start  
 15 there I was an assistant guide, so.....  
 16 Q Okay, since '99?  
 17 A Right.  
 18 Q The -- what type of species did you guide?  
 19 A Primarily for moose, caribou, black bears and brown  
 20 bears.  
 21 Q In what areas?  
 22 A Unit 19-C and B, and Unit 9-A and B. And we just  
 23 started in Unit 16.  
 24 Q Okay. Unit -- the areas in Unit 19, there's a map off  
 25 to your right, I believe it's marked as Exhibit 25. Can

- 528 -

1 you show on the map, can you point out what areas you  
 2 guided in?  
 3 A Primarily I was guiding in -- in this area, Dave's  
 4 lodge. In this area, then we'll jump across the -- the  
 5 Swift and then guide down to in this area.  
 6 Q Okay. Down around the Rock Creek area?  
 7 A Right; that's further south we normally go.  
 8 Q That's down in 19-C?  
 9 A That's B.  
 10 Q That's B. I'm sorry. Yeah, that's right, C is up.....  
 11 A Yeah.  
 12 Q Okay. And you guided for what species in those areas?  
 13 A Moose, caribou, grizzly and black bear.  
 14 Q Now -- and that was through Mr. Haeg, correct.....  
 15 A That's correct.  
 16 Q .....that you guided for?  
 17 A Through his company.  
 18 Q Through his company. The -- was that your primary  
 19 guiding areas for -- you've talked about other areas,  
 20 the primary guiding areas for moose and caribou?  
 21 A Yes, that was our only area that we -- we guided for  
 22 moose and caribou.  
 23 Q Approximately how many clients did you take a year?  
 24 A Before the seasons changed I would have approximately  
 25 three clients during the moose season because it's a 10

- 529 -

1 day period. They were broken up that way so....  
 2 Q I see. Okay. Now let me ask you, sir. Did you also  
 3 participate with Mr. Haeg in a -- any predator control  
 4 programs in the McGrath area?  
 5 A Yes, I did.  
 6 Q Okay. When did you do that?  
 7 A That was in March of 2004.  
 8 Q And I guess what was -- how did you get involved in  
 9 that?  
 10 A Got involved with it when the state started the aerial  
 11 wolf program, found out they were going to issue permits  
 12 and we applied for a permit and was awarded one in  
 13 February I believe it was.  
 14 Q And that was the predator control program through the  
 15 Department of Fish and Game?  
 16 A Correct.  
 17 Q The -- and you said you were awarded permits?  
 18 A Correct.  
 19 Q Was that in conjunction -- that was in conjunction with  
 20 Mr. Haeg or you separately?  
 21 A Correct, that was in conjunction with Mr. Haeg. We put  
 22 in as a pilot/gunner team, so.  
 23 Q And the intent was for who to do what as far as duties?  
 24 A Mr. Haeg was going to be the pilot and I was going to be  
 25 the gunner.

- 530 -

1 Q Did -- so you got awarded a permit. We've heard that  
 2 -- from other testimony that some people didn't pick up  
 3 their permits or didn't actually you know participate in  
 4 the program under the permits. Did you and Mr. Haeg  
 5 pick up your permits?  
 6 A Yes, we did.  
 7 Q Okay. Where did you do that?  
 8 A We picked it up here in McGrath.  
 9 Q Do you recall when you did that?  
 10 A March 5th, started out....  
 11 Q March 5th of last year, right?  
 12 A Yeah, 2004.  
 13 Q Okay. And how did -- did you and Mr. Haeg pick it up  
 14 together?  
 15 A Yes, we did. We flew up and -- and we picked it up from  
 16 I believe Al Root was the fish and game representative.  
 17 Q Okay. Were you familiar with Al?  
 18 A No, I wasn't. Never met him before.  
 19 Q Kind of big, burly guy, right?  
 20 A Yeah.  
 21 Q Okay. And did -- what was the process when you picked  
 22 up the permits?  
 23 A Fill out the permits, as far as your -- your name,  
 24 address and stuff. Al gave us -- told us where the area  
 25 was. The area had just changed. The management area

- 531 -

1 had just expanded, so the permit wasn't quite right what  
 2 was written on the back of it so he explained that and  
 3 then picked up a little map along with it.  
 4 Q Okay.  
 5 A A small -- a small one.  
 6 Q Were you and Mr. Haeg there at the same time when you  
 7 picked up your permit?  
 8 A Yes, we were.  
 9 Q Is that the same time he picked up his permit?  
 10 A Yes, it was.  
 11 Q How did the two of you get out to McGrath?  
 12 A We flew in Mr. Haeg's plane.  
 13 Q From?  
 14 A From Soldotna.  
 15 Q Okay.  
 16 MR. LEADERS: May I approach the witness, Judge?  
 17 THE COURT: Yes.  
 18 Q I'm going to ask a few questions from here.  
 19 THE COURT: Uh-huh.  
 20 Q Exhibit number 26, correct?  
 21 A Yes.  
 22 Q Okay. That -- is that the plane you and Mr. Haeg flew  
 23 out....  
 24 A Yes.  
 25 Q .....to McGrath in?

- 532 -

1 A Yes.  
 2 Q Okay. It's got an insignia the Batcub on it?  
 3 A Right.  
 4 Q Okay. Now in applying to obtain the permit there was an  
 5 application, is that correct?  
 6 A That's correct.  
 7 Q Did you fill out your own application or how did that  
 8 work?  
 9 A No, Dave actually filled out the application. He called  
 10 me over the phone and I gave him the information over  
 11 the phone.  
 12 Q Okay. Provided information that you asked as far as  
 13 filling it out?  
 14 A Right.  
 15 Q Okay. So did you actually even see the application then  
 16 before it was submitted or?  
 17 A No, I did not.  
 18 Q Okay. You just knew Mr. Haeg was submitting one on your  
 19 behalf?  
 20 A On my behalf.  
 21 Q As a team?  
 22 A Right.  
 23 Q Okay. The -- Exhibit number 21, correct?  
 24 A Correct.  
 25 Q Is that familiar to you?

- 533 -

1 A Yes, this is the permit that I was issued and I filled  
 2 out with my information.  
 3 Q Okay. And so you filled out the -- kind of the writing  
 4 on there, the printed writing.....  
 5 A Yes.  
 6 Q .....that's all your printing and writing. And the --  
 7 on the back it talks about.....  
 8 A Yes, this is my signature and.....  
 9 Q Signature.  
 10 A .....and Al Root's.  
 11 Q Talks about permit conditions?  
 12 A Correct.  
 13 Q Did you review those permit conditions prior to signing  
 14 it?  
 15 A Yes, we did.  
 16 Q Did Mr. Root actually review them with you?  
 17 A Yes, I believe he was there and reviewed them with us.  
 18 Q Okay. He spec -- did he -- I guess emphasize any of  
 19 them in particular or?  
 20 A Nothing in particular. He just -- that I remember. He  
 21 just went through the numbers on the permit.  
 22 Q Okay. Was there -- now on there one of the conditions  
 23 discusses the permit boundaries and that type of stuff,  
 24 or the area in which the permit is valid?  
 25 A Yeah, I believe so. Let me just look here.

1 Q Okay.  
 2 A (Pause) Doesn't actually define the.....  
 3 Q Okay, but number 6, does that address that?  
 4 A No, number 3 is the one that addresses it.  
 5 Q Oh, sorry. Thank you. Number 3. Indicates that the  
 6 permit allows the taking of wolves using aircraft only  
 7 within a portion of Unit 19-D east. That includes the  
 8 experimental micro-management aerial -- area, the  
 9 attached map and written descriptions specifically  
 10 identify the control area within which this permit may  
 11 be used?  
 12 A Correct.  
 13 Q Okay. That -- now let me ask. Were you familiar with  
 14 19-D east?  
 15 A Not as familiar as -- as I am with the further south  
 16 areas, 19-C and B.  
 17 Q C and B where you guided?  
 18 A Where -- yeah.  
 19 Q Okay. But did you know the -- roughly where 19-D was?  
 20 A Yes.  
 21 Q Do you know roughly where 19-D east was?  
 22 A Yes.  
 23 Q Okay. And where is that in relation to where you guide?  
 24 A That would be north of where we guided.  
 25 0670

1 (Tape change)  
 2 4MC-05-15/Side B  
 3 0670  
 4 THE COURT: Go ahead. Mr. Leaders.  
 5 Q You indicated there was a map that was provided to you.  
 6 I'm handing you Exhibit 22.  
 7 A Yes.  
 8 Q Okay. Is that -- does that, I guess, ring a bell to  
 9 you?  
 10 A Yeah, the map is familiar. It's not the exact map that  
 11 we were provided. I believe the map we were provided  
 12 was a lot smaller, just a single page about that size.  
 13 Q Okay. But did it depict the same area?  
 14 A Yes.  
 15 Q For the permit?  
 16 A Yes.  
 17 Q Okay. Did Mr. Root discuss this -- the area contained  
 18 in this permit with you?  
 19 A Briefly. I think he discussed more of what was added to  
 20 the original area.  
 21 Q Okay. Now this here -- there's a note, revised March  
 22 1st. That was the point in time when they expanded the  
 23 area, right?  
 24 A Correct.  
 25 Q So this here was the revised map, is that correct?

1 A Correct.  
 2 Q So then he discussed this -- that this was the area in  
 3 effect at the time of your permit?  
 4 A Yes.  
 5 Q Okay. Did you have any doubts or misunderstandings  
 6 about what -- where the predator control program  
 7 boundaries were?  
 8 A No.  
 9 Q Okay. The -- or any doubts or misunderstandings whether  
 10 or not the permit authorized any activity outside the  
 11 permit boundaries?  
 12 A No.  
 13 Q What was your understanding outside the permit  
 14 boundaries? Did it authorize you to take any wolves?  
 15 A No.  
 16 Q Do you know -- there wasn't any predator control  
 17 programs outside those permit boundaries, were there at  
 18 the time?  
 19 A Yes, there was. It was in -- Unit 13 was doing a  
 20 predator control, land and shoot.....  
 21 Q Okay. Let me ask you. In Unit 19 were there any other  
 22 predator control.....  
 23 A No.  
 24 Q Okay. Programs? All right, now -- this area here  
 25 roughly depicts that -- the control program area, is

1 that correct?  
 2 A Roughly, the northern boundary of it.  
 3 Q The north -- correct, the northern boundary is  
 4 inaccurate?  
 5 A Right.  
 6 Q Now the -- what did you and Mr. Haeg do after obtaining  
 7 the permits?  
 8 A We commenced patrolling some of the control area.  
 9 Q Okay. What area? Maybe, if you'd like.....  
 10 MR. LEADERS: Maybe it would be -- Judge.....  
 11 A Primarily we flew over.....  
 12 Q Actually, Mr. Zellers, what I'll have you do.....  
 13 MR. LEADERS: Judge, can we bring the map up and have the  
 14 witness maybe get a little closer to the jury to show where  
 15 he engaged in activities?  
 16 THE COURT: Yeah, just.....  
 17 (Pause)  
 18 Q We'll have you come up here because the map is quite a  
 19 distance from some of us. (Pause) Can you show us --  
 20 okay, you picked up the map -- the -- excuse me, permits  
 21 on March 5th, correct? 2004?  
 22 A Correct.  
 23 Q What did you do after picking up the permits?  
 24 A Well, we didn't have a whole lot of daylight left that  
 25 day if I remember right, we picked it up in the

- 538 -

1 afternoon, so we flew over and we basically flew the --  
 2 the Big River.  
 3 Q Okay. Show us roughly the route?  
 4 A This -- this here is the Big River.  
 5 Q Okay. In a southerly direction then?  
 6 A Correct; because our.....  
 7 Q Towards the lodge?  
 8 A Our base of operations was out of the lodge. So we're  
 9 basically heading back toward the lodge and doing some  
 10 predator control in the area while we're leaving.  
 11 Q Okay. So for the time that you're doing the predator  
 12 control the plan was to have base of operations out of  
 13 the lodge there?  
 14 A Correct.  
 15 Q All right. And -- excuse me. What did you -- did you  
 16 encounter any wolves in the control area?  
 17 A Yes, we encountered three wolves.  
 18 Q Where were those at?  
 19 A Approximately down in here on the -- the Big River.  
 20 There was a moose kill site and we saw three wolves on  
 21 the river.  
 22 Q What wolves did you see?  
 23 A Two blacks and a gray.  
 24 Q Two blacks and a gray. And you said they were in the  
 25 area? In the permit area or boundaries?

- 539 -

1 A I believe so at the time. It's -- it's hard to say at  
 2 the time without detailed study to where I was exactly,  
 3 because I didn't have the GPS in the back. I didn't  
 4 have.....  
 5 Q You're in the back. What type -- that plane, that's a  
 6 PA-12, right?  
 7 A Yeah, it's a PA-12, I was in the back seat.  
 8 Q You were in the back, okay. And you didn't have GPS or  
 9 anything back there for you to know?  
 10 A Right, so all I'm looking at is Lone Mountain, trying to  
 11 get a.....  
 12 Q See Lone Mountain and you're looking for wolves?  
 13 A Right.  
 14 Q Okay. And you observed three. Where are they at?  
 15 A On the river.  
 16 Q Okay. On the Big River out on the river bed?  
 17 A Right, out in the open on the river.  
 18 Q Okay. No others around, just the three of them?  
 19 A That's all we saw at that time was three.  
 20 Q Where was the wolf kill? Or I'm sorry, the moose kill?  
 21 A The moose kill was -- was just a hair down river into  
 22 the trees, is where the majority of the -- the wolf  
 23 tracks and -- and -- and that were.  
 24 Q So who spots the wolf or wolves?  
 25 A I couldn't tell you who -- who saw them first. If Dave

- 540 -

1 saw them first or if I saw them.  
 2 Q Okay. What happens when someone sees the wolves?  
 3 A We start to get set up. It's like there's some wolves,  
 4 let's get set up. I've got to put some protection on as  
 5 far as -- because we're going to open the doors and I'm  
 6 in the back seat so I put some -- some gloves and stuff  
 7 and then get the shotgun ready.  
 8 Q Okay. What were you -- what kind of firearms were you  
 9 using for this?  
 10 A We had a 12 gauge shotgun.  
 11 Q Okay. What brand?  
 12 A Benelli.  
 13 Q Okay.  
 14 MR. LEADERS: May I approach?  
 15 THE COURT: Yes.  
 16 Q Exhibit number 1 is this, in fact, the -- appear to be  
 17 the shotgun that you were using at the time?  
 18 A Yes, it does.  
 19 Q Whose shotgun was that?  
 20 A I purchased it, but we purchased it basically for the --  
 21 for the use.....  
 22 Q For the purpose of this hunt?  
 23 A For the purpose of this hunt.  
 24 Q Okay. 12 gauge, correct?  
 25 A Correct.

- 541 -

1 Q And what type of ammunition were you using?  
 2 A At that time primarily we were using number 4 buckshot.  
 3 but we also had some double-ought buckshot, also. And I  
 4 think one box of the new Remington heavy shot that was  
 5 given to us.  
 6 Q Okay. And what size shells?  
 7 A We had both three inch and three and a half inch.  
 8 Q Okay. Three and three and a half, okay. And the -- so  
 9 you get set up and you get ready, open the doors and  
 10 what happens?  
 11 A We make a pass on the wolf and I couldn't tell you  
 12 exactly how many passes. I believe there was three  
 13 passes on this wolf before I put him down with shot.  
 14 Q Okay.  
 15 A You basically get one shot per pass because of the  
 16 aircraft strut and I can't go too far forward because of  
 17 the propellor.  
 18 Q Okay. Sure. And what -- does the wolf stay in the same  
 19 place or the wolves stay in the same place or what do  
 20 they do?  
 21 A No, before we even get set up the two black ones  
 22 immediately are into the timber. The gray is the one  
 23 that stayed on the river and that's the only one we went  
 24 after.  
 25 Q Okay. And did it just freeze, stay in that same place

1 or what did it do?  
 2 A No, it starts running but it stays on the river.  
 3 Q Stays on the river. Which direction does it head?  
 4 A I believe it's running up river.  
 5 Q All right, so it's heading south?  
 6 A Right. Where the blacks went.....  
 7 Q Are east?  
 8 A Off to the west into the brush.  
 9 Q Okay. And maybe if you could come up and show us again  
 10 the -- where is -- using that again, rough boundaries, I  
 11 know it's not exact. Where was it that you believe you  
 12 first observed that wolf?  
 13 A After looking back on it, it was probably right in this  
 14 area right in here. Just on the boundary or slightly  
 15 south of the boundary.  
 16 Q Okay. So right -- basically right there at the boundary  
 17 or slightly outside the boundary?  
 18 A Correct.  
 19 Q When you say slightly what are you talking about? Are  
 20 you talking about an issue of yards, a mile, or what?  
 21 A Scot, I can't tell where the -- where the boundary  
 22 exactly is on -- on the ground, so, you know, it's --  
 23 it's hard -- maybe it's a mile out, maybe it's two miles  
 24 out, I don't -- I can't.....  
 25 Q Fair enough, I understand. You weren't check.....

1 A Right.  
 2 Q You were trying to shoot this, not check GPS?  
 3 A Right.  
 4 Q Were you aware though that it was right there on the  
 5 boundary area?  
 6 A Well, I knew we were close to this little jog on the  
 7 boundary. I didn't have a whole lot of time to study  
 8 the map before we shot this one, but, you know, Lone  
 9 Mountain is a pretty good sized mountain and you're  
 10 trying to judge where exactly this line is when -- you  
 11 know, this line shows this, so you got another map that  
 12 shows it slightly lower and, you know.....  
 13 Q Okay. And had the two of you, you and Mr. Haeg, kind of  
 14 discussed and studied the geographic, I guess, maybe any  
 15 geographic markers on the boundaries to know where they  
 16 were at?  
 17 A Just roughly with Lone Mountain here because this is our  
 18 -- our route to going back, so.  
 19 Q Okay. But prior to getting the permit or anything like  
 20 that you hadn't really kind of sat down and studied it  
 21 out?  
 22 A No, because we didn't -- because it just expanded.....  
 23 Q It just(indiscernible).  
 24 A .....and we didn't -- I didn't have the -- the new --  
 25 new stuff, so.

1 Q Fair enough. Now the -- I assume that to -- for -- to  
 2 some extent you were relying on Mr. Haeg as far as where  
 3 you were? I assume he has GPS in the front of the  
 4 plane?  
 5 A Correct.  
 6 Q Okay. You said you guys kind of -- there's a wolf and  
 7 you begin setting up. Is there a discussion between the  
 8 two of you at all?  
 9 A Briefly just as far as we're going to try and set up and  
 10 he's going to try and make a right pass or a left pass.  
 11 I'm not doing a whole lot of talking because I've got to  
 12 let go of the mike, it's a push to talk mike and if I'm  
 13 getting stuff and putting gloves on and goggles on.....  
 14 Q Kind of hard to talk?  
 15 A Trying to get the shotgun and everything ready.  
 16 Q I see. Any discussion at all about the wolf is out of  
 17 the boundary, do we go for it or not?  
 18 A No.  
 19 Q So there's a wolf, we're going for it?  
 20 A Correct.  
 21 Q Okay. Now what happens to the wolf? Do you guys get  
 22 it?  
 23 A Yes.  
 24 Q Okay. But it takes about three passes?  
 25 A Yeah. Two to three passes from what I remember, before

1 the wolf goes down for good.  
 2 Q What happens after you kill the wolf? And I assume  
 3 that's -- you shoot it from the air, is that correct?  
 4 A Right. Right.  
 5 Q Using that shotgun there?  
 6 A Correct, with that shotgun.  
 7 Q And at that time were you using the double-ought or the  
 8 4....  
 9 A No, I believe that one was shot with number 4.  
 10 Q Okay. It shoots -- it goes down. What do you do?  
 11 A We looked the river over for a landing spot where we can  
 12 land fairly close to go to pick it up.  
 13 Q Were you able to get pretty close to it?  
 14 A Fairly close. Within about, you know, probably 150, 200  
 15 yards on good ice.  
 16 Q Right. And that was a gray wolf?  
 17 A That was a gray wolf.  
 18 Q Okay.  
 19 A Male.  
 20 Q A male gray, okay. A good wolf, a good sized wolf  
 21 or....  
 22 A Yeah.  
 23 Q Okay. And what did you do at that point then after -- I  
 24 assume Mr. Haeg flew you in and you landed and one of  
 25 the two of you got out to get it?

- 546 -

1 A Yeah, I walked over and started dragging it about -- got  
 2 it about part way back and then Mr. Haeg joined me and  
 3 we drug him back to the plane, threw him in the plane  
 4 and took off for the lodge.  
 5 Q Okay. So you just got the permit, within a matter of  
 6 hours, you got your first wolf, right?  
 7 A Correct.  
 8 Q Anything -- what else happens after that? You just head  
 9 back to the lodge?  
 10 A Yeah, it's getting -- getting late so we're....  
 11 Q Now one of the requirements of the permit was to provide  
 12 GPS coordinates of the kill site. Do you recall that?  
 13 A Correct.  
 14 Q Okay. Did you guys take GPS coordinates?  
 15 A At that time I don't remember anything about us  
 16 recording any GPS coordinates or -- or anything.  
 17 Q Or even talking about you need to do it or anything....  
 18 A No, I don't. We were just kind of happy and  
 19 (indiscernible).  
 20 Q Kind of happy that -- what do you -- do you look around  
 21 and realize, gee, are we in or are we out? Did you  
 22 discuss it at all?  
 23 A No, we don't discuss that at all. And actually looking  
 24 around from the ground it's hard to say if I'm, you  
 25 know, one degree off of west from Lone Mountain or two

- 547 -

1 degrees off, or right on, so it's like -- from standing  
 2 on Big River looking over it's hard to say exactly where  
 3 you are on the line.  
 4 Q The -- so you head back, and this is still March 5th,  
 5 you head back to the lodge?  
 6 A Correct.  
 7 Q What do you do at that point?  
 8 A Land at the lodge and I think we're going to eat dinner  
 9 and then later on that night we skinned the wolf.  
 10 Q Oh, had you guys been out -- now you guys -- you flew  
 11 from Soldotna all the way out to McGrath that day,  
 12 right?  
 13 A Correct.  
 14 Q Okay. Stop off at the lodge on the way in?  
 15 A Yeah, we dropped off fuel. We were loaded full of fuel  
 16 and....  
 17 Q A short break?  
 18 A And our personal equipment, clothes and stuff.  
 19 Q Okay. Had you been out at the lodge and in that area  
 20 doing anything -- any hunting, trapping, anything like  
 21 that prior to going out there on the 5th?  
 22 A No.  
 23 Q Okay. Didn't have any trap sets or snare sets or  
 24 anything to set out there after?  
 25 A Not at that time.

- 548 -

1 Q Not at that time. I'll have you sit -- you're probably  
 2 going to be -- I'm sorry to keep you standing....  
 3 A That's okay, I need to get up every once in a while.  
 4 Q Okay. You're going to be up and down with that -- I'm  
 5 sorry. What -- I assume you guys take care of the wolf  
 6 that night?  
 7 A Correct.  
 8 Q What do you -- I mean skin it out?  
 9 A Just -- yeah, skin it out in the lodge.  
 10 Q Do you recall case it or open....  
 11 A I believe that one was case skinned. The first one.  
 12 Q Okay. And who does that?  
 13 A Both of us.  
 14 Q Okay. Now what happens the next day then?  
 15 A The next day we get up and we start -- do some stuff  
 16 around the lodge I believe, until it gets good light and  
 17 then preheat the plane and we head north.  
 18 Q Okay. Where do you head to, if you head north? I guess  
 19 -- I'm sorry, I'll have you come back up. Maybe you can  
 20 show us?  
 21 A Right. From the lodge the easiest way for us to get  
 22 into the predator control is just to fly right up the  
 23 valley, right up -- right down the Big River.  
 24 Q Okay. Up the valley there and down the river?  
 25 A Right, jump over into the Big River and -- and just take

- 549 -



1 that into the control area.  
 2 Q Okay. I mean it's also -- I guess -- did you talk about  
 3 well, gee, you knew there were wolves there, right?  
 4 A Right, right. So we want to check because there's just  
 5 -- was just a ton of tracks and kill site.  
 6 Q Okay. So in addition to the three that you saw and the  
 7 one that you took you saw a bunch of tracks in that  
 8 area?  
 9 A Right.  
 10 Q Okay. Had you guys been looking, scouting for any other  
 11 way into McGrath the day before or anything?  
 12 A Not really, just because we were trying to get there to  
 13 get the permit and.....  
 14 Q While there's still some light to do some kind of.....  
 15 A Well, while Al's.....  
 16 Q Still there?  
 17 A Somebody's still there, you know.  
 18 Q Okay. Sure.  
 19 A To make the flight.  
 20 Q Very good. Now then the second day we're talking about  
 21 then the 6th of March, you fly up the valley, then up  
 22 the river, Big River, back towards the permit  
 23 boundaries. So you guys both, I assume, clearly  
 24 understood the lodge was outside the permitted area,  
 25 right?

- 550 -

1 A Correct.  
 2 Q Okay. It's in Unit 19-C?  
 3 A 19-C.  
 4 Q And what happens then? I guess that second day?  
 5 A We basically see some wolf tracks.....  
 6 Q I'll have you come back up, maybe show the areas that  
 7 you guys.....  
 8 A We see some wolf tracks in this area, and we find  
 9 another kill.  
 10 Q Let me ask. Okay, what area?  
 11 A On the Big River.  
 12 Q Okay. Big River there.  
 13 A The Big River, just to the east of it, in the -- in the  
 14 flats.  
 15 Q To the east. And is that an area -- were you inside the  
 16 permit -- the predator control permit boundaries?  
 17 A No, we weren't.  
 18 Q Okay. Was this on the way in?  
 19 A This was on the way up, yes.  
 20 Q Okay. And you see some wolf tracks?  
 21 A Right. And then we find a -- a pretty well eaten kill  
 22 site and we tracked some tracks away from there and they  
 23 end up going up onto this ledge, and it's right there we  
 24 find two wolves.  
 25 Q Okay. What do you do when you see the two wolves up

- 551 -

1 there?  
 2 A We get set up on them and we end up shooting both  
 3 wolves.  
 4 Q Any discussion about that? I mean other than there's  
 5 some wolves, let's get on them? I mean just kind of  
 6 tell me what.....  
 7 A Right. There's not a whole lot of discussion again.  
 8 We're kind of excited that we're finding wolves and --  
 9 and stuff, so I'm getting up in the back and -- and we  
 10 take them down.  
 11 Q This is up in the area you -- that you guys guide for  
 12 your moose?  
 13 A No.  
 14 Q Oh, okay. It's.....  
 15 A We -- we don't go up into the Big River area at all.  
 16 Q Okay. It's north of that then?  
 17 A Right.  
 18 Q North of the area you guys typically guide, right?  
 19 A Right.  
 20 Q Now at that time I guess you guys see them. Is that --  
 21 and that's on the way in. You haven't gone even into  
 22 the boundaries yet to look for wolves?  
 23 A That's correct.  
 24 Q And I guess like you said, just kind of get excited and  
 25 you just get ready for them?

- 552 -

1 A We get ready, yeah.  
 2 Q The -- any discussion at all -- I mean I guess -- were  
 3 you aware that you weren't in the permit boundaries at  
 4 that time?  
 5 A Yes.  
 6 Q Clearly not -- not.....  
 7 A Yeah.  
 8 Q I mean by a considerable distance?  
 9 A Actually after I was told how far we were out later on,  
 10 I didn't think it was that far out, but that's just the  
 11 way Alaska is on mileage, so.  
 12 Q Right. And the -- what happens? You set up on these  
 13 two?  
 14 A Set up on the two, make probably two passes on the --  
 15 the smaller of the -- of the two, which is a female, we  
 16 put her down. And we set up on the other one, that one  
 17 takes quite a few passes. I couldn't tell you the  
 18 number of passes and -- before we get that one down.  
 19 Q Okay.  
 20 A Toward the edge.  
 21 Q So, I mean several passes though between the two of  
 22 them?  
 23 A Right.  
 24 Q Do you have to chase them or do they kind of stay in the  
 25 same.....

- 553 -

1 A Well, they're.....  
 2 Q They're running, but.....  
 3 A If I'm shooting at them they're not standing still, so.  
 4 Q Okay, fair enough. Now -- actually can I have -- I'll  
 5 have you mark with this red pen here the location of the  
 6 -- those two wolves. First, if you can mark.....  
 7 A I think the.....  
 8 Q Mark -- I guess let me ask you this before I have you  
 9 mark. How far, I guess, did you have to pursue them  
 10 before you were able to -- from the point you see them  
 11 and you set up on them and you start trying to shoot  
 12 them, how far until you actually are able to get -- to  
 13 kill them?  
 14 A The female didn't -- wasn't too far.  
 15 Q Okay.  
 16 A Because I think we only did two passes on her, and a lot  
 17 of times when you overfly them, you know, the wolf is  
 18 going to turn around, so they don't end up traveling  
 19 very -- very far.  
 20 Q I see. So the female doesn't go far. The male goes a  
 21 little bit further I assume because it takes longer?  
 22 A A little bit longer. He gets closer to the edge of  
 23 trying to get back to the timber. Along down the hill.  
 24 Q Okay. So let me have you mark the female, where --  
 25 because the female, where you're marking, and I'll have

- 554 -

1 you put a one. Actually, I'm sorry, an A.  
 2 THE COURT: Yeah, have it be something that's.....  
 3 A Yeah, it's got to be right in this area, roughly.  
 4 Q And you've marked that as an A?  
 5 A Correct.  
 6 Q Okay. So that would have been approximately where you  
 7 first saw -- or where you saw the two of them together  
 8 originally?  
 9 A Right; they were up on the bench.  
 10 Q Okay. And then could you mark with a B approximately  
 11 where you took the male?  
 12 A He ended up somewhere right -- just over the edge.  
 13 Q So he heads in a southerly direction then, is that  
 14 correct, or.....  
 15 A Southerly to the west.  
 16 Q Okay. Southwesterly?  
 17 A And he's -- and he's trying to get down off of the ledge  
 18 is what he was trying to do.  
 19 Q Down off -- and I'll just have you mark with I guess a Z  
 20 where the moose kill is that you observed in that area.  
 21 A Oh, it was probably right down in that area. Roughly is  
 22 the moose.  
 23 Q Okay. And of course I -- we'll go in a little bit of a  
 24 reverse order because I need to have you mark with a C  
 25 where the first one you guys took the day before. I

- 555 -

1 should have had you start the.....  
 2 A Where it ended up after we looked on the map later,  
 3 right about there.  
 4 Q Okay. So you marked that with a C?  
 5 A Correct.  
 6 Q Okay. Now the -- did you guys -- were there any other  
 7 wolves that you saw in that area or just the two of  
 8 them?  
 9 A We just saw those two.  
 10 Q Okay. And you were able to get both of them?  
 11 A Right.  
 12 Q What did you use? What.....  
 13 A The 12 gauge.  
 14 Q Okay.  
 15 A Initially we used the 12 gauge and then when we came  
 16 back to pick -- to pick them up the -- the male was  
 17 sitting up and we ended up shooting that with a .223.  
 18 Q Okay. From the air or on the ground?  
 19 A No, that was from the ground.  
 20 Q Okay. The wolves were initially shot though from the  
 21 air with the.....  
 22 A 12 gauge.  
 23 Q .....12 gauge.  
 24 A Right.  
 25 Q Okay. We'll discuss that for a little bit and then I'll

- 556 -

1 -- so I'll let you sit down if you'd like. The --  
 2 after.....  
 3 THE COURT: Mr. Leaders, let me just interrupt because I  
 4 kind of want to take a dinner break around 5:30 kind of time  
 5 frame. Or is this a good place to take a break for about 10  
 6 minutes or so?  
 7 MR. LEADERS: That's fine, Judge.  
 8 THE COURT: Okay. Why don't we take a break. Start back  
 9 up right at about 4:30 and then we'll take our dinner break  
 10 in about an hour then.  
 11 MR. LEADERS: Thank you.  
 12 THE COURT: Okay.  
 13 (Off record)  
 14 THE COURT: Back on record. Mr. Zeller, I -- Zellers, I  
 15 need to remind you that you are still under oath. Okay?  
 16 A Yes, Your Honor.  
 17 MR. LEADERS: Judge, may Mr. Robinson and I approach for  
 18 one -- it's a real brief one.  
 19 MR. LEADERS: Sure.  
 20 (Bench conference as follows:)  
 21 MR. LEADERS: I (indiscernible) five minutes or so with  
 22 Mr. Parker in the front row turned to me and asked, can we  
 23 ask questions. And I just -- I know we're not supposed to  
 24 communicate with jurors. I just said ask the judge, and  
 25 that's all I said. So I just -- but I wanted to make

- 557 -

1 sure.....  
 2 THE COURT: (Indiscernible).  
 3 MR. LEADERS: .....that you both know that I communicated  
 4 with the juror. so.  
 5 THE COURT: Okay. Thank you.  
 6 (End of bench conference)  
 7 THE COURT: Go ahead, Mr. Leaders.  
 8 MR. LEADERS: Thank you.  
 9 Q Mr. Zellers, when we left off I guess you had just kind  
 10 of finished marking the various kill sites that we've  
 11 discussed so far, the ones on the 5th and the 6th?  
 12 A Correct.  
 13 Q Okay. Let me ask. Had you and Dave discussed -- Mr.  
 14 Haeg, excuse me, you and Mr. Haeg discussed setting out  
 15 any traps in these areas up there?  
 16 A Not in -- in those areas, no.  
 17 Q Now -- I mean on the 5th you saw two extra wolves up  
 18 there, right there at the boundaries, and there was a  
 19 kill site, right?  
 20 A Right. But by the time we would -- we would have flown  
 21 back down and got traps and -- and stuff it's -- it  
 22 would have been dark.  
 23 Q I guess I look at the 5th was right after you got the  
 24 permit, you're flying out, kind of, you know, checking  
 25 the permit area towards -- and then you get this wolf as

- 558 -

1 you're heading back towards home -- or towards the  
 2 lodge.  
 3 A Right.  
 4 Q You skin it out that night, you're there, you've got  
 5 snares and traps, that type of stuff, at the lodge,  
 6 right?  
 7 A Correct.  
 8 Q Okay. And you know that all your predator control  
 9 flying and shooting all has to occur back up that way,  
 10 right?  
 11 A Correct.  
 12 Q Where you know there's -- well, that's where you have to  
 13 be anyway, but you know there's a couple wolves still in  
 14 that area, or you've seen them the night before?  
 15 A Correct.  
 16 Q No discussion though about setting out any -- and you  
 17 know there's a kill site, moose kill site. No  
 18 discussion about setting out traps or snares?  
 19 A No, there's no discussion about it.  
 20 Q Okay. And then -- then, as well, no discussion about  
 21 setting out traps or snares or anything like that near,  
 22 I guess what we've marked as sites A -- kill sites A and  
 23 B, from the site. Again, there's a moose kill site  
 24 there again?  
 25 A Right. We're basically -- you know, there's no

- 559 -

1 discussion about it. I don't even think about it and I  
 2 don't think Dave would -- would even think about it  
 3 because you're basically out of his traditional trapping  
 4 area and there's other people are down -- oh, they would  
 5 be down here on the -- on the Big River in here. I know  
 6 there was somebody out here one time on a plane, and I  
 7 don't know if he was trapping or what. but, you know,  
 8 it's like moving into somebody else's territory.  
 9 Q Okay.  
 10 A That's.....  
 11 Q All right. So no discussion of it at all?  
 12 A No.  
 13 Q Okay. Let's talk about you -- you talked about you shot  
 14 both of them from the air and you had -- later you came  
 15 back and had to dispatch or kill the male.....  
 16 A Correct.  
 17 Q .....from the ground with the .223?  
 18 A Correct.  
 19 Q Okay.  
 20 MR. LEADERS: May I approach with an exhibit and hand it  
 21 to him?  
 22 THE COURT: Uh-huh.  
 23 Q That's -- that was this rifle here, is that correct?  
 24 A That's correct.  
 25 Q Marked as Exhibit number 2. Does that appear to be the

- 560 -

1 one that was used in fact?  
 2 A Yeah.  
 3 Q Okay. Now what type of ammunition were you using for  
 4 that?  
 5 A I believe it's just a -- it's wolf ammo is what it's  
 6 called. That's the brand name on it.  
 7 Q Obviously we know the caliber is .223 and then.....  
 8 A Right.  
 9 Q .....designation Rem-wolf on it?  
 10 A Yeah, that.....  
 11 Q Okay.  
 12 THE COURT: What exhibit is that?  
 13 MR. LEADERS: I'm sorry.  
 14 Q That's Exhibit 35, correct?  
 15 A Correct.  
 16 Q Okay.  
 17 THE COURT: Thank you.  
 18 Q The same as Exhibit 4?  
 19 A Correct.  
 20 Q The -- now apparently there's no magazine in Exhibit  
 21 number 2? Do you recognize this?  
 22 A Yes, it's the magazines we used.....  
 23 Q Okay.  
 24 A .....in the .223.  
 25 Q The taped back-to-back for.....

- 561 -

1 A Correct.  
 2 Q I mean you're out there, you want to have enough ammo,  
 3 right?  
 4 A Well, it's easier to carry ammo that way, so instead of  
 5 loose ammo all over.  
 6 Q Okay.  
 7 THE COURT: And that's.....  
 8 Q This is Exhibit 3, correct?  
 9 A Correct.  
 10 Q Okay. Now -- so after you first shoot them from the air  
 11 with the shotgun what do you do?  
 12 A The wolves are down and we continue on flying into the  
 13 predator control area.  
 14 Q And do what then?  
 15 A We check around the other kill site looking for the  
 16 blacks, and we basically fly down the Big River all the  
 17 way up to around Medfra, just south of Medfra, and look  
 18 around that area. From there we -- we -- I believe we  
 19 continue over toward the east boundary and we fly the  
 20 east boundary and then we'll jump into the -- the Windy  
 21 River and fly up the Windy River a ways before we turn  
 22 back toward Lone Mountain.  
 23 Q Okay. Any success up in that area?  
 24 A No. We saw a few moose tracks around Medfra and we  
 25 spent quite a bit of time right around that area because

- 562 -

1 A Right.  
 2 Q And what was -- the time just outside the area where --  
 3 what was he at or where -- what he doing?  
 4 A It appeared to us that he was running traps or -- or  
 5 something. Plus we didn't.....  
 6 Q Yeah. Was his plane on the ground?  
 7 A .....know it was Trooper Gibbens.....  
 8 Q .....  
 9 A .....and he just seemed to be a trapper out checking  
 10 traps.  
 11 Q Okay. So the plane is on the ground at that time,  
 12 or.....  
 13 A The plane was on the river, landed, both times.  
 14 Q Oh, okay. How much time do you guys spend up there in  
 15 the area?  
 16 A Quite a bit of time. We burned quite a bit of gas. I  
 17 don't know, three, four hours up into the area.  
 18 Q And then what did you do?  
 19 A It's getting later so we're going to head back. First  
 20 we -- like I said, we flew Windy Fork and then we headed  
 21 back toward Lone Mountain. Somewhere between here and  
 22 the Middle Fork, right on the boundary, we run across a  
 23 bunch of moose -- or wolf tracks that are headed west.  
 24 Q Can you show me that again. Where was that?  
 25 A I believe it was just before you get to the Middle Fork.

- 564 -

1 it seemed to be a couple wolves that were in the woods  
 2 hunting the moose tracks that we saw, so -- because  
 3 there were wolf tracks intermixed with the moose.  
 4 Q Okay.  
 5 A Just -- just across the river from Medfra.  
 6 Q But didn't actually see any wolves you could get on or  
 7 anything?  
 8 A Didn't see the wolves or the moose.  
 9 Q Okay. Did you see any other planes or pilots or  
 10 anything up there?  
 11 A Yeah, we saw the -- Trooper Gibbens. Later learned was  
 12 Trooper Gibbens' 170, so.  
 13 Q Okay. Where was that that you saw him?  
 14 (Indiscernible).  
 15 A I saw him twice. I saw him once on the -- the Big  
 16 River.  
 17 Q I'm going to have you -- maybe show it from the map  
 18 again. And I guess let's talk about -- this is March  
 19 6th? Did you see him twice on March 6th?  
 20 A I believe it was twice on March 6th when I saw him.  
 21 Q And where were those times?  
 22 A One time was right in this area, and then the other time  
 23 would have been probably just outside the area here on  
 24 Windy -- Windy Fork.  
 25 Q Just outside the area?

- 563 -

1 Between the Windy and the -- the Middle Fork.  
 2 Q And they were heading west, so into the permit area?  
 3 A Correct. And we followed them for a little ways but  
 4 they're in the -- the short trees and stuff. We never  
 5 see any moose or never see any wolves from that pack.  
 6 But it looks like a very large pack.  
 7 Q And -- so you don't -- you follow the tracks for a while  
 8 but don't -- nothing really turns up?  
 9 A Right. And what happens is we end up going this side of  
 10 Lone Mountain, we go back over to the -- to the Big  
 11 River and check looking for the blacks again where we  
 12 know there's wolves there the day before. And then we  
 13 end up flying down to pick up the two wolves that we  
 14 have down.  
 15 Q Okay. Now I know the wolf you took on the 5th you said  
 16 was a gray wolf. How about the two you took on the 6th?  
 17 A They were gray also.  
 18 Q Okay. A smaller female and the male was larger?  
 19 A Correct.  
 20 Q Okay. And so you head over to pick them up and what  
 21 happens?  
 22 A We land at the female first because we can land real  
 23 close to her and pick her up. While we're doing that we  
 24 notice that the -- the male was now sitting up, a little  
 25 bit, has moved to maybe 10 yards down -- down the

- 565 -

1 mountain. We land and pick the female up. From there  
 2 we get back in the plane and we fly over closer to the  
 3 male. Reland, and I'll take the .223 over to the edge  
 4 and shoot the -- the male. Both of us go down to bring  
 5 it back up because he's hard to drag up the hill.  
 6 Q Okay. And so -- now is that male, you said you flew  
 7 around for about three or four hours up in the -- up  
 8 north of them from the time you shot it until you went  
 9 back.....  
 10 A Roughly. I -- I wasn't watching the clock, so --  
 11 but.....  
 12 Q And it didn't make it far?  
 13 A No, it was -- it was right there where we thought he was  
 14 down dead, so.  
 15 Q Okay. What happens after you pick these two wolves up?  
 16 A We get back in the plane and fly to the lodge.  
 17 Q And what happens back at the lodge? Anything.....  
 18 A No, we take the wolves, you know, put the plane to  
 19 sleep, covers and all that stuff and we'll end up  
 20 skinning the wolves probably after we eat. We both  
 21 help. Dave's starting to get a little bit sick at this  
 22 time, but that's basically what we do.  
 23 Q Okay. So he was -- Mr. Haeg was beginning not to feel  
 24 well, he was getting sick?  
 25 A Correct.

- 566 -

1 Q What happens -- I assume that -- I guess, like you said,  
 2 you skin the wolves out or whatever and then.....  
 3 A Right. And I believe we case -- cased them.  
 4 Q Cased them, again?  
 5 A Right. We may have opened one of them but I believe we  
 6 cased. It's hard to remember which one we did.  
 7 Q Sure, it's been a while ago.  
 8 A Right.  
 9 Q What did you do the next day?  
 10 A The next day Dave is still not feeling the -- the best,  
 11 but we're going to head up to the predator control area.  
 12 We get up to the -- the Big River, just south of the  
 13 boundary and we see a -- pretty much of a gust front,  
 14 wind, wall of snow coming from the east and we turn  
 15 around and head back towards the lodge before the wind  
 16 gets too (indiscernible).  
 17 Q Okay. Does that sock you in for a little bit, or.....  
 18 A It keeps us down for the rest of that day.  
 19 Q Okay. Then the 8th, what happens?  
 20 A The 8th we get up, it's a lot colder on the 8th. Dave,  
 21 again, is not feeling well, so we don't do a whole lot  
 22 that morning because it's fairly cold. It's below --  
 23 it's probably 20 below. We decide to -- to head up to  
 24 the control area. This time we're going -- instead of  
 25 going to the Big River we want to go more to the

- 567 -

1 southwest corner, so we fly over the mountains and we're  
 2 somewhere over the -- over the hills, probably right up  
 3 in this area in here when we decide it's -- it's way to  
 4 cold. We turn around, we don't have the oil cooler  
 5 taped off on the plane, we're running low oil  
 6 temperature, we're not getting a whole lot of heat out  
 7 of the engine, so.....  
 8 Q Okay.  
 9 A And it's cold so we head back to the lodge, again.  
 10 Q Okay. All right. Now one of the permit requirements  
 11 was some reporting. You know, we talked earlier about  
 12 the GPS.....  
 13 A Right.  
 14 Q Taking GPS coordinates and all that there. Do you  
 15 recall, did you take GPS coordinates for wolves two and  
 16 three there that you took on the 6th?  
 17 A I believe we did, and on the 6th I believe that's when  
 18 we flew back over to the -- to the Big River is when we  
 19 actually really noticed that that wolf was out, because  
 20 we took coordinates of where that kill was.  
 21 Q So you went back down on that site and took coordinates  
 22 of where it was?  
 23 A We didn't land, we just overflew.....  
 24 Q Overflew it?  
 25 A Right.

- 568 -

1 Q Okay. And at that point you realized that wolf was out  
 2 of the boundaries?  
 3 A Right. That's when it really sank in that he was out of  
 4 the boundary.  
 5 Q You and Mr. Haeg discussed that or at least acknowledged  
 6 that it was outside the boundary?  
 7 A Right.  
 8 Q The -- so what did you do then with this reporting  
 9 requirement? As far as having -- reporting the wolves?  
 10 A We decide that we're going to report the wolves. We're  
 11 going to report the wolves just inside the south  
 12 boundary. All three of them together.  
 13 Q You and Mr. Haeg discussed this?  
 14 A Yeah, some.  
 15 Q Pretty much, probably.....  
 16 A Yeah.  
 17 Q But a decision was made, basically.....  
 18 A Right, and the -- the reporting was -- what we really  
 19 wanted to do, we know we're getting ready to head back  
 20 because Dave's not feeling very well. And we're.....  
 21 Q When you say back?  
 22 A Back to Soldotna, to town, and -- and that. So we're  
 23 going to report the three wolves together just inside  
 24 the area, and the biggest thing we want to do with the  
 25 report is say -- let everybody else know that there's

- 569 -

1 other wolves there that we saw, the two blacks, and let  
2 them know that we saw just a whole bunch of wolf tracks  
3 over on the east side and into the area, so maybe if  
4 some of the other aerial hunters checked in with fish  
5 and game they would have a report that, hey, there's  
6 wolves over there. Because when we first got our permit  
7 they told us where some of the reports of wolf packs  
8 were and stuff like that. But they were kind of old,  
9 old data, so.

10 Q Okay. Why didn't you just report having seen wolves  
11 there as opposed to actually taking wolves there?

12 A Well, we want to be -- seem successful in the -- the  
13 permit, so.

14 Q And how did you -- I mean -- so then you -- I assume you  
15 flew then into the -- inside the permit boundaries and  
16 took the coordinates somewhere?

17 A Right; we -- we took -- took a coordinate just inside  
18 the permit boundary. I don't know if we flew and  
19 actually marked a coordinate or we just looked on the  
20 map and -- and marked the coordinate that -- that looked  
21 -- looked good at the time, so.

22 Q It -- now as I recall you guys hadn't spent a lot of  
23 time prior to obtaining the permit inside the  
24 boundaries, or were you really familiar, other than the  
25 information others had told you about the status of the

1 fish and game as far as the big pack was the -- the  
2 primary thing was we had a big pack on the eastern side  
3 heading into the -- into the area.

4 Q Okay. Now with Dave -- Mr. Haeg, excuse me, feeling --  
5 not feeling well, did you guys, you know, kind of -- did  
6 you fly at any time or anything like that, so.....

7 A No.

8 Q .....that wouldn't be an issue for him?

9 A No. I did not fly, so.

10 Q Okay. You didn't fly at any -- you just acted as gunner  
11 when you were.....

12 A Right. Normally I do not fly Dave's 12.

13 Q You're a pilot though, correct?

14 A Correct, I am.

15 Q All right. You don't fly his 12, but you fly.....

16 A I fly his PA-18.

17 Q Okay.

18 A At times.

19 Q So he's got a -- he's got a Cub?

20 A Right.

21 Q Now -- and your background is in aviation, too, is that  
22 correct?

23 A Correct, I was an Air Force pilot.

24 Q The -- what did you do with the three hides?

25 A They were in the plane. I think we were taking them

1 wolf packs there, in there? As far as, you know, the  
2 makeup of packs or anything like that?

3 A No.

4 Q Didn't know, you know, what color combinations were in  
5 packs of blacks.....

6 A No. Fish and game had some report. Like I said, they  
7 were probably two weeks old was probably the newest  
8 report, and the reports would be two grays, you know,  
9 three blacks and a gray or something like that. But  
10 down there I don't think we knew of what was down there.  
11 It was more of the reports were more on the west side of  
12 the area.

13 Q Okay. So you weren't aware if other people had been  
14 reporting those -- that -- where you reported taking it  
15 was you just had a pack of only about two grays?

16 A No.

17 Q The -- you obtain a coordinate. I assume that was  
18 conveyed then to fish and game, a report was made?

19 A Right; and I believe that was made on the 9th, the next  
20 day, prior to us flying back to Soldotna.

21 Q Okay. What was the process for that?

22 A Dave called fish and game on the -- the satellite  
23 telephone and reported the -- the coordinates.

24 Q Okay.

25 A And the other information that we wanted to convey to

1 back with us. Originally during our briefing Al Root  
2 told us that we just had to call in within five days and  
3 we could get them sealed, wherever, but it didn't have  
4 to go back to McGrath to get them sealed, so.....

5 Q There was a special sealing process though, is that  
6 correct, or at least identification process.....

7 A We had a special tag.

8 Q Okay.

9 A But -- and then Al gave us a temporary sealing permit,  
10 fur bearer sealing permit, so -- and he said we didn't  
11 have to -- to seal them there, they could be sealed at  
12 any fish and game.

13 Q That's what he had originally told you when you picked  
14 up the information?

15 A The original agreement, correct.

16 Q And I guess that special tag for the predator control  
17 program, that was a yellow kind of metal covered.....

18 A I believe so, correct.

19 Q That was -- you had to apply that in addition to the  
20 standard sealing tag?

21 A Correct.

22 Q Now -- and is that something you as the permittees put on  
23 or was that something fish and game put on, as far as  
24 the.....

25 A The -- the yellow tag was handed out to the permittees to

1 put on when you made a kill.  
 2 Q Okay.  
 3 A You would tag -- tag the wolf and then the sealing tag  
 4 fish and game had them, they didn't pass them out until  
 5 you brought the hide in to be sealed, and then they  
 6 would record it.  
 7 Q Okay. So a slightly different process with the two?  
 8 A Correct.  
 9 Q You guys -- or the permittees were given the tags.....  
 10 A We had the tags for the yellow tags and fish and game  
 11 has the sealing tag.  
 12 Q Okay. Oh, what did you guys do with the carcasses from  
 13 the wolves that -- these wolves? I guess A, B and C, or  
 14 C, A, B however you want to.....  
 15 A At -- at that time originally they were just tossed  
 16 outside the -- the lodge and then prior to us leaving we  
 17 took them down and we stacked them down by the one  
 18 bridge that crosses the creek down there.  
 19 Q What do you guys typically do with the carcasses from  
 20 your wolf kills?  
 21 A We typically take what carcasses we had there at the  
 22 lodge, take them down there and stack them by the  
 23 bridge.  
 24 Q Okay. There's a carcasses pile there?  
 25 A It just gets them -- gets them away from the lodge, gets

- 574 -

1 it away from the building area, so -- or if we've got  
 2 time we might take them off somewhere else to -- to  
 3 dispose of.  
 4 Q Not many -- not much of a use for them other than bait  
 5 or something like that I assume for.....  
 6 A Correct.  
 7 Q Not something in your guiding experience with seeing Mr.  
 8 Haeg or anyone else, I guess, give or offer to clients?  
 9 Carcasses?  
 10 A As far as wolf carcasses?  
 11 Q Yeah.  
 12 A No.  
 13 Q It wouldn't be a typical.....  
 14 A No, that wouldn't be a very nice gift (indiscernible).  
 15 Q Probably the same, I would assume, with a wolverine?  
 16 A No.  
 17 Q Not quite something you want to take home?  
 18 A No.  
 19 Q So that was on the 9th, you guys called the wolves  
 20 in.....  
 21 A Correct.  
 22 Q .....to fish and game. Who did that? Was it you or Mr.  
 23 Haeg?  
 24 A It was Mr. Haeg.  
 25 Q Okay. Were you there when he provided the information?

- 575 -

1 A I believe I was in the lodge. I don't know if I was  
 2 sitting there right next to him at the phone or  
 3 something, or if I was packing up, getting ready to --  
 4 because we were -- we were getting ready to leave.  
 5 Q You were at least aware of the information he conveyed?  
 6 A Yes.  
 7 Q And what was that?  
 8 A The three wolves just inside the -- on the Big River.  
 9 Q Identify them by color and.....  
 10 A Identified by color and I believe he told them the tag  
 11 numbers that we put on them. The location, and then  
 12 went into the other sightings that we had so that  
 13 there's a report for other aerial teams.  
 14 Q Okay. And then after that -- that was on the 9th. What  
 15 do you do?  
 16 A We pack up and fly to Soldotna.  
 17 Q Okay, so you head back to Soldotna on the 9th?  
 18 A I believe so, yes.  
 19 Q Okay. Any other participation in the predator control  
 20 program then after the 9th?  
 21 A Yes, we get a call that -- somewhere around the 15th we  
 22 get a call -- first of all, I think we get a call that  
 23 something-- they've changed some of the rules and the  
 24 permit, so we get -- I had an answering machine message  
 25 about that. We call out there and then we get a call

- 576 -

1 that, hey, we've got to bring the wolves back to McGrath  
 2 to have them sealed.  
 3 Q Contrary to what you were told originally?  
 4 A Right.  
 5 Q Now the change as far as the permit itself or what was  
 6 allowed, the rules; what were the changes, do you  
 7 recall?  
 8 A I don't know the exact changes that was and I think that  
 9 one had to do with radial usage and -- and stuff for the  
 10 guy on the ground. If -- you can assist somebody going  
 11 to dispatch a wounded wolf or something like that,  
 12 or.....  
 13 Q Okay.  
 14 A .....somebody on a -- you know, one of the permittees  
 15 to.....  
 16 Q Doing a land and shoot?  
 17 A To recover the wolves, so.  
 18 Q Okay. And -- so what do you -- you get this call, you  
 19 need to go back out on the 15th, what happens?  
 20 A Not a whole lot. Dave and I talk and we're getting busy  
 21 because our bear season is just around the corner so  
 22 neither of us -- I don't think Mr. Haeg is feeling very  
 23 good. I think he's still a little bit ill, so we don't  
 24 do anything right away. We know we've got 30 days. Al  
 25 told us when we talked to him that, hey, you've got 30

- 577 -

1 days to bring them back to be sealed, so.  
 2 Q When he called and told you you had to bring them back  
 3 to get sealed?  
 4 A Right. Not -- not 30 days from that date, 30 days from  
 5 the time that you killed them, so.  
 6 Q Okay. And you called on the 9th. When did you report  
 7 having killed them or taken them?  
 8 A I couldn't -- the 5th or the 6th. We reported the day  
 9 that we shot them. I couldn't -- I don't remember what  
 10 day, but it was either the 5th or the 6th was the day  
 11 that was reported, so.  
 12 Q Okay. And so you don't do anything right away after the  
 13 phone call on the 15th. At some point do you actually  
 14 go back out to....  
 15 A Right, on the 20th we fly back to the lodge.  
 16 Q Now -- and you fly back to the lodge, I guess, going  
 17 back out to do some more.....  
 18 0277  
 19 (Tape change)  
 20 4MC-05-16/Side A  
 21 0003  
 22 THE COURT: We're back on record.  
 23 A The primary reason we were flying back out is just to  
 24 take these three wolves to get them sealed because we're  
 25 -- we're gearing up for our -- our bear season that's

1 A Yeah, we've got the guns in the plane.  
 2 Q Okay. You've got the guns, you've got the hides, taking  
 3 them back out to get them.....  
 4 A Right, because we know we're going to be in the predator  
 5 control area because we've got to go to McGrath, so.  
 6 Q If you see something?  
 7 A Right.  
 8 Q Wasn't really planning to go out though and hunt??  
 9 A No, we weren't -- we weren't planning on going out and  
 10 -- and actually, you know, running through the area and  
 11 spending days upon days out there.  
 12 Q Were you planning on going out and setting out any trap  
 13 or snare sets or anything like that?  
 14 A That's always kind of in the plans if -- you know,  
 15 opportunities. It depends on -- on what equipment and  
 16 stuff and how many flights we're planning on going over  
 17 to pick up equipment from the lodge. Most of the -- the  
 18 guiding equipment was at the lodge, the majority of it.  
 19 We actually decided this year to take one of the -- the  
 20 big weather port tents so that was going to be basically  
 21 a load by itself, so.  
 22 Q So it's kind of you're getting geared up, probably a lot  
 23 to get ready for the bear hunts, right? There's stuff  
 24 to do?  
 25 A Right.

1 going to start April 2nd so we're getting close, and  
 2 Dave's got a lot of work to do as far as getting gear  
 3 ready and stuff like that.  
 4 Q Where do you guys bear hunt, in that same area? Or were  
 5 you -- were you (indiscernible).....  
 6 A That year we were spring bear hunting in Unit 16.  
 7 Q Where is Unit 16 in relation to the lodge up there?  
 8 A It would be on the east -- east side, over here, prior  
 9 to the Inlet.  
 10 Q Okay. About how far?  
 11 A Probably 80, 100 miles. Through Merrill Pass. On the  
 12 other side of Merrill Pass.  
 13 Q Okay. You guys still base out of the same lodge then?  
 14 A No.  
 15 Q Okay.  
 16 A Base out of the -- the old.....  
 17 Q So you don't have to go up over the range, or around, or  
 18 whatever  
 19 A Right. Right, because of the weather and the flying  
 20 through the pass and stuff, we would base out of  
 21 Soldotna.  
 22 Q So you said your only real reason then for going out was  
 23 to take the hides back out?  
 24 A Originally, yeah, that's the reason we.....  
 25 Q Do you end up taking the firearms or the guns back out?

1 Q Did you actually sit -- talk about, hey, let's go set  
 2 some traps or snare sets out there while we're in the  
 3 area?  
 4 A Well, when we get -- we get to the lodge we noticed  
 5 that, you know, our carcass pile down there that we got  
 6 is drawing quite a few wolverine tracks and -- and stuff  
 7 like that and we decide to set out some -- some  
 8 wolverine sets just around the lodge.  
 9 Q Just around the lodge. How about out and around for --  
 10 to try and get any of the wolves? Was there any plan  
 11 for that there?  
 12 A No formal plan.  
 13 Q Okay.  
 14 A There are traps in this area that he has traps strung up  
 15 here, strung up there.  
 16 Q None were active at that time though?  
 17 A None were active but if there's something going on and  
 18 they're active then we could land and -- and set them.  
 19 Q I mean once you make them active you need to monitor  
 20 them, right?  
 21 A Right.  
 22 Q And the plan was take the wolf hides up and then finish  
 23 getting ready for that bear camp over across the range?  
 24 And not.....  
 25 A Right. And Dave's going to have to make three or four



1 flights back and forth to the lodge to get all the gear,  
 2 but at least get the gear down to the building by the  
 3 lake so that it's all there so that he can just come in  
 4 and load up and.....  
 5 Q So setting traps out around -- traps, snares, whatever,  
 6 around the lodge where you're going to be flying in and  
 7 out of isn't really a problem. You're going to be  
 8 there, right?  
 9 A Right.  
 10 Q But how about out, you know, kind of setting some of  
 11 these other act -- or inactive at the time set? That  
 12 would probably become less convenient in the sense  
 13 of.....  
 14 A Well, maybe less convenient. Most of his -- his primary  
 15 trapping area was always down, out and down to down  
 16 here, down to the Stony River was traditional, which  
 17 when you come through Merrill Pass.....  
 18 Q Okay.  
 19 A .....you're flying by them anyway.  
 20 Q But down on the Stony that would have been kind of in  
 21 the path -- or the area if you're going through Merrill  
 22 Pass.....  
 23 A Right, (indiscernible), you know, all in -- in the  
 24 areas.  
 25 Q Right. Okay. Now but still no plan was discussed

- 582 -

1 between you to just go out and set after that?  
 2 A No. Not at the time.  
 3 Q Okay. You get out there -- or what day is it that you  
 4 head out there?  
 5 A The 20th.  
 6 Q Okay. Do you go -- do you drop stuff at the lodge  
 7 again?  
 8 A No, it's late in the afternoon when we -- we go over and  
 9 we fly high, we go over the mountains and drop right  
 10 into the lodge, right at dark.  
 11 Q Oh, drop into the lodge at dark?  
 12 A Uh-huh (Affirmative).  
 13 Q Okay. And so then it's the next day that you take care  
 14 of going into McGrath to seal the hides, or what do you  
 15 do?  
 16 A The next day I think we make a couple phone calls, we  
 17 can't get a hold of them -- anybody, and the 21st I  
 18 believe was a Sunday anyway.  
 19 Q Okay. All right.  
 20 A So we decide -- we get up and we decide to fly south and  
 21 check some of the camps and -- and some of the old trap  
 22 sites and stuff.  
 23 Q So you don't decide to get up and go into the predator  
 24 control program to look for wolves?  
 25 A No, because we were going to wait until somebody's at

- 583 -

1 McGrath to seal the wolves. We get a hold of somebody  
 2 there to seal them and then we'll fly up.  
 3 Q And so you go -- you said you head south to just check  
 4 some of the camps?  
 5 A Yeah, some of our camps to see how they came through the  
 6 winter because we didn't fly by them because we came  
 7 over the top. Check on some moose numbers. We kind of  
 8 like to keep track of how many moose because that will  
 9 tell us about how many hunters we can have in the fall.  
 10 Q I guess, again, no discussion at that time about setting  
 11 out a trap or snare sets down there where you're going  
 12 to check your camps?  
 13 A No, but we fly by all the-- the older.....  
 14 Q The old stuff?  
 15 A Old stuff so if there's something there we always look  
 16 to see if there's something going on there.  
 17 Q Okay. Okay. You fly south. What happens?  
 18 A We don't see a whole lot. We might see a couple moose  
 19 on the Swift River. Cross over that all the way down,  
 20 check our camps.  
 21 Q I'm going to have you come up to the map and kind of  
 22 show us the area you went -- this is the 21st?  
 23 A Right. We just -- basically I believe we fly just  
 24 across this, fly maybe just a little bit down, look on  
 25 the Swift, just a little bit. We'll come up across this

- 584 -

1 -- this flat. Down here to Rock Creek, and then once we  
 2 get south we'll -- I don't know if we flew up into Rock  
 3 Creek. I believe we did. To check on that camp up  
 4 there, and there was a couple moose up in there. Which  
 5 there normally is during the winter time, but not many  
 6 -- not like there should be, but the -- the year prior I  
 7 had set a trap line for Dave. I believe it was this  
 8 bench, one of these benches right here, so.  
 9 Q Uh-huh. But you weren't going to check that particular  
 10 set or.....  
 11 A We were just going to see if it's active. It's not  
 12 really -- it's a -- it's a trail that the wolves like to  
 13 use.  
 14 Q You're looking for wolves, too, not just checking your  
 15 camp?  
 16 A We're not necessarily looking for wolves, we're looking  
 17 for activity. Any kind of activity out there. We're  
 18 just -- just kind of.....  
 19 Q Sure. So you're -- then you're not really going out, at  
 20 that point in time on the 21st when you're heading  
 21 south, you're not going out to do the predator control  
 22 stuff?  
 23 A Our primary purpose I think was just to go check for  
 24 moose and -- and check the camps.  
 25 Q Okay.

- 585 -

1 A And then once we got down to our last camp, now we're  
 2 checking to see if we've got activity on the old trap  
 3 line because the snares are still there and -- and  
 4 stuff, and then there was another set down on Stony that  
 5 we went over to.  
 6 Q Did you set any -- make any of those active?  
 7 A No.  
 8 Q Okay. Did you encounter any game or I guess you said a  
 9 couple moose here and there?  
 10 A Right.  
 11 Q See any wolves?  
 12 A We end up seeing three wolves on the Stony.  
 13 Q Where at on the Stony? And actually, here I'm going to  
 14 make it with my red pen today. Did I leave a red pen up  
 15 there with you?  
 16 A Yeah, I've got that here.  
 17 Q Okay. I guess before you mark, you see three wolves  
 18 down on the Stony. What happens when you see the three  
 19 wolves on the Stony?  
 20 A We're pretty frustrated just because we haven't seen any  
 21 moose like there should be moose out there, and so we  
 22 start to set up on the three wolves when we see them.  
 23 We turn out and -- and get ready to set up on them.  
 24 Q With the shotgun, the.....  
 25 A With the shotgun, all my gear on.

- 586 -

1 Q Your gear?  
 2 A Right.  
 3 Q As you would up in.....  
 4 A Right.  
 5 Q The plan was up in the control area?  
 6 A Correct.  
 7 Q You set up on the wolves. Do you actually take any of  
 8 them there?  
 9 A End up shooting one wolf there. There was a moose kill  
 10 that's pretty far off the river that the other two go  
 11 into, into the taller trees that we don't get.  
 12 Q Okay. Black, gray? Do you recall?  
 13 A All grays I believe.  
 14 Q All grays.  
 15 A And the one that was shot was a gray.  
 16 Q The one that was shot was a gray. The -- how close were  
 17 they -- can you show us on there with a D where the wolf  
 18 on the 21st was shot?  
 19 A (Pause) Let's see. It was approximately right here.  
 20 Q Okay. And the other two wolves were -- where did they  
 21 head?  
 22 A They headed toward this hill. This was kind of open but  
 23 not real open and then it gets into real heavy tall  
 24 trees, and the kill site -- there was a kill, a moose  
 25 kill, right about there that day. And there it was just

- 587 -

1 covered with tracks, and once we got there it's like we  
 2 couldn't track them any more.  
 3 Q Couldn't track them. And how far from there was the  
 4 moose kill?  
 5 A From?  
 6 Q From where you ended up seeing these wolves and shooting  
 7 the D?  
 8 A Maybe a mile and a half. I mean it's just.....  
 9 Q Maybe a mile.  
 10 A Maybe mile, mile and a half. It was just up the  
 11 drainage a little bit.  
 12 Q The two that got away, did you shoot on them?  
 13 A Initially I shot at the one, I shot behind that one  
 14 because it was crossing right to left, and -- and I saw  
 15 that hit clearly behind that. And the other one -- the  
 16 one that we got was running straight away.  
 17 Q Do you even shoot on it or.....  
 18 A The one -- yeah, the one straight away was running.....  
 19 Q The one straight away, sorry.  
 20 A .....straight away, that was an easier shot, so. And  
 21 then the other ones, when they initially got into the  
 22 trees we were high, we did pop at them to try and get  
 23 them out of the trees but they just went deeper into the  
 24 brush.  
 25 Q Now you talked about you got some -- the trap and snares

- 588 -

1 set down in this area, right?  
 2 A Right.  
 3 Q Did you make it active? I mean there's a kill site and  
 4 a couple of wolves?  
 5 A No, because it's -- the -- the traps are further up and  
 6 the kill site is pretty far off river. We do look  
 7 around for landing sites, to see if we can land, and  
 8 trap, because there's at least half a moose left there.  
 9 It's a fairly fresh kill.  
 10 Q Uh-huh.  
 11 A So -- but there's no place where we can land close to --  
 12 to make it a convenient trap site for, you know, Dave to  
 13 check later or whatnot.  
 14 Q Okay. So you don't set anything up?  
 15 A So we don't set anything.  
 16 Q You -- I assume you go back to pick up the one you  
 17 killed?  
 18 A Yes.  
 19 Q And what do you do after that?  
 20 A Well, that one was -- ended up still being alive. I  
 21 ended up shooting him with the .223, pick him up and we  
 22 fly him back to the lodge.  
 23 Q You had to land to finish shooting him again?  
 24 A Right, because he got just barely off the river and just  
 25 up across the brush and when we came back after the

- 589 -

1 other two he was -- he was there and -- and I just  
 2 walked up and -- and shot him, close range with the .223  
 3 to dispatch him.  
 4 Q Okay. Then you pick him up, throw him in the plane.  
 5 head back to the lodge?  
 6 A Correct.  
 7 Q Do you call him in and report him at that time?  
 8 A No.  
 9 Q What do you guys do?  
 10 A We toss him out, we probably eat lunch. It's probably  
 11 around that time, and we get a hold of I believe Toby  
 12 Boudreau up here and plan on heading up here in the  
 13 afternoon to seal him.  
 14 Q And is that what you end up doing then?  
 15 A Yes.  
 16 Q Okay. You fly into McGrath and you have those -- the  
 17 three that were shot out of the area but you said were  
 18 just inside the boundary on the Big River sealed?  
 19 A Right.  
 20 Q Mr. Boudreau does that?  
 21 A Yes.  
 22 Q And you were present and you see that occur?  
 23 A Yes.  
 24 Q Were you familiar with the information that was put on  
 25 the sealing certificate?

- 590 -

1 A I was fairly familiar with where the wolves were going  
 2 to be located and -- and stuff.  
 3 Q You and Dave had talked about it or you knew where he  
 4 was going to report it?  
 5 A Well, when he called them in on the 9th, we -- we had  
 6 already talked about where they were going to be  
 7 located.  
 8 Q Okay.  
 9 MR. LEADERS: May I approach the witness, Judge?  
 10 THE COURT: Uh-huh.  
 11 Q Number 24, correct?  
 12 A Right.  
 13 Q Is that the sealing certificate that was used for those  
 14 three wolves?  
 15 A I believe so.  
 16 Q Okay. It's signed by whom?  
 17 A David Haeg.  
 18 Q And dated?  
 19 A 3-21-04.  
 20 Q Who is the, I guess, sealer?  
 21 A Oh. Toby Boudreau.  
 22 Q Okay. And does it -- the information that's on there,  
 23 is it accurate as to where the wolves were taken? I  
 24 mean does it -- it reflects wolves taken on what day?  
 25 A On 3-04, which is not accurate.

- 591 -

1 Q Okay. And actually I guess that's month and year, isn't  
 2 it?  
 3 A Oh, okay.  
 4 Q It doesn't have a specific date, isn't it....  
 5 A Yeah. Yeah, okay.  
 6 Q So it doesn't state a specific date but it gives a  
 7 location for wolves taken?  
 8 A Right; all three same location.  
 9 Q Okay. Was that accurate as to where those three were  
 10 taken?  
 11 A In actuality, no.  
 12 Q Okay. All right. And that was however the information  
 13 you and David discussed providing on -- for  
 14 reporting.....  
 15 A Right.  
 16 Q .....these wolves?  
 17 A Right.  
 18 Q Any other discussion other than just having the wolves  
 19 sealed with Mr. Boudreau?  
 20 A Yeah, we talked to him about the other wolf packs. You  
 21 know, what's going on with the other -- other hunters,  
 22 who's -- you know, we just in general -- general  
 23 discussion. And Dave is talking to him with a lot of  
 24 stuff that hopefully is coming out of the Board of Game  
 25 and we're learning that 19-C is not going to be opened

- 592 -

1 up like we originally thought, the next year. And --  
 2 and stuff like.....  
 3 Q That was something Mr. Haeg was pretty interested in,  
 4 right? He had been to -- right before you guys getting  
 5 the permit where did Mr. Haeg coming from?  
 6 A The Board of Game in Fairbanks.  
 7 Q And that was one of the issues, whether 19-C would be  
 8 open?  
 9 A Right.  
 10 Q So you find out from Mr. Boudreau that's not going to  
 11 happen?  
 12 A Yeah. Basically we find out from him it's not going to  
 13 happen due to the surveys not being adequate.  
 14 Q Okay. And the -- talk with anyone else there in  
 15 McGrath?  
 16 A We ended up talking with Trooper Gibbens at the plane,  
 17 just prior to us departing.  
 18 Q Okay. At the plane right there at the airport here?  
 19 A At the fuel pump, yeah.  
 20 Q Fuel pump, okay. And what was the discussion with  
 21 Trooper Gibbens?  
 22 A That's where we first learned that he's the owner of the  
 23 170 that we overflew, so we talk about that and he asked  
 24 some questions about the plane, the skis, the set up  
 25 with the -- the tail wheel.

- 593 -

1 Q It's a little bit of a unique set up, isn't it?  
 2 A I guess maybe. I mean.....  
 3 Q Have you seen it on other planes?  
 4 A Yes, I have seen it on other planes, so.  
 5 Q That -- those ski .....  
 6 A And there may be more -- more towards the  
 7 Soldotna/Anchorage area that you'll see more of that set  
 8 up than out here in the Bush.  
 9 Q Oh. okay.  
 10 A But I -- I can't say that for certain.  
 11 Q Okay. Sure. Fair enough. And any other -- any  
 12 discussion about where the wolves were taken with  
 13 Trooper Gibbens?  
 14 A I believe there was some, just minor discussion. He  
 15 just wanted to make sure we knew where the boundaries  
 16 were, so he did mention that.  
 17 Q And.....  
 18 A And we talked about the shotgun and what we're using for  
 19 ammo.  
 20 Q So Trooper Gibbens brought up to you or asked if you  
 21 guys were aware of where the boundaries were, if you had  
 22 any questions.....  
 23 A He wanted the more -- when we overflew him on the Windy  
 24 Fork he wanted to make sure that we knew we were outside  
 25 the area where -- if we knew we were outside the area.

- 594 -

1 Which we stated to him that we were, we knew.  
 2 Q Okay. You knew?  
 3 A Right.  
 4 Q And he offered to clarify or make sure that you guys  
 5 were aware of the specifics of the boundaries, correct?  
 6 A I don't -- I -- he might have. I don't specifically  
 7 recall the -- asking (indiscernible).  
 8 Q He at least asked you if you guys were aware, right?  
 9 A Yeah. Right.  
 10 Q You guys let him know you -- did you have any questions  
 11 about the boundaries at that point?  
 12 A No.  
 13 Q So you knew the four wolves that you had taken at that  
 14 point were all outside the boundary?  
 15 A Yes.  
 16 Q The -- you knew that the predator control program was  
 17 all just in 19-D, correct?  
 18 A Yes.  
 19 Q And where you guys had taken wolves, at that point,  
 20 three of them out of 19-C?  
 21 A Three out of 19-C because they were just south of the  
 22 border of -- the one was just south of the border of 19-  
 23 D.  
 24 Q Just south. Okay.  
 25 A Right.

- 595 -

1 Q And the.....  
 2 A The other one was in 19-B.  
 3 Q Like the one that's just south of the border and into  
 4 19-C, if that's how -- that's a game management border,  
 5 right? Or subunit border?  
 6 A Subunit border, correct.  
 7 Q So say if you're hunting -- say you draw a permit for a  
 8 moose or something in 19-D, you took it -- where you  
 9 actually took those wolves you would be hunting -- you  
 10 wouldn't be under the authority of that permit, right?  
 11 A Correct.  
 12 Q Okay. Because you would be in 19.....  
 13 A You'd be in a different subunit, right.  
 14 Q Right. So that permit wouldn't have given you any  
 15 authority in C, right?  
 16 A Correct.  
 17 Q So that's a permit -- or that boundary wasn't just  
 18 specific to the wolf program, it kind of followed the  
 19 subunit boundary at that particular area?  
 20 A On the Big River that line, yeah, it follows the subunit  
 21 boundary, I believe, yeah. Without specifically looking  
 22 at the.....  
 23 Q So anybody hunting in that area would need to be  
 24 familiar with that boundary as well, not just the  
 25 predator control program?

- 596 -

1 A And -- yeah, anybody hunting on -- unless they're  
 2 allowed to hunt in both areas. I mean it's.....  
 3 Q Okay, fair enough, sure.  
 4 A Right.  
 5 Q Okay.  
 6 A Because the guide use areas don't necessarily go by the  
 7 boundaries of the subunits.  
 8 Q Right. But the permits, as far as game -- some game  
 9 permits do?  
 10 A Right, but the most people that we're worried about  
 11 hunting for animals, non-residents, it's just 19. You  
 12 know.  
 13 Q Right. Okay.  
 14 A We're not talking harvest permits and stuff.  
 15 Q Sure. What happens after speaking to Mr. Boudreau and  
 16 Mr. Gibbens on the 21st?  
 17 A Well, we talked with Mr. Boudreau, he's talking to us  
 18 about some wolves that are just north of town. They  
 19 were moose killers, he's talking about wolves on the  
 20 Nixon Fork so we end up flying north and flying the  
 21 Nixon Fork pretty extensively up -- up that way, and  
 22 it's quite a bit of the northern border.  
 23 Q Do you have much time? You guys hadn't left the lodge  
 24 until the afternoon, right?  
 25 A Well, we didn't have a whole lot of time, but we'd fly

- 597 -

1 up there at that time. And that's why we don't fly the  
 2 whole northern boundary before we come back.  
 3 Q Is the Nix -- that Nixon Fork, that's up north of -- is  
 4 it like north and east of where you were in McGrath?  
 5 A Right. Correct.  
 6 Q Any luck up there or any wolves?  
 7 A No, we don't see wolves, a lot of tracks. Found  
 8 probably two wolf or moose kills, older kills up there.  
 9 We do -- don't see any wolves before we come back down.  
 10 Q Why didn't you bring it -- if you had taken -- you only  
 11 brought in the three from previous, you didn't bring in  
 12 the one you had taken earlier that day?  
 13 A No, we didn't.  
 14 Q Why was that?  
 15 A We knew he was directly -- he was out of the area. He  
 16 was unskinned and usually -- for me, usually, when I  
 17 bring stuff in to be sealed it's going to be skun out  
 18 and stuff, but I think it was just natural reaction  
 19 that, hey, we got back to the lodge, tossed him out and  
 20 tossed the other ones in.  
 21 Q Okay. As to who was kind of making the decisions as to  
 22 where you guys go as you, you know, take off at whatever  
 23 times, you know, from the lodge or from McGrath?  
 24 A Well, Dave's making most of the decisions. I mean we  
 25 talk about it a little bit. Hey, you know, we're going

- 598 -

1 to go over here and do this or do that, and -- and  
 2 stuff. I'm -- like I said, we're -- we're getting at  
 3 the lodge, we're -- we're doing quite a bit of work just  
 4 to gear up for the -- for the bear hunt, because it's --  
 5 ended up being a little bit harder to take down the  
 6 weather point than we -- we thought because it was kind  
 7 of froze in.  
 8 Q Okay.  
 9 A Dig it out and empty it out and....  
 10 Q Right. So you go up the....  
 11 MR. ROBINSON: Nixon Fork.  
 12 Q Nixon Fork, thank you. And you don't see anything  
 13 there. Do you go back to the lodge or what?  
 14 A Yeah, we'll head back south, fly by McGrath again and --  
 15 and fly up the Big River, back -- no, I believe that  
 16 time we actually fly a little bit further west of the  
 17 Big River, just checking out some different country,  
 18 maybe some more open country before we head back to the  
 19 lodge.  
 20 Q Do you go back and check at any of your previous kill  
 21 sites?  
 22 A We did that on the way up.  
 23 Q You did on the way up. Nothing?  
 24 A No.  
 25 Q Okay. That -- so then you head back to the lodge, that

- 599 -

1 pretty much wraps it for the 21st then? Anything else  
 2 going on?  
 3 A That pretty much wraps it for the 21st.  
 4 Q Assume you take care of the one wolf you had taken  
 5 earlier?  
 6 A Right.  
 7 Q What do you do the next day?  
 8 A The next day we get up, we probably do some work  
 9 gathering gear, and weather port, working on the weather  
 10 port getting that down and we decided to go -- since we  
 11 didn't see a whole lot of moose, decided to go down --  
 12 fly down the Swift River and see if we can find some  
 13 more moose.  
 14 Q Who made that decision?  
 15 A It's hard to say who makes that decision. I mean Dave's  
 16 making most of the decisions. But I mean we're not --  
 17 we're -- it's just not, hey, we're going to -- I'm going  
 18 to go fly here, we're going to fly there. It's like,  
 19 you know, we want to go fly here. It's like, okay,  
 20 yeah, whatever. I'm -- I'll go fly wherever.  
 21 Q Okay. Sure. You go -- you say you go to the Swift,  
 22 you're just looking for moose or....  
 23 A Moose, caribou. Usually there's -- in that area there's  
 24 usually about 5,000 caribou that winter there and we  
 25 haven't seen any.

- 600 -

1 Q Okay. And -- why are you guys looking for game if you  
 2 don't guide in that area?  
 3 A The game -- some of the game -- most of the game what  
 4 happens is will end up onto the Swift River. The moose  
 5 who we're after will end up into the Swift, and they're  
 6 usually in here or -- or slightly right in here. The  
 7 caribou will winter, I believe, out in here more, out  
 8 into the flats, so.  
 9 Q Okay. So even though you don't actively hunt those  
 10 grounds you went out....  
 11 A We'll hunt in here and every now and then we'll hunt out  
 12 on the east side of the moose hills.  
 13 Q And how far out do you guys go then on the Swift?  
 14 A We end up going probably 25 miles from the lodge or so.  
 15 Q Looking for wolves again?  
 16 A Wolves, moose, game. Just -- just taking -- taking in  
 17 what's out there. What's -- and getting depressed  
 18 because there's nothing.  
 19 Q Looking for wolves to shoot from the air again?  
 20 A Not specifically.  
 21 Q That's not an active area that you guide. Well, I  
 22 guess, take that back. Do you end up encountering any  
 23 game out there?  
 24 A We end up encountering some -- another moose kill on the  
 25 Swift River. There's actually probably -- up river

- 601 -

1 there's probably two moose that was probably with the  
 2 one that got killed. But we encountered that kill and  
 3 we're looking at wolf tracks and -- and whatnot.  
 4 Q Okay. So you see one moose kill and a couple wolves a  
 5 little further up river?  
 6 A We don't see them at that time. We actually end up  
 7 flying.....  
 8 Q Not wolves, moose. I'm sorry. I misstated.  
 9 A Yeah, a couple moose, yeah.  
 10 Q Do you see any wolves in the area?  
 11 A No.  
 12 Q The.....  
 13 A Not at that time.  
 14 Q Not at that time, okay. I -- what do you mean not at  
 15 that time?  
 16 A Well, we end up following tracks where we think the pack  
 17 is going. We end up flying out into the flats towards  
 18 Lime Village.  
 19 Q Uh-huh.  
 20 A Figuring out that we're probably tracking them the wrong  
 21 way. We end up flying back and landing on the Swift  
 22 River to check the direction of tracks, and possibly  
 23 number of wolves.  
 24 Q Okay. So you come back and then land down to check the  
 25 direction of travel?

- 602 -

1 A Right.  
 2 Q And which way were they actually traveling?  
 3 A We were back tracking them so they were headed -- that's  
 4 where they came in and made the kill from Lime Village  
 5 area.  
 6 Q Do you guys do much activity over around Lime Village  
 7 itself?  
 8 A Do we?  
 9 Q Yeah.  
 10 A No.  
 11 Q Any discussion between you and Mr. Haeg about, you know,  
 12 going out and trying to take wolves out of the -- around  
 13 Lime Village?  
 14 A No, no discussion.  
 15 Q No -- didn't target that area for any particular reason?  
 16 A No. No.  
 17 Q Just flew the Swift?  
 18 A Yeah.  
 19 Q So you realized you were back tracking them after you  
 20 land so then what do you do?  
 21 A We fly back to the kill site and we're flying around the  
 22 kill site looking at it and we're planning on setting  
 23 some traps, snares, and whatnot. And we see a small  
 24 wolf. At the time we didn't recognize it as a wolf. We  
 25 think it was a coyote at first because it was so small.

- 603 -

1 Comes flying out onto the river, and while we're  
 2 circling the kill site looking for it -- seeing if it's  
 3 going to be a site to -- to set some snares on it  
 4 because Dave's got just further up river, three, four  
 5 miles or so is -- is one of his older sites that we can  
 6 get the snares kind of quick and bring them back down  
 7 and -- and set up.  
 8 Q Okay. So you see this smaller wolf. What do you guys  
 9 do?  
 10 A Well, like I said at first we didn't recognize it as a  
 11 wolf, it looks more like a coyote because it's  
 12 small.....  
 13 Q Okay.  
 14 A .....so we kind of talk about it and then by the time we  
 15 realize it's a wolf there's no time before it gets -- to  
 16 get set up and shoot it that it's in the brush.  
 17 Q Okay. See any other wolves?  
 18 A Yeah. Shortly thereafter a -- a big male comes out and  
 19 it's definitely a wolf. And we're kind of mad now just  
 20 because of the moose kills and no moose, and -- and  
 21 stuff, so we set up on him.  
 22 Q You set up. You get the gun out and get ready?  
 23 A Correct.  
 24 Q Getting dressed up for the weather and.....  
 25 A Dressed up. Right.

- 604 -

1 Q .....Dave's.....  
 2 A Doors -- door is open.  
 3 Q And Dave's approaching for shot?  
 4 A Right.  
 5 Q What do you guys -- he approaches -- you  
 6 (indiscernible).....  
 7 A Head -- head on shot. It takes one shot to knock the  
 8 wolf down.  
 9 Q Can you show us on the map where that occurred,  
 10 approximately?  
 11 A There's.....  
 12 Q I'm going to refer you. There's a bunch of, I guess,  
 13 pink dots on the map.  
 14 A Right.  
 15 Q Okay. And you've seen this map before, correct?  
 16 A Yes, I have.  
 17 Q Okay. You -- there was an interview with you and  
 18 Trooper Gibbens and another trooper in Anchorage?  
 19 A Correct.  
 20 Q I guess last summer?  
 21 A It was last year, I believe.  
 22 Q Okay. Those dots -- do you recognize kind of what those  
 23 locations?  
 24 A Yeah, roughly this would probably be the location where  
 25 we landed to check the direction of the tracks.

- 605 -

1 Q Okay, what's that? What number?  
 2 THE COURT: Is that.....  
 3 A That would be zero.  
 4 Q Okay.  
 5 THE COURT: I just want to make sure it was identified.  
 6 Q Yeah. And go ahead. And now you've talked about you've  
 7 located a wolf and shot a wolf then, that same day?  
 8 A Right. And the kill is probably one or five. It's  
 9 right in this area, the -- the moose kill, and that's  
 10 the exact spot where we shot that wolf.  
 11 Q Okay. So there's the moose kill -- you land, see the  
 12 tracks. Further up river is the moose kill?  
 13 A Correct.  
 14 Q And right, almost kind of in that immediate area is that  
 15 wolf.....  
 16 A Right; the moose kill is in the brush on the little  
 17 Peninsula, and the wolf is running the river around the  
 18 Peninsula.  
 19 Q Okay. So one and five are kind of pretty much in that  
 20 same area?  
 21 A Correct.  
 22 Q Okay. So that kind of fairly depicts where that -- and  
 23 the events that you've discussed so far were located?  
 24 A Uh-huh (Affirmative). Correct.  
 25 Q Okay. What else happens? I guess after you -- you set

- 606 -

1 up and you said one shot and he's down, right?  
 2 A Correct.  
 3 Q Okay. What do you guys do?  
 4 A We land and pick him up.  
 5 Q Do you see any other wolves?  
 6 A Not at that time.  
 7 Q Okay. And this is the 22nd, correct?  
 8 A Correct.  
 9 Q You land, you pick him up. Then what?  
 10 A We -- the side that -- there's enough -- and since we  
 11 had the wolf that we're going to fly back to the lodge  
 12 and grab more snares and -- and stuff and some leg  
 13 holds, and fly back down and we'll pick up the snares at  
 14 the -- the island set, and take down and set them at the  
 15 moose kill.  
 16 Q Okay. Can you show us on the map where, I guess, those  
 17 -- the snare set was? Is it depicted by any of the  
 18 dots?  
 19 A Yeah, it's probably depicted here by number 9 would be  
 20 approximately the -- the other island.  
 21 Q Okay. That's approximately the area, okay. So you go  
 22 down there, you pick up.....  
 23 A That's after going to the lodge, climb back out, picking  
 24 up some other traps and -- and stuff. We fly them back  
 25 down there.

- 607 -

1 Q And you set those traps and snares out around the moose?  
 2 The kill site?  
 3 A Yes.  
 4 Q Kill site. Do you have any idea how many you set out?  
 5 A Approximately 30 to 40 snares, and probably six leg  
 6 holds.  
 7 Q Okay. Did -- what did you set? Did you set any of  
 8 them?  
 9 A I set snares.  
 10 Q You set snares?  
 11 A Primarily, yes. I didn't set any.....  
 12 Q Did you set any of the leg holds.....  
 13 A .....of the leg holds, I set the snares.  
 14 Q Mr. Haeg set the leg holds then?  
 15 A Yes, while I was setting the -- the original -- the  
 16 outer ring of snares he was setting the leg holds around  
 17 the kill site.  
 18 Q And I assume he -- then he helped you with the snares?  
 19 A Yeah, then he helped me set some more snares before we  
 20 were approximately out of snares and thought we had it  
 21 ringed good enough.  
 22 Q Now whose set was that? Whose trap set, snare sets was  
 23 that? I mean as far as.....  
 24 A That was Mr. Haeg's.  
 25 Q Okay.

- 608 -

1 A His traps. I was just helping him.....  
 2 Q You were helping him out?  
 3 A Yeah.  
 4 Q Okay. Did you have either a hunting or a trapping  
 5 license at the time you were doing all this?  
 6 A I was required to have a trapping license for the  
 7 permit.  
 8 Q Okay. And, I guess, you're a guide, you're a registered  
 9 guide at the time, right?  
 10 A Right.  
 11 Q You're required to have a hunting license for that as  
 12 well, right?  
 13 A If I'm actively guiding, yes.  
 14 Q Okay. And did you have a hunting license?  
 15 A Yes, I did.  
 16 Q Okay. Yeah, I'm sorry, you have to if you're guiding?  
 17 A Right.  
 18 Q Now after you guys do the trap and snare you set those  
 19 out, what do you guys do?  
 20 A It's pretty late, we fly back to the lodge for the  
 21 night.  
 22 Q Okay. So that kind of wraps up the 22nd. You got one  
 23 wolf over there on the Swift?  
 24 A Right.  
 25 Q You hadn't -- you testified earlier you guys didn't

- 609 -

1 really have a plan to go out there and hunt wolves or  
 2 set traps, snares.  
 3 A We didn't have necessarily a plan to go out and -- and,  
 4 you know, set a bunch of snares, but, you know, said,  
 5 well, I was looking for -- for the opportunity to -- to  
 6 do whatever we can for the predators control out there.  
 7 Q Uh-huh. Well, I mean you're not in the predator control  
 8 program when you guys -- both the 21st and 22nd.....  
 9 A No, we're -- we're trapping predators, trapping the  
 10 wolves.  
 11 Q But both the 21st and 22nd your initial flights are away  
 12 from the predator control.....  
 13 A Right.  
 14 Q .....permitted area?  
 15 A Right.  
 16 Q The -- I assume you go back and you take care of that  
 17 wolf?  
 18 A Yes, go back.....  
 19 Q The night of the 22nd?  
 20 A Correct.  
 21 Q Morning of the 23rd then, what happens then?  
 22 A The morning of the 23rd I think we're actually planning  
 23 on going back to Soldotna, but we got a fresh set out  
 24 and stuff. I think we gathered some more -- more  
 25 equipment around, finished -- finished that stuff and

- 610 -

1 we're going to fly over and check the set.  
 2 Q Okay. So you fly over to check the set. What happens?  
 3 A We fly the set, circle the set a few times and we don't  
 4 see anything in the snares or leg holds, and we end up  
 5 turning around and flying, start heading back toward the  
 6 lodge and we end up seeing four wolves just up from the  
 7 island where the other snares were.  
 8 Q You see four wolves. What do you guys do?  
 9 A We get set up on them.  
 10 Q Okay. How far are they from the wolf you had taken the  
 11 day before?  
 12 A Probably three miles. Two, three miles up river.  
 13 Q Okay. You see four. How do you guys do on these?  
 14 A The first pass I knock one down. We end up shooting --  
 15 we end up shooting four in that area, but initially we  
 16 ended up shooting three and then we tracked one up over  
 17 onto Big Mountain and ended up shooting that one up  
 18 there, so. There's more wolves in the area than just  
 19 the four. Once we scattered them four, after we shoot  
 20 two of them four initially, and we end up shooting  
 21 another one out in the -- the swamp ground. I believe  
 22 that was from that four. We run into more wolves.  
 23 They're all scattered out through the wolves -- or  
 24 through the trees, and you know, we're attempting to  
 25 take them, too, but they're in the trees and -- and

- 611 -

1 stuff where we can't get them, we can't get them out of  
 2 the trees, out of the brush, out into the open.  
 3 Q Can you show us on the map where each of these four  
 4 wolves are taken on the 23rd?  
 5 A We're going to end up taking one -- it's going to be  
 6 approximately here where number 2 is, I believe. And  
 7 then where number 3 is we'll take another one. Then  
 8 number 4 would be the one that's out in the swampy open  
 9 area.  
 10 Q Okay. So you just identified three more wolves.  
 11 There's a fourth wolf you said you took on the 23rd?  
 12 A Yes, he was up -- would be up on top of the.....  
 13 Q Would you mark that with an E.  
 14 A It would be -- it would be this hill right here.  
 15 Q Okay. Each of those were shot by you with the shotgun  
 16 from the air?  
 17 A Correct.  
 18 Q As then -- you and Dave -- or Dave flies the plane. Mr.  
 19 Haeg flies the plane, sets up in a manner for you to be  
 20 able to shoot at them?  
 21 A Correct.  
 22 Q You guys kind of discuss -- you plan on or he knows  
 23 that's what you're doing, right? You're setting up on  
 24 them. It's not just flying along and you see from the  
 25 door open and shoot?

- 612 -

1 A Right. Right.  
 2 Q Okay. Mr. Haeg's aware of what's going on?  
 3 A Correct.  
 4 Q Okay. The -- one of the wolves kind of fell into a  
 5 little ice hole in the river, right?  
 6 A Correct.  
 7 Q Do you recall that? You -- who pulled that out, do you  
 8 recall?  
 9 A I ended up getting that wolf out.  
 10 Q Okay.  
 11 A That wolf ended up still being alive and I dispatched  
 12 that one with the .223.  
 13 Q Okay. Any of the others you had to dispatch with the  
 14 .223 or do you -- were you able to kill them with the  
 15 shotgun?  
 16 A They were dead with the shotgun.  
 17 Q Okay.  
 18 THE COURT: Just -- as soon as you get to a breaking  
 19 point I'll -- it's 5:35.  
 20 MR. LEADERS: Okay.  
 21 THE COURT: If you -- if this isn't a good time -- if  
 22 there's a few more minutes one way or another -- I mean a few  
 23 more minutes but.....  
 24 MR. LEADERS: It will -- we're about I think at a  
 25 breaking point I guess. I'll.....

- 613 -



1 THE COURT: Okay. Okay.  
 2 MR. LEADERS: (Indiscernible).  
 3 Q Did -- so you take -- I assume you guys -- you end up  
 4 just -- is there a point where one of you are dropped  
 5 off? Or I guess you were dropped off and Mr. Haeg.....  
 6 A Initially we shoot the four wolves. We pick up two of  
 7 them. We pick up the one on top of the hill, and we  
 8 pick the one up out in the flats, and we fly them back  
 9 to the lodge and we'll stay at the lodge, skin them out,  
 10 it's a nice day, but the snow is getting soft. The  
 11 other two it's going to be a little more of a challenge  
 12 getting in and out to pick them up. So we're going to  
 13 wait until the snow crusts up a little bit. We're going  
 14 to take some of the equipment out of the plane, lighten  
 15 the plane up so we can get in and out a little easier.  
 16 Q Okay.  
 17 A And we end up picking them up later that day.  
 18 Q Do you -- and you said -- so you pick them up a little  
 19 bit later. Do you pick them up individually and  
 20 (indiscernible) at locations?  
 21 Q Dave drops me off, when we fly we notice that the one is  
 22 still alive, so he drops me off to dispatch that one.  
 23 Meanwhile the other landing spot is actually tighter  
 24 than that landing spot so he really doesn't want my  
 25 weight in the plane. He flies over to pick up the other

- 614 -

1 one. He takes that one down and drops it where the  
 2 snares that we pulled are.  
 3 Q The old snares?  
 4 A The old snares.  
 5 Q Okay.  
 6 A Drops that and then he comes back to pick me up.  
 7 Q Okay. Picks you up, you get that wolf, the wolf that  
 8 you dispatched?  
 9 A Right.  
 10 Q Go to where the old snares were, pick up that wolf, as  
 11 well?  
 12 A Correct.  
 13 Q And then head back to camp I assume, or the lodge?  
 14 A Correct.  
 15 Q What happens after that?  
 16 A Well, we end up skinning them four at the lodge. The  
 17 next day we loaded the plane up. We actually fly over  
 18 to the set and check the set, and we fly back to  
 19 Soldotna through Merrill Pass.  
 20 Q Okay.  
 21 MR. LEADERS: This is probably a good breaking point,  
 22 Judge.  
 23 THE COURT: Okay. All right, we'll take a dinner break  
 24 and then we'll see you back here at 7:00. I'm going to  
 25 admonish you again please not to speak to other or anybody

- 615 -

1 else associated with the trial or anybody associated with  
 2 them, any of the witnesses, or anybody else; and we'll see  
 3 you back here at 7:00 o'clock. Okay. Thank you.  
 4 (Off record)  
 5 THE COURT: We're back on record. And again, Mr.  
 6 Zellers, I need to remind you that you are still under oath.  
 7 okay.  
 8 A Yes, Your Honor.  
 9 MR. LEADERS: Thank you.  
 10 THE COURT: Go ahead Mr. Leaders.  
 11 Q So, Mr. Zellers, in relation to the wolves that were  
 12 taken out in -- out by the lodge there, were all -- I  
 13 guess say the first one, you knew all the others were  
 14 clearly outside the boundaries when they were shot?  
 15 A Yes.  
 16 Q And you knew that they were -- that the permit didn't  
 17 authorize the taking of those wolves, shooting them,  
 18 correct?  
 19 A It was not in the predator control area, correct.  
 20 Q Right. So the permit didn't authorize you to do that,  
 21 right?  
 22 A Right.  
 23 Q And you also knew that taking those -- by shooting them  
 24 from the air was also not authorized by any other means,  
 25 is that correct?

- 616 -

1 A Yeah.  
 2 Q Okay. In fact, I mean the whole predator control issue  
 3 kind of created a new way for you to be able to take  
 4 wolves? I mean I guess I won't say new way in that it's  
 5 never been done before, but new legal method?  
 6 A Correct.  
 7 Q Okay. That wasn't otherwise available?  
 8 A Right.  
 9 Q It would be a violation of both hunting regulations  
 10 because you'd have to wait -- if you're same day  
 11 airborne you'd have to wait until after 3:00 o'clock the  
 12 next day to take big game which a wolf qualifies for,  
 13 right?  
 14 A Yeah, under.....  
 15 Q Under hunting regulations?  
 16 A Under hunting regulations, correct.  
 17 Q It would also be a violation of trapping regulations  
 18 because you're same day airborne?  
 19 A Correct.  
 20 Q You're not waiting until after 3:00 o'clock the next  
 21 day?  
 22 A Correct.  
 23 Q So there was no legal ability for you to take those  
 24 wolves in the manner you did.....  
 25 A Not outside the predator control area, no.

- 617 -

1 Q Okay. And by the express conditions on the permit, the  
 2 permit was limited to the boundaries of the predator  
 3 control area?  
 4 A Correct.  
 5 Q And that was all information you were aware of at the  
 6 time that the wolves were shot?  
 7 A Yes.  
 8 Q It's -- mis -- from -- and you and Mr. Haeg were working  
 9 in conjunction on this?  
 10 A Yes.  
 11 Q Because all of the information he was aware of at the  
 12 time, too, is that correct?  
 13 A Yeah, I can't testify to what he was really aware of. I  
 14 believe he was aware, so.  
 15 Q I mean he's a master big game guide.....  
 16 A Right. Right.  
 17 Q You're a registered guide?  
 18 A Right.  
 19 Q Those are issues that are of very significant importance  
 20 to a guide, as far as.....  
 21 A Yes.  
 22 Q .....rules and regulations, what you can and can't do  
 23 and -- I mean same day airborne is one of the big ones,  
 24 right?  
 25 A Correct.

1 Q I mean did you believe that you could actually fly and  
 2 shoot that same day under either a hunting or trapping  
 3 license?  
 4 A Under a hunting/trapping license, no.  
 5 Q Okay.  
 6 A Under the predator control program permit, yes.  
 7 Q In the permit boundaries only though, correct?  
 8 A Correct; just like if you're hunting under a permit, if  
 9 you're outside the permitted area you're hunting.....  
 10 Q You're not under that permit?  
 11 A Well, you're -- if you -- you've violated your permit is  
 12 what you violate.  
 13 Q Okay. And the -- now what happened as far as sealing  
 14 with the remainder of the wolves then? The I guess six  
 15 that weren't sealed on the first certificate?  
 16 A Those wolves we talked about having (indiscernible) seal  
 17 them in a -- falsify them in another area because there  
 18 was a lot of-- we were worried now because we've caused  
 19 a lot of activity and we got a lot of activity, we've  
 20 still got traps out there, so I offered to seal the  
 21 wolves in a different area.  
 22 Q You and Mr. Haeg discussed that issue?  
 23 A Yes, we did.  
 24 Q And it was specific because you knew that there was no  
 25 legal authority for you to take those wolves in the

1 Q Okay. I mean it would never -- he never gave you any  
 2 indication he was -- he thought what he was doing was  
 3 legal, did he?  
 4 A No.  
 5 Q Or, in fact, I mean the first sealing certificate, the  
 6 first three wolves, you guys talk about it, you  
 7 falsified the location?  
 8 A Correct.  
 9 Q Because where they were taken was illegal?  
 10 A Yeah, where they were taken was illegal, outside the  
 11 control area.  
 12 Q Okay. And there was no other authority for you to do  
 13 that legally?  
 14 A No.  
 15 Q Not under a hunting or trapping license?  
 16 A No, the predator control program did not allow us to  
 17 shoot them outside the area. That was a violation of  
 18 the program.  
 19 Q Right. Violation of the program as well as it was a  
 20 violation of both hunting and trapping regulations?  
 21 A That's for you to decide.  
 22 Q What?  
 23 A That's for the law to decide. I mean.....  
 24 Q As you understand them wouldn't it have been?  
 25 A Well.....

1 manner you took them where you did.....  
 2 A Right.  
 3 Q The last ones, correct?  
 4 A Correct, we were outside the area.  
 5 Q Outside the area, you were same day airborne if you were  
 6 looking in the context of either hunting or trapping?  
 7 A Correct.  
 8 MR. LEADERS: May I approach the witness, Judge?  
 9 THE COURT: Uh-huh.  
 10 Q Exhibit number 68, correct?  
 11 A Correct.  
 12 Q Okay. Can you identify that?  
 13 A Yes, this is the sealing permit that I did down in  
 14 Anchorage fish and game along with the temporary sealing  
 15 that I filled out.  
 16 Q Okay. And what information did you put on this  
 17 temporary seal -- you filled out the temporary sealing  
 18 certificate?  
 19 A Right, basically I -- I put the Chekachatna River and  
 20 the Chuitna River as the areas where we shot the wolves.  
 21 Q Can you show us on the map where those locations are?  
 22 A No.  
 23 Q Not able to are you. It's -- they're not even on this  
 24 map?  
 25 A They're in this cutout.

1 Q Oh, they're in the cutout, okay. All right. And can  
 2 you give us any idea as to how far they were across the  
 3 range?  
 4 A Just on the other -- other.....  
 5 Q Just the other side of this range here?  
 6 A Yeah.  
 7 Q Okay. And those -- the wolves that you identified here,  
 8 did they -- properly identify I guess the color of the  
 9 wolves that were taken, the six additional wolves  
 10 after.....  
 11 A Correct.  
 12 Q .....the first sealing certificate?  
 13 A Correct.

14 0885  
 15 (Tape change)  
 16 4MC-05-17/Side A  
 17 0885  
 18 THE COURT: .....on record.  
 19 Q Does it also properly identify the male -- or the sex of  
 20 the wolf that was taken?  
 21 A Correct.  
 22 Q Okay. And does it properly identify the method of  
 23 taking wolves?  
 24 A No.  
 25 Q Okay. What does it indicate?

1 A It indicates ground shooting.  
 2 Q Okay. In fact, they were -- each of those six wolves  
 3 were taken from the air, shot from the air?  
 4 A Correct.  
 5 Q Okay. How about the method of transportation?  
 6 A Snowmobile.  
 7 Q Okay. Again, that was inaccurate?  
 8 A Correct.  
 9 Q The -- I guess the seal numbers, however, those did  
 10 relate to the actual seals that were placed on?  
 11 A Yeah, fish and game put them on there.  
 12 Q They put -- because they placed those. Okay. Fair  
 13 enough. Now -- and the game management unit is  
 14 identified as 16-B. Again, that's inaccurate as to  
 15 where those -- all those wolves were taken in either 19-  
 16 C or B, is that correct?  
 17 A No.  
 18 Q No?  
 19 A Those wolves were taken in 19-D and one in 19-B.  
 20 Q Okay. Thank you. That's right, because the first three  
 21 were in 19-C?  
 22 A Correct.  
 23 Q 19-B is the one over by -- down the Stony River?  
 24 A Right.  
 25 Q The remainder of 19-D?

1 A Correct.  
 2 Q Okay. Now I guess why all the false information on this  
 3 form then?  
 4 A As I stated, we had a lot of activity out there. Now  
 5 we're -- we're worried. We're just worried that there's  
 6 too much activity, we didn't want to draw additional  
 7 attention to the area.  
 8 Q Okay. The methods that you identify for taking them on  
 9 the sealing certificate, those would have been legal  
 10 take methods, correct?  
 11 A Correct.  
 12 Q Okay. And you couldn't really identify them as trapped  
 13 or snared, would that be fair to say?

14 A Correct.  
 15 Q They weren't, right?  
 16 A Correct, they weren't.  
 17 Q Now what happens by -- or what happened to all these  
 18 hides and -- I guess, did you retain the skulls as well  
 19 out of the hides?  
 20 A We harvested the skulls when we skun the wolves.  
 21 Q Okay. Okay. And were all the hides and skulls taken  
 22 back to Soldotna with you then when you went?  
 23 A Yes.  
 24 Q What happened to all the hides and skulls?  
 25 A I took the hides to Anchorage to be sealed by fish and

1 game and then to take them to Alpha Fur Dressers.  
 2 Q Okay. So you took them to get sealed first?  
 3 A And then processed.  
 4 Q Now that -- the sealing certificate we were just talking  
 5 about is two pages. You had first filled out and signed  
 6 the temporary sealing certificate, right?  
 7 A Correct.  
 8 Q Okay. And you did that -- it states that it's -- the  
 9 information you're certifying that it's accurate under  
 10 penalties of.....  
 11 A Correct.  
 12 Q .....unsworn falsification?  
 13 A Right. Correct.  
 14 Q And despite that you knowingly signed that with the  
 15 false information?  
 16 A Correct.  
 17 Q And you and Mr. Haeg discuss exactly the information  
 18 that was going to put on there?  
 19 A No. We discussed I would seal them in a different area.  
 20 I didn't know exactly what area I wanted to seal them in  
 21 at the time.  
 22 Q Okay. Okay. But you -- the two of you did discuss and  
 23 agree that they would be -- you needed to falsify where  
 24 and how they were taken?  
 25 A We want -- didn't want to draw attention to the fact

1 that they were all shot out in 19, so we wanted to....  
 2 Q I guess why not? I mean don't you want to show there's  
 3 a bunch of wolves out there, you need to increase the  
 4 predator control down there?  
 5 A We -- right. That would be -- be good, but now we know  
 6 we're outside the area, as I've stated. So we don't  
 7 want to draw attention to the troopers, to whoever, who  
 8 wants to go, hey, these guys just came in with a sealing  
 9 permit for nine more wolves. Let's go check it out.  
 10 Q But you could have at least sealed them by ground,  
 11 snowmachine take in that area, right?  
 12 A Correct.  
 13 Q So why not do that at least? I mean, again, to show,  
 14 gee, you really need to be controlling out here, there's  
 15 a lot of wolves?  
 16 A It's a pretty desolate area. If you fly over the area  
 17 and you don't see any snowmobile tracks, you know, where  
 18 19 -- 16-B, there's quite a few snowmobile tracks.  
 19 Q Okay. So kind of not wanting to draw attention was not  
 20 wanting to get in trouble with the law?  
 21 A Correct.  
 22 Q The -- you dropped all those -- all nine of those out at  
 23 Alpha Fur Dressers then, the hides?  
 24 A Correct.  
 25 Q Dealt with Kevin Hacken there I believe?  
 - 626 -

1 Q Okay. That was something he advertized on the website  
 2 that he had, isn't that correct?  
 3 A Yeah, I believe so. I have not looked at the website  
 4 personally.  
 5 MR. LEADERS: May I approach?  
 6 THE COURT: Uh-huh.  
 7 Q Have you ever seen this or this information? And I've  
 8 handed you Exhibit 75, correct?  
 9 A Correct.  
 10 Q Okay.  
 11 A I've seen flyers that represent, but.....  
 12 Q Same information on flyers?  
 13 A The same -- the same information.  
 14 Q Okay. It indicates a -- each hunter and trapper has  
 15 their own pilot guide airplane with at least six hours  
 16 of flight time and is guaranteed to be able to take home  
 17 at least one wolf or wolverine? The second paragraph  
 18 there. It's a little bit cut off on the end.  
 19 A Right.  
 20 Q The -- now as a guide -- you're a registered guide, you  
 21 know you can't guarantee success, isn't that correct?  
 22 A That's correct.  
 23 Q So that's not what that was doing. It wasn't guaranteed  
 24 and you would actually kill or take a wolf, was it?  
 25 A No.  
 - 628 -

1 A I believe that's correct. He's the worker there, so.  
 2 Q Okay. Well, he works there, okay. And you dropped the  
 3 hides off under Mr. Haeg's name, correct?  
 4 A Correct.  
 5 Q You also -- did you also provide other furs to be -- for  
 6 him?  
 7 A Yeah, I think I had six martins and one mink that I had  
 8 trapped.  
 9 Q Okay. A different trap set or.....  
 10 A They were trapped in Unit 13 up by Talkeetna.  
 11 Q The -- have you participated in any other wolf hunts  
 12 with Mr. Haeg?  
 13 A I went out the winter prior to 2004 and I didn't  
 14 actually guide, it was my first time out to the lodge in  
 15 the winter time. I had basically ran the lodge while  
 16 Mr. Haeg performed the -- the hunt.  
 17 Q And what -- that was -- was it that same type of hunting  
 18 for wolves or was it something different?  
 19 A That was something completely different. That's with  
 20 clients and -- and stuff where they were going to locate  
 21 kill sites, land. Dave always carried the tents with  
 22 him, land and then try to get up on the wolves the next  
 23 day.  
 24 Q Okay. That was one of the hunts Mr. Haeg offered then?  
 25 A At the time, correct.  
 - 627 -

1 Q What was it guaranteeing?  
 2 A That you'd get a wolf or a wolverine hide.  
 3 Q A wolf or wolverine hide?  
 4 A At least one wolf or wolverine is what it says, correct.  
 5 Q Okay. And you had seen clients of Mr. Haeg's under that  
 6 -- come in under that I guess hunt or whatever?  
 7 A Just one -- or two, actually. Or a husband/wife came in  
 8 under that.  
 9 Q Were they both successful in actually killing, taking on  
 10 their own?  
 11 A No.  
 12 Q No. Were either of them successful?  
 13 A No.  
 14 Q Did they get to take home a wolf or wolverine hide?  
 15 A I don't know.  
 16 Q You don't know. Okay. You believe they would have  
 17 based on.....  
 18 A I believe they probably would have.  
 19 Q Is that what you understood the offer to mean? You get  
 20 a wolf or wolverine hide guaranteed?  
 21 A Guaranteed for the cost of the hunt, yeah.  
 22 Q Okay. Not like a carcass or anything like that?  
 23 A Right.  
 24 Q I mean that wouldn't make much -- it wouldn't be too  
 25 attractive on (indiscernible) clients?  
 - 629 -

1 A No.  
 2 Q And I'm assuming -- now, Mr. Haeg didn't do taxidermy  
 3 work himself did he?  
 4 A Not that I'm aware of, no.  
 5 Q So -- that you're aware of. It wasn't like a wolf or  
 6 wolverine mount or something like that?  
 7 A No.  
 8 Q The -- oh, all the wolves that were taken out there,  
 9 whose wolves I guess were they to be called? Your's or  
 10 Mr. Haeg's or someone else's?  
 11 A Primarily Mr. Haeg's. I was going to get -- get a  
 12 couple of them for....  
 13 Q Okay. So most of them were going to Mr. Haeg?

14 A (Pause).  
 15 MR. LEADERS: All right, thank you, sir. I don't have  
 16 any other questions.  
 17 THE COURT: Mr. Robinson?  
 18 TONY RUSSELL ZELLERS  
 19 testified as follows on:  
 20 CROSS EXAMINATION  
 21 BY MR. ROBINSON:  
 22 Q Mr. Zellers, with regard to that ad. Where does it say  
 23 that somebody is going to get a hide?  
 24 A It doesn't say in there.  
 25 Q For their \$4,000 they were going to get a hide?

- 630 -

1 A It doesn't say hide at all in there.  
 2 Q You never knew of him giving anybody a hide, did you?  
 3 A No, I did not.  
 4 Q In fact, if you look at the second page, if you wanted a  
 5 hide you had to buy one, didn't you?  
 6 A Tanned pelts for sale.  
 7 Q Pelts are hides, right?  
 8 A Correct.  
 9 Q So you had to buy one?  
 10 MR. LEADERS: Objection, (indiscernible) states.  
 11 A (Pause)  
 12 THE COURT: Well, first of all, Mr. Zellers, you have to  
 13 say yes or no. The tape can't hear your head nod, so....  
 14 A Oh, all right, I'm sorry.  
 15 THE COURT: Please respond verbally....  
 16 A Sorry, Your Honor.  
 17 THE COURT: .....to the questions.  
 18 A I'm sorry, Your Honor.  
 19 Q And according to that advertizement if you wanted a hide  
 20 you had to buy one? The only thing mentioned about a  
 21 hide is for sale, right?  
 22 A Correct. For pelts, yes, hides.  
 23 Q So it could have been that Mr. Haeg was maybe trying to  
 24 guarantee a hunt or so, but really couldn't guarantee  
 25 that, but that doesn't necessarily mean somebody's going

- 631 -

1 to get a hide. does it?  
 2 A No, it doesn't.  
 3 (Whispered conversation)  
 4 Q But with regard to guaranteeing -- what about in  
 5 trapping? You can guarantee trapping, couldn't you?  
 6 A I -- I know no regulation that you can't guarantee  
 7 trapping.  
 8 Q All right. So if you went trapping and you didn't get  
 9 -- you know, I mean if, you know, you could guarantee  
 10 that if you didn't get one I guess you'd get your money  
 11 back, right?  
 12 A That would be logical, correct, on a guaranteed.  
 13 Q Mr. Zellers, why did you shoot that wolf with that .223  
 14 caliber rifle, the one that you finished off that fell  
 15 in the ice and brought it out, finished it off?  
 16 A I used the .223 primarily because it was listed on the  
 17 back of the permit. The....  
 18 Q What was listed on the back of the permit?  
 19 A The method that -- you could use a shotgun from the  
 20 airplane. Once you got on the ground you could not  
 21 shoot with the shotgun, you had to use a rifle, so. And  
 22 that's why I was using the rifle, to dispatch for wolves  
 23 once I was on the ground because the permit listed that.  
 24 Q Even though you were outside of the permitted area,  
 25 you're still trying to comply with the permit

- 632 -

1 conditions?  
 2 A Correct.  
 3 Q Now was it Mr. Haeg's intent to sell the hides that --  
 4 from the wolves that were taken?  
 5 MR. LEADERS: Objection, calls for speculation.  
 6 Q Well, had you talked to Mr. Haeg about.....  
 7 MR. LEADERS: Calls for hearsay.  
 8 Q .....taking them up to.....  
 9 MR. ROBINSON: Now wait a minute. You opened the door by  
 10 him taking these furs up to Alaska Fur Dressers.  
 11 MR. LEADERS: I opened the door to an issue.....  
 12 MR. ROBINSON: On behalf of Mr. Haeg.  
 13 MR. LEADERS: .....(indiscernible)inadmissible evidence,  
 14 Judge.  
 15 MR. ROBINSON: On behalf of Mr. Haeg.  
 16 THE COURT: Well, but the way your question was phrased  
 17 it's calling for hearsay. If you want to rephrase your  
 18 question.  
 19 Q Did you understand why you were delivering those furs to  
 20 -- or those hides to Alaska Fur Dressers for Mr. Haeg?  
 21 A Yes.  
 22 Q What was your understanding?  
 23 A My understanding was for them to be tanned so that we  
 24 could sell them later.  
 25 Q Now under the predator control program, if you abided by

- 633 -

1 all the conditions of the permit, could you sell --  
2 could you keep the hides themselves?  
3 A Yes.  
4 Q So you had a commercial intent in mind with regard to  
5 the hides, right?  
6 A Correct. To offset some of the cost of doing the  
7 predator control.  
8 Q I believe in your testimony you had said that Mr. Haeg  
9 was interested in Board of Game hearings. How did you  
10 know he was interested in Board of Game hearings?  
11 A We talked quite a bit about it prior to us actually  
12 going out and doing the predator control. I knew Dave  
13 was -- that Mr. Haeg was going to the -- to the Board of  
14 Game and I knew he had been active as far as testifying  
15 on the Board of Game in previous years.  
16 Q When you shot those nine wolves, Mr. Zellers, in your  
17 mind what kind of activity did you think you were doing?  
18 A I was doing predator.....  
19 MR. LEADERS: Objection, calls for -- it's irrelevant  
20 what -- Mr. Zellers mind set is not at issue in this trial.  
21 MR. ROBINSON: Oh, yes, it is because they were a team,  
22 as I recall it.  
23 MR. LEADERS: Mr. Haeg's mind set is. That would.....  
24 MR. ROBINSON: Not -- as I recall -- as I recall the  
25 testimony that was elicited from Mr. Zellers, they talked

- 634 -

1 over, made decisions together, they were a team.  
2 MR. LEADERS: And those issues go to Mr. Haeg's mind.....  
3 MR. ROBINSON: Well, but they also go to -- well, they  
4 circumstantially go to Mr. Haeg's state of mind.  
5 THE COURT: (Pause) The objection is overruled, you can  
6 ask the question.  
7 Q You can answer the question, Mr. Zellers.  
8 THE COURT: You can answer that.  
9 A In my mind I was doing predator control for the state.  
10 MR. ROBINSON: That's all the questions I have. Oh, no,  
11 wait a minute. (Indiscernible).  
12 (Whispered conversation)  
13 Q Now, Mr. Zellers, I'm handing you what's now been marked  
14 as Defendant's Exhibits 1 and 2.  
15 THE COURT: How about A and B.  
16 MR. ROBINSON: Oh, I'm sorry.  
17 THE COURT: Please.  
18 MR. ROBINSON: A and B.  
19 A A and B.  
20 THE COURT: You can't take.....  
21 A You've got to mix them up.  
22 THE COURT: Yep. They have different color stickers.....  
23 Q A and B.  
24 MR. ROBINSON: Did you make the corrections on those?  
25 MR. LEADERS: No. Which ones have you got as A?

- 635 -

1 (Whispered conversation)  
2 Q A and B. My (indiscernible). And could you identify  
3 what those are, sir?  
4 A Those are addendum to the permit to take wolf using  
5 aircraft in 19-D east for a year, 2003 to '04.  
6 Q And there's an addendum to permit number 12?  
7 A It is, correct.  
8 Q And that's where you -- is that the one where you had  
9 the gunner's permit and Mr. Haeg had the pilot's permit  
10 for the.....  
11 A Correct.  
12 Q .....predator control program?  
13 A Right.  
14 Q You remember receiving these don't you?  
15 A Yes, I remember seeing them.  
16 MR. ROBINSON: I'd like to move for admission of A and B.  
17 MR. LEADERS: No objection.  
18 THE COURT: Okay, A and B will be admitted.  
19 (Defendant's Exhibits A & B admitted)  
20 (Pause)  
21 (Whispered conversation)  
22 THE COURT: Anything else?  
23 MR. ROBINSON: That's it.  
24 THE COURT: Okay.  
25 MR. ROBINSON: I don't have any further questions.

- 636 -

1 THE COURT: Mr. Leaders?  
2 TONY RUSSELL ZELLERS  
3 testified as follows on:  
4 REDIRECT EXAMINATION  
5 BY MR. LEADERS:  
6 Q Mr. Zellers, I'll refer you to back to Exhibit 75, the  
7 Internet printout. The -- on the second page there are  
8 a listing of pelts for sale, or the prices for pelts,  
9 hides for -- if you want to purchase them, correct?  
10 A Correct.  
11 Q Okay. Nowhere on there -- but that's under a separate  
12 subsection, I guess, than the discussion about the  
13 guaranteed wolf hunt, correct?  
14 MR. ROBINSON: Objection, leading. .  
15 THE COURT: You want to rephrase your question.  
16 Q Is it under the same section or series of material as  
17 the stuff about the guaranteed wolf hunt?  
18 A It's all under the Alaskan wolves page.  
19 Q The -- it's all on the same page. There's a -- it talks  
20 about -- the first page of the printout talks about the  
21 guaranteed wolf hunt. Each hunter/trapper.....  
22 MR. ROBINSON: Or trapping. It isn't just limited to  
23 hunting.  
24 MR. LEADERS: I said each hunter or trapper.  
25 Q Has their own pilot guide airplane, at least six hours

- 637 -

1 of flight time, is guaranteed to be able to take home at  
 2 least one wolf or wolverine, right?  
 3 A Correct.  
 4 Q Okay. It goes through some other stuff, talks about the  
 5 other animals, the costs involved and it indicates that  
 6 that there, all that is included in that -- here that  
 7 guaranteed, able to take home a wolf or wolverine is  
 8 included in the price of \$4,000, correct? That's -- is  
 9 that how you read that?  
 10 A Correct. Correct, yeah.  
 11 Q On the top of the second page it then starts discussing  
 12 -- gives some background or experience of Mr. Haeg,  
 13 correct?  
 14 A Correct.  
 15 Q And then there's a line, if you're interested in this  
 16 please let us know. That's that guaranteed wolf hunt,  
 17 right?  
 18 A I -- yeah.  
 19 Q And then below that it indicates tanned pelts for sale?  
 20 A Correct.  
 21 Q Indicated a different section. Did you notice anything  
 22 in the first series, I guess the first page and the top  
 23 of that second page where it's discussing you'd be  
 24 guaranteed to be able to buy a wolf, in addition to the  
 25 4,000 you're paying?

- 638 -

1 A Guaranteed to buy a wolf?  
 2 Q Yeah; it doesn't say anything about being able to guaran  
 3 -- that you're guaranteed to buy -- be able to buy a  
 4 wolf, does it?  
 5 A Well, unless you pay 4,000 for the hunt.  
 6 Q Right. What you're also.....  
 7 A I mean -- I -- I don't -- I don't really understand what  
 8 you're trying to get here. It says, you know, we have  
 9 on several occasion shot or snared five wolves in the  
 10 same day.  
 11 Q Sure. I guess what I'm trying to get at is the listing  
 12 of hides or pelts for sale isn't a part of the  
 13 guaranteed wolf hunt or trapping experience?  
 14 A Probably not.  
 15 Q Okay. It's simply indicating you can buy these hides,  
 16 the pelts if you want to?  
 17 A Correct.  
 18 Q Does it seem to restrict only those people who have  
 19 already paid \$4,000?  
 20 A No.  
 21 Q Okay. So anybody could purchase, according to what you  
 22 see there, these hides.....  
 23 A Correct.  
 24 Q Either the wolf, the wolverine, lynx, martin, and a fox,  
 25 whatever. So to get the wolf under the hunting or

- 639 -

1 trapping experience for \$4,000 it's not that you must  
 2 buy it, is it?  
 3 A You must pay for the hunt.  
 4 Q You have to pay for the hunt but.....  
 5 A Right.  
 6 Q .....you don't have to pay the additional 650 bucks for  
 7 that?  
 8 A The way I read this, no.  
 9 Q Okay. Now you said the reason you shot the wolf that  
 10 was down in the -- I guess the ice hole, for a better  
 11 term, was because the permit said to use a .223  
 12 basically?  
 13 A It said use a rifle. On the back of the permit it -- it  
 14 lists that.  
 15 Q Okay. I mean if you had your choice, the Benelli would  
 16 -- that -- you were using buck shot out there, right?  
 17 A (Indiscernible).  
 18 Q Or the rifle, which one would you use?  
 19 A The Benelli on that one.  
 20 Q Really?  
 21 A Yes.  
 22 Q Why is that?  
 23 A Because it was hard to get -- I was close enough to the  
 24 wolf that it's hard with a scope to get him into -- by  
 25 the time I see the wolf because he's down in a hole, and

- 640 -

1 I didn't want him -- he was up on an ice -- ice edge, so  
 2 I just wanted to peak over and get him so he wouldn't  
 3 fall back into the water and be all wet.  
 4 Q Okay. Even though it's going to do considerably more  
 5 damage than the .223 would do?  
 6 A I'm not really worried about damage, I'm worried about  
 7 getting the wolves taken care of.  
 8 Q I thought you wanted these for the commercial purpose of  
 9 being able to tan them and sell them?  
 10 A I wanted -- the purpose we were out there was for the  
 11 predator control program.  
 12 Q And that's interesting because you've been hunting out  
 13 there for years, right?  
 14 A Correct, five years.  
 15 Q Five years you've been guiding out there?  
 16 A Yes.  
 17 Q And Mr. Haeg's been hunting out there for more years  
 18 than that, right?  
 19 A Right.  
 20 Q And the area -- you're saying you were engaged in -- you  
 21 believed you were engaged in predator control, even  
 22 though you're not in the permit boundaries?  
 23 A Correct.  
 24 Q And so the permit you had didn't authorize you to do any  
 25 predator control where you were taking any of these nine

- 641 -

1 wolves?  
 2 A It was outside the permit area, correct.  
 3 Q Right. And so that permit didn't change your status in  
 4 March of 2004 from any status you had in the five years  
 5 previous flying around out there and seeing wolves all  
 6 over?  
 7 A Not that I could say, no.  
 8 Q Right. Is that -- did you commonly engage in that form  
 9 of predator control, shooting wolves from the air?  
 10 A No. No, I didn't. Until I got the permit.  
 11 Q And you knew the permit didn't authorize that area?  
 12 A Correct.  
 13 Q And you knew that just like in years past, it was just  
 14 as illegal at that point in time as it had been in years  
 15 past?  
 16 A Correct, I was violating the permit.  
 17 Q Well, in the years past there weren't even permits that  
 18 would have authorized it. You didn't.....  
 19 A Well, I didn't do -- I didn't do it in years past.  
 20 Q Right.  
 21 A And I can't talk about.....  
 22 Q I guess why didn't you? I mean if you're just -- you're  
 23 out there doing it now and the permit doesn't authorize  
 24 it, I don't see now that in 2004 you were out there  
 25 doing it, under this predator control -- why didn't you

- 642 -

1 Q And Mr. Haeg wasn't guiding?  
 2 A No.  
 3 Q You said you had never been involved in aerial shooting  
 4 of wolves before you got the permit, isn't that.....  
 5 A That's correct.  
 6 Q Now you also testified earlier that there were times  
 7 when you and Mr. Haeg were, in fact, intend to shoot  
 8 wolves in the permitted area because you were looking  
 9 for some to shoot, right?  
 10 A Correct.  
 11 Q So you were pursuing them, weren't you?  
 12 A Correct. We were following tracks, pursuing tracks.  
 13 Q All right. So that is a form of taking, isn't it?  
 14 A I would say so.  
 15 Q And that was within the permitted area, right?  
 16 A Correct.  
 17 Q And that was lawful, right?  
 18 A Correct.  
 19 Q So did your state of mind change any from when you were  
 20 doing that to when you stepped out of the boundaries?  
 21 A No.  
 22 (Whispered conversation)  
 23 Q On this advertisement, Exhibit number 75, is that  
 24 limited to just hunting or is it also trapping?  
 25 A It says trapping. Hunter/trapper, and it says also down

- 644 -

1 do predator control in the years prior?  
 2 A The state didn't have the predator control program, so  
 3 it's not in my mind and I wasn't active in the predator  
 4 control program.  
 5 Q Is it your belief that because the state enacted a  
 6 predator control program that gave you the authority or  
 7 the ability to engage in predator control wherever you  
 8 wanted to?  
 9 A No. I knew -- I willingly knew that I had violated the  
 10 boundaries of the permit in the program.  
 11 Q And -- but actually you didn't violate the permit  
 12 itself, or you weren't under the authority of the permit  
 13 itself when you took any of those wolves?  
 14 A Correct.  
 15 MR. LEADERS: I don't have anything further.  
 16 THE COURT: Mr. Robinson, anything else?  
 17 MR. ROBINSON: Yeah.  
 18 TONY RUSSELL ZELLERS  
 19 testified as follows on:  
 20 RE CROSS EXAMINATION  
 21 BY MR. ROBINSON:  
 22 Q Mr. Zellers, when you and Mr. Haeg were out in areas 19-  
 23 D, 19-C and 19-B and you shot those wolves were you  
 24 guiding?  
 25 A No.

- 643 -

1 there on several occasions we've shot or snared five  
 2 wolves in a single day. And everywhere I see another  
 3 hunter/trapping, hunting/trapping. Licensed.  
 4 Q So it was also the trapping aspect?  
 5 A Correct.  
 6 Q Now I think Mr. Leaders asked you whether or not you  
 7 knew whether Mr. Haeg has hunted in these areas. When  
 8 you -- for the five years that you've known Mr. Haeg,  
 9 have you known him to actually personally hunt himself?  
 10 A Personally hunt himself?  
 11 Q Right.  
 12 A No. Other than just his guiding.  
 13 Q Right, but I mean himself going.....  
 14 A Right.  
 15 Q .....out and personally hunting?  
 16 A No.  
 17 Q But he has personally trapped, right?  
 18 A Correct.  
 19 MR. ROBINSON: Thank you, Mr. Zellers, I don't have  
 20 anything further.  
 21 THE COURT: Mr. Leaders, anything else?  
 22 MR. LEADERS: I don't have any further questions for Mr.  
 23 Zellers, but the state is going to seek to -- provisionally  
 24 seek admission of Exhibit 25. I'd ask we wait until you make  
 25 final determination until the conclusion of this trial in

- 645 -



1 case there's any other added marks made to -- throughout  
 2 further testimony. I don't want to foreclose the possibility  
 3 of any other testimony marks.....  
 4 THE COURT: That would require marks on it.  
 5 MR. ROBINSON: That's okay. I mean -- if Mr. Leaders is  
 6 saying that he would like to wait until the defense has  
 7 (indiscernible)-- if the defense (indiscernible) to admit  
 8 Exhibit 25.....  
 9 THE COURT: 25 isn't it, madam.....  
 10 MR. ROBINSON: I don't have any.....  
 11 THE COURT: Well, you want it admitted now and just.....  
 12 MR. LEADERS: I just -- because I have no further  
 13 questions for Mr. Zellers. I have no further.....

14 THE COURT: Okay.  
 15 MR. LEADERS: .....witnesses to present, so I'm closing  
 16 my case.  
 17 THE COURT: Okay.  
 18 MR. LEADERS: Before I close my case I want to present  
 19 to the court I'm seeking admission of Exhibit 25, but I'm  
 20 going to wait for -- or ask the court to reserve -- that the  
 21 possibility for amendment through further testimony.  
 22 THE COURT: Do you have any objection to that, Mr.  
 23 Robinson?  
 24 MR. ROBINSON: No.  
 25 THE COURT: Okay. All right.

- 646 -

1 (Plaintiff's Exhibit 25 admitted)  
 2 THE COURT: Is Mr. Zellers free to go then?  
 3 MR. LEADERS: I have no -- I ask that he be released from  
 4 subpoena. Thank you, Mr. Zellers.  
 5 THE COURT: Okay. Thank you, Mr. Zellers. Try not to  
 6 get wet. Is the state resting?  
 7 MR. LEADERS: And just -- I am resting. The state is  
 8 resting its case, Judge. Actually before -- can I just  
 9 confirm then all exhibits so -- to date there are -- to this  
 10 point that.....  
 11 THE COURT: I have 80.....  
 12 MR. LEADERS: Through 83 are all admitted?  
 13 THE COURT: Oh, that's the last number I have. Let me  
 14 double check. (Pause) 83. To 83. Yes, to 83 are admitted  
 15 then.  
 16 MR. LEADERS: Thank you, Judge, and then I do rest the  
 17 state's case in chief.  
 18 THE COURT: Okay. Ladies and gentlemen, the state's  
 19 concluded its case which means that we have a few things we  
 20 need to take care of administratively before we can proceed  
 21 any further. It's about 20 until. Why don't we start back  
 22 up at 8:00 o'clock. Okay? All right, we won't go.....  
 23 UNIDENTIFIED JUROR: (Indiscernible).  
 24 THE COURT: We won't go much -- I don't know how much  
 25 later. We'll see, but I think -- I don't think it will be

- 647 -

1 much later tonight, but -- we'll get as far as we can without  
 2 falling asleep.  
 3 (Whispered conversation)  
 4 THE COURT: Okay.  
 5 THE CLERK: Off record?  
 6 THE COURT: Yes, off.....  
 7 (Off record)  
 8 (Anteroom conference tape not provided 4MC-05-17-C)  
 9 THE COURT: Everybody we need here? Okay. We're on  
 10 record. Mr. Robinson, you want to call your first witness,  
 11 please.  
 12 MR. ROBINSON: Yes, Your Honor, at this time I'd like to  
 13 call Mr. Peter Buist.

14 THE COURT: Okay. Mr. Buist, I think is in the  
 15 courtroom. Sir, if you'd come up and stand in front of the  
 16 middle padded chair there, the gray witness chair, and face  
 17 the clerk.  
 18 (Oath administered)  
 19 MR. BUIST: I do.  
 20 THE CLERK: You may be seated.  
 21 PETER BUIST  
 22 called as a witness on behalf of the defendant, testified as  
 23 follows on:  
 24 DIRECT EXAMINATION  
 25 THE CLERK: Please state your name and spell your last

- 648 -

1 name for the record.  
 2 A I'm Peter Buist, B-u-i-s-t  
 3 THE CLERK: B-u-i-s-t?  
 4 A Yes, ma'am.  
 5 THE CLERK: Your occupation?  
 6 A I'm a retired state employee.  
 7 THE CLERK: And what town do you live in?  
 8 A Fairbanks.  
 9 THE CLERK: Thank you.  
 10 THE COURT: Go ahead, Mr. Robinson.  
 11 MR. ROBINSON: May I question Mr. Buist from the sitting  
 12 position?  
 13 THE COURT: Sure, sure.  
 14 BY MR. ROBINSON:  
 15 Q Mr. Buist, you live in Fairbanks?  
 16 A Yes, sir.  
 17 Q How long have you lived there?  
 18 A 34 years.  
 19 Q And are you married?  
 20 A I was, I'm widowed.  
 21 Q You have children?  
 22 A I have one son.  
 23 Q And does he live in Alaska?  
 24 A He lives in Fairbanks now.  
 25 Q Okay. You mentioned that you were a retired state

- 649 -

1 employee. What position did you retire from?  
 2 A I was a forester and wildland fire fighter for the  
 3 Division of Forestry.  
 4 Q And for how long did you do that work?  
 5 A 28 years.  
 6 Q Other than your public service as a fire fighter for the  
 7 Division of Forestry have you done any other public  
 8 service for Alaska?  
 9 A I have served on several boards and commissions here and  
 10 there for various governors.  
 11 Q Okay. Can you give us an example of what boards and  
 12 commissions you have served on?  
 13 A I was appointed by Governor Cowper to the Guide  
 14 Licensing and Control Board and later to the -- by  
 15 Governor Hickel to the Alaska Big Game Commercial  
 16 Services Board. I served several years on each of  
 17 those. I served on the Governor's task force on guiding  
 18 and game, Governor Cowper's task force on guiding and  
 19 game in the late 80's, and most recently I served one  
 20 term on the Alaska Board of Game. I was not reappointed  
 21 in March when my term expired.  
 22 Q And what term did you serve on the Board of Game? What  
 23 as the....  
 24 A It -- it was -- it was an unexpired term from the last  
 25 administration. I -- I -- I actually was -- had that

- 650 -

1 appointment in February of 2003 and served until March  
 2 of 2005.  
 3 Q In addition to your public service on boards and  
 4 commissions do you also -- have you been involved in any  
 5 civic activity?  
 6 A Various boards and directorships and that sort of thing,  
 7 including my -- my local area fire department, Steese  
 8 Volunteer Fire Department. I served on the Fairbanks  
 9 Advisory Committee to the Boards of Fish and Game for  
 10 somewhere between 15 and 20 years. I -- I have been on  
 11 and off the president of the Alaska Trappers Association  
 12 for almost 20 years.  
 13 Q So are you a trapper?  
 14 A I fancy myself a trapper, yes, sir.  
 15 Q And for how many years have you done trapping?  
 16 A Even before I came to Alaska in the early 70's I -- I've  
 17 trapped since I was probably 10 years old.  
 18 Q Big game, fur bearers or small game (indiscernible)?  
 19 A Trap fur -- fur bearers. I -- I also hunt. I also have  
 20 a guide license.  
 21 Q I'd like to draw your attention now, Mr. Buist, to your  
 22 service as a Board of Game member, in 19 -- in 2003 to  
 23 2005. During the period of time that you were a member  
 24 of the Alaska Board of Game were you involved in any way  
 25 in the -- what's known as the predator control program

- 651 -

1 for wolf population control?  
 2 A Yes, sir, in -- in several instances. I believe a total  
 3 of five areas that are authorized for -- for wolf  
 4 control presently, and I was involved in the discussions  
 5 of -- for all of those. One -- one was an area that had  
 6 been approved by a previous board some time ago but the  
 7 governor refused to implement the -- the wolf control  
 8 plans, and then we re-authorized that after I was on  
 9 board.  
 10 Q All right. And do you remember when that was re-  
 11 authorized?  
 12 A I do not, I'm sorry.  
 13 Q I'd like to take your attention now to December, 2003 up  
 14 through March of 2004. And ask you whether or not you  
 15 remember the implementation of a predator control  
 16 program for wolf population control in the McGrath area,  
 17 what would be known as game unit 19?  
 18 A I remember hours and hours of testimony and discussion.  
 19 Whether I remember all the details may be a little  
 20 problematic, but the -- the 19-D east project was  
 21 something that we spent a lot of time on, yes, sir.  
 22 Q And when the board adopted that program, the  
 23 implementation, what was the intent of the board  
 24 regarding the activity that a permit holder would be  
 25 engaged in if he or she were to get involved with the

- 652 -

1 taking of wolves under that program in the predator  
 2 control area?  
 3 A I'm not sure I understand the question. I'm sorry.  
 4 Q Well, I take it that the Board of Game ordinarily deals  
 5 with issues of hunting and trapping?  
 6 A Yes, sir.  
 7 Q My question to you is, when the board approved the  
 8 implementation of the 19-D east predator control  
 9 program, what was its intent regarding the activity of  
 10 people involved in taking wolves under that program, in  
 11 terms of hunting and trapping?  
 12 A I -- I think I understand. We were adamant that it not  
 13 be considered sport hunting or trapping or subsistence  
 14 hunting. That it was to be purely a control project.  
 15 It was not to be related to those others. And, in fact,  
 16 there's a -- there's a regulation in -- that says that  
 17 the control projects and the -- the work done in them is  
 18 -- is -- has basically nothing to do with the -- with  
 19 the other regulations that govern sport hunting and --  
 20 and trapping.  
 21 Q And why was that?  
 22 A Well, part -- part of it was we were -- we were  
 23 cognizant of the public relations problems, if you will,  
 24 that would ensue if this was perceived as being  
 25 something that was being done for recreation or for

- 653 -

1 sport. And it -- it was our intention to not -- not so  
 2 much to remove wolves as to rebuild a declining moose  
 3 population in 19-D. That -- that was the objective.  
 4 The -- the way that we decided to do that was by  
 5 removing some wolves and bears.  
 6 Q Now you've been a trapper you say for -- since you were  
 7 10?  
 8 A Yes, sir.  
 9 Q I'd like to talk to you about your understanding -- and  
 10 you've been president of the trappers association in  
 11 Alaska?  
 12 A Yes, sir.  
 13 Q And for how long have you been that?  
 14 A Some -- somewhere between 15 and 20 years. Probably  
 15 closer to 20. There's not very many people that want  
 16 that job.  
 17 Q Okay. In your experience as a trapper are you familiar  
 18 with any customs in the trapping industry where someone  
 19 turns over their trapping line to someone else for  
 20 (indiscernible)?  
 21 A I've -- I've done that sort of thing myself and -- and  
 22 had people give me portions of their line as well. If  
 23 somebody is -- say somebody is sick or has to go to town  
 24 or something and they say, well, you're out in that area  
 25 anyway, would you -- would you take care of that line,

- 654 -

1 you know, just give me the gear at the end of the -- end  
 2 of the season, you can have the fur, but now it's --  
 3 it's your's to -- to check and take care of.  
 4 That's.....  
 5 Q And so that's customary in the trapping.....  
 6 A It's -- it's not -- not uncommon.  
 7 Q All right. And once the decision is made that someone  
 8 else takes over their trap line who then becomes  
 9 responsible for closing it up for the season?  
 10 A Well, in -- in terms of custom it's the person who now  
 11 is -- is checking the line. I -- I have no idea whether  
 12 there's any basis in law for that, but like many other  
 13 things that trappers do, buying and selling trap lines,  
 14 and -- and that sort of thing, that the custom is that  
 15 the person who agreed to take care of the -- the -- it  
 16 may only be a couple of sets or it may be a whole trap  
 17 line, then that -- then that person is responsible for  
 18 it.  
 19 Q Now do you know Mr. Haeg. David Haeg? I mean can you  
 20 see him over.....  
 21 A Just in -- I -- I can see him. Yeah, sort of in -- in  
 22 passing. We -- we have -- we have spoken before.  
 23 Q All right. Have you ever seen him attend any of the  
 24 Alaska Board of Game members -- I mean the Alaska Board  
 25 of Game meetings?

- 655 -

1 A Yes, sir, I -- I believe I have (indiscernible) both  
 2 before I was on the board and -- and afterwards.  
 3 Q All right. And if you can recall, do you ever recall  
 4 Mr. Haeg coming before the board to testify about the  
 5 predator control program implementation for the wolf  
 6 population control and the increase of moose population?  
 7 A I -- I don't know, sir. We -- we hear from -- always  
 8 from hundreds of people and if you count the written  
 9 testimony this time, thousands. So it -- I -- I just --  
 10 I don't remember everybody that comes before the board.  
 11 Q Now this wolf population control program was a fairly  
 12 controversial program?  
 13 A I think that's safe to say.  
 14 Q Because there was some opposition to it, as well court  
 15 order?  
 16 A Yes, sir.  
 17 Q And as I understand this 19-D east program was to be an  
 18 experimental program?  
 19 A That -- that was a decision on the -- on the part of the  
 20 Department of Fish and Game, not the -- not the Board of  
 21 Game. But, yes, that was the -- ultimately that was the  
 22 decision, yes, sir.  
 23 Q And it's also my understanding -- forgive me if I'm  
 24 wrong, but the board had approved a population control  
 25 program many years before the Alaska Department of Fish

- 656 -

1 and Game actually implemented it, right?  
 2 A Yes, sir.  
 3 Q What was the relationship between the board approving it  
 4 and the Department implementing it?  
 5 A Well, the -- the -- the board had and has the -- the  
 6 legal responsibility to develop the implementation plan  
 7 and then that is -- is integrated into the regulations  
 8 in the 5 AAC. But the -- the actual implementation was  
 9 something that the Department did. And, in fact, in --  
 10 well, I don't remember what meeting it was, but it -- at  
 11 some meeting the -- the board delegated their authority  
 12 to determine the specific permit conditions and that  
 13 sort of thing back to the Department of Fish and Game.  
 14 Q Was there a lag of time between the time the board  
 15 actually approved the predator control program and in  
 16 fact when it was implemented by the Department?  
 17 A Yes, sir, several -- several years. It was originally  
 18 approved by a -- by a prior board during the last  
 19 administration and -- and it wasn't until after -- after  
 20 the -- the new board, for lack of a better term, because  
 21 it was almost a complete turnover. It wasn't until then  
 22 and a -- and a new theory of how to go about business in  
 23 the Department of Fish and Game, in the -- under the  
 24 Murkowski administration, that anything actually  
 25 happened.

- 657 -

1 MR. ROBINSON: That's all the questions I have. Thank  
2 you. Mr. Buist.

3 THE COURT: Thank you. Mr. Robinson? Mr. Leaders.

4 MR. LEADERS: Yeah, (indiscernible).

5 THE COURT: Okay.

6 (Pause)

7 PETER BUIST

8 testified as follows on:

9 CROSS EXAMINATION

10 BY MR. LEADERS:

11 Q So this program out here in 19-D east, the McGrath area,  
12 it -- have you -- you said there was a lot of time spent  
13 on it, a lot of discussion?

14 A Yes, sir.

15 Q And a lot of work by the board, the Department, put this  
16 program into place.....

17 0475

18 (Tape change)

19 4MC-05-17/Side B

20 0475

21 THE COURT: We're back on record.

22 Q As well as involved a lot of input from the local  
23 communities, is that correct?

24 A The -- the board takes testimony from you know anybody  
25 who wants to testify to the board. And prior to the

- 658 -

1 board I was on making some of the decisions that we did,  
2 there had been meetings in McGrath, promises made by the  
3 administration and various people in it, none of which  
4 had come to fruition.

5 Q The program though as currently -- I guess implemented  
6 or designed out here, there was a give and take between  
7 the locals -- the local community as far as them giving  
8 up certain hunting rights, that type of stuff, in order  
9 to bring this predator control program in their area to  
10 fruition?

11 A Most of that took place before I was on the -- on the  
12 board. There was -- there was obviously a lot of -- a  
13 lot of interest in -- in McGrath in seeing anything done  
14 because the situation was becoming so grim and -- and it  
15 kept getting put off and put off and there was a lot of  
16 frustration here. And -- and I've -- I mean I observed  
17 what was going on but I was not -- I was not on the  
18 board while most of that -- most of those throws were --  
19 were occurring. I did travel to McGrath at that one  
20 time for something we called a wolf summit out here, and  
21 that sort of thing, but the -- by -- by the time I was  
22 on the board most of the -- most of the discussion and  
23 the -- the agony of the meetings was between the Board  
24 of Game and outside animal rights groups.

25 Q Okay. But I guess what I'm trying to get at is the way

- 659 -

1 the program here -- and this program is I guess you've  
2 kind of discussed it in some ways a test project or kind  
3 of a -- for -- and now it's expanded -- predator control  
4 has expanded to some other areas. is that correct?

5 A Yes, there are now five areas where -- where we're doing  
6 predator control of one form or another.

7 Q Were they all modeled after the system put in place here  
8 in the McGrath area?

9 A No. This didn't work smoothly enough that we wanted to  
10 model it completely after this.

11 Q Okay. And part of that -- the I guess model out here or  
12 the system out here though is the -- there's a specific  
13 area, limited area around McGrath. There's basically --  
14 the locals agreed to give up hunting rights for game  
15 populations, moose particularly, caribou, in that area  
16 for a five year period, correct?

17 A That -- that was part of the -- sort of consensus  
18 arrangement when -- when we defined the boundaries of  
19 what we called the M of the experimental area.

20 Q Okay. And the M.....

21 A When I say we, I was not -- I was not on the board when  
22 those -- when those decisions were made.

23 Q But you were on the board when the program was  
24 implemented?

25 A Right, when the program was actually implemented, yes,

- 660 -

1 sir.

2 Q Okay. And so that was one of the things that did -- one  
3 of the requirements or restrictions that did continue in  
4 place here?

5 A Yes, sir, we -- we didn't -- we respected the -- what  
6 the local community thought and didn't -- didn't want to  
7 change that.

8 Q Okay. Because their investment in the program to see  
9 if.....

10 A Yes, sir.

11 Q .....it becomes a success. Now the -- so the locals  
12 have given up a lot in that sense in order to see this  
13 program.....

14 A I would agree.

15 Q .....be successful?

16 A Yes, sir.

17 Q Okay. The -- you said as far as what was the -- the  
18 questions regarding the intent of the board regarding  
19 implementing this program under -- and its relation to  
20 hunting and trapping laws and regulations. And you said  
21 that they were adamant that it not be sport hunting, not  
22 be trapping, not be subsistence hunting. Any of those  
23 things?

24 A Correct. And -- and, in fact, that -- that is in the  
25 regulation that the -- that the control programs operate

- 661 -

1 under a different set of regulations.  
 2 Q Okay.  
 3 A 5 AAC 92.15.  
 4 Q Now this program is not new, is that correct? I mean  
 5 there's been aerial killing of wolves or other animals  
 6 in the past, isn't that correct?  
 7 A Yes. Not -- not under these regulations. This was a  
 8 new -- a new way to go about it.  
 9 Q Oh, this predator control program now?  
 10 A New -- new statutes and new regulations that we're  
 11 operating under. You know, the -- the feds did wolf  
 12 control somewhat indiscriminately for years and years,  
 13 and years.

14 Q Uh-huh.  
 15 A We've had various land and shoot programs by the -- by  
 16 the state and by private gunners in the past. I don't  
 17 know what the licensing requirements or anything were on  
 18 -- on those, but the -- the conditions that we operate  
 19 under now are dependent on new statutes and regulations  
 20 just that have been generated in the last 10 years or  
 21 so.  
 22 Q The -- and this system that -- as you state are based on  
 23 the statute -- or regulations that have been adopted  
 24 that, you know, adamant about making it separate from  
 25 hunting, trapping, et cetera. Part of that -- isn't --

- 662 -

1 part of that is out of concerns for interaction with the  
 2 Airborne Hunting Act? Federal laws that would prohibit  
 3 this type of activity if it's termed hunting, for  
 4 example?  
 5 A That -- that was a consideration, yeah, a part of it,  
 6 yes, sir.  
 7 Q Okay. So by defining it if you're -- defining this  
 8 predator control activity as specifically non-hunting  
 9 you've got -- it helped get around the federal Airborne  
 10 Hunting Act?  
 11 A It would -- of course, we don't want to get around  
 12 federal regulations, we want to operate within them.  
 13 But it would certainly assist the attorney general's  
 14 office when the inevitable lawsuits came as they did.  
 15 Q Uh-huh. Okay. And so that was one of the primary  
 16 incentives for not classifying it as hunting program?  
 17 A I don't know whether it was the primary one, it was --  
 18 it was a consideration.  
 19 Q As well as -- I mean you identified one other, the  
 20 public perception?  
 21 A The public perception is something that, believe it not,  
 22 the Board of Game always worries about.  
 23 Q Okay. And so I'm -- I would assume that issues such as  
 24 strict adherence to the program, that type of stuff, are  
 25 of grave concern to the board?

- 663 -

1 A That's fair to say.  
 2 Q Because if the program's not strictly adhered to, the  
 3 conditions of permits, those types of things could  
 4 jeopardize public perception of the program?  
 5 A Yes, sir.  
 6 Q Now the predator control initiatives, regulations  
 7 adopted under those, and statutes adopted in  
 8 coordination with them indicate that predator control is  
 9 simply -- is a program designed by and restricted to a  
 10 program designed by the board and the Department, isn't  
 11 that correct?  
 12 A I -- I don't remember the wording of the statutes and  
 13 regulations. If....

14 Q Okay. Are you familiar with 16.05.783. A statute  
 15 (indiscernible).....  
 16 A Not -- not by that cite, no, sir.  
 17 Q Okay. The statute regulates same day airborne hunting  
 18 and then authorizing certain airborne activities for the  
 19 taking of wolves under predator control programs or game  
 20 management programs?  
 21 A Yes, sir.  
 22 Q Okay. And are you familiar with the definition that  
 23 states that a game management program means a program  
 24 authorized by the Board of Game or the Commissioner of  
 25 the Department of Fish and Game to achieve -- identify

- 664 -

1 game management objectives in a designated geographic  
 2 area?  
 3 A Yes, sir.  
 4 Q And so by its definition -- let me ask. I mean doesn't  
 5 that by its definition predator control is limited to  
 6 specific programs authorized and implemented, isn't that  
 7 correct? By the board and the Department?  
 8 A Yes, sir.  
 9 Q Predator control is not a new method for taking fur  
 10 bearers or big game generally?  
 11 A The -- the act itself is -- is not, but under -- under  
 12 these statutes and regulations it is -- it's new in that  
 13 regard.  
 14 Q But it doesn't -- it doesn't create a general new -- I  
 15 mean we've got hunting, we've got trapping, there's  
 16 subsistence hunting by definition, as well. As  
 17 different means of taking game or fur bearers, is that  
 18 correct?  
 19 A Well, there -- there are various methods and means that  
 20 are allowed that -- or to be more specific there are  
 21 sections in the -- in the statutes and the regulations  
 22 of methods and means which are prohibited, yes.  
 23 Q Right. And they're -- each of these methods and means  
 24 are regulated, right?  
 25 A Yeah, by virtue of the fact that they're in the statutes

- 665 -

1 and regulations, yes, sir.  
 2 Q There's no general authority to take game or fur bearers  
 3 or anything in the state of Alaska. You need to have a  
 4 grant of authority either through a hunting license,  
 5 trapping license? It's just.....  
 6 A Well, I'm -- I'm no lawyer.  
 7 Q Okay. Well, that you're aware of?  
 8 A But there's a section of the Alaska Constitution that  
 9 says that -- that the natural resources are available  
 10 for the common use of the people. To me that does what  
 11 I think you're implying.  
 12 Q So that means -- so I guess what I'm implying or asking  
 13 is, does that mean to you that you don't need a license,  
 14 you don't need either a hunting or trapping license to  
 15 take fur bearers or big game?  
 16 A For me, no.  
 17 Q Okay. In fact, because those methods of taking are  
 18 regulated, right?  
 19 A Yes, sir.  
 20 Q Okay. Through -- they're regulated and authorized in  
 21 specific circumstances?  
 22 A Yes, sir.  
 23 Q Okay. And now the predator control didn't create a  
 24 general authorization, did it? Such as hunting or  
 25 trapping?

- 666 -

1 A No, there were conditions on the -- on the permits.  
 2 Q Okay. And it's according to the definition we discussed  
 3 of game management program, and that's what predator  
 4 control is, it's a game management program, correct?  
 5 A Yes, sir.  
 6 Q Okay. It's only applicable -- predator control as an  
 7 authorized means or an activity is only applicable or  
 8 authorized under a specified game management program?  
 9 A Well, under -- under -- if -- it's -- it's authorized by  
 10 a specific permit to participate in that activity.  
 11 Q And it's only authorized within the confines of that  
 12 specific program, correct? I mean.....  
 13 A Yes, sir. Yeah.  
 14 Q Okay. So if you get -- there isn't -- you don't have a  
 15 -- you can get a hunting license to hunt throughout the  
 16 state of Alaska, right?  
 17 A Yeah, I mean there are also closed areas, but.....  
 18 Q But, yeah, and.....  
 19 A And your -- and your hunting license doesn't specify  
 20 which areas are closed or open.  
 21 Q Right. It's.....  
 22 A You have a responsibility to, you know, be familiar with  
 23 the regulations and so forth.  
 24 Q Any open area you can use it, right?  
 25 A That's correct.

- 667 -

1 Q And trapping license, the same thing, right?  
 2 A Yes, sir.  
 3 Q But not with a predator control permit, right? That  
 4 will only.....  
 5 A That -- that is.....  
 6 Q .....authorize a -- just a specific area?  
 7 A Yes, sir.  
 8 Q Not a general authority to take game or fur bearers  
 9 throughout the state?  
 10 A That -- yes, sir.  
 11 Q Okay. And so if you go outside of those specific  
 12 boundaries you're not engaged in predator control?  
 13 A Well, I -- I mean that sounds like -- again that sounds  
 14 like a legal question. To me you've violated the  
 15 conditions of the permit, and -- and -- but I'm not  
 16 familiar with what -- what then happens.  
 17 Q Well, if the permit doesn't apply outside the specified  
 18 areas -- let me ask you this. You've -- if someone gets  
 19 a permit for 19-D east.  
 20 A Okay.  
 21 Q To aerially shoot wolves, or land and shoot wolves.  
 22 A Okay.  
 23 Q Does that authorize them in any way to take wolves out  
 24 of Denali Park?  
 25 A No.

- 668 -

1 Q Out of the Dillingham area?  
 2 A No, sir.  
 3 Q It's only limited just to the confines of that -- for  
 4 that specified program?  
 5 A The area specified, yes, sir.  
 6 Q In fact, if you get a permit for the 19-D east program  
 7 it doesn't authorize you to participate in a program in  
 8 19-A, isn't that correct?  
 9 A No, that's a -- that's a separate permit.  
 10 Q Okay. You'd have to get a separate permit?  
 11 A Yes, sir.  
 12 Q Okay. The -- so kind of the point -- the issue is  
 13 there's no generally recognized method of -- that was  
 14 created for preda -- of predator control. It's only  
 15 within specific program boundaries?  
 16 A Well, predator control comes in several different  
 17 flavors. It can be aerial wolf control, land and shoot  
 18 wolf control. It can be doing things with bears. There  
 19 are all sorts of different aspects of it.  
 20 Q Uh-huh. Right. But according to statute it's only  
 21 within specific areas established?  
 22 A But in -- in the areas established by the -- by the  
 23 board, and we establish the -- the boundaries of each of  
 24 those specific areas and do all the -- the Department  
 25 does the-- the background work and we analyze the

- 669 -

1 harvest objective, the population objectives and we  
 2 decide whether that's going to be effective or possibly  
 3 be effective in bringing those ungular populations back  
 4 up.  
 5 Q Okay. And it's only through these game management  
 6 programs that predator control is authorized, is that  
 7 correct?  
 8 A Predator control as we have just defined it, yes.  
 9 Q In the term of -- okay, shooting -- same day air -- or  
 10 aerial shooting, land and shoot -- shooting, those type  
 11 of....  
 12 A Yes, sir.  
 13 Q Okay. So it's not based on the intent -- I mean I can't  
 14 decide that I want to engage in predator control and  
 15 because that's what I want to do, I can simply go out  
 16 into 19-C or 19-B, another area where there's no  
 17 predator control program and engage in predator control  
 18 lawfully? And I'm not -- if I go out and kill an animal,  
 19 let's say a wolf, same day airborne, I'm not engaged in  
 20 predator control based on the authorizing language of  
 21 the statutes, is that correct?  
 22 A Well, on -- on that -- on that statutory language, yeah,  
 23 but there's nothing to say you can't take an airplane  
 24 full of snares and traps and -- and under the auspices  
 25 of a -- of a trapping license do predator control from a

- 670 -

1 practical standpoint.  
 2 Q Right, but it wouldn't be regulated under predator  
 3 control, you're regulated under the trapping.....  
 4 A A different set of statutes and regulations, yes, sir.  
 5 Q Or the hunting regulations, right?  
 6 A Yes, sir.  
 7 Q Okay. So it's not an issue of what I believe I'm doing,  
 8 it's an issue of what regulatory scheme applies to the  
 9 taking of game in an area, isn't that correct?  
 10 A I guess that's fair, yeah.  
 11 Q And outside of aerial shooting or land and shoot  
 12 programs for the predator control programs there's no --  
 13 it's unlawful under either a hunting or trapping license  
 14 or any other means to shoot a wolf from the air, isn't  
 15 that correct?  
 16 A That's correct.  
 17 Q It would be, in fact, a violation of either both hunting  
 18 regulations and trapping regulations, if you have a  
 19 hunting license and a trapping license?  
 20 A Yeah, if -- yeah, if you're armed with those two  
 21 licenses then that -- yeah, that's not a legal method  
 22 and means of taking wolves.  
 23 Q In fact, it would be a violation of both licenses and  
 24 both regulations?  
 25 A I -- yeah, it -- it -- say you had either one. In -- in

- 671 -

1 either case I -- I understand that that would be a  
 2 violation.  
 3 Q Okay. If you had both it would be a violation of both  
 4 then, right?  
 5 A Well, I mean if you're shooting one wolf, you're --  
 6 you've -- say -- you're not taking it under both the  
 7 hunting and a trapping license, you're taking it under  
 8 one or the other. And there -- and there are -- there  
 9 are lots of differences in the -- in the ways that --  
 10 that those licenses permit you and require you to do  
 11 things with wolves. For example, how long you have to  
 12 seal the wolf.  
 13 Q And -- but it doesn't restrict the -- so -- oh, never  
 14 mind, as far as you have to seal them. The issues of --  
 15 but I guess to get back to either license could apply  
 16 and you could violate either license?  
 17 A Well, I -- I can't think of an -- an example of where  
 18 somebody would be trying to shoot a wolf under two  
 19 licenses at the same time. It's -- it's silly.  
 20 Q Okay. Maybe not trying to, but if you have each of the  
 21 licenses each of the regulations would apply? If one of  
 22 them authorizes it you're okay. If the other -- but if  
 23 neither of them do, you'd be violating both?  
 24 A That doesn't seem logical to me, no.  
 25 Q Why is that?

- 672 -

1 A Well, you're either taking wolves under a trapping  
 2 license or -- or a hunting license. I mean you may have  
 3 a driver's license in your pocket, too, but that's --  
 4 that's not part of the -- part of the equation. I -- I  
 5 -- I don't understand what....  
 6 Q Your driver's license doesn't authorize you to take  
 7 game, does it?  
 8 A No, but it authorizes you to drive to access game, for  
 9 example. For example, if you're hunting grouse in the  
 10 -- in early fall time with a .22, and you -- and you --  
 11 and both the trapping season and the hunting season are  
 12 open and you see a wolf and -- and all you have in your  
 13 pocket is a hunting license, you can't shoot that wolf  
 14 with a .22. If you have a trapping license in your  
 15 pocket you can shoot that wolf with a .22, with a  
 16 rimfire cartridge. But at that point you may have both  
 17 licenses in your pocket but you're taking the wolf only  
 18 under the trapping license.  
 19 Q If you have that -- both those licenses and you have a  
 20 center -- a rifle, center fire rifle, you can take it  
 21 under either of them?  
 22 A Yes, sir.  
 23 Q Okay. So which one applies?  
 24 A When are you going to seal the wolf?  
 25 Q So that's an issue -- so you're saying it depends on --

- 673 -

1 I can decide which one I want?

2 A No, under which license you're taking the wolf, it

3 depends when you're required to seal the wolf.

4 Q If you shoot them -- under your scenario you shoot him

5 with a rimfire in say July, which license are you

6 operating under?

7 A You're probably illegally trapping. I don't think

8 there's any trapping season in July.

9 Q Okay. Neither is there a hunting?

10 A Is that trick question?

11 Q Well, I mean that's the issue.

12 A I -- I -- I guess I don't understand what you're trying

13 to get me to say.

14 Q The -- let's -- the -- I guess these are, I guess this

15 discussion we've had is based on -- I guess do you --

16 are those your opinions, personally, or as a member of

17 the board are those how -- as far as which license would

18 apply, is that something that was worked out by the game

19 board?

20 A I don't -- I don't ever remember -- well, I mean the --

21 the game board at some point back while I was probably

22 in diapers figured out the difference between using a

23 hunting license and -- and using a trapping license to

24 take -- take wolves. Wolves were -- were classified

25 dually as a fur bearer and a big game animal quite some

- 674 -

1 A No, that's -- no, that's -- that's a personal decision.

2 You can carry either -- if you want to shoot a wolf in

3 September you do it either under the hunting regs or the

4 -- or the trapping regs.

5 Q Okay.

6 A If you want to use a .22 you better have a trapping

7 license in your pocket.

8 Q If you want to use a center fire rifle?

9 A Either -- either -- you could use either one.

10 Q Okay. So you could be regulated under either one?

11 A Well -- well, yeah, I assume so.

12 Q Laws under either one....

13 A Well, when....

14 Q ....would apply to you?

15 A Well, when you go in to seal the wolf....

16 Q Uh-huh.

17 A ....and if it's taken under a trapping license you have

18 until 30 days after the season closes to seal the wolf,

19 I believe. Okay. So -- and under the hunting

20 regulations I believe you have 30 -- 30 days from the

21 time you take the wolf to have it sealed, I believe.

22 So, for example, if it's the 32nd day after you shot

23 that wolf, well, you obviously are doing it under a

24 trapping license, not a -- not a hunting license.

25 Q Well, why is that obviously? Because isn't -- so you're

- 676 -

1 time ago.

2 Q Uh-huh.

3 A And -- and that is the reason for those, quite frankly,

4 some rather confusing differences in what you can and

5 can't do, what you can and can't use to take wolves at

6 certain times of year.

7 Q And so it can be regulated under both, right?

8 A It -- it is regulated under -- under both, and at some

9 point you have to make a decision whether you're

10 trapping a wolf or shooting a wolf. Or -- or hunting a

11 wolf I guess is the proper term.

12 Q Okay. And who -- and so who are you saying makes that

13 decision?

14 A I would as an individual. If I'm carrying a .22 and

15 it's September and both seasons are open, I've -- I have

16 -- I have to think to myself, jeeppers, do I have a

17 trapping license in my -- did I buy a new trapping

18 license for this year. Can I legally take that wolf

19 with a .22 or do I have to rummage around in -- in -- in

20 the back of the truck and find a different rifle to

21 shoot it.

22 Q And that's based on policy by the board?

23 A It's not policy, it's -- it's in regulation.

24 Q The regulation is an individual decides which license

25 they're operating under? They're taking game under?

- 675 -

1 saying you may (indiscernible).

2 A Because otherwise you've committed a viol -- a violation

3 of the hunting regulations.

4 Q The -- so you're saying you make that decision when it

5 suits you, not at the time you take the game?

6 A Well, if you're making that decision based on what

7 weapon you're going to use, in -- in my example, then

8 you have to make that decision before you squeeze off a

9 round.

10 Q Okay.

11 A If you're making the decision based on when you want to

12 bother to take the wolf in to get it sealed, then it's

13 far after that.

14 Q So by your analysis an individual gets to choose which

15 regulatory scheme they need to comply with?

16 A At -- at some point in time, yes.

17 Q It would be a violation under one if they decide they

18 don't want to do it, they'll do it -- how about if it's

19 a violation under both? Do they get to choose which

20 regulation they're -- which regulations they're

21 violating?

22 A I have no idea. That's a hypothetical that sort of

23 escapes me.

24 Q You've put out the hypotheticals that you get to choose

25 which one, in order to comply?

- 677 -



1 A Well, that's a little different than if you're breaking  
2 the law and then making decisions based on that.  
3 Q The regulatory schemes weren't designed for someone to  
4 run for protection when they've broken the law, were  
5 they? They're designed to regulate activity?  
6 A Yeah, that's fair.  
7 Q Okay. Let's discuss the trapping aspects. You said  
8 it's trapping custom to turn over lines to someone else  
9 at times?  
10 A Yeah, it's -- it's not uncommon. It's commonly done.  
11 Q Okay. It's not uncommon. It's not necessarily a  
12 custom?  
13 A That's something every -- everybody does, but  
14 particularly people who trap for -- for a long time.  
15 You know, somebody that's got three or four traps out  
16 and they're accessing them with a vehicle on the roads  
17 around Fairbanks, they just -- if they've got to go  
18 south for a death in the family or something they just  
19 pick up the -- pick up the sets. But on trap lines in  
20 -- in rural areas it's not uncommon to say, hey, I've  
21 got to go to town for a while, would -- would you take  
22 care the line.  
23 Q Okay. Kind of turn over on an interim basis?  
24 A Yeah.  
25 Q Okay. Not typically -- it's not common that it's turn

- 678 -

1 it over. You know, you start a trapping line, just turn  
2 it over mid-season?  
3 A I don't think that's uncommon at all.  
4 Q But is it common then, or not uncommon, however you want  
5 to phrase it, to turn over trapping -- or to accept or  
6 take over a trapping or snare set without having any  
7 idea as to the number of sets -- snares, traps, that are  
8 set or where they're located exactly?  
9 A I -- I think that would be uncommon. I mean obviously  
10 the idea is for the -- if that other person is assuming  
11 that responsibility then that per -- that other trapper  
12 needs to know where the -- where the sets are and -- and  
13 -- and have -- how many snares in each set, so that --  
14 so that he can pick them up at the -- at the end of the  
15 season.  
16 Q That's if they're assuming that responsibility to pick  
17 them up at the end of the season. That would be logical  
18 or reasonable, you'd want to know -- gee, where are they  
19 located and how many are there, right?  
20 A Yes, sir.  
21 Q Okay. You -- have you trapped or snared wolves?  
22 A Yes, sir.  
23 Q Okay. (Indiscernible) around like -- like commonly big  
24 wolves, set them around kill sites, moose kills, that  
25 type of game kills?

- 679 -

1 A Yes, sir.  
2 Q And often it's a fairly large scale set? Lots of-- if  
3 you're using especially snares, a lot of snares?  
4 A I don't know what your definition of a lot is. I very  
5 seldom put more than 10 or 12 snares around a kill.  
6 Q Okay. How about in a range of say 30 to 50, or 30 to  
7 40?  
8 A I guess some people do that. I don't have any interest  
9 in doing that.  
10 Q That would be....  
11 A Hell, I can't remember where they are much less tell  
12 somebody else.  
13 Q Okay. It seems kind of unreasonable just -- I mean  
14 would you -- do you think that would be a wise thing to  
15 do or would it seem common to take over a set like that?  
16 If you didn't have a diagram as to where they are?  
17 A I mean I -- I diagram mine for myself. I know -- I can  
18 think of several people, very accomplished wolf trappers  
19 who sometimes set 50 or more snares on a -- on a -- on a  
20 -- particularly on a -- on a kill. And I -- I assume  
21 that if they -- if they would-- if they were to -- to  
22 turn that over to somebody that they would -- they would  
23 probably have a diagram or at least know how many snares  
24 were at that particular -- that's more common is for  
25 somebody just to know I have this many snares at a -- at

- 680 -

1 a set.  
2 Q Sure.  
3 A But I'm -- I'm old and can't remember so I draw a  
4 diagram.  
5 Q Okay. And so it would probably be uncommon then to take  
6 over that type of set, if it was 30 to 50 snares or  
7 snare/trap combinations, without knowing at least how  
8 many there are or where they're set?  
9 A Well, it's -- it's probably uncommon just because there  
10 are very few people that put that many snares at a set.  
11 Q Fair enough. Do you think it would also be uncommon for  
12 someone to want to accept the responsibility for that  
13 type of -- you're saying when someone takes over a set  
14 they accept responsible for that -- removing that set at  
15 the close of season?  
16 A Well, certainly, that's the agreement that I make with  
17 anybody who would take over something for me, and -- and  
18 conversely with people that I have helped out by doing  
19 that, I have been very adamant about knowing not only,  
20 you know, GPS coordinates of where a -- where a kill is  
21 but how many -- at -- at the very least how many snares  
22 are -- are at the -- are at that set.  
23 Q Uh-huh. Okay. And so it sounds like while it may not  
24 be uncommon to take over sets, it would be uncommon to  
25 take over large sets without knowing what's entailed?

- 681 -

1 What it entails, where they're at, how many, those types  
 2 of things?  
 3 A I don't know whether it's common or not. As -- as I  
 4 said before, it's just it's not common for people to  
 5 have that many snares at a -- at a kill site.  
 6 Q Well, then I guess I'm trying to figure out where you  
 7 get your basis that it's not uncommon to take over sets  
 8 but it -- you don't know if it's common or not to take  
 9 over large sets and not know where the traps.....  
 10 A Well, when some -- when.....  
 11 Q .....and snares are?  
 12 A I'm sorry. When -- when some -- when -- I'm -- I'm  
 13 aware very often when something like that happens in the  
 14 Fairbanks area. I know that so and so has a kid that's  
 15 going to be in the hospital in Seattle or something and  
 16 I know that this other guy is taking over his trap line.  
 17 Q Uh-huh.  
 18 A So I'm aware that that transfer of responsibility, if  
 19 you will, is going on. I don't have any idea of how  
 20 many sets there are or how many snares there are at each  
 21 -- at each set.  
 22 Q Uh-huh.  
 23 A I just know that they -- that these two guys have --  
 24 have that agreement.  
 25 Q Now you said you were adamant when you engage in like

1 taking over someone's set, this kind of exchange.....  
 2 A Yes, sir.  
 3 Q .....this acceptance of responsibility?  
 4 A Yes, sir.  
 5 Q Okay. You're adamant about knowing where they are and  
 6 adamant about the communication of who is responsible  
 7 for it?  
 8 A Yes, sir, because -- because I think as I know that  
 9 ultimately I'm going to be responsible for pulling that  
 10 set and I want to make sure I get them all.  
 11 Q Okay. Conversely you've also indicated that you're  
 12 adamant when you have someone else take over your set,  
 13 right?  
 14 A Yes, sir.  
 15 Q That they understand they're responsible. Why is that?  
 16 A Because I don't want them going to jail for -- for  
 17 leaving snares set on a kill on my trap line because  
 18 I'll probably get a visit from the troopers, too.  
 19 Q Because ultimately you set those out there. You're  
 20 ultimately responsible, unless you reserve.....  
 21 A Well, that -- yeah, that's a legal question. I don't --  
 22 you know, I don't -- I don't know. I've not -- not been  
 23 cited for it or anything.  
 24 Q Right. But that's why you -- you don't want the legal  
 25 responsibility?

1 A Yeah, I don't want either one of us to go to jail.  
 2 Q Right. But that's why you insure that someone else  
 3 accepts that responsibility because you did -- you don't  
 4 want it to come back on you?  
 5 A Well, correct.  
 6 MR. LEADERS: No further questions.  
 7 THE COURT: Any redirect, Mr. Robinson?  
 8 (Whispered conversation)  
 9 PETER BUIST  
 10 testified as follows on:  
 11 REDIRECT EXAMINATION  
 12 BY MR. ROBINSON:  
 13 Q Mr. Buist, are you saying that a prudent person taking  
 14 over a set would want to find out where the traps and  
 15 snares are located?  
 16 A Yes, sir.  
 17 Q Now as I understand the board from your discussions with  
 18 Mr. Leaders has independent authority to create a  
 19 predator control program that's independent of trapping  
 20 and hunting regulations, correct?  
 21 A Yes, sir.  
 22 Q And that's what this program was in McGrath for Unit 19-  
 23 D east, right?  
 24 A Yes, sir.  
 25 Q Separate from any hunting and trapping -- normal hunting

1 and trapping regulations?  
 2 A Yes, sir.  
 3 Q Now with regard to hunting and trapping in general.  
 4 Isn't it true that in the regulation books it usually  
 5 says where hunting areas are open and hunting areas are  
 6 closed?  
 7 A Yeah, mostly it lists closed areas.....  
 8 Q Right.  
 9 A .....and you're left with hoping that the rest of it's  
 10 really open.  
 11 Q All right. But there's a specification for closed  
 12 areas?  
 13 A Yes, sir.  
 14 Q Well, if someone with a hunting license who intended to  
 15 hunt. Say wanted to hunt moose, and they hunted moose  
 16 in a closed area. They would still be hunting in a  
 17 closed area, they wouldn't be trapping in a closed area  
 18 would they?  
 19 A For -- for moose?  
 20 Q Right.  
 21 A No, sir, moose is not a fur bearer.  
 22 Q Okay. But the activity that they're doing is still  
 23 hunting whether they're doing it in an open area or in a  
 24 closed area, right?  
 25 A That sounds correct.

1 Q The same thing would be true for trapping. In other  
 2 words there's certain areas of trapping that could be  
 3 closed. You are a trapper, you have the intent to trap  
 4 and you go trapping in a closed area, you're trapping in  
 5 a closed area?  
 6 A Yes, sir, and you would be -- if you were cited you  
 7 would be cited for trapping in a closed area.  
 8 Q Trapping, right. Under the trapping regulations?  
 9 A Under the trapping regulations, yes, sir.  
 10 Q Now with regard to success. I understood you to  
 11 originally say that the purpose of the program really is  
 12 to help increase the population of moose or caribou.  
 13 depending on which prey population was being decreased  
 14 by wolf predation. So success is the increasing of the  
 15 moose population, not necessarily the elimination of the  
 16 wolves, correct?  
 17 A Yes, sir, that's probably a -- a simplified version.  
 18 The -- the board has for each of these species in the  
 19 intensive management areas, has a population objective  
 20 and a harvest objective for -- for each species. And  
 21 what we're trying to do is -- is reach those objectives  
 22 for each of those species.  
 23 Q Now I noticed that there wasn't a bounty for the wolves  
 24 taken in the predator control program. Is there a  
 25 reason for that?

- 686 -

1 A There have been no bounties for wolves in Alaska since I  
 2 believe about 1973 or '74. Govern -- government  
 3 bounties. There have been some private entities that  
 4 offered.  
 5 Q But I notice in the predator control program that if you  
 6 abided by the permit conditions and you got these  
 7 lawfully, you could lawfully possessed these things for  
 8 the purposes of your own personal use, you could sell  
 9 them, the wolves that you took you could keep and sell  
 10 them (indiscernible)?  
 11 A Yes, sir, it was the intent of the board to reward these  
 12 people in some small way for the hundreds of dollars  
 13 they spent on Av gas to maybe sell a couple wolf hides.  
 14 Q And when you were a board member sitting there  
 15 considering that did you consider that this program was  
 16 going to be one in which if you ever participated in and  
 17 kept those hides that you were going to make a lot of  
 18 money?  
 19 A To -- to the contrary, I think most of us on the board  
 20 have been around long enough to know that -- that, no,  
 21 that most people were going to do it as a public service  
 22 because it was going to cost them money.  
 23 MR. ROBINSON: That's all the questions I have, thank  
 24 you.

PETER BUIST

- 687 -

1 testified as follows on:

2 RECROSS EXAMINATION

3 BY MR. LEADERS:

4 Q I'm still at loss with your belief. I guess, that you  
 5 get to choose what regulation, what applied to you.  
 6 Your -- the example you proposed, you're out, you've got  
 7 a -- you see a wolf and you've got a .22, a rim-fire.  
 8 If you don't have either a hunting or trapping license,  
 9 you shoot that wolf, are you hunting or are you  
 10 trapping?

11 A Well, you -- you took the wolf illegally. I -- I would  
 12 assume that the -- that my friendly local trooper would  
 13 cite me for illegal taking of a wolf. Whether that is  
 14 considered under the trapping or the hunting would  
 15 probably be his decision, not mine.

16 MR. LEADERS: No further questions.

17 PETER BUIST

18 testified as follows on:

19 REDIRECT EXAMINATION CONTINUED

20 BY MR. ROBINSON:

21 Q But you would agree, would you not, Mr. Buist, that when  
 22 it comes to choosing your activity, that's why you  
 23 purchased the license? Purchased a license because you  
 24 don't want to trap but you want to hunt, as an  
 25 individual?

- 688 -

1 A Yes, sir.

2 Q So when it comes to buying a license or getting the  
 3 permission to do one or the other, that's a personal  
 4 choice, isn't it?

5 A Yes, sir.

6 Q So then when you engage in the activity itself, whether  
 7 it's hunting or trapping, and you're making a choice at  
 8 that point whether you want to go hunting with your  
 9 hunting license or go trapping with your trapping  
 10 license, correct?

11 A Yes, sir.

12 MR. ROBINSON: No further questions.

13 THE COURT: Can Mr. Buist be excused?

14 MR. ROBINSON: Yes.

15 MR. LEADERS: Yeah, I -- thank you, sir.

16 THE COURT: Okay. Thank you, Mr. Buist.

17 MR. ROBINSON: I'll get my next witness who is Ted  
 18 Spraker. Could I take -- before I bring Mr. Spraker in can I  
 19 take a quick bathroom break?

20 THE COURT: How long? We -- not the bathroom break.

21 MR. ROBINSON: Oh, I'm just.....

22 THE COURT: I don't know how -- I don't want to know how  
 23 long that takes.

24 MR. ROBINSON: (Indiscernible). I think Mr. Spraker will  
 25 probably take, I don't know, until 9:30 we should be done

- 689 -

1 with him. Between cross examination and.....  
 2 THE COURT: Okay. And if we start looking like he's  
 3 going to take as long as Mr. Buist's short examination we may  
 4 stop before that.  
 5 MR. ROBINSON: Okay.  
 6 THE COURT: Okay.  
 7 MR. ROBINSON: Well, I'd like to see if Mr. Spraker can  
 8 go home by tomorrow.  
 9 THE COURT: Okay. Is Mr. Spraker downstairs?  
 10 MR. ROBINSON: Yes, he's here.  
 11 THE COURT: Okay. Well, why don't you go upstairs and  
 12 Magistrate Woodman (ph) he'll go downstairs and get Mr.  
 13 Spraker.  
 14 (Witness summoned)  
 15 THE COURT: All right, Mr. Spraker, come right up here.  
 16 You can sit down for a minute if you want, but.....  
 17 MR. SPRAKER: Is this -- is this my spot.  
 18 THE COURT: .....we'll have you stand back up in a  
 19 minute, as soon as Mr. Robinson comes back.  
 20 (Pause)  
 21 THE COURT: Are you ready, Mr. Robinson?  
 22 MR. ROBINSON: Yes.  
 23 THE COURT: Okay. Mr.....  
 24 MR. ROBINSON: The defense at this time calls Mr. Ted  
 25 Spraker to the stand.

1 A I moved to Soldotna from Glenallen in July of 1978.  
 2 Q So about 25 -- no. 27 years.  
 3 A 27 or so years.  
 4 Q How long did you live in Glenallen?  
 5 A About four years.  
 6 Q So you've been in Alaska over 30 years?  
 7 A Yes, sir.  
 8 Q Now you said you retired from the Department of Fish and  
 9 Game.....  
 10 A Yes, sir.  
 11 Q .....in the year of 2002?  
 12 A Yes, sir.  
 13 Q What -- when you retired what was your position at  
 14 ADF&G?  
 15 A I was the area wildlife biologist for the Kenai  
 16 Peninsula.  
 17 Q And how long did you hold that position?  
 18 A From 1978 until I retired.  
 19 Q And now yesterday a Mr. Toby Boudreau told me there was  
 20 a difference between the area management biologist,  
 21 that's like a fisheries (indiscernible) wildlife area  
 22 biologist which is for game.....  
 23 A Correct.  
 24 Q .....is that right? So you were a game biologist for  
 25 the time that you were in the.....

1 THE COURT: Mr. Spraker, if you'd stand up, please, and  
 2 face the clerk.  
 3 (Oath administered)  
 4 MR. SPRAKER: I do.  
 5 THE CLERK: You may be seated.  
 6 MR. SPRAKER: Thank you.  
 7 TED SPRAKER  
 8 called as a witness on behalf of the defendant, testified as  
 9 follows on:  
 10 DIRECT EXAMINATION  
 11 THE CLERK: Please state your full name and spell your  
 12 last name for the record.  
 13 A For the record my name is Ted Spraker, and the spelling  
 14 of the last name is S-p-r-a-k-e-r.  
 15 THE CLERK: Your occupation?  
 16 A I'm currently retired. I worked for the Alaska  
 17 Department of Fish and Game for a little over 28 years,  
 18 and I retired in the spring of '02.  
 19 THE CLERK: And what town do you live in?  
 20 A I live in Soldotna, Alaska.  
 21 THE CLERK: Thank you.  
 22 THE COURT: Thank you. Mr. Robinson?  
 23 MR. ROBINSON: Thank you.  
 24 BY MR. ROBINSON:  
 25 Q Mr. Spraker, how long have you lived in Soldotna?

1 A Yes, game.....  
 2 Q .....Kenai Peninsula?  
 3 A Game only.  
 4 Q Game only?  
 5 A No -- no fisheries management.  
 6 Q In addition to your public service as a ADF&G wildlife  
 7 biologist, area biologist, have you done any other  
 8 public service work?  
 9 A Well, I'm also a member of the Board of Game, and I was  
 10 just reappointed to the second term for the Board of  
 11 Game. I was also just recently appointed by the  
 12 Governor to the Big Game Commercial Services Board as  
 13 well.  
 14 Q How long have you been a member of the Alaska Board of  
 15 Game? From when to when?  
 16 A About two and a half years. About January of '03 is  
 17 when I was appointed, so I have to count on my fingers  
 18 real quick.....  
 19 Q So.....  
 20 A .....but it's January, '03 is when I was appointed.  
 21 Q And you're still a current member?  
 22 A Yes, sir.  
 23 Q In addition to the public service that you have done,  
 24 but what kind of civic activities have you been involved  
 25 with?

1 A You mean like elected things or community service.....  
 2 Q Community service.....  
 3 A .....projects?  
 4 Q Organizations and.....  
 5 A As far as other sort of organizations, I've been a --  
 6 hunter education instructor for many years. Actually I  
 7 haven't taught a class in about a year. I've been kind  
 8 of out of the loop a little bit, building a house and  
 9 I've been extremely busy and missed a couple of classes,  
 10 but I've done that for 15 or more years. I'm an  
 11 official measurer for the Boone and Crockett Club. I've  
 12 been involved in that now for about 15 or more years.  
 13 THE COURT: I'm sorry, official?  
 14 A Measurer.  
 15 THE COURT: For the what?  
 16 A Boone and Crockett Club.  
 17 THE COURT: Oh, okay. Thank you.  
 18 A For the big game.  
 19 Q (Indiscernible). Daniel Boone and Davy Crockett?  
 20 A I think that's the guys. But -- and in addition to that  
 21 I belong to several organizations, Safari Club  
 22 International, member of the Alaska Trappers  
 23 Association, have been for years. I'm a life-member of  
 24 NRA. I've been a life-member for probably 30 plus  
 25 years. Now you'll find out how old I really am. But

- 694 -

1 those are -- those are pretty much the main  
 2 organizations I belong to.  
 3 Q Your membership in the trappers association, is that  
 4 related at all to your own personal trapping activity?  
 5 A Yes, sir.  
 6 Q How long have you been a trapper?  
 7 A Well, actually I started trapping at a very young age.  
 8 I've trapped my entire time in Alaska. And if you added  
 9 up all the years, I was raised in Wyoming and I trapped  
 10 when I lived in Wyoming as well. Probably 35 to 40  
 11 years of trapping.  
 12 Q Now with regard to the Board of Game activity that  
 13 you're involved in, in the time that you've been on the  
 14 board, Mr. Spraker, have you come to have known or had  
 15 to deal with what's known as a predator control wolf  
 16 population reduction program?  
 17 A Very -- very much so, yes.  
 18 Q And what's been your involvement?  
 19 A Well, my involvement have been -- has been to listen to  
 20 public testimony, listen to the evidence provided by the  
 21 Alaska Department of Fish and Game, and along with other  
 22 members make decisions on whether or not we should  
 23 authorize these areas for predator management. And  
 24 we've been heavily involved in those in the last --  
 25 well, since I've been on.....

- 695 -

1 0067  
 2 (Tape change)  
 3 4MC-05-18/Side A  
 4 0094  
 5 THE COURT: Go ahead, Mr. Spraker. Thank you.  
 6 A So the change in administration one of the -- the  
 7 directions or one of the goals of this administration  
 8 was to restore moose populations across fairly large  
 9 areas of the state. There's currently five management  
 10 -- wolf management, predator management programs in  
 11 place right now. And the board has certainly been on  
 12 the forefront of all those discussions. And my phone  
 13 rings off the hook at nights, people for and against.  
 14 So I've been very involved in this.  
 15 Q All right. Calling your attention now, Mr. Spraker, to  
 16 the predator control program for game management Unit  
 17 19-D east, the McGrath area. Are you familiar with that  
 18 program?  
 19 A Yes, sir.  
 20 Q And with regard to that program, what was the board's  
 21 intent with regard to whether or not the activity of  
 22 those who had permits to participate in that program  
 23 would be hunting or trapping? Or would they be doing  
 24 something else than hunting or trapping?  
 25 A Well, that's -- that's been an issue that I can honestly

- 696 -

1 say I'm not -- I'm not clear as to why a permittee would  
 2 have to have a hunting or trapping license to engage in  
 3 wolf control.  
 4 Q And why is that?  
 5 A Because it is completely separated from trapping and  
 6 hunting. It is a control program that's not part of  
 7 hunting and it's not part of trapping. And it was  
 8 designed and fashioned that way so that there's no  
 9 perception by the public that this is just an extension  
 10 of a hunting season or something that's just a hunting  
 11 program. It's a controlled effort. Most of these five  
 12 have -- all of them have some sort of research project  
 13 attached to them. They're experimental in nature, at  
 14 least some of them are. This 19-D east is an  
 15 experiment, very controlled experiment. And, again, I  
 16 -- I'm not clear. You -- you do have to have a trapping  
 17 license to participate, but I don't know why.  
 18 Q With regard to trapping customs. You've been a trapper  
 19 for quite a few years. Are you familiar at all, Mr.  
 20 Spraker, with a custom or activity in the trapping  
 21 industry where someone will take over someone else's  
 22 trap line and become responsible for it?  
 23 A You mean like a trapping partner where you trap  
 24 together?  
 25 Q Well, even if you weren't trapping together, somebody

- 697 -

1 who wants to say take over somebody -- say somebody else  
 2 has something to do and somebody else wants to take over  
 3 their trap line.....  
 4 A Oh.  
 5 Q .....and let them do that?  
 6 A Yes. In fact, in -- in most of the years that I trapped  
 7 I had a trapping partner, for several reasons. Safety,  
 8 you know, in case I broke down 30 miles out on my  
 9 snowmachine, which you do every once in a while. The  
 10 other reason was with my job I couldn't always check my  
 11 traps when I needed to or wanted to or whatever, on a  
 12 good regular, you know, short time regular basis. So in  
 13 those -- in those instances my trapping partner would  
 14 check them. And when he was working and couldn't go  
 15 with me I would check them, so there were quite a few  
 16 times when we'd run the trap line, you know,  
 17 independently but we always had each other to depend on  
 18 if we needed help or one guy had to work and the other  
 19 guy ran the line. And that's real common in Alaska. I  
 20 think there's a lot of guys that have trapping partners  
 21 for those similar reasons.  
 22 Q Is it also common even though somebody may not be  
 23 considered a partner, who may want to help out somebody  
 24 else and take over your trap line in case that person is  
 25 unable to do it? And they've may not necessarily have

1 formed a partnership to do it, but somebody says I'll --  
 2 if I get to keep the animals, and whatever, you know,  
 3 can I take over your trap line and close it out for the  
 4 season, et cetera?  
 5 A Right. No, that -- that happens. The trapping season  
 6 is quite long, and I think what happens to some trappers  
 7 is, you know, after trapping from November 10 to, you  
 8 know, some seasons stay open -- well, muskrat season  
 9 stays open until the 15th of May in some areas in my  
 10 area where I trap. So I mean you can trap for -- you  
 11 know, from November until May and that gets kind of long  
 12 and I can certainly see where a person, especially late  
 13 in season could say, you know, if you want to take over  
 14 the line from here on out, it's your's, and you take  
 15 care of it, you pull all the gear and it's your's. It's  
 16 all your's. You get the furs but make sure you don't  
 17 leave any traps in the field and it's -- it's your line,  
 18 your responsibility at that point. That can happen.  
 19 Q Now would you say that it would prudent on the part of  
 20 the person who takes over someone else's trap line to  
 21 find out where the traps and snares would be located so  
 22 they can, one, get the furs out of it; and two, be able  
 23 to close them down when the season's over?  
 24 A Absolutely. I -- I mean you'd never find them if you  
 25 didn't have prior knowledge to where the traps are. It

1 would be difficult just to locate them on your own.  
 2 Q Now a wolf, as I understand it, can either be a big game  
 3 animal or a fur bearer?  
 4 A Right.  
 5 Q Based on your experience as an ADF&G wildlife biologist  
 6 for many, many years, plus your board experience, when  
 7 is it, Mr. Spraker, that a person knows that he or she  
 8 is either hunting wolves as a big game animal or  
 9 trapping wolves as a fur bearer?  
 10 A Well, the way I've kind of always looked at -- at that  
 11 issue is that in the fall I think of wolves as a big  
 12 game animal because it can only be taken on hunting  
 13 license. And generally it starts about sheep season,  
 14 August the 10th. Whereas trapping season doesn't start,  
 15 in most areas, like in my area, November the 10th. So  
 16 in the fall I think of them as big game animals. If I  
 17 see one I can take it on a hunting license. The same  
 18 thing in the spring. The trapping of wolves ends March  
 19 31st where I trap, but the hunting of wolves ends April  
 20 30th; so in the spring my thinking goes back to hunting.  
 21 But all during the winter there's a real advantage to  
 22 the trapping of wolves as a fur bearer for several  
 23 reasons. One, there's no limit. And the other thing is  
 24 there's restrictions on the type of firearm you can use  
 25 with hunting. You can't use a rimfire cartridge, for

1 instance, for hunting. But on trapping I could shoot a  
 2 wolf with a .22. So there's a benefit there. But other  
 3 than that, I guess the way I look at it is fall, late  
 4 spring, hunting. Middle -- middle of the winter,  
 5 trapping. And the reason it's kind of set up that way  
 6 is the trapping is kind of centered around the primeness  
 7 of the fur whereas the hunting is more liberal. Because  
 8 generally hunters only take a few wolves and they may  
 9 not be as concerned about a prime pelt. Maybe just the  
 10 fact that they might be able to get a wolf when they're  
 11 sheep hunting or goat hunting or early caribou hunting  
 12 or something like that.  
 13 Q So then it's -- I mean it's a choice of the person as to  
 14 what activity that person wants to engage in?  
 15 A Right, as long as the season is open, you know, you  
 16 could -- you could work on either one. The other thing  
 17 is the sealing requirement for wolves. There is a  
 18 difference between trapping and hunting. On hunting  
 19 it's 30 days after the take of the animal, whereas on  
 20 trapping I can trap a wolf November the 10th and I don't  
 21 have to seal it until 30 days after the end of the  
 22 trapping season, which would be the end of April. So I  
 23 don't have to report it for sealing until the -- so  
 24 there's a difference in the sealing requirement. I can  
 25 -- I can tell you this. That in all the years that I

1 sealed pelts from trappers and hunters and so forth, in  
 2 the winter time they always bring them in on their  
 3 trapping license. Because they don't want to use up the  
 4 limit on their hunting license.  
 5 Q So you can get more wolves under a trapping license than  
 6 you can under a hunting license?  
 7 A So they'd always seal them under their trapping license  
 8 if the trapping season was open. Because you can take a  
 9 wolf with a firearm under a trapping license. I can --  
 10 I can shoot a wolf on my trap line with any weapon I  
 11 want to use. Well, almost any. And it's -- it's legal  
 12 to shoot it. I don't have to catch it in a trap.  
 13 Q Now do you know Mr. Haeg?  
 14 A Yes.  
 15 Q And have you known Mr. Haeg to be involved in any of the  
 16 fish and game issues or participate in board hearings,  
 17 talk with fish and game people about wolf control?  
 18 A Yes, I have. He's -- he's been very active over quite a  
 19 few years and interested in predator management. He's  
 20 written several proposals that I can recall trying to  
 21 open wolf hunting or increase bag limits of wolves, or  
 22 whatnot; but he's been interested in these issues for  
 23 quite a few years.  
 24 MR. ROBINSON: Thank you, Mr. Spraker.  
 25 A Thank you.

- 702 -

1 THE COURT: Mr. Leaders?  
 2 MR. LEADERS: Thank you, Judge.  
 3 (Whispered conversation)  
 4 TED SPRAKER  
 5 testified as follows on:  
 6 CROSS EXAMINATION  
 7 BY MR. LEADERS:  
 8 Q Mr. Spraker, the -- so you've been involved over the  
 9 last I guess two and a half years now with  
 10 implementation or authorization and implementation of  
 11 the predator control program up here?  
 12 A Yes, sir.  
 13 Q Through your position on the board?  
 14 A Yes, sir.  
 15 Q Okay. How active were you in the program or -- in the  
 16 program before your position on the board?  
 17 A Well, one the things I probably should say for the  
 18 record, that although I'm a member of the board and I  
 19 can speak for myself, in no way can I speak for the  
 20 board. We probably need to clarify that just to make  
 21 sure I don't get myself in too much hot water.  
 22 Q So let me make sure. So your testimony today isn't  
 23 based on authority -- you're not stating a position of  
 24 the board?  
 25 A No, sir, I'm not authorized to speak for the board. I'm

- 703 -

1 only speaking as member of the board.  
 2 Q Okay.  
 3 A As an individual on the board. As far as my involvement  
 4 prior to that, I participated in several predator  
 5 control programs. One in the late 70's that involved  
 6 aerial shooting of wolves in the Nelchina Basin. In the  
 7 mid-- mid 70's, I guess it was, early on. I also  
 8 participated in 20-A when the Department snared wolves  
 9 and was one of the trappers that went out and snared  
 10 wolves in that program.  
 11 Q When was that?  
 12 A '94.  
 13 Q Okay.  
 14 A And I've also been, I guess, I'd be characterized as a  
 15 strong advocate for management of predators in the  
 16 state.  
 17 Q Okay. But the local program here, no personal  
 18 involvement in it until you became a member of the board  
 19 and then it's through your position on the board?  
 20 A That's correct, I was not involved in it.  
 21 Q And so I guess you were involved in this program, this  
 22 aerial shooting of wolves back in the 70's. So there  
 23 have been aerial predator control programs over the  
 24 years?  
 25 A Yes, sir.

- 704 -

1 Q Prior to -- and the most recent -- well, I guess within  
 2 the last couple years, two years ago November of 2003  
 3 this program here went into effect?  
 4 A Yes, sir.  
 5 Q And then now it's a couple of other additional programs  
 6 gone into effect this year?  
 7 A Yes, sir, there's four aerial gunning programs and one  
 8 land and shoot only. Land and shoots for Unit 13 and  
 9 all the rest are -- actually the one in 16-B started out  
 10 as land and shoot, but about two-thirds of the way into  
 11 the winter they changed it. The Department of Fish and  
 12 Game changed it to aerial shooting as well.  
 13 Q And you talked a little bit earlier about the -- these  
 14 predator control programs in this -- you know, what the  
 15 board's intent was regarding how it relates to either  
 16 hunting or fishing. Or excuse me, hunting or trapping.  
 17 Excuse me. And you're unclear why any license is needed  
 18 because it -- your understanding of the board's intent  
 19 was it doesn't relate to either hunting or trapping?  
 20 A That's true. The -- the only correlation and after I  
 21 said that I was trying to put some things in my mind  
 22 that could make some sense on why the trapping is  
 23 required and the only thing I could really come up with  
 24 is prior to 1996 we had in this state land and shoot  
 25 open, throughout the state unless it was specifically,

- 705 -

1 you know, not authorized. Like on refuges and so forth,  
 2 and parks and things. But we had land and shoot  
 3 available across the state on your trapping license.  
 4 And the only reason that I can kind of connect those  
 5 dots is maybe that's something that's been in place for  
 6 a long time. Prior to '72, of course, we had aerial  
 7 shooting throughout the state, and to be honest with you  
 8 I don't know if that was under hunting or a trapping  
 9 license. I suspect it was under a trapping license for  
 10 that. And maybe that's why it's just a carryover.  
 11 That's just a speculation on my part.  
 12 Q Just speculate on -- I mean even though you're  
 13 positioned on the board you don't really know why this  
 14 is required? I mean there.....  
 15 A We didn't discuss that. And -- and as you know, the  
 16 board authorizes these programs but then they delegate  
 17 the whole program to the Department of Fish and Game to  
 18 sort out all the conditions, the seasons -- well, not  
 19 all the seasons, but we'll usually give them some  
 20 parameter to work within and then they fine tune all the  
 21 details. And I think that's pretty much where it came  
 22 from. It wasn't something that I know we discussed at  
 23 the board on the trapping license.  
 24 Q Now there are a couple specific reasons that you  
 25 recalled -- that the board discussed a couple of

1 specific reasons why not to have it related to hunting,  
 2 as far as public perception of the program?  
 3 A Exactly. It -- it is not a hunting program. In fact,  
 4 we were very careful not to even talk about hunting of  
 5 wolves in this discussion of predator management.  
 6 Predator management is a control effort on a defined  
 7 number of wolves and packs of wolves that the Department  
 8 has, you know, delineated an area. That area is also  
 9 represented as an area that's low as far as numbers of  
 10 moose or numbers of caribou, but it's -- it's a -- it's  
 11 a finite sort of place and number.  
 12 Q So this predator -- management predator control is  
 13 limited in, I guess, in a lot of -- by the permit by  
 14 limited geographically, right?  
 15 A Yes. Yes.  
 16 Q And as part of that, as you've discussed, as by numbers  
 17 and actually even specific population targets, right?  
 18 Specific groups?  
 19 A Yeah. Each -- each predator program in 13-A and 19-D  
 20 east was -- was the first aerial program. In fact, not  
 21 to labor this too long, but you know it was passed by  
 22 two previous boards, but the past administration  
 23 wouldn't allow the program to go forward. So this was  
 24 actually something that's been worked on since the mid-  
 25 90's. '94, '95, somewhere in there. Maybe a little bit

1 later, but it had been worked on for a long period of  
 2 time. A lot of research had gone into it. Fish and  
 3 game had a pretty solid idea of how many -- not only  
 4 packs, but numbers of wolves, and they had it down to  
 5 about 35 wolves, individual wolves. And, again, this  
 6 was an experimental area, and it was -- it was, again,  
 7 it was the first one so the Department and the board  
 8 were all kind of testing the water on this one. And, of  
 9 course, it gave rise to several court cases and.....  
 10 Q Very controversial?  
 11 A Very controversial. And this was one that, you know,  
 12 everybody was kind of watching. They only issued three  
 13 permits. I mean it was very controlled. I don't know  
 14 how to classify that. Yes.  
 15 Q Right. And so it was restricted as by the area and the  
 16 targeted animals. I mean specific groups, right? And  
 17 that was part of this, specifying the area restriction?  
 18 A Yes. And -- and the reason for that was the Department  
 19 wanted to demonstrated that if they removed black bears  
 20 and brown bears, or as many as they could capture; and  
 21 they did that for two years, and also remove as many of  
 22 these 35 or so wolves as they could possibly get, plus  
 23 they closed the moose hunting season for this McGrath  
 24 area. So it's kind of a three pronged approach to  
 25 predator management to try to restore the moose

1 population around McGrath.  
 2 Q And so -- and by definition of this predator control  
 3 programs or game management programs, they are by  
 4 definition only -- you're only involved in predator  
 5 control or game management, or predator management,  
 6 within -- by definition within the confines of that  
 7 geographic area or that target population, isn't that  
 8 correct?  
 9 A Correct. And -- you know, to take that a step further.  
 10 In -- in March of '04 when the board looked at 19-D east  
 11 we changed the size of the area. Originally it was  
 12 about 1,700 square miles which took in the emergency  
 13 micro-management area, the M. Okay, that's like 528  
 14 square miles, so that's the -- the center part.  
 15 Q Uh-huh.  
 16 A And then the first control area was 1,700 square miles.  
 17 And as the Department looked at it, and others. I'm  
 18 sure Brett was involved in this. They realized that  
 19 these packs of wolves -- there were three or so packs of  
 20 wolves, maybe a few pairs or singles, but they would  
 21 range a little bit outside of that. So the board took  
 22 another look at it and said, okay, we're going to expand  
 23 this out to 3,200 square miles, and that's where it is  
 24 today. It's -- it's that size. And that's to make sure  
 25 that we can impact all the wolves in this area.



1 Because, again, you know, what you want to do is you  
 2 want to make sure that you harvest the wolves that you  
 3 say you're going to harvest so that you can get good  
 4 reliable information when the project is completed.  
 5 Q And so that's why this -- these control programs are --  
 6 and any authorizations or conditions are specified to  
 7 these limited target geographic areas and predator  
 8 populations for predator control?  
 9 A Yes.  
 10 Q So if you're operating outside that geographic area  
 11 you're not involved in predator control based on a  
 12 program developed by the Department and the board?  
 13 A Well, that's the way I would see it. You're issued a  
 14 permit to work within this area. Within your defined  
 15 area. That 3,200 square miles. That's where the permit  
 16 is good for, that's.....  
 17 Q And it's -- it only authorizes activity in that area and  
 18 it only conditions activity in that area?  
 19 A Correct.  
 20 Q You go outside that area you're not operating under the  
 21 permit? I mean if you get a permit and you go up and  
 22 try -- take a wolf -- I guess back in your area, down in  
 23 the Kenai/Soldotna area, the permit doesn't authorize  
 24 that?  
 25 A Well, in my way of thinking you wouldn't be. You know,

- 710 -

1 and -- I guess that's up to the judge to determine  
 2 whether or not you're violating the permit when you're  
 3 outside of the area. But in my opinion you were given a  
 4 special permit to hunt in an area, or to control wolves  
 5 -- not to hunt, but to control wolves in a certain area.  
 6 And once you get outside of that, then you're.....  
 7 Q (Indiscernible).  
 8 A .....back out with everybody else and everything is left  
 9 at the border, so to speak. I mean that's the way I  
 10 would view it if I had the permit.  
 11 Q Okay. Now the -- this issue of trapping customs, we've  
 12 talked a lot about trapping partners and kind of -- but  
 13 as I understand it you were explaining it as someone  
 14 that works with you on a trap line or trap set and is  
 15 familiar with it, as you are kind of working in  
 16 conjunction with each other?  
 17 A Correct.  
 18 Q And then another, I guess, practice that was discussed  
 19 was taking over someone's trap line or trap sets? That  
 20 I assume is a little less common than the partner  
 21 aspect?  
 22 A Well, it's -- it may be less common but it's not unheard  
 23 of. You know I know.....  
 24 Q Sure.  
 25 Q .....when I worked for the Department -- for instance,

- 711 -

1 guys that worked on the Slope. On -- if they trapped on  
 2 the refuge there's a four day trap check. And it was  
 3 not uncommon for a guy to get called up to the ref --  
 4 called up to the Slope and have to work an extra hitch  
 5 or two, or whatever.  
 6 Q Right.  
 7 A And -- and I would talk with the refuge guys and then  
 8 they'd just in conversation, not that as I was involved  
 9 in it, but in the conversation they'd say that, you  
 10 know, your buddy so and so is up on the Slope, but  
 11 someone else has taken over his line and, you know,  
 12 he's.....  
 13 Q Kind of on a short term or interim basis by the sounds?  
 14 A Well, yeah, usually -- it's usually at the end of the  
 15 season when things are kind of winding up and, you know,  
 16 a guy gets -- gets some work and goes back to work and  
 17 someone else takes over his line. It's -- it's not an  
 18 everyday sort of thing but it's not uncommon.  
 19 Q Typically though it's a situation where someone would --  
 20 I guess if you were to do that type of thing, take over  
 21 someone's line, would that be something you would do not  
 22 knowing where their traps, snares are set or how many  
 23 are out there?  
 24 A No, if I took over your line I'd want to know exactly  
 25 where they are so I could find them. That doesn't make

- 712 -

1 sense to me.  
 2 Q Have you ever had someone take over one of your lines,  
 3 not in the hunting -- or trapping partner aspect where  
 4 they had worked with you at different times, but if  
 5 someone took over your line because you had other  
 6 commitments or something that pulled you away?  
 7 A No, I've always had my trapping partner to rely on. And  
 8 one year, and I don't remember exactly the circumstances  
 9 but I wasn't able to pull the line at the end of the  
 10 season and he had to go in and pull the whole line by  
 11 himself. And.....  
 12 Q But he was aware of -- he had worked it with you  
 13 previously?  
 14 A Yes, we trapped together the whole winter.  
 15 Q I guess if you were in that situation, would you be  
 16 concerned at all about making sure there was an  
 17 agreement, an express agreement between you and that  
 18 other person that they would become responsible for that  
 19 or do you feel that you might ultimately be --  
 20 ultimately be responsible for those traps even though  
 21 someone says, hey, I'll go check them, I'll take care of  
 22 them?  
 23 A Well, at that point he would be responsible for it. I  
 24 would think that he would take the responsibility of  
 25 pulling all the sets and if he didn't get one or missed

- 713 -

1 one or whatever -- we count our traps and our snares,  
 2 and whenever you put snares out, at least the way I do  
 3 is I put them in bundles of six. So everything is in  
 4 dozens or half dozens or whatever. I mean even if I --  
 5 if I have a place where I'm going to set 22 snares, I  
 6 don't have two more spots; I'll take those two snares  
 7 and I'll wrap them up together and just hang them up  
 8 someplace right there. When I come back I've got two  
 9 dozen snares to find, and that's just the system I've --  
 10 I guess I'm not good at counting so that's the system I  
 11 have to use to make it work for me. And on traps, the  
 12 same thing. You know, if I have four or five dozen  
 13 traps that I start the season with that we take out on  
 14 the line, you know, I -- I -- I write notes and.....  
 15 Q But you would feel though that.....  
 16 A .....keep track of them.  
 17 Q .....if someone else took over your line you would have  
 18 no more legal responsibility for those traps that you  
 19 set out?  
 20 A No, if he said he was going to pick them up I'd trust  
 21 him to do it.  
 22 Q You'd trust him to do it?  
 23 A Yes.  
 24 Q But if he doesn't and there's legal recourse from law  
 25 enforcement, you think that could fall back on you

1 A If you say you're going to do it, you know, you -- you  
 2 need to own up to it.  
 3 Q Okay. The -- I guess, you know, when -- are there risks  
 4 leaving out large sets of wolf snares?  
 5 A There's a lot of risk.  
 6 Q What type?  
 7 A It seems like -- you know, and I saw this too often when  
 8 I worked, you know, for the Department; it seems like if  
 9 you leave a snare out, eventually -- because they  
 10 continue to work, and traps to some extent continue to  
 11 work, but usually they get uncovered and, you know,  
 12 things can kind of avoid them, but snares will work  
 13 until the wind blows them down or something knocks them  
 14 down, and it seems like it never fails a moose will get  
 15 into one or black bears or some -- some species will get  
 16 into it, and of course in the summer time they rot in a  
 17 short period of time so you can't salvage the meat or  
 18 the fur or the fur is usually not good anyway, so.  
 19 Q What about risk to non-target species from wolf snares?  
 20 A As coyotes, wolverine, other species?  
 21 Q Well, you leave them out past -- typically would be  
 22 trapping season through the winter, right? Snow build  
 23 up, you know, so they're set a little bit higher than --  
 24 I guess once snow leaves, do they set higher than they  
 25 would be if there were snow?

1 ultimately?  
 2 A Well, again, it would probably be a judgment call on who  
 3 has the responsibility. If I gave that responsibility  
 4 to someone else, I mean I would -- I would hold him  
 5 accountable.  
 6 Q You would want to hold them accountable?  
 7 A Well, I -- I'd want to. Whether or not the.....  
 8 Q Whether or not.....  
 9 A .....judge would.  
 10 Q Right. Whether or not that's -- so you're just --  
 11 that's your personal belief system?  
 12 A Right.  
 13 Q Right; not anything based on your understanding of the  
 14 law or anything like that?  
 15 A Well, I would feel the same way. If I was on the tail  
 16 end of that trapping season and my partner had to go do  
 17 something and, you know, most of the traps belonged to  
 18 him or all of them belonged to him, and he said I -- I  
 19 can't help you pick up the traps, you go get them. I  
 20 would do my best to get them all and if I didn't I would  
 21 say I forgot that trap. You know, I.....  
 22 Q Okay. That's your -- kind of your belief system as far  
 23 as.....  
 24 A Yes.  
 25 Q .....accountability?

1 A Yeah, they -- usually you'll move them up as the snow --  
 2 snow gets deeper.  
 3 Q Okay. Does that increase at risk non-target species to  
 4 some game population? Moose, caribou?  
 5 A Well, it -- it would be less risk to smaller creatures  
 6 and a greater risk to taller ones.  
 7 Q Right.  
 8 A Like a moose or a caribou if you did -- but wolf snares  
 9 are set so big that even if you raise them up, you know,  
 10 they're still probably capable of catching certainly  
 11 bears, and I can't imagine raising them so high you  
 12 couldn't catch a moose, at least by the nose or a  
 13 caribou. But you might have raised them high enough  
 14 where a smaller wolverine and other things, coyotes,  
 15 lynxes may go under.  
 16 Q Okay. This issue of a wolf being both a fur bearer and  
 17 a big game animal and which applies. Are you hunting  
 18 them as a big game or trapping them as a fur bearer.  
 19 You just -- I guess you've kind of developed your own  
 20 personal system by the sound, is that right?  
 21 A I just look at them in the fall as big game and I look  
 22 at wolves and wolverines, those are the two that have a  
 23 dual classification. I look at those fur bearers in the  
 24 winter time.  
 25 Q Okay. And then in the spring you look at them back as

1 big game animal?  
 2 A Yes, sir.  
 3 Q Come March, April, May, that type of time frame you're  
 4 looking back at more the big game animals, correct?  
 5 A Yes, sir. Because trapping is over.  
 6 Q Sure. Okay. Now when -- and that's based on -- and  
 7 that's just kind of your personal system because you  
 8 look at -- take the more expense or a least restrictive  
 9 application?  
 10 A Correct.  
 11 Q It's not based on any policy or anything like that from  
 12 your position with the Department of Fish and Game?  
 13 A No, sir.  
 14 Q The -- do you know then -- say you're in one of those  
 15 situations though or time frame when op -- hunting and  
 16 trapping apply, and say -- of course, well, you  
 17 mentioned with -- as a fur bearer you can take a wolf  
 18 with a rimfire rifle, correct?  
 19 A Right.  
 20 Q .....under a trapping license? And say you take a wolf  
 21 as it's in open both hunting and trapping season you  
 22 take it with a rimfire rifle, a .22. You have neither a  
 23 hunting nor a trapping license, were you hunting or were  
 24 you trapping?  
 25 A If you take it with a rimfire you had better have a

- 718 -

1 trapping license. Because that's the only thing that  
 2 would be legal.  
 3 Q You better have, but if you don't have either hunting or  
 4 trapping license, which one -- which regulation -- which  
 5 set of regulations have you broken?  
 6 A Again, that would be up to the discretion of the  
 7 officer, I guess. Because -- I mean I don't know how --  
 8 how you would know which you broke. I -- I guess you  
 9 could -- you would have to ask the individual, you know.  
 10 And you could look at the sealing. If they sealed it  
 11 after 30 days, well, the hunting option is -- is out.  
 12 Q What if they didn't seal it?  
 13 UNIDENTIFIED SPEAKER: (Indiscernible) without a license.  
 14 Q Right; they couldn't seal it without a license, right.  
 15 So if they don't seal it?  
 16 A I mean if they brought it in to seal it and then  
 17 discovered they didn't have the license -- well, the  
 18 other thing is the trapping license goes -- you know,  
 19 the -- the dates go throughout the winter, whereas the  
 20 hunting license is set up on a calendar basis, so you  
 21 have to buy a new hunting license January the 1st. And  
 22 because of that -- and again, in my past working for the  
 23 Department, most people in -- after the 1st of the year,  
 24 or at least after trapping season opened, sealed  
 25 everything on their trapping license because the

- 719 -

1 benefits are much better. The sealing requirement is  
 2 longer, and then the trapping license they buy in the  
 3 fall is good until September 30th the next year.  
 4 Q And so -- but in your I guess analysis and discussion  
 5 things are based on kind of your personal views of -- as  
 6 a license holder or I guess not a license holder under  
 7 the example I gave you, what's most beneficial to you.  
 8 correct?  
 9 A Correct.  
 10 Q The -- did some -- were you involved in enforcement at  
 11 all with your position with fish and game?  
 12 A Yes. I was commissioned.  
 13 Q Okay. And enforcement decisions aren't left up to the  
 14 individual who is charged, are they? They're left up to  
 15 law enforcement?  
 16 A Correct.  
 17 MR. LEADERS: No further questions.  
 18 THE COURT: Mr. Robinson?  
 19 TED SPRAKER  
 20 testified as follows on:  
 21 REDIRECT EXAMINATION  
 22 BY MR. ROBINSON:  
 23 Q Mr. Spraker, with regard to this idea of having a  
 24 trapping license until trapping season is over, there's  
 25 some areas the trapping season may begin in early winter

- 720 -

1 and not be over until April 30th?  
 2 A Or later.  
 3 Q Or later. So under your scenario I guess that the --  
 4 when Mr. Leaders was trying to get you to say March or  
 5 April you didn't necessarily mean that that was  
 6 universal, that once March or April showed up you didn't  
 7 consider a person having a trapping license during that  
 8 time to treat wolves and wolverines as fur bearers, did  
 9 you?  
 10 A No. And, again, I -- I probably should have commented  
 11 that I'm, you know, very familiar with my -- my trapping  
 12 area, and everything closes.....  
 13 Q Right.  
 14 A .....March 31st. But I know some of these areas out  
 15 here wolf trapping doesn't close until April 30th. And  
 16 a lot of places in the state, especially this western --  
 17 and the northern part of the state where hides are prime  
 18 longer in the spring because of colder conditions, those  
 19 seasons stay open really late. You know, beaver seasons  
 20 now are open year around. So, yes, I corrected that.  
 21 Q You, in your experiences as a ADF&G wildlife area  
 22 biologist, have you ever come to know about how far  
 23 wolves range or what their range capabilities are?  
 24 A Yes.  
 25 Q What are they?

- 721 -

1 A It's -- it's staggering. Over the years I've -- I've  
 2 been involved in quite a few of the capture or collaring  
 3 projects with wolves, and -- and handled several  
 4 hundred. I don't know how many, but three, 400 wolves.  
 5 I think one of the longest records that I recall was  
 6 about 500 miles for an individual wolf. Wolf  
 7 territories are large. And it's not uncommon for wolf  
 8 territory to be, you know, at least several hundred  
 9 square miles. They -- they range over large areas. But  
 10 about 500 miles, that's -- and that's straight line, so  
 11 no one knows what he did like this, but we know from  
 12 point A to point B was about 500. There's two cases in  
 13 two different studies. One was a Canadian study and one  
 14 was here on -- in Alaska where those -- those distances  
 15 were measured by collared wolves. Great distances.  
 16 Q Now about this permit and complying with permit  
 17 conditions. It seems that if you were not to comply  
 18 with any permit condition then even the taking of wolves  
 19 in a -- at least under some theory, taking of wolves  
 20 within the permit, or within the predator control area,  
 21 would not be predator control. Imagine that under, like  
 22 the state's theory, if you violate any condition of the  
 23 permit -- for instance, one of the conditions is you  
 24 have to have the permit in your possession all the time.  
 25 A Right.

1 A Yes, sir, I did. It -- it's certainly a condition of  
 2 the permit. And if I can venture away just for a second  
 3 here. I guess I would look at that the same as if I got  
 4 stopped driving my pickup one day going to work and I  
 5 forgot my wallet at the house on the counter and the  
 6 officer said, well, I'm going to give you a warning  
 7 citation, you come show me your license today after work  
 8 and we'll tear this up and you're good to go. And I'd  
 9 go get my license and come back and show it to him and  
 10 he'd say, okay. I mean that as a guess that -- what I  
 11 would say. But it is a condition of the permit. And I  
 12 -- I'm supposed to have that license in my wallet when  
 13 I'm driving that pickup. That's.....  
 14 Q A condition of being a licensed driver, right?  
 15 A Yes.  
 16 Q And if you don't have it you could be considered an  
 17 unlicensed driver, right?  
 18 A I would be at that point, yes.  
 19 Q But you would get a warning because under rational and  
 20 reasonable.....  
 21 THE COURT: Now you're going too far, Mr. Robinson.  
 22 MR. ROBINSON: All right.  
 23 THE COURT: You said it was the last question, so.  
 24 MR. ROBINSON: That's all I have. Thank you, Mr.  
 25 Spraker.

1 Q So if you don't have physical -- permit in your  
 2 possession but you are, in fact, predator controlling  
 3 within the specified area, then all of a sudden you  
 4 would no longer be a predator control, you'd be thrown  
 5 out there with everybody else. I mean.....  
 6 A Yes, that's a condition of the permit.  
 7 Q Well, that just seems a little way out to think that you  
 8 wouldn't be predator control, even though you're within  
 9 the area of the permit on file, but you don't happen to  
 10 have it in your possession, like carrying it around your  
 11 neck like some people do with commercial fishing  
 12 licenses and what have you. That all of a sudden you're  
 13 no longer in predator control because you just don't  
 14 happen to have this thing in your possession. Does that  
 15 seem reasonable?  
 16 MR. LEADERS: Objection, Judge. It's relevance.  
 17 MR. ROBINSON: The permit conditions and whether or not  
 18 you could still be predator controlling without. Certainly  
 19 opened the door.  
 20 THE COURT: Well.....  
 21 MR. ROBINSON: It's the last question.  
 22 THE COURT: I'll overrule the objection, but that's the  
 23 only question, as I say.....  
 24 MR. ROBINSON: It's the last question.  
 25 Q You understood the question?

1 TED SPRAKER  
 2 testified as follows on:  
 3 RE CROSS EXAMINATION CONTINUED  
 4 BY MR. LEADERS:  
 5 Q Mr. Spraker, you talked earlier about you've known Mr.  
 6 Haeg. How long?  
 7 A It -- I'm trying to think. At least 10 years, 15,  
 8 probably more. I've known of his parents since I've  
 9 been in -- on the Kenai in, you know, the late '78, when  
 10 I moved to Kenai. Long time.  
 11 Q Did you talk with -- I guess you were on the game board  
 12 when this predator control program went into effect?  
 13 A Yes, sir.  
 14 Q And did you get information from anyone involved in this  
 15 program, Mr. Haeg or anyone else, about the wolf packs  
 16 here locally? You talked earlier about you've known  
 17 wolves ranging as -- I guess on the extreme, 500 miles.  
 18 How about the local pack territories?  
 19 A All the information I -- I got was through the  
 20 Department of Fish and Game, primarily from Toby  
 21 Boudreau who was the area wildlife biologist here.  
 22 Q That limited -- that information was the pack  
 23 territories here is quite limited, right? Not this 500  
 24 mile range?  
 25 A No, that -- the 500 is an extreme condition.

1 Q Right.  
 2 A That was a maximum condition of movement. No, that  
 3 information came from the Department on what was going  
 4 on here, and it was all presented at the board  
 5 March.....  
 6 Q And that information is that the pack territories here  
 7 is fairly small, is that correct?  
 8 A Well, they're not small but they're contained within the  
 9 3,200 square miles.  
 10 Q It was what now?  
 11 A They're not any different from other wolf territories  
 12 throughout the state. They're all pretty much the same  
 13 size. It -- it depends on prey. The -- the higher the  
 14 prey base, the more moose and caribou you have, the  
 15 smaller wolf territories tend to be. If you have very  
 16 few moose and caribou around, well then the wolves have  
 17 to stretch out to find enough prey.  
 18 Q Okay.  
 19 A So I wouldn't characterize these packs as very different  
 20 from on the Kenai or other parts of the Interior or  
 21 whatever.  
 22 Q And what is that territorial range then?  
 23 A Well, three or 400 square miles, some of them.  
 24 Q Well, I guess I'm trying to comprehend what you're  
 25 saying. That it's no different than others and then

1 you're saying some of them are 300 to 400, and on the  
 2 extreme end 500, so is what's.....  
 3 A Okay. I -- I.....  
 4 Q If it's no different than, which one is it no different  
 5 then? The ones that are 300, 400 or ones that are less,  
 6 ones that are more?  
 7 A The 500 that I mentioned was a linear movement. It was  
 8 a point A to point B. Two different cases, two  
 9 different studies. One Alaska, one in Canada where  
 10 radio collared wolves were actually tracked some  
 11 distance, 500 or so miles from where they were  
 12 originally collared. But wolf territories are usually  
 13 three or 400 square miles, and they could go up to 500  
 14 square miles. It could be 200 square miles. There's a  
 15 variation. As an average, probably about 300, 350,  
 16 somewhere in there is probably an average size for a  
 17 wolf territory, for a pack of wolves.  
 18 Q So based on the information presented the area proposed  
 19 for this predator control program was sufficient to  
 20 encompass the wolves targeted?  
 21 A Yes.  
 22 Q Because there is how many square miles in the program?  
 23 A 3,200.  
 24 Q 3,200.  
 25 A So these wolves -- these wolves may have had territories

1 -- I'm not sure about this map, but they may have had  
 2 territories -- I mean they're not always perfect  
 3 circles, and they're not like this.....  
 4 0650  
 5 (Tape change)  
 6 4MC-05-18/Side B  
 7 0712  
 8 THE COURT: Go ahead, sir.  
 9 A But the territories sometimes will almost follow rivers.  
 10 They can be elongated territories. And in cases like  
 11 this, and I -- and I'm not familiar exactly with the  
 12 size of these territories or where these territories are  
 13 in 19-D east. All I can tell you is that from the  
 14 information from the Department they wanted to see a  
 15 larger area than the original 1,700 square miles to  
 16 encompass all these outlying or wolves that went outside  
 17 of the 1,700 and that's why it went to 3,200.  
 18 Q You -- Mr. Robinson was talking to you about, you know,  
 19 the permits and the conditions, and violating -- you  
 20 know, you don't have your permit on you. That's --  
 21 you've violated a condition of the permit, but the  
 22 permit is still applies, right?  
 23 A I would -- yes, I would think so.  
 24 Q You're still within the program. If you're.....  
 25 A Right, you're still signed up for the program, right.

1 Q You've just violated one specific condition?  
 2 A Well, it's like the driver's license example that I  
 3 tried to use. You know, I'm still a legal driver in the  
 4 state of Alaska, but I don't have my driver's license in  
 5 my pocket when I get my -- when I'm stopped. So -- but  
 6 I am a legal driver. So under this example you're still  
 7 a permitted hunter within this control area, although  
 8 you may not have your permit in your pocket at the time  
 9 you're contacted.  
 10 Q What if your licensed in another jurisdiction that's not  
 11 applicable in Alaska? You're still a licensed driver in  
 12 another area, but not in Alaska?  
 13 A I don't know how the law reads on that to be honest with  
 14 you.  
 15 Q That might be a little -- we might be going stray on  
 16 that. That's fine. The issue is you talked earlier  
 17 about -- I guess with any of these kinds of violations,  
 18 whether it's a violation of the permit or you're not  
 19 under the authority of the permit or anything like that,  
 20 talked earlier about public perception and all that, and  
 21 how fragile the system was.  
 22 A Right.  
 23 Q Just anything -- any violations would affect that,  
 24 correct?  
 25 A It has the potential, and, you know, I don't want to go

1 too far on this, but one of the issues that came up  
 2 during all the controversies over predator control was  
 3 the fact that there would be no control over where  
 4 wolves were taken. And it was one of the issues that  
 5 became a very delicate issue and one of the issues that,  
 6 you know, had a potential to jeopardize future programs  
 7 in the state. And it -- yes, it's something that's very  
 8 important to this program.

9 Q That was one of the primary concerns, this issue of not  
 10 having control over where wolves were taken, right?

11 A It was -- it was paramount because with an experiment  
 12 you have to have a closed system. An example is the  
 13 bounty system that was used in Alaska in the early parts  
 14 of Alaska, and used in the -- you know, in the western  
 15 Rocky Mountains and so forth. One of the big failures  
 16 of the bounty system is you offer \$50 for a coyote but  
 17 you want them all killed on your ranch and you're going  
 18 to pay as the rancher 50 bucks and all of a sudden you  
 19 pay on 200 coyotes and you lose as many lambs or calves  
 20 or whatever you were trying to protect from coyotes  
 21 because they bring them from all over the state. I mean  
 22 that has been a classic example of why bounty systems  
 23 have failed. Those same arguments were made in  
 24 opposition to predator control in Alaska because we  
 25 couldn't control where the wolves would be taken. So

1 A Well, we didn't -- I don't think we got into that sort  
 2 of detail, but, you know, we did talk about making sure  
 3 this worked because it was one of the first ones and  
 4 there was a tremendous amount of controversy surrounding  
 5 it, and we wanted to do this in several other areas of  
 6 the state, and we didn't want to get short stopped. So  
 7 he was familiar with that.

8 Q Any specific discussion or advice to Mr. Haeg about his  
 9 participation in this program, insuring he doesn't  
 10 jeopardize it?

11 A Well, you know, again, we had general conversation about  
 12 it but the Director of Fish and Game, Mr. Matt  
 13 Rhodis(ph) called me because he knew that I lived on the  
 14 Kenai and assumed I knew Mr. Haeg, and you know I -- I  
 15 vouched for him. I said he would definitely be an  
 16 individual that would be out there and try to get some  
 17 wolves. So, you know, I had good faith in him doing it.

18 Q He'd be out -- you had good faith in him being able to  
 19 accomplish killing wolves?

20 A Yes, he's -- he's a very accomplished hunter, and you  
 21 know, he's been in this business for a long time, as far  
 22 as being a hunter and a good pilot and so forth. And  
 23 you know, I thought he would -- and at that time there  
 24 were few or very few wolves had been taken, and I  
 25 thought he would do a good job and get some wolves. So

1 they would take a lot of wolves by these liberalized  
 2 methods, but it wouldn't restore the moose population in  
 3 the area, for instance.

4 Q And that's why in 16.05.783 there -- they defined game  
 5 management programs as applying to a designated  
 6 geographic area?

7 A Correct. So you can manage.....

8 Q So you get outside that designated geographic area  
 9 you're not involved in that game management program?

10 A That's the way I would see it. You know, you're --  
 11 you're permitted to be an agent of the state to reduce  
 12 wolves in an area. That's what you're permitted to do.

13 Q You talk about you -- did you have any conversations or  
 14 discussions about that issue with Mr. Haeg?

15 A Well, we talked in general about hunting and shot size  
 16 and other miscellaneous things and so forth about this,  
 17 yes.

18 Q Did you talk with him at all about the public perception  
 19 issues, the fragile nature in some ways of this program?

20 A That was part of the conversation. I mean he -- he knew  
 21 that we were very concerned. As a board member that I  
 22 was very concerned that we had a program that resulted  
 23 in good clean results. He was well aware of that.

24 Q And about the need and the importance of following the  
 25 specific program boundaries?

1 I went to bat for him. I -- I guess that's my bottom  
 2 line. When the director said shall we give him a permit  
 3 or not, I said, yeah, I know the guy, and I think he'll  
 4 get wolves.

5 Q He was aggressive in the desire to see predator control  
 6 programs in place?

7 A Clear -- clearly. I mean he's written proposals, he and  
 8 I have discussed it. I mean I've known him for a long  
 9 time and he and I have the same sort of thinking when it  
 10 comes to management of game in a lot of -- lot of ways,  
 11 and.....

12 Q So what specifically do you communicate to him about his  
 13 participation in this program?

14 A Well, I don't recall the exact words, but in essence  
 15 that, you know, do a good job. Depend on you to take  
 16 some wolves out of this area, and don't do anything you  
 17 shouldn't do. I mean bottom line, it was just a general  
 18 discussion that you're going to have a spotlight on --  
 19 on your head, you know, when you participate. There's  
 20 only three permits so it's not like there's a lot of  
 21 people out there, and do a good job.

22 Q Do a good job but don't mess it up?

23 A Don't mess it up. That was clearly implied.

24 Q The -- based on the fragile nature of the public  
 25 perception issues is the program taking wolves outside

1 of the program boundaries is that risk messing it up?  
2 A It certainly has a potential to do that. It's --  
3 there's a lot of people watching this decision. We all  
4 are.

5 Q This case here?

6 A This case.

7 MR. LEADERS: No further questions.

8 MR. ROBINSON: Just one.

9 TED SPRAKER

10 testified as follows on:

11 REDIRECT EXAMINATION CONTINUED

12 BY MR. ROBINSON:

13 Q Since what Mr. Haeg did, right or wrong, regarding this  
14 program, the state has enacted 19-A?

15 A 20-E, 16-B.....

16 Q 20-E, 16-B, so it has continued to go on and implement  
17 other predator control programs, right?

18 A Yeah, this has not jeopardized those other programs at  
19 all. I'm just saying there's potential that.....

20 MR. ROBINSON: No further questions.

21 TED SPRAKER

22 testified as follows on:

23 RECROSS EXAMINATION CONTINUED

24 BY MR. LEADERS:

25 Q That is it hasn't jeopardized them to date, correct?

1 But it has the potential to jeopardize them in the  
2 future as well as this program in the future?  
3 A I don't want to tie it just to this one case. Anything  
4 has the potential to jeopardize predator -- predator  
5 management in our state. I mean there's a huge faction  
6 of people that send me hate mail, death threats. It  
7 doesn't end there. I mean people are very opposed to  
8 the taking of wolves, whether it's taken by hunting,  
9 trapping, whatever. And all these things are just  
10 another tick mark on the potential.....

11 Q Sure. Not saying this in and of itself, but this  
12 is.....

13 A Right.

14 Q .....that one more tick mark, I guess, in the balance of  
15 the scale and the jeopardy ramification -- you said  
16 there's a lot of -- a lot of things and a lot of people  
17 are looking at this case?

18 A Yes.

19 Q And so the jeopardy issue hasn't been determined?

20 A I guess you'd have to say that, yes.

21 MR. LEADERS: Nothing further.

22 MR. ROBINSON: I don't have any further questions.

23 THE COURT: Okay. Mr. Spraker can leave I presume.

24 Thank you, Mr. Spraker.

25 A Thank you.

1 THE COURT: You're free to go. All right, ladies and  
2 gentlemen, it has been a long day. We went longer than  
3 expected, but since I wasn't in complete control again, I  
4 didn't want to stop before Mr. Spraker was done just because  
5 I like to finish with somebody rather than stopping part of  
6 the way through.

7 Having said that, I don't know about you all but I think  
8 9:00 o'clock is probably a good time to start rather than  
9 8:00, unless you all really want to start at 8:00 and then  
10 I'll be here.

11 MR. ROBINSON: I'd rather start at 9:00. I'd rather  
12 start at 9:00.....

13 THE COURT: I've made my preference clear, but our  
14 preference is whatever the jury decides.

15 MR. ROBINSON: I know. I just like to let them know.

16 THE COURT: So.....

17 UNIDENTIFIED JUROR: We're not going to be able to pick  
18 the five that says let's go.....

19 (Whispered conversation)

20 UNIDENTIFIED JUROR: We have an airplane that's leaving  
21 at 9:30.

22 THE COURT: At 9:30. Oh, do you want to.....

23 UNIDENTIFIED JUROR: The Meltons.

24 THE COURT: The Meltons are leaving tomorrow. Do you  
25 want to start at.....

1 UNIDENTIFIED JUROR: Well, we can just take little breaks  
2 and run down there.

3 THE COURT: Yeah, yeah. I'm trying to figure this out.  
4 I'm kind of thinking it probably wouldn't be worth starting  
5 at 9:00 to take a break at 9:30. That might be a little bit  
6 quick.

7 MR. ROBINSON: 10:00.

8 THE COURT: So I mean it just may mean it's a late day  
9 tomorrow but we can take a late lunch or something maybe if  
10 we start at 10:00. Will that -- I mean that should give you  
11 enough time if the plane -- let's do it this way.

12 UNIDENTIFIED JUROR: We're going to be late tomorrow.

13 THE COURT: Yeah, -- because.....

14 UNIDENTIFIED JUROR: (Indiscernible).

15 THE COURT: Because -- why don't we do this. If the  
16 plane is on time we'll start at 10:00. Because I've been  
17 involved in this before and I know what happens when this --  
18 when I want to be on the plane. It's always late. So if the  
19 plane is going to be late, as in like, you know, not get in

20 until 10:30 or something let's start at 9:00. Can we do  
21 that? Can you all check in the morning? Because by 9:00

22 they should know whether the plane is going to be there or  
23 not. Okay. I mean the plane takes off at 8:15, so if you

24 call PennAir and the flight has not left Anchorage by 9:00  
25 o'clock, then come to the court and we'll start. If it has

1 left Anchorage by 9:00 o'clock then we'll presume it's going  
2 to be up and gone by 10:00 and we'll start when the plane --  
3 after the plane leaves. Does that sound fair?  
4 UNIDENTIFIED JUROR: Sounds good to me.  
5 THE COURT: You guys will be right there, you can check.  
6 We can check on it, too, so. Okay. So we'll plan on 10:00  
7 unless the plane is late, and then we'll plan on 9:00. Okay.  
8 And I've got to admonish you not to talk to anybody and don't  
9 check anything out, do anything. Go home and go to bed,  
10 we'll see you in the morning. Off record.

11 (Off record)

12 0883

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE DISTRICT COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT

FILED  
STATE OF ALASKA  
APPELLATE COURTS  
2007 NOV 14 AM 11:16  
CLERK, APPELLATE COURTS  
BY: \_\_\_\_\_  
DEPUTY CLERK

STATE OF ALASKA, )  
 )  
Plaintiff, )  
vs. )  
DAVID HAEG, )  
 )  
Defendant. )

A09455

Case No. 4MC-04-24 CR

VOLUME II

TRANSCRIPT OF PROCEEDINGS

July 29, 2005 - Page 740 through Page 1035

DISCLAIMER

Transcripts prepared for the Alaska Court System

The Alaska Court System accepted this transcript based on either review of a random sample or without review because the transcriber's prior work has consistently met court system standards. Because it is possible that this transcript may contain some errors, the court system encourages parties to listen to the recordings of critical portions of the proceedings and to bring any significant errors to the ACS Transcript Coordinator's attention immediately.

AURORA COURT REPORTING

1  
2  
3  
4  
5 TRIAL BY JURY, CONTINUED (EXCERPT)  
6  
7 BEFORE THE HONORABLE MARGARET L. MURPHY  
8 District Court Judge  
9  
10 McGrath, Alaska  
11 July 29, 2005  
12 10:00 a.m.  
13  
14 APPEARANCES:  
15 FOR THE PLAINTIFF: SCOT HENRY LEADERS  
16 Assistant District Attorney  
17 120 Trading Bay Drive  
18 Suite 200  
19 Kenai, Alaska  
20  
21 FOR THE DEFENDANT: ARTHUR ROBINSON  
22 Attorney at Law  
23 35401 Kenai Spur Highway  
24 Soldotna, Alaska  
25

- 740 -

1  
2 DIRECT EXAMINATION  
3 THE CLERK: Please spell your full name and spell -- I  
4 mean please state your full name and spell your last name for  
5 the record.  
6 A David Scott Haeg, H-a-e-g.  
7 THE CLERK: Your occupation?  
8 A I'm a big game guide and trapper.  
9 THE CLERK: And what town do you live in?  
10 A Soldotna, Alaska.  
11 THE CLERK: Thank you.  
12 THE COURT: Go ahead, Mr. Robinson.  
13 MR. ROBINSON: May I remain seated?  
14 THE COURT: Sure.  
15 BY MR. ROBINSON:  
16 Q Mr. Haeg, how long have you lived in Soldotna?  
17 A Gosh, probably since 1986 or so.  
18 Q Where did you live before that?  
19 A Chinitna Bay.  
20 Q Where is Chinitna Bay?  
21 A It's on the lower west side of Cook Inlet. It's an  
22 extremely remote area.  
23 Q How long did you live there?  
24 A Since I was nine years old.  
25 Q And who did you live there with?

- 742 -

1 PROCEEDINGS  
2 4MC-05-18/Side B  
3 0883  
4 THE COURT: We're on record. It's Friday morning at  
5 10:00 o'clock. Everybody got to say goodbye to the Meltons?  
6 UNIDENTIFIED JUROR: Thank you.  
7 THE COURT: Oh, no problem. They've been here a long  
8 time. I would hate to see -- have them leave like sneaking  
9 out without anybody saying goodbye to them, so. Not a  
10 problem. But I appreciate you all being here promptly, and  
11 heard the plane was already set up, probably helped because I  
12 wasn't on it, so. All right. I think we're ready to proceed  
13 then. Mr. Robinson, you want to call your next witness,  
14 please.  
15 MR. ROBINSON: Yes, Your Honor. At this time I'd like to  
16 call Mr. David Haeg.  
17 THE COURT: Mr. Haeg, you want to come up here, by this  
18 witness chair. I think we'll just put this table back where  
19 it was, too. You want to stand in front of the witness chair  
20 there and face the clerk.  
21 (Oath administered)  
22 MR. HAEG: I do.  
23 THE CLERK: You may be seated.  
24 DAVID SCOTT HAEG  
25 called as a witness on his own behalf, testified as follows on:

- 741 -

1 A I lived there with my parents.  
2 Q About how many people lived in Chinitna Bay?  
3 A There was one other local trapper about three miles down  
4 the beach, and other than that the next people were  
5 about 30, 35 miles away.  
6 Q And so just about four of you lived in the bay?  
7 A Yes.  
8 Q When you lived in Chinitna Bay how did you and your  
9 family make a living?  
10 A We commercial salmon fished, we trapped. Later on, some  
11 years down the road, we had some people come in for bear  
12 viewing and wildlife viewing.  
13 Q So how old were you when you left Chinitna Bay to move  
14 to Soldotna?  
15 A I lived with my parents until I was about -- I think  
16 about 20 or so.  
17 Q And that's when you moved to Soldotna?  
18 A Yes.  
19 Q Are you married?  
20 A Yes, I am.  
21 Q And how long have you been married?  
22 A Since 1996. I'm not -- time flies when you're having  
23 fun.  
24 Q Do you have any children?  
25 A Yes, we do. Have two daughters. Cassie's three and

- 743 -

1 Kala is seven. I hope I'm getting all this right.  
 2 Q Now you say that your occupation is a guide, a hunting  
 3 guide?  
 4 A Yes, it is.  
 5 Q And how long have you been a hunting guide?  
 6 A I received my assistant guide license when I was 18  
 7 years old. I don't remember exactly when I became a  
 8 registered guide, but it was -- gosh, I think about 1998  
 9 maybe, or something like that. I just two years ago  
 10 became a master guide.  
 11 Q And you also say you're a trapper?  
 12 A Yes, I am.  
 13 Q How long have you been trapping?  
 14 A Been trapping since -- I don't -- I can't answer that  
 15 because I was -- we was trapping when I was -- I guess I  
 16 grew up trapping. I mean on my own I probably started  
 17 on my own trapping when I was 14.  
 18 Q Still living in Chinitna Bay?  
 19 A Yes.  
 20 Q Living in such a remote area how did you -- what kind of  
 21 education did you receive?  
 22 A I did everything through home school. Up through and  
 23 including graduation by home school.  
 24 Q And you got your high school diploma that way?  
 25 A Yes, I did.

- 744 -

1 Q Since getting your high school diploma have you gone to  
 2 any other institutions of learning like for college or  
 3 anything?  
 4 A I took a couple welding courses. I loved flying and I  
 5 actually through correspondence they enabled me to take  
 6 courses to learn how to fly. I became a private pilot I  
 7 think when I was seven -- 16 or 17, I think. Commercial  
 8 pilot at -- I don't know, very soon after. I'm now a  
 9 flight instructor also. Flying is something that I -- I  
 10 very much love, like to do.  
 11 Q Now you've heard a lot of testimony in this trial about  
 12 something known as the Batcub?  
 13 A Yes, I have.  
 14 Q Is that your plane?  
 15 A That is my plane, yes.  
 16 Q When did you obtain that? When did you first get it?  
 17 A I obtained it in 19 -- gosh, '95, '96, I believe.  
 18 Q And since you've had it have you had any modifications  
 19 to it?  
 20 A Yes, I bought it as a wreck, complete wreck, for \$4,000  
 21 and I spent two years of my life, every spare moment,  
 22 rebuilding it. Making -- you know, turning it into  
 23 something that -- it fits me perfectly. I did  
 24 everything I wanted to do and took my time and spent  
 25 pretty much all my resources back then on doing that.

- 745 -

1 Q Did you outfit it for winter use?  
 2 A Yes. I mean in Alaska most people that fly in the  
 3 winter do that. Put skis on it, auxiliary heaters. You  
 4 know, ways to block up oil coolers, just -- but, yes, we  
 5 built it to be a bush airplane to be able to use -- be  
 6 used in the winter time. You know, any time.  
 7 Q Does it also have floats?  
 8 A Yes, I have floats for it also.  
 9 Q So you can use it in the summer and in the spring as  
 10 well?  
 11 A Yes. And I -- I also have, you know, Tundra tires also  
 12 for....  
 13 Q So you can use it as wheels and ski plane or float  
 14 plane?  
 15 A Yes.  
 16 Q What kind of guiding do you do?  
 17 A We do moose, caribou, grizzly, black bear. We also --  
 18 where I grew up down in Chinitna Bay, we provide brown  
 19 bear hunts there. We now how shifted mostly away from  
 20 moose guiding or hunting, primarily because of the --  
 21 you know, the declining -- decline in the moose  
 22 population, shifted our effort into more bear hunting  
 23 because there's a healthy population of bears.  
 24 Q When you guided for moose where did you guide for moose?  
 25 A In Unit 19-B and Unit 19-C.

- 746 -

1 Q Yes, but how long have you been guiding for moose in  
 2 those two game units?  
 3 A I think I started off working there for another full-  
 4 time guide in 1998, I believe. So that was -- I had  
 5 been up to Unit 19 a fair amount, just looking around.  
 6 I think I did some of my own hunts before I actually  
 7 started working here, but that was when I first started  
 8 working there.  
 9 Q And over the years that you've been guiding for moose,  
 10 guided moose hunts in Units 19-C and B, have you  
 11 personally noticed any change in the moose population?  
 12 A Yes, I have. And I think -- actually thinking back, I  
 13 think it was 1988 or '89, I....  
 14 Q When you started?  
 15 A When I started there. I -- I'm not great with dates,  
 16 whatnot. I was just thinking back, I was thinking, you  
 17 know, it's only five years. I've been out there a very  
 18 long time.  
 19 Q Well, what have you noticed then in terms of moose  
 20 population in these units and guided hunts?  
 21 A It has suffered tremendously, I feel, through mostly  
 22 wolf predation. Grizzlies and black bears do contribute  
 23 also, but with all the flying I do there, there's  
 24 absolutely no doubt, you know, that the moose have been  
 25 affected mostly by the wolves because the grizzlies and

- 747 -

1 black bear pressure has remained relatively stable and  
 2 wolf population really skyrocketed and -- but the moose  
 3 population is -- you know, it -- it's suffered  
 4 tremendously.  
 5 Q Have you ever participated before 2004 in any state  
 6 sponsored predator control program?  
 7 A No, I have not.  
 8 Q No land and shoot?  
 9 A We did -- we did some land and shoot but I don't think  
 10 it was really a state sponsored program. I don't -- I  
 11 think it was something that was open for people to do to  
 12 -- I think to help with, you know, the control of  
 13 wolves, but I don't -- I don't know if it was actually  
 14 like a -- like the programs they have now. I'm not  
 15 certain about that, but I did participate.  
 16 Q It had to be something authorized by the state  
 17 government in order to (indiscernible).....  
 18 A Yes, it was.  
 19 Q And when was that?  
 20 A I think like 1992. '91, '92, somewhere in there.  
 21 Q What kind of license did you have to have?  
 22 A Had to -- it was mandatory to have a trapping license to  
 23 do that.  
 24 Q Now over the years have you done anything with making  
 25 proposals or going to Board of Game meetings to express

- 748 -

1 your concerns about wolf population and moose reduction?  
 2 A Yes, I have. I have been to a great many Board of Game  
 3 meetings. I've testified at I think all of them.  
 4 I.....  
 5 Q Concerning this issue you mean?  
 6 A Yes, concerning the growth of wolves and the -- you  
 7 know, the -- the trend of moose and caribou due to that.  
 8 Q Have you made proposals concerning predation controls?  
 9 A Yes, I have. I -- you know, talked to actually a lot of  
 10 local people around where I guide, villagers, got their  
 11 input, other guides to just get a broad consensus of  
 12 what's going on and what everybody feels. And I -- I  
 13 guess I took the initiative to bring those concerns  
 14 before the Board of Game in the form of proposals and  
 15 testimony.  
 16 Q And what kind of things had you proposed?  
 17 A Proposed opening up programs such as we have now, aerial  
 18 shooting of wolves. Liberalizing trapping seasons. You  
 19 know, liberalizing hunting seasons on wolves. We've  
 20 also most of the time reckoned -- recognized the need to  
 21 cut back on moose harvest throughout all this. So we --  
 22 we -- we have been trying to do whatever we can to  
 23 address the -- the imbalance as I see it in the  
 24 populations.  
 25 Q Over the years have you ever done any wolf tracking

- 749 -

1 yourself? Just to see how a wolf moves around, where he  
 2 goes and (indiscernible)?  
 3 A Yeah, I've done a -- a lot of that. I love trapping.  
 4 It's kind of the one thing that I do that you know gets  
 5 me out into the wilderness, you know, in the winter time  
 6 and really lets me, you know, get back to my roots. But  
 7 I have spent -- I don't know if it's thousands of hours,  
 8 but it's many hundreds of hours tracking wolves and just  
 9 -- you know, with -- you know, when you're trapping you  
 10 just want to see where they're at and where you can make  
 11 sets and learn their habits and.....  
 12 Q Well, in your experience of tracking wolves what kind of  
 13 migratory patterns have you observed about these wolves?  
 14 A The wolves that I'm most familiar with generally range  
 15 in -- oh, there's one pack that kind of lives where we  
 16 guide in our southern area, kind of the -- the upper  
 17 Stony River. I would say it makes a loop that's at  
 18 least 80 miles around it. You know, I would say it's  
 19 not -- I'd say it's probably 30 -- 30 mile diameter, 40  
 20 mile diameter, but I have seen -- I don't know if it was  
 21 the same pack, but a pack that was from that same area  
 22 of about 30 wolves. We trailed them one time. Picked  
 23 up the trail. I was actually heading back home to  
 24 Soldotna. Picked up a trail on the upper Stony River,  
 25 followed it across two lakes, up through Merrill Pass,

- 750 -

1 down Chakachamna Lake, turned south, went across the  
 2 base of the west Forlands and we followed it all the way  
 3 to Drift River on the -- getting down to the lower west  
 4 side of Cook Inlet before I had to turn around because  
 5 of darkness and being low on fuel, but that.....  
 6 Q How many miles?  
 7 A That was -- we laid it, plotted it out. As the crow  
 8 flies it was very near 100 miles as the crow flies and  
 9 about 130 miles on the ground, and that was a pack of 30  
 10 wolves, and it -- you know, I -- as I said, I don't know  
 11 that very logically was not probably its range, but  
 12 that's what this one pack did, and it was still heading  
 13 south when we -- when we gave up the tracking of it.  
 14 Q What has been your personal history regarding hunting?  
 15 You personally?  
 16 A Grew up as a kid out in the wilderness, love to hunt.  
 17 You know, shot my first moose I think when I was 14.  
 18 Just loved it. Think that's why I got into guiding, and  
 19 you know, just something I very much enjoy.  
 20 Q Well, when is the last time you personally hunted  
 21 yourself? Not guided somebody hunting, buy you hunting?  
 22 A I can't remember when I -- it's been so long ago, I  
 23 can't remember when I actually went out for myself,  
 24 personally, to hunt. Just -- you know, in the winter  
 25 time I do trapping and that I guess is kind of taking

- 751 -

1 the place and my business of guiding has kind of taken  
 2 over, you know, when I used to hunt and -- and whatever,  
 3 so for personal hunting I pretty much no longer do that.  
 4 Q So I think we heard some testimony that in order to have  
 5 a guide license you have to have a hunting license?  
 6 A That is correct.  
 7 Q But you don't use your hunting license?  
 8 A The only reason -- in the past years that I've got a  
 9 hunting license is to -- you -- you must have a hunting  
 10 license to also guide, so that's -- have to have it.  
 11 Q Well, other than for that reason, you haven't personally  
 12 used your hunting license to go hunting?  
 13 A No.  
 14 Q What about trapping? How often do you do that?  
 15 A I usually do it every winter. This -- this past winter  
 16 I didn't. Kind of had other things going on, but  
 17 trapping is something I do every winter if I possibly  
 18 can.  
 19 Q Now it's pretty clear that you made an application for a  
 20 permit to participate in the predator control program  
 21 for wolves in game Unit 19-D east, is that right?  
 22 A That is correct.  
 23 Q Do you know when you made that application?  
 24 A I think it would be December of 2003, I think.  
 25 Q Why did you apply for that permit?

1 A I felt that the program was a -- a program that had to  
 2 -- I guess was our one hope to restore the depleted  
 3 moose population and felt as a citizens of Ala --  
 4 citizen of Alaska that, you know, depend on moose, along  
 5 with a great many other people, it's all -- it's all of  
 6 our job to do what we can to, you know, protect the  
 7 resource that we all -- all depend upon.  
 8 Q Now you made this application in conjunction with Tony  
 9 Zellers, right?  
 10 A That is correct.  
 11 Q How did you happen to know and get acquainted with Tony?  
 12 A I don't know exactly how it was but he contacted me for  
 13 a job as an assistant guide, and had great  
 14 qualifications, although he had never been a guide, he  
 15 was a pi -- retired pilot with the U.S. Air Force, and I  
 16 kind of screen everybody that works for me pretty well,  
 17 make sure they're professional and very conscientious,  
 18 good hunters and he was -- fit the bill.  
 19 Q So you applied as the pilot and he applied as the  
 20 gunner, right?  
 21 A That is correct.  
 22 Q When did you find out that you were successful in the  
 23 application of getting this permit?  
 24 A I think it would have been maybe February of -- gosh, I  
 25 -- 2004, I think.

1 Q Do you remember where you were when you found out?  
 2 A I was actually in Pennsylvania. We were looking at some  
 3 -- picking up some wrecked airplanes and I think we had  
 4 a -- a sports show that we were attending there, and I  
 5 received a call from ADF&G notifying me in Pennsylvania  
 6 that -- and I guess -- at that time I don't think I was  
 7 awarded a permit. They wanted to know if -- if they did  
 8 award me a permit, if I would be able to go fairly soon  
 9 and go. I -- I think their -- their concern was if they  
 10 get out -- gave out a permit they wanted someone that  
 11 would make a timely, you know, attempt to go  
 12 participate.  
 13 Q And what did you tell them?  
 14 A I told them that as soon as I got back to Alaska and  
 15 there was a Board of Game meeting in -- gosh, I think it  
 16 was the first part of March. I -- I told them that I  
 17 was going to attend then and that after that I would --  
 18 I would do my best to participate.  
 19 Q So you eventually got a license?  
 20 A Yes.  
 21 Q Or the permit.  
 22 MR. ROBINSON: I think that's marked as Exhibit 20. It's  
 23 already been admitted.  
 24 Q Is this the permit that you were given?  
 25 THE COURT: I'm sorry, what number is that?

1 MR. ROBINSON: Exhibit 20.  
 2 THE COURT: Thank you.  
 3 A Yes, this is the permit that I was given by Alan R.  
 4 Root.  
 5 Q And there's Defendant's Exhibit A, which I think is a  
 6 supplement or an addendum to the permit. Do you  
 7 remember getting that, too?  
 8 A Yes, I think I received this by fax at my home.  
 9 Q Okay. Now did you take the time, Mr. Haeg, to go over  
 10 the conditions of your permit?  
 11 A Yes, we did. We looked them over and I think Al Root  
 12 just kind of pointed out, you know, some of the  
 13 highlights, area, you know, what kind of gun, et cetera,  
 14 et cetera. He was also -- he was concerned about I  
 15 think the adden -- the amended thing because the Board  
 16 of Game had amended the permit. He was making sure also  
 17 that we knew that there was a difference between one  
 18 permit and the -- the amended permit.  
 19 Q Okay. When you yourself became familiar with the  
 20 conditions of the permit, did you understand that you  
 21 were supposed to hunt within 19-D east (indiscernible)  
 22 predator control? In Unit 19-D east?  
 23 A Yes, we were. We were familiar with that.  
 24 Q You and Tony got your licenses together, right?  
 25 A Yes.

1 Q Here in McGrath?  
 2 A Yes, we did.  
 3 Q Now what did you do when you got your permits?  
 4 A We were excited to be able to participate. I mean, you  
 5 know, finally, you know, I guess I looked at it like we  
 6 had, you know, the tools to make a difference finally in  
 7 what was going on and we headed out to go look for  
 8 wolves. I think that was March 5th, if I remember  
 9 correctly, and when we picked up the permit we -- I  
 10 think it was somewhat late. We headed back toward the  
 11 lodge but rather than just direct line -- I know wolves  
 12 usually travel in the win -- travel on the rivers in the  
 13 winter time so we -- I think we flew east from McGrath  
 14 kind of -- kind of along the Kuskokwim and then we  
 15 followed the Big River, it would be south, but up river  
 16 would be south, looking for tracks that wolves were, you  
 17 know....  
 18 Q Within Unit 19-D east?  
 19 A Yes.  
 20 Q About how much time did you fly around in that unit that  
 21 day?  
 22 A You know, we had flown in but we didn't have a permit.  
 23 We flew out, I would say, I don't know, it's hard for me  
 24 to remember, but we probably put two hours in inside the  
 25 -- the area. We didn't really make big -- but we -- we

1 really know, you know, what exactly the experiment was,  
 2 but I -- I just knew that through the years that the  
 3 Board of Game that McGrath was the main concern for the  
 4 Board of Game for low moose populations.  
 5 Q When you got your permit from Mr. Root did you also get  
 6 a sealing certificate from him?  
 7 A Yes, he did. He -- he told us that when we -- or if we  
 8 took wolves that we would need to get them sealed. He  
 9 said that we did not need to have them sealed in  
 10 McGrath, and that we could -- if we wanted to we could  
 11 use a temporary sealing certificate and log the wolves  
 12 onto that until such time we could -- we could deliver  
 13 them for permanently being sealed. And actually with a  
 14 temporary sealing certificate you can bring that -- it  
 15 -- it -- it's a way that you can seal them and not  
 16 actually go to an ADF&G office, I believe.  
 17 Q And so did you take those certificates with you when you  
 18 took your permit?  
 19 A Yes, we did.  
 20 Q Now when was the first moose that you -- I mean wolf  
 21 that you took? When was that?  
 22 A I believe it was the same day we got the permit. As I  
 23 said, we were generally heading -- headed south,  
 24 generally in the direction of my lodge. You know, we  
 25 were looking for moose, we were looking for wolf tracks,

1 would -- we were just kind of making big -- as we were  
 2 kind of traveling we were looking for tracks, we were  
 3 kind of going back and forth and any openings or ridges  
 4 that looked like wolves might travel we would go look  
 5 at.  
 6 Q Now on this permit it requires you to have a trapping  
 7 license, right?  
 8 A Yes.  
 9 Q Did anybody ever explain to you from ADF&G why you had  
 10 to have a trapping license as opposed to a hunting  
 11 license in order to get the predator control permit?  
 12 A No one explained it to me. They all just said that to  
 13 receive the permit I had to have a trapping license in  
 14 my possession.  
 15 Q And did you understand this predator control program in  
 16 Unit 19-D east to be an experimental program?  
 17 A It was a new program but I -- and I maybe had heard it  
 18 was experimental but I -- you know, I did not know the  
 19 details of what -- how it was operated. I -- I guess  
 20 the way I looked at it is McGrath, I believe, has been  
 21 the area -- you know, the area around McGrath was hit  
 22 first with the -- the decline in moose and -- and the  
 23 increase in wolves, and I guess it was where the -- the  
 24 state had the most knowledge of what was going on and so  
 25 it received the -- the program first. And I didn't

1 we were looking at any activity that would indicate  
 2 wolves which that usually means caribou or moose, any  
 3 time there's -- there's animals that wolves like to eat  
 4 that's where wolves generally are. Qua -- you know, a  
 5 ways up the Big River we found a place where there was  
 6 numerous wolf tracks. It appeared like there -- there  
 7 was a kill somewhere back in the trees because out on  
 8 the river it looked like there was maybe, you know, a  
 9 chunk of leg bone or whatever. We actually looked for  
 10 the kill for some time but where -- I think where it was  
 11 was very tall timber, very dense. We couldn't really  
 12 tell what was going on. And where that was we were  
 13 getting somewhat close to the -- the edge of the Unit  
 14 19-D east -- you know, the -- the open predator control  
 15 area. But we were still well inside, so we just started  
 16 down the river. There were lots of wolf tracks on the  
 17 river and we went maybe several more miles and sure  
 18 enough, we found three wolves up ahead of us on the  
 19 river. And, you know, looking back on it, you know, we  
 20 should have just not worried about it, but wolves are  
 21 running down the river, two of them head for the trees,  
 22 and we just -- you know, this is what we've come here to  
 23 do. It's -- our intent is to try to, you know, take  
 24 some wolves to give some relief to the moose, and we  
 25 went after the one wolf that stayed on the river and we

1 -- we shot it.  
 2 Q So Tony shot it, you put him in a position to shoot, is  
 3 that what you're saying?  
 4 A That is correct. I flew the plane and Tony shot.  
 5 Q Now what was your intent and purpose when you got the  
 6 permit in terms of pursuit and the taking of wolves?  
 7 A My intent and purpose was to reverse the decline of  
 8 moose. I mean -- and it's.....  
 9 Q (Indiscernible).  
 10 A You know, and -- kind of the way I look at it is those  
 11 of us that can do something should do something. You  
 12 know, not everybody has an airplane, not everybody has  
 13 the experience to go. It -- and so that was my intent  
 14 and purpose is to do what I could to -- to benefit  
 15 everybody that uses moose. I mean local people, guides,  
 16 other guides than me. You know, people that boat up the  
 17 rivers, down the rivers, fly in. You know, it -- moose,  
 18 I -- I feel are one of the greatest resources out here.  
 19 Renewable resources. I mean there's other resources,  
 20 timber. But how do you get it out. You know.....  
 21 0249  
 22 (Tape change)  
 23 4MC-05-19/Side A  
 24 0249  
 25 THE COURT: Go ahead.

- 760 -

1 A All right. You know, I just -- moose and fish and stuff  
 2 like that are so important, you know, for everybody in  
 3 the state that I think it's everybody's job that -- that  
 4 utilizes that resource to do what they can.....  
 5 Q To help it.....  
 6 A To help it recover from some -- you know, I think it's  
 7 to a point where it can't -- you know, it can't provide  
 8 for, you know, for people like it used to, and -- you  
 9 know, so that was my intent and purpose. It wasn't --  
 10 was not to necessarily kill wolves, it was to restore a  
 11 great resource to something that can be utilized again.  
 12 Q Well, what was your state of mind in terms of the  
 13 activity that you were doing? What did you think you  
 14 were doing in terms of activity?  
 15 A We were controlling -- we were predator controlling. It,  
 16 you know, was -- was not hunting, was not -- you know,  
 17 we came out here to control predators to restore a, you  
 18 know, a vital resource back to, you know, a healthy  
 19 condition.  
 20 Q Well, after the first wolf was shot, when did you get  
 21 the next wolf?  
 22 A We picked up that first wolf, flew back to the lodge and  
 23 the next day we headed back toward the open area and we  
 24 wanted to go where that -- to where that moose kill was,  
 25 and the next day we shot two more wolves.

- 761 -

1 Q Now when you shot -- when Tony shot the first wolf, did  
 2 you know whether that wolf was in or out of the predator  
 3 control unit area?  
 4 A We honestly did not know. We were so excited, we see  
 5 him, get him, land. You know, I didn't -- at that time  
 6 neither Tony and I knew -- my GPS that's in my plane is  
 7 not a new fancy one, it scrolls along. The boundary at  
 8 the southern area is -- I think it was at an angle so it  
 9 was hard to tell like a -- a latitude line that would  
 10 scroll up on a GPS. And, you know, from where we found  
 11 the wolf kill I knew it was inside, and then when you  
 12 see the wolves up ahead and you're going -- I mean it  
 13 was -- at that time we didn't know. We found out later  
 14 that we were -- I would say a mile or maybe a little  
 15 more outside of the area.  
 16 Q Now when you -- it was the next day two more wolves were  
 17 taken?  
 18 A Yes.  
 19 Q Did you know those wolves were in or out of the  
 20 permitted area?  
 21 A We knew that those wolves were outside the permitted  
 22 area.  
 23 Q Had you been in the permitted area at all that day  
 24 before you took the two wolves outside the area?  
 25 A We were on our way up to the permitted area. We found

- 762 -

1 another kill that was still outside the permitted area,  
 2 I believe, by, you know, maybe 15, 20 miles. It was off  
 3 the river a ways. We looked at it. The tracks were  
 4 headed back -- well, headed east and then north toward  
 5 the permitted area and when we come upon the wolves they  
 6 were still outside the area and we, you know -- I don't  
 7 know how to -- you know, I guess we were just over  
 8 zealous. We were out there trying to control predators  
 9 and we're, you know, over zealous about it. We were  
 10 headed back to the area and were, you know, relatively  
 11 close, but I mean we knew we were -- I don't know, it  
 12 was 20 miles out I would say, 15 miles out.  
 13 Q All right. And so there came a time where you reported  
 14 coordinates to Toby Boudreau about where these wolves  
 15 were taken, right?  
 16 A Yes.  
 17 Q And that wasn't -- the coordinates you gave him weren't  
 18 right, were they?  
 19 A No, they were not.  
 20 Q And so why did you give Toby the wrong coordinates?  
 21 A The one -- one reason was before we came out to help  
 22 with the program there was very few wolves taken, and  
 23 when I was at the Board of Game meeting there were  
 24 concerns voiced to me that the -- the numbers of wolves  
 25 taken were so low that they may just say the program was

- 763 -

1 not achieving its objective, and be shut down. And that  
 2 was something that I did not want to happen, because I  
 3 felt that the program was what needed to happen to bring  
 4 -- you know, to start a recovery in the moose  
 5 population. We also -- you know, after we shot the two  
 6 wolves we came inside the area and flew for I would say  
 7 four hours inside the area looking for wolves. We had  
 8 found -- I think we looked kind of at the eastern  
 9 boundaries and we had found tracks of a great many  
 10 wolves that I thought that were maybe off the east,  
 11 southeast side of the area but were headed back into the  
 12 area, and it was an area that was wide expanse of kind  
 13 of stunted trees. An area that -- not like a river  
 14 river, but one that's hard to pick out an individual  
 15 area -- or animal because there's lots of trees. And we  
 16 zigzagged and we went into, you know, -- so when we  
 17 reported where the wolves were taken we wanted to not  
 18 only try to help the program by showing that it is  
 19 effective and that there's not a reason to shut it down,  
 20 and also to let other permittees or whoever that was also  
 21 doing predator control where there were wolves inside  
 22 the area. We never did see those wolves but they were  
 23 fresh tracks and I would say there were -- my best guess  
 24 I would say there were over 20 wolves in that pack.

25 Q Now some time between the time you took the second

- 764 -

1 wolves you made the reported coordinates and you got a  
 2 call from McGrath concerning where you had to seal the  
 3 wolves?  
 4 A Yes. I -- you know, it's been a -- many, many months  
 5 ago. A year and a half ago, but I remember either  
 6 getting a call or a fax from Al Root who had, you know,  
 7 given us the -- the paperwork so that we could  
 8 temporarily seal the wolves and have them sealed  
 9 anywhere, and he had said that we needed to bring the  
 10 wolves back to McGrath to have them sealed.  
 11 Q And did you do that?  
 12 A We did that. We were getting -- kind of getting ready  
 13 for a spring brown bear season, but yes, we did. I  
 14 think -- I think it was like mid -- mid-March or so, I  
 15 believe, we -- we came back to McGrath to have the --  
 16 the wolves sealed.  
 17 Q Now when you were in McGrath that day to have the wolves  
 18 sealed did you run into Trooper Gibbens?  
 19 A Yes, we did.  
 20 Q And what kind of things did you and Trooper Gibbens and  
 21 Tony Zellers talk about?  
 22 A Trooper Gibbens was interested in my airplane. You  
 23 know, he's a pilot. He commented how it looked like a  
 24 very good airplane to have in Alaska. With big baggage,  
 25 you know, big engine, long range tanks. You know, nice

- 765 -

1 skis, et cetera, et cetera. Just airplane talk. He  
 2 also, you know, wanted to know how we were doing with  
 3 the program, if we knew where boundaries were. We told  
 4 him yes. And at that time we had -- I think we have  
 5 overflowed Mr. Gibbens twice when he was out trapping in  
 6 his own personal plane. He told us at that time that's  
 7 what he flew and we said, yeah, we seen you on the Big  
 8 River. It looked like he was making maybe martin sets  
 9 or wolverine set up in the woods. And then one time  
 10 when we were flying down the east side of the -- the  
 11 boundary of the control -- the predator control area, we  
 12 flew over him just outside the area. As we were exiting  
 13 the area we flew over him because there was a few wolf  
 14 tracks going out and we were just seeing if they were  
 15 going to loop around or not, and from there, you know,  
 16 we -- we headed back into the area and that's where we  
 17 found all the wolves. But we talked to Trooper Gibbens,  
 18 you know, not at great length, it's just -- people with  
 19 planes, we talk about planes all the time, so I -- I  
 20 really didn't give it, you know, a whole lot of thought.

21 Q All right. Where did you go when you left McGrath after  
 22 you came in to seal the three wolves?

23 A We had talked to whoever was -- before we left we talked  
 24 to everybody we could about any wolf sightings. There  
 25 was reports of wolves up on the Nixon Fork, and we took

- 766 -

1 off -- I think we fueled up at the -- the fuel she --  
 2 the fuel sales place here. Took off.....  
 3 Q Here in McGrath?  
 4 A Huh?  
 5 Q Here in McGrath?  
 6 A Here in McGrath, and we had fuel inside of the plane  
 7 also, so we had -- I can fly for almost six hours with  
 8 the fuel that's in my wings, but we went north and we  
 9 did a very extensive survey all around kind of the  
 10 northern boundary up and down the -- the Nixon Fork. We  
 11 found a few wolf tracks, quite a few moose kills. And  
 12 just looked at the whole north area as best we could.  
 13 And then I think we kind of went down through the center  
 14 of the area, kind of headed back to our lodge. It was  
 15 starting to get late, starting to get dark.  
 16 Q Did you take any wolves that day on the way back from  
 17 McGrath?  
 18 A No, we did not.  
 19 Q When was the next time you took any more wolves?  
 20 A The fir -- after the first three we took a wolf on the  
 21 same day that we came in to seal the first three wolves.  
 22 Q So on your way back then on the day you came in you met  
 23 Trooper Gibbens and on your way back out.....  
 24 A Before that we.....  
 25 Q Oh, before you came in?

- 767 -



1 A Yes.

2 Q Okay. And where did you -- where was it that that wolf

3 was taken?

4 A That was actually taken south of our lodge. We -- we

5 came from town with the wolf hides, we flew in to

6 my....

7 Q When you say you came from town, what town?

8 A Soldotna.

9 Q Okay.

10 A Flew from Soldotna up over the top into our lodge, and I

11 think we -- usually when we come over we bring a lot of

12 fuel and supplies. You're always loaded to the gills

13 coming this way, you know, to resupply stuff. And I

14 know that we tried to get a hold of somebody to seal the

15 hides here in McGrath, because if I remember right it

16 was a weekend, and we were concerned that we may not --

17 you know, before flying from the lodge up here we wanted

18 to -- to make sure there was somebody here. And I think

19 -- I don't know, I think maybe we took off in town

20 pretty early so we didn't call before we left, but

21 anyway we couldn't get a hold of anybody, so before we

22 came to McGrath we thought we would look around where I

23 normally trap in the winter time. Also thought we'd

24 look at some of the camps that we have for hunting, see

25 if animals have got into them. So we actually flew

1 south down over all our camps and then we were just

2 going to swing up, down the Stony River and head back

3 north to the lodge and call but we -- we were going down

4 the Stony River and we seen three wolves, and, you know,

5 our purpose was to come out here and control wolves and,

6 you know, I don't know, you know, just over zealous or

7 over eager, you know. We're finally being able to do

8 something. You know, and we -- we shot one wolf there

9 on the Stony River.

10 Q And what did you do with that wolf once you shot it?

11 A We picked it up and took it back to the lodge. I think

12 we called McGrath here trying to get a hold of somebody.

13 I think at that time we got a hold of Toby Boudreau, and

14 so we -- I believe we left that wolf there because it

15 had just been shot. Usually when you get stuff sealed

16 there's -- they need to be skinned, and -- or I don't

17 know if they have to be, but I've never taken in

18 animals, you know, whole. We always have them skinned

19 because they put a tag through the hide. So that's --

20 that's what happened there.

21 Q All right. So then you come back from McGrath that day,

22 you go back to the lodge, fly around looking for --

23 before you get back you fly around in the control --

24 predator control area looking for wolves and you go back

25 to your lodge. When's the next time that any wolves are

1 taken?

2 A I believe it's the next day we go fly out. Actually

3 down, or westward on the Swift River. It's where I've

4 done a lot of my trapping. It's where wolves like to

5 kill moose, and if -- usually if we find a moose kill we

6 will -- I have snare sets that I can -- I can set there.

7 So we flew down, we actually found a set of tracks of

8 wolves. Looked like a big pack of wolves. We actually

9 landed on the tracks to look at which way they were

10 going. So we stayed, you know, can at least find which

11 way they're going, find if they had killed a moose,

12 maybe set snares or traps. And we come upon a moose

13 kill, fresh, lots of wolf tracks. And you know we talk

14 about where we have snares that we could put there.

15 Just looking at if we could land anywhere and while

16 we're doing that we see another wolf. And you know we

17 -- we go after it and get it. It just -- you know, we

18 came out to make a difference in what was do -- you

19 know, to what was going on. You know, all in our mind

20 we're out here controlling predators. I mean it just --

21 you know, was what we -- you know, our only purpose,

22 intent, you know.

23 Q Now are these wolves still in game Unit 19?

24 A Yes, they are.

25 Q But they're just not in 19-D east?

1 A That's correct. Well, let me rephrase. The one wolf we

2 shot on the Stony was in 19-B, the one that we had taken

3 to the lodge, the one the next day was in 19-D, but not

4 19-D east.

5 Q So by my count you're up to five or so wolves taken by

6 that time?

7 A No.

8 Q And then when's the next time that wolves were taken?

9 A We flew back toward the lodge, picked up snares and

10 traps. Came back and set them and I don't -- I think it

11 was the next day after we set the snares and traps we

12 came back to -- to look -- look at the set, see if we

13 caught anything and we hadn't, and I think on the way

14 back to the lodge -- we were going to go back to the

15 lodge, get more fuel and head north to the control area,

16 but back to the lodge, further up river on the Swift we

17 find, you know, -- I don't know how many wolves there

18 were but there were wolves running everywhere. And

19 actually when we seen them they had a couple more moose

20 that they had kind of fanned out by. I don't know why

21 they would kill another moose right then because they

22 still had about half of the other moose, but it -- you

23 know, it's -- we had seen so few moose in the whole

24 program. I mean up here in McGrath anywhere it just was

25 so frustrating that -- you know, we're -- we're finding

1 so few moose and yet still finding so many wolves that,  
 2 you know, it -- it was....  
 3 Q You mean live moose?  
 4 A So few live moose, so many dead moose -- you know, wolf  
 5 killed moose and so many wolves that it, you know, --  
 6 you know and our purpose was to change all that, and  
 7 that's what we were doing. You know, and I don't -- I  
 8 know there's lots of names for it. Over zealotness,  
 9 excitement, you know, for being able to finally have  
 10 something happen. It could have been many things, but  
 11 our intent -- you know, to me, I guess it was, you know,  
 12 the knowledge that we finally had the ability to do  
 13 something. Bring, you know, to reverse the -- the  
 14 trend.  
 15 Q So how many wolves are taken that day?  
 16 A I believe we shot four wolves that day.  
 17 Q And you knew that those were not within Unit 19-D east?  
 18 A Yes, we did.  
 19 MR. ROBINSON: Your Honor, I wonder if we can  
 20 (indiscernible) now or take a five or 10 minute break?  
 21 THE COURT: Okay. Let's come back at 10 after 11:00.  
 22 THE CLERK: Off record?  
 23 THE COURT: Yes.  
 24 (Off record)  
 25 THE COURT: We're back on record. Mr. Haeg, I need to

- 772 -

1 remind you that you are still under oath.  
 2 A Okay.  
 3 THE COURT: Go ahead, Mr. Robinson.  
 4 Q Now, Mr. Haeg, during this month of March after you got  
 5 your permit were there times when you -- you and Mr.  
 6 Zellers attempted to go back into Unit 19-D east to  
 7 pursue wolves and were unable to?  
 8 A Yes, there were.  
 9 Q What happened?  
 10 A I know one time we headed north to go up, got to Big  
 11 River, we're going along and see a huge snow squall  
 12 coming down the river, had some real bad turbulence and  
 13 we had just almost -- I -- I think we were maybe 10  
 14 miles from the area, got into some pretty bad turbulence  
 15 just getting back to the lodge. And snow, wind kept us  
 16 pinned down. It actually got pretty bad. We had to put  
 17 something -- you know, tie the plane down really well so  
 18 can keep it from blowing away. And I think that was  
 19 after we had shot the first three wolves. I actually  
 20 had a cold that was getting pretty bad. Actually was so  
 21 bad I could -- couldn't function really well either. I  
 22 know the day after the wind storm we again attempted to  
 23 come up into the area, and I think this would have been  
 24 on the -- gosh, the 7th or 8th of March if I remember,  
 25 we -- yeah, 7th or 8th of March. 7th and 8th. On the

- 773 -

1 8th we took off and were headed toward I think the  
 2 middle or the middle west side of the lower part of the  
 3 area and it was very cold, and I was really sick.  
 4 Coughing all the time and actually had bronchitis,  
 5 coughing up green stuff, et cetera, et cetera, and at  
 6 that time it was so cold that we turned around and  
 7 called it a day. Went back to the lodge and I just, you  
 8 know, tried to get better, but yes, there were several  
 9 other times that we tried to get up into area and just  
 10 due to weather conditions could not make it.  
 11 Q So now what happened with these nine wolf hides that --  
 12 from the nine wolves that were taken?  
 13 A We took them up to -- actually Tony took them to  
 14 Anchorage to have them tanned. We tan all our hides so  
 15 we can sell them. We -- you know, operating out here,  
 16 doing all the flying that we were doing, we went through  
 17 an enormous amount of fuel. It's very expensive out  
 18 here. It's, you know, I guess everybody knows. And,  
 19 you know, try to sell them, get some of the money back  
 20 that we were spending.  
 21 Q Now apparently -- well, Trooper Gibbens testified that  
 22 on I thought it was the 29th of March, I think it was,  
 23 of '04, there was a search conducted at your lodge.  
 24 Were you there at the time that that occurred?  
 25 A No, I was not.

- 774 -

1 Q With regard to the snares and the leg hold traps that  
 2 you put out around the 23rd of March, about how many did  
 3 you put out and where did you put them?  
 4 A We put them around the moose kill on the Swift River,  
 5 and I put out 20, Tony put out 20, and we also....  
 6 Q 20 snares?  
 7 A Yes, 20 snares each, 40 snares. It -- if there's room  
 8 to put lots of snares you usually do if there's a moose  
 9 kill because you'll -- there's a possibility of catching  
 10 a -- you know a good portion of a pack of wolves if you  
 11 do that. It seems like once you catch one, especially  
 12 maybe an alpha wolf, the rest of the pack will remain in  
 13 the area, circle around and the more snares that you  
 14 have, especially away from where that wolf is, the more  
 15 -- the greater the likelihood of getting multiple  
 16 wolves.  
 17 Q All right. And what about the leg hold traps?  
 18 A We set some leg hold traps there also. I actually set  
 19 them. I remember doing the setting. Tony was setting  
 20 snares, and I believe we set eight leg hold traps.  
 21 That's, you know, been a long time ago, but that's what  
 22 I remember.  
 23 Q Did you set any leg hold traps near your lodge?  
 24 A Yes, we also set some leg hold traps for wolverine.  
 25 Around our lodge there's a -- you know, I have permanent

- 775 -

1 sets there that, you know, when I come out in the winter  
 2 time to the lodge we always bring bait along to put bait  
 3 in and -- and reset the traps. And I -- I would say we  
 4 had maybe eight traps for wolverine set. I think a  
 5 couple of them were Conabears with a box. Most of the  
 6 rest were leg hold traps.  
 7 Q Now when you set those traps what were you intending to  
 8 do? When you set those traps and snares?  
 9 A Intending on catching wolves. Get the furs and sell  
 10 them. Also if, you know, we caught wolves that's more  
 11 predator control. You know, just trying to, you know,  
 12 cover costs of being out there flying around looking.  
 13 Q Do you know a person by the -- oh, then I think Trooper  
 14 Godfrey testified that on or about the 1st of April of  
 15 2004 that your house was searched?  
 16 A That is correct.  
 17 Q And you were there for that?  
 18 A Yes, I was.  
 19 Q He mentioned that you had to be called back on the lake.  
 20 You were about ready to take off and (indiscernible)?  
 21 A Yes.  
 22 Q So you didn't know that they were coming to search  
 23 before you were taking off, did you?  
 24 A No, I did not.  
 25 Q Now do you know a person by the name of Anthony or Tony

- 776 -

1 Lee(ph)?  
 2 A Yes, I do. He's.....  
 3 Q How do you know him?  
 4 A He is a guide that operates on the -- the Stony River  
 5 just below Lime Village. I believe he operates out of  
 6 Curley Warren's lodge. Curley Warren is also another  
 7 guide. And I know him through being a guide.  
 8 Q Okay. Did you ever have any contact with him about him  
 9 doing anything with your trap line?  
 10 A Yes, I did. I received a call from Tony Lee(ph) some  
 11 time toward the end of March. Not exactly sure what day  
 12 it was, stating that he had found a set of -- around a  
 13 moose kill on the Swift River and that there were a  
 14 couple wolves in it, and he asked me if I needed help  
 15 with that.  
 16 Q And what did you say?  
 17 A And I said I would very, very much appreciate it if he'd  
 18 help me with it by shutting it down.  
 19 Q Did he agree? Did he agree?  
 20 A Yes, he did. He agreed. I told him -- I told him he  
 21 could have all the animals in the set, and you know he  
 22 -- he said that.....  
 23 MR. LEADERS: Objection, hearsay.  
 24 MR. ROBINSON: Well, I'm not offering it for the truth of  
 25 the matter asserted but that's something that was said.

- 777 -

1 MR. LEADERS: (Indiscernible).  
 2 THE COURT: That's -- the objection is sustained.  
 3 MR. ROBINSON: All right.  
 4 Q Well, what did you believe was your agreement with Mr.  
 5 Lee(ph).....  
 6 MR. LEADERS: Objection, that calls for hearsay.  
 7 MR. ROBINSON: No, I'm just saying what his belief was  
 8 about his agreement with -- his state of mind is not hearsay.  
 9 Mr. Haeg's state of mind is not hearsay.  
 10 MR. LEADERS: The agreement is hearsay. I think that's  
 11 what he's calling for is an answer based on hearsay.  
 12 MR. ROBINSON: No, it isn't. I'm asking him what he  
 13 thought his agreement was. It's not hearsay.  
 14 THE COURT: You're asking what he believed.....  
 15 MR. ROBINSON: I'm asking Mr. Haeg what he believed, not  
 16 what Mr. Lee(ph) believed, but what Mr. Haeg believed.  
 17 THE COURT: All right. The objection is overruled. You  
 18 can answer the question, Mr. Haeg.  
 19 A I believed that Tony Lee(ph) was taking responsibility  
 20 for the set, to set everything off and in return he  
 21 could take all the animals for his -- his own use.  
 22 Q At that point did you feel that you had to then close  
 23 out any of these trap line sets?  
 24 A No, I did not. Not that trap line or the other ones.  
 25 He had just found that one set. As I said he was

- 778 -

1 guiding out there for bear and was in the area and had  
 2 seen the set. I still took responsibility of the -- you  
 3 know, the -- the traps around my lodge, but that set he  
 4 -- he -- I mean he's the one that called me and asked if  
 5 he -- you know, if I needed help with it and I told him,  
 6 yes, I did and he could have all the fur from it.  
 7 Q All right.  
 8 A He also -- there's a little bit more to this. About, I  
 9 don't know, a few days later he called back, said that  
 10 he got a few wolf.....  
 11 MR. LEADERS: Hearsay.  
 12 MR. ROBINSON: (Indiscernible).  
 13 Q He called back?  
 14 A Yes, he called back.  
 15 Q And from that conversation what did you leave that  
 16 conversation believing?  
 17 MR. LEADERS: Objection, it's calling for hearsay.  
 18 MR. ROBINSON: It's not calling for hearsay.  
 19 (Pause)  
 20 MR. ROBINSON: Can we approach?  
 21 THE COURT: Uh-huh.  
 22 (Bench conference as follows:)  
 23 MR. ROBINSON: There's exceptions to it, it's under 803.  
 24 3. Statements of declarant's then existing state of mind,  
 25 emotion, sensation, (indiscernible) religion, such as the

- 779 -

1 intent, plan, like in the take-over, nor the design, mental  
 2 feeling of pain and body health. Offered to prove the  
 3 declant's present present condition (indiscernible) in future  
 4 actions. It's not hearsay.  
 5 MR. LEADERS: So you're saying that (indiscernible) Mr.  
 6 Haeg's state of mind?  
 7 MR. ROBINSON: Well, there was a (indiscernible), not the  
 8 plan to take-over, future action.  
 9 MR. LEADERS: Okay. Then Mr. Lee's(ph) intent or state of  
 10 mind isn't relevant to the charges against Mr.....  
 11 MR. ROBINSON: It -- well, I think it's relevant as to  
 12 the.....  
 13 MR. LEADERS: No, you're trying to choose to argue that  
 14 Mr. Haeg's state of mind(indiscernible).....  
 15 MR. ROBINSON: We have evidence about customary uses and  
 16 trapping issues. (Indiscernible) is not relevant, and it's  
 17 about the declarant's future plans.  
 18 MR. LEADERS: If they were relevant. They're not  
 19 relevant to Mr. Haeg's.....  
 20 THE COURT: Mr. Lee's(ph) state of mind is irrelevant for  
 21 the issue.  
 22 MR. ROBINSON: No, but his state of -- wait a minute.  
 23 His then existing state of mind, the declarant's then  
 24 existing state of mind.  
 25 THE COURT: Right. Mr. Lee(ph) would be the declarant.  
 - 780 -

1 snares. Absolutely.  
 2 MR. LEADERS: I don't know if he's ever been asked to  
 3 (Indiscernible) whether or not (indiscernible).  
 4 MR. ROBINSON: Yes, he was.  
 5 MR. LEADERS: (Indiscernible).  
 6 MR. ROBINSON: It is (indiscernible).  
 7 MR. LEADERS: Okay.  
 8 MR. ROBINSON: Absolutely it goes to the (indiscernible).  
 9 Because he made a plan for future action with the declarant.  
 10 MR. LEADERS: That's what you can discuss. You can  
 11 discuss whether or not.....  
 12 MR. ROBINSON: No.  
 13 MR. LEADERS: .....he made a plan, but you can't discuss  
 14 Mr. Lee's(ph) intent.  
 15 MR. ROBINSON: I can't talk about the declarant's state  
 16 of mind. That's my point. That's why they carved out this  
 17 exception. As to declarations related to the execution,  
 18 revocation, identification of terms of the declarant's will,  
 19 not Mr. Haeg's will. The declarant's will.  
 20 MR. LEADERS: I'm -- right, that's the argument I'm  
 21 making is Mr. Lee's (ph)state of mind is for all intent is  
 22 not what's relevant to the charges.  
 23 MR. ROBINSON: If he says I'm willing to take over your  
 24 sets, that is relevant to the charges, and that goes to  
 25 whether Mr. Haeg was negligent or he (indiscernible), period.  
 - 782 -

1 MR. ROBINSON: No, not Mr. Haeg, Mr. Lee(ph) is the  
 2 declarant.  
 3 THE COURT: Right. His state of mind.....  
 4 MR. ROBINSON: Right.  
 5 THE COURT: .....is not relevant.  
 6 MR. ROBINSON: Well, yes, it is as to the -- as to a plan  
 7 for future action it is.  
 8 THE COURT: He's not the one charged with anything.  
 9 MR. ROBINSON: It doesn't matter. It's not a question  
 10 about whether he's charged, it doesn't go to the charges; it  
 11 goes to whether this particular -- the declarant's statement,  
 12 (indiscernible) for future action.  
 13 THE COURT: (Indiscernible).  
 14 MR. ROBINSON: Look at the commentary.  
 15 (Pause)  
 16 MR. ROBINSON: It's admissible. It's the declarant's  
 17 statement.  
 18 MR. LEADERS: I guess I don't (indiscernible).  
 19 MR. ROBINSON: Future action.  
 20 MR. LEADERS: Right. I mean.....  
 21 MR. ROBINSON: The exception to (indiscernible).  
 22 MR. LEADERS: But the issue is Mr. Lee's(ph) state of  
 23 mind is not what's relevant.  
 24 MR. ROBINSON: It is relevant to the question of the plan  
 25 and actions that this man took regarding the traps and  
 - 781 -

1 (Pause)  
 2 MR. ROBINSON: (Indiscernible) evidence of intention is  
 3 intending to prove (indiscernible) is, of course, left  
 4 undisturbed, as applied to declarant.  
 5 (Pause)  
 6 MR. ROBINSON: (Indiscernible) but this refers to future  
 7 action.  
 8 (Whispered conversation of jurors in background)  
 9 (Pause)  
 10 MR. ROBINSON: It says, special (indiscernible) of  
 11 subdivision (indiscernible) and you can get that in.  
 12 (Indiscernible).  
 13 MR. LEADERS: Well, it's (indiscernible).  
 14 MR. ROBINSON: Because Mr. Lee -- he's going to say  
 15 (indiscernible) is to take future actions which he relied on  
 16 which goes now to this question of negligence.  
 17 MR. LEADERS: (Indiscernible) going to.  
 18 MR. ROBINSON: Yeah, but he has to say whether he -- what  
 19 he said that he relieved him.  
 20 MR. LEADERS: Based on the conversation.....  
 21 MR. ROBINSON: (Indiscernible) as to the declarant's  
 22 statements about future actions it's relevant and it's  
 23 admissible, under the hearsay exception to the rule.  
 24 MR. LEADERS: I'm not dispute -- I'm not disagreeing with  
 25 that part of the analysis that 803(3) allows for state of  
 - 783 -

1 mind. The issue is why is Mr. Lee's(ph) state of mind.....  
 2 MR. ROBINSON: Because the wrong evidence of intention  
 3 is tending to prove the doing of an act intended that, of  
 4 course, left undisturbed as applied to declarant.  
 5 MR. LEADERS: Right, but it still has -- now it's a 403  
 6 issue. Why is it.....  
 7 MR. ROBINSON: No, but that's because of this particular  
 8 exception for that (indiscernible). That's why the rule  
 9 carved it out, that's why this exception to.....  
 10 MR. LEADERS: Yeah, but it still has to be relevant  
 11 to.....  
 12 MR. ROBINSON: It is relevant because.....  
 13 MR. LEADERS: Well, the next -- the next (indiscernible).  
 14 MR. ROBINSON: Because what he said caused him to have a  
 15 belief that goes to whether or not he had a negligent state  
 16 of mind. Because of the future actions, statements of the  
 17 declarant.  
 18 MR. LEADERS: Judge, I'm going to withdraw the objection.  
 19 THE COURT: Okay.  
 20 MR. LEADERS: I think it needs to be limited to just  
 21 what the intent or the plan was that he created, not beyond  
 22 that. And that I'll agree that (indiscernible) his reliance  
 23 on the statements, it goes to the negligence.  
 24 THE COURT: Okay. Okay. That's the only  
 25 (indiscernible).....

- 784 -

1 (End of bench conference)  
 2 0854  
 3 (Tape change)  
 4 4MC-05-19/Side B  
 5 0854  
 6 THE COURT: All right. We're back on record. You want  
 7 to repeat your last question, Mr. Robinson.  
 8 Q Mr. Haeg, you were saying that there was more than  
 9 (indiscernible) in another communication with Mr.  
 10 Lee(ph)?  
 11 A Yes, I did. He called several days later, said that he  
 12 landed at the set, took out several wolves. I think  
 13 maybe wolverine, whatever. And that there were  
 14 wolves.....  
 15 MR. LEADERS: Objection. Judge, this is -- this isn't  
 16 going to the issue.  
 17 THE COURT: That's -- yeah.  
 18 Q What did he promise to do about the sets?  
 19 A He first promised to shut it down. Then when he called  
 20 back he said he would like to keep it going.  
 21 Q And what did you say to that?  
 22 A And I said that -- I said you can do with it whatever  
 23 you want as long as you shut it down. And I mean I made  
 24 it adamantly clear because I had a fear that something  
 25 may, you know, I -- I wanted it spelled out exactly what

- 785 -

1 my -- my intent -- I didn't care if it kept going. I  
 2 just wanted it taken care of. And.....  
 3 Q Was this keep going based on the fact he had seen more  
 4 animals in the trap line?  
 5 A Yeah, I -- I don't know what his basis was for believing  
 6 there were more animals coming in, but he apparently  
 7 believed that after he took animals out more animals  
 8 would come back.  
 9 Q And so he wanted to keep it open?  
 10 A And he wanted to keep it open. There's one more bit to  
 11 this. I worried and agonized over this for another  
 12 several days, and I ended up calling Anthony Lee(ph)  
 13 back, myself, and I told him -- I said I don't care that  
 14 you want to keep it up and running, I just want it taken  
 15 care of. Go out and shut the set down. So I know.  
 16 Anthony Lee(ph) called me the first time, you know, I  
 17 returned his call. He called me back and then I called  
 18 him the last time and told him if you want to, you know,  
 19 tell -- you know, basically I said I don't care that you  
 20 want to continue trapping there. Shut the set down.  
 21 And he said absolutely, Dave, if that's what you want,  
 22 I'll go do it. And that's -- that was where I left it.  
 23 If -- if there had been any hint of anything that I  
 24 thought that -- that wouldn't happen, I would have went  
 25 out immediately and took care of it, but we were getting

- 786 -

1 ready for bear season. The set's out here, he's out  
 2 here guiding, I'm doing my bear season on the other  
 3 side, and, you know, he -- he took responsibility for  
 4 the set.  
 5 Q All right. Now Mr. Haeg, those nine wolves that you and  
 6 Tony Lee(ph) took, do you think you had those in lawful  
 7 possession?  
 8 A No, I do not. And it was Tony Zellers.  
 9 Q I'm sorry, Tony Zellers. I misspoke -- miss pronounced  
 10 -- I mistated his name (indiscernible) the nine wolves  
 11 were eventually taken up to Alaska Furs.....  
 12 A Yeah.  
 13 Q .....or eventually taken up to Alaska Fur Dressers? You  
 14 knew that those were unlawfully taken?  
 15 A Yes, I did.  
 16 Q You're not by any means trying to convince this jury  
 17 that they were lawfully possessed carcasses or hides,  
 18 are you?  
 19 A No, I'm not. I understand that we did wrong and I  
 20 understand that we pay the price for it.  
 21 Q With regard to the permit conditions. I mean you took  
 22 those animals outside of the area and possessed them.  
 23 What did you think that you were doing with regard to  
 24 the conditions of the permit?  
 25 A I thought we were breaking the conditions of the permit

- 787 -

1 but not breaking the intent or the purpose of the  
 2 permit.  
 3 Q And you have now been charged with five counts of  
 4 knowingly violating a state law prohibiting hunting,  
 5 same day airborne, you understand that, right?  
 6 A Yes.  
 7 Q What was your state of mind with regard to whether what  
 8 you were doing, the actual activity that you were doing  
 9 was hunting?  
 10 A We were not hunting. We were conducting predator  
 11 control.  
 12 Q What was your state of mind when you began to set those  
 13 leg hold traps and the snares and -- in conjunction with  
 14 the aerial shooting?  
 15 A We were conducting predator control.  
 16 MR. ROBINSON: That's all I have.  
 17 THE COURT: Thank you, Mr. Robinson. Mr. Leaders?  
 18 MR. LEADERS: Thank you, Judge.  
 19 DAVID SCOTT HAEG  
 20 testified as follows on:  
 21 CROSS EXAMINATION  
 22 BY MR. LEADERS:  
 23 Q So, Mr. Haeg, you've basically been hunting since you  
 24 were 14 or so, or even younger?  
 25 A Yes.

- 788 -

1 Q And you're, in fact, a professional hunter?  
 2 A Yes.  
 3 Q To the extent you've reached kind of the highest guide  
 4 status you can reach in Alaska, master guide, master big  
 5 game guide?  
 6 A Yes.  
 7 Q And you've had that status for how long, or that  
 8 licensure?  
 9 A A couple years, year and a half, two years.  
 10 MR. LEADERS: Actually, maybe I can approach, Judge,  
 11 with.....  
 12 THE COURT: Uh-huh.  
 13 Q Exhibit 29, that's your verification of licensure,  
 14 correct?  
 15 A Yes, it is.  
 16 Q Master big game guide and that was original issue date  
 17 of?  
 18 A November 13th, 2003.  
 19 Q Okay. So a year and a half or so at this point as a  
 20 master big game guide?  
 21 A Yes.  
 22 Q And it also goes through on the additional comments  
 23 there on the right, your additional guide licenses held?  
 24 A Registered guide license number 783 from April 17th,  
 25 1992 through November 13th, 2003.

- 789 -

1 Q So you've been a registered guide since 1992. That  
 2 means you can contract and -- contract your own hunts,  
 3 et cetera. You can employ other guides under you to  
 4 conduct guiding activities, those types of things,  
 5 correct?  
 6 A Yes.  
 7 Q Okay. Prior to 1992 you were an assistant guide,  
 8 correct?  
 9 A Yes.  
 10 Q The licensure verification notes when you became an  
 11 assistant guide, correct?  
 12 A Yes.  
 13 Q When was that?  
 14 A From 1996 to 1992.  
 15 Q That's probably a misstatement, that would be correct?  
 16 Do you think you were probably an assistant guide back  
 17 in 1986? Do you think it's a typographical? It would  
 18 be hard to be from 1996.....  
 19 A Yeah, I understand.  
 20 Q .....backwards to '92?  
 21 A Yes. Yeah, I would -- I would say that.  
 22 Q Does 1986 seem approximate to the time that you became  
 23 an assistant guide?  
 24 A (Pause).  
 25 Q Earlier you said you were assistant guide around 20, 21

- 790 -

1 years of age?  
 2 A Yeah, I -- I think I got my -- you know, it's hard to  
 3 remember back. I think I got my assistant guide license  
 4 when I was 18.  
 5 Q Okay.  
 6 A So I don't know, that would be whatever, 18.  
 7 Q Your date of birth was in?  
 8 A 1966, yes. So.....  
 9 Q So somewhere.....  
 10 A .....18, that would be 70, '84 or so.  
 11 Q Okay. Around '84. So that's when you believe you were  
 12 actually -- you started.....  
 13 A Yeah.  
 14 Q You believe you started guiding professionally since  
 15 '84, or have been?  
 16 A I got a license but I didn't actually guide for a couple  
 17 years but I held the license.  
 18 Q Okay. But a couple years after that, then so maybe  
 19 around '86 or so you started your profession as a  
 20 professional hunter, guide?  
 21 A Yes.  
 22 Q You said you don't really hunt anymore though?  
 23 A That's correct.  
 24 Q In fact, you do hunt, you just don't hunt for yourself,  
 25 correct? You don't sport hunt for yourself?

- 791 -

1 A Yeah, I provide a service for hunters. And in providing  
 2 that service they call it professional hunting. It's  
 3 actually providing a guide service.  
 4 Q Right. So you hunt with clients, assist them in doing  
 5 the killing of the game?  
 6 A We -- we guide them so that they can hunt and kill game,  
 7 yes.  
 8 Q You hunt several species. You guide, hunt for several  
 9 species; bear, moose, caribou?  
 10 A Yes.  
 11 Q Wolf?  
 12 A Yes.  
 13 Q You do that in various areas around the state?  
 14 A Yes.  
 15 Q The -- I think you testified your bear operations are  
 16 primarily down in the Chinitna Bay area, is that  
 17 correct?  
 18 A Yes, and up in Unit 16, which is just north of there.  
 19 Q Just north of Chinitna Bay area?  
 20 A Yes.  
 21 Q Okay. And that would be across the Alaska Range to the  
 22 east of this area? East and slightly south?  
 23 A Yes.  
 24 Q You don't guide for bear out in 19 -- Unit 19?  
 25 A Yes, we do.

1 Q Oh, you do. What areas of 19?  
 2 A 19-A and 19-B.  
 3 Q And that's -- and when is the last time you guided for  
 4 bear out in 19-A or B?  
 5 A We did not guide last fall, so it would have been 2003.  
 6 Q 2003, okay. So fall of 2003?  
 7 A Yes.  
 8 Q Okay. When's the last time you guided for bear in other  
 9 areas then?  
 10 A We guided in the spring of 2004, and I helped do two  
 11 guided hunts this spring.  
 12 Q Okay. And -- but those weren't out here in 19?  
 13 A No.  
 14 Q Those were over in, what, 16 or down by Chinitna?  
 15 A In Unit 16.  
 16 Q Okay. The -- your moose, you guided for moose out of  
 17 Unit 19 though?  
 18 A Yes.  
 19 Q Predominantly where?  
 20 A 19-A -- or 19-B and 19-C.  
 21 Q You don't guide at all in 19-D?  
 22 A No, we do not.  
 23 Q Specifically you don't guide in 19-D east do you?  
 24 A No, we do not.  
 25 Q As a guide a lot of your clients are out of state

1 clients?  
 2 A Yes, they are.  
 3 Q 19-D east is restricted. You -- it's a locals only hunt  
 4 area, isn't that correct? Not open for non-residents  
 5 for moose?  
 6 A I believe so. I'm -- we -- we have an area that we  
 7 utilize that we stay within so we don't cause any  
 8 conflicts with anyone -- any other users, and so I don't  
 9 know the specific laws to areas that we do not guide in.  
 10 Q But you know that 19 -- I mean it's in the regulations  
 11 pretty well publicized 19-D east is a resident only  
 12 moose area, as well as caribou and sheep?  
 13 A I -- yeah, I -- I believe so. I -- you know, I guess I  
 14 could look in a regulation book and tell you that.  
 15 Q The entire permit area for the predator control program  
 16 is within 19-D east, this locals only area?  
 17 A In 2003-4, yes.  
 18 Q At the time that you were involved in the program,  
 19 correct?  
 20 A Yes.  
 21 Q So the wolves tar -- and you've heard the testimony of  
 22 Mr. Boudreau that there were -- the plan was to  
 23 eliminate the wolves in 19-D east essentially, right?  
 24 A Yes.  
 25 Q And they determined -- tried to determine the range of

1 those wolves. Ultimately came up with over 3,200 square  
 2 miles or something like that, range for these wolves,  
 3 the various packs?  
 4 A Yes.  
 5 Q Those wolves really don't affect directly your hunting  
 6 range?  
 7 A They most certainly do.  
 8 Q So the biologist indicated their range was -- that they  
 9 believe in the predator control program boundaries and  
 10 you're saying the biologist is wrong, the boundary of  
 11 those packs range down into 19-B and C in your hunting  
 12 grounds?  
 13 A There's no doubt about that. Especially when the prey  
 14 population gets scarce they have to eat.  
 15 Q The -- you talked about your moose hunting. You said  
 16 you've shifted your efforts from moose to bear because  
 17 of the population problems. With healthy bear  
 18 populations, not so healthy moose populations in the  
 19 areas you guide?  
 20 A Yes.  
 21 Q When's the last time you guided moose hunters out of 19-  
 22 B or C?  
 23 A It would have been the fall of 2003.  
 24 Q So the fall right before you started into the predator  
 25 control program?

1 A Yes.  
 2 Q You -- the fall of 2004, did you guide at all?  
 3 A No.  
 4 Q The -- and that was based on because of this case  
 5 itself, isn't that correct?  
 6 A That is very much true and -- and you were a big part of  
 7 that, yes.  
 8 Q Let me ask. You had -- prior to -- you had scheduled  
 9 clients for the fall of 2004, isn't that correct, for  
 10 moose out in 19-B and C?  
 11 A Yes, I did.  
 12 Q And you cancelled those hunts?  
 13 A Yes.  
 14 Q Okay. Now how many hunters did you have scheduled for  
 15 the fall of 2004 in 19-B and C, moose hunters? Moose  
 16 and/or caribou?  
 17 A I'd have to go back and look but I think probably seven.  
 18 Q In 2003, the last year you guided clients for moose in  
 19 19-B or C, how many clients did you take out?  
 20 A I'd have to look back through the records. Sometimes we  
 21 have people that aren't hunting moose, they're hunting  
 22 grizzlies, some people that, you know, are non-moose  
 23 hunters, but I think maybe eight or nine.  
 24 Q Okay. How much do you charge for your moose hunts in  
 25 19-B or C?

- 796 -

1 MR. ROBINSON: Objection, relevancy in terms of success.  
 2 Apparently you can't guarantee success, so I don't understand  
 3 the relevancy of it.  
 4 MR. LEADERS: Goes to the issue of why he's taking wolves  
 5 in the area, Judge.  
 6 MR. ROBINSON: It doesn't -- it can't be both. If he  
 7 doesn't -- if he charges \$11,000 whether they get a moose or  
 8 not, and I don't understand the relevancy of the success  
 9 (indiscernible).  
 10 THE COURT: Well, I can see it. Well, the objection is  
 11 overruled. You can answer the question, Mr. Haeg.  
 12 Q What was the success rate of these eight or nine clients  
 13 for moose in Unit 19-B or C in 2003?  
 14 A I believe everyone got a moose.  
 15 Q Now can you -- the diagram behind you, or the map,  
 16 excuse me, not diagram. Would you stand and show us  
 17 your actual hunting grounds then in 2003? Actually, Mr.  
 18 Haeg, I'm going to -- sorry, I'll ask you to -- I'm  
 19 going to bring the map up. (Pause) Okay, would you come  
 20 up. Thank you. Where did you guide these clients in  
 21 2003?  
 22 A We have a lodge here, and we have camps up and down  
 23 here. Down to.....  
 24 Q So to the north and to the south of your main lodge?  
 25 A Yes.

- 798 -

1 MR. ROBINSON: Objection, relevance as to what he  
 2 charges.  
 3 MR. LEADERS: It goes to the intent of his participation  
 4 and the intent he's taking the wolves in the area.  
 5 MR. ROBINSON: Well, that -- I don't see the relevancy of  
 6 what he charges. I don't see the relevancy of his personal  
 7 charging for his guiding service.  
 8 MR. LEADERS: The issue of why he seeks these wolves  
 9 is.....  
 10 THE COURT: No, I understand the argument. The objection  
 11 is overruled, you can answer the question.  
 12 MR. LEADERS: Okay.  
 13 Q How much do you charge for your moose hunts, or have you  
 14 charged -- did you charge in 2003 and had you I guess  
 15 reached any agreements with your clients in 2004 for  
 16 these moose hunts in 19-B and C?  
 17 A 11,000.  
 18 Q Per client?  
 19 A Yes.  
 20 Q What was your success rate in 2003?  
 21 MR. ROBINSON: Objection. Success rate at what? It's  
 22 not clear.  
 23 MR. LEADERS: Sure, I'll.....  
 24 Q The success rate for these eight or nine moose hunters  
 25 in 19-A or B that you guided out.....

- 797 -

1 Q Okay.  
 2 A Right in this area here.  
 3 Q Okay.  
 4 A We do some caribou hunting out -- out over here, and  
 5 primarily just right in this area.  
 6 Q Most -- Mr. -- and you've been hunting out there for how  
 7 many years, this area?  
 8 A Gosh, I think -- I think since 1989.  
 9 Q Okay. And you've testified earlier that you've been  
 10 monitoring the wolf populations and packs in this area?  
 11 A Yes.  
 12 Q Okay. I assume it -- because it greatly affects your  
 13 guiding operations, would that be fair to say?  
 14 A It affects the moose resource, the caribou resource,  
 15 yes.  
 16 Q Which would then affect your guiding? You know, your --  
 17 the game that you're going after with these clients?  
 18 A No -- no doubt.  
 19 Q And -- Mr. Zellers testified yesterday it's been his  
 20 experience a lot of the game that you end up -- the  
 21 moose you end up targeting are from -- come in from the  
 22 Swift River area, is that correct?  
 23 A Yes, but there's another guide that -- that guides in  
 24 the Swift River drainage, and we do not guide in the  
 25 Swift River drainage. We guide the highlands to the

- 799 -



1 north, highlands to the south. Most of the moose that  
 2 we take winter up high. And some of the low lands the  
 3 moose will go down on the rivers where the overflow is  
 4 and they'll winter along the river. So the moose that  
 5 actually winter in here we do not necessarily hunt, but  
 6 -- anyway, hopefully that clarifies it.  
 7 Q Well, I guess because Mr. Zellers indicates some of  
 8 these moose from around here you guys do. You don't  
 9 directly hunt the Big -- or the Swift, excuse me,  
 10 but.....  
 11 A That's correct.  
 12 Q ....you would have -- take some animals from that --  
 13 that would come from that area?  
 14 A The likelihood is, yes, that we do, but I would say that  
 15 the portion of them that we take are fairly small.  
 16 Q Okay. Let's talk about now -- number 6 here, in this  
 17 square, does that fairly represent where your lodge is?  
 18 A Yes, it does.  
 19 Q Okay. So it's your lodge up here. This indicates  
 20 McGrath on the map, is that correct?  
 21 A Yep.  
 22 Q Okay. So McGrath is essentially northwest -- north and  
 23 west, I guess?  
 24 A North -- yes, that's.....  
 25 Q Okay. From -- approximately how far from your lodge to

- 800 -

1 McGrath by air?  
 2 A I have never plotted it out exactly, but I think it's  
 3 about 80 miles.  
 4 Q Okay. Do you know the distance from your lodge to, I  
 5 guess, this here, would you agree, is not exact but  
 6 fairly represents the permit boundary areas as far as  
 7 predator control permit you were.....  
 8 MR. ROBINSON: Why don't you put a dot, because that's  
 9 not going to show up on the record. That's the southern  
 10 boundary, southeastern boundary, what one are you talking  
 11 about?  
 12 Q Does this fairly represent the western boundary of the  
 13 predator control permit area that you participated in?  
 14 A Yes.  
 15 Q This very disjointed line or -- represent the southern  
 16 boundary?  
 17 A Yes.  
 18 Q And this line here the eastern boundary of that?  
 19 A Yes.  
 20 Q Okay. So point seven, does that at least somewhat  
 21 fairly represent the closest point to the permitted  
 22 areas from your lodge?  
 23 A Yes.  
 24 Q Do you have any idea of the distance?  
 25 A I can guess. I would say if it's 80 miles to McGrath,

- 801 -

1 it's probably 50 miles.  
 2 Q Okay.  
 3 A 45.  
 4 Q Okay. Somewhere in that area? Okay, I'm not asking you  
 5 to be exact. Now the -- you've talked about several  
 6 wolves that you and Mr. Zellers took. And actually,  
 7 before we get there I want to -- I think we need to  
 8 discuss a few other things, so go ahead and have a seat,  
 9 we'll come back to the map in a bit.  
 10 (Pause)  
 11 Q Now you have been actively involved in and interested in  
 12 the wolf predator control program, or issues, in the  
 13 state of Alaska, correct?  
 14 A Yes.  
 15 Q We've heard testimony from both Mr. Spraker, from  
 16 yourself, you've actually drafted some proposals for the  
 17 Board of Game?  
 18 A Yes.  
 19 Q It focused on liberalizing seasons, hunting and  
 20 trapping, as well as limits.....  
 21 A Yes.  
 22 Q ....for the taking of wolves? As well as you've been a  
 23 strong advocate for the aerial shooting of wolves,  
 24 predator control?  
 25 A Yes.

- 802 -

1 Q Your -- you've been -- I assume you've been a proponent  
 2 then as a guide, guides need to be proactive in this  
 3 issue?  
 4 A I think that's fair to say, yes.  
 5 Q The -- and why is that? Or why have you been involved  
 6 and why is it that you feel you, personally, need to be  
 7 proactive in this?  
 8 A It's a resource that I grew up on, and -- or grew up  
 9 having and want to have my kids grow up and have it  
 10 also. I mean I could just turn my back on it and  
 11 exclusively hunt brown bear, that is perfectly capable  
 12 of doing. But a healthy moose population is something  
 13 that is one of the best benefits that this area can  
 14 have. I don't see how there could hardly be a better  
 15 resource to have.  
 16 Q Okay. So I guess your interest is the moose population.  
 17 You said that it's a resource you grew up on, you're  
 18 talking about the moose?  
 19 A Yeah, moose -- I grew up eating moose and hope to die  
 20 eating moose. It's what I eat.  
 21 Q You said you don't personally hunt any more?  
 22 A That's correct.  
 23 Q I mean you can't legally trap moose, correct?  
 24 A Nope.  
 25 Q Get your meat where then if you're not hunting?

- 803 -

1 A Our hunters that do not -- or most of our hunters do not  
 2 take meat home, so all that meat I eat. They transfer  
 3 it to us. My wife and kids eat.  
 4 Q So the....  
 5 A The -- the people that work for me eat it, we give much  
 6 of it away to people that need it.  
 7 Q So these people are paying 11,000 bucks for a hunt.  
 8 they're looking for the trophy, not the meat?  
 9 A That is correct.  
 10 Q And you don't just waste the meat, you make sure someone  
 11 uses it? Or hope....  
 12 A Or me.  
 13 Q You give it away hoping that others will use it?  
 14 A We do not waste meat.  
 15 Q Now your -- you talked -- and I asked you a little bit  
 16 of questions but you said you talked with -- or you --  
 17 when Mr. Robinson was asking you questions, you've done  
 18 some of your own surveying and tracking of the moose --  
 19 or these wolf populations. Has that included this pack  
 20 on the Swift River that you and Mr. Zellers shot five  
 21 wolves out of?  
 22 A I would assume so. In these areas they -- I don't know,  
 23 I've seen packs get big, split up, packs exchange  
 24 territories. It's kind of a dynamic thing. From one  
 25 year to the next. They are not the same. They can

1 change dramatically, so I just know where there  
 2 generally will be a pack and their general range, and  
 3 generally what they're going to do, yes.  
 4 Q That pack that you and Mr. Zellers -- so you were well  
 5 aware of that pack there on the Swift River that you and  
 6 Mr. Zellers took five wolves out of?  
 7 A Yes.  
 8 Q You were well -- I assume you were then pretty well  
 9 aware of their territorial area as well?  
 10 A It -- like I said, it changes. Different packs will  
 11 move, come and go, but yeah, that pack I -- exact idea  
 12 but, you know, I can....  
 13 Q Primarily up and down the Swift River? Along that  
 14 river, right?  
 15 A Yes, and that same pack had just come from essentially  
 16 right just -- just south of Lime Village. And I mean  
 17 just merely a mile or two away from the village from  
 18 essentially the Stony River. They cross -- there's a  
 19 low land kind of crossing where -- where they cross and  
 20 then they work the Swift and then they go back toward  
 21 Lime Village.  
 22 Q So that pack there primarily -- and we're not saying it  
 23 might not be an anomaly, but they -- primarily their  
 24 territory doesn't affect the McGrath predator control  
 25 permit boundaries? They don't range into there

1 primarily?  
 2 A I would say as a whole, probably not. Many -- but I --  
 3 there's no doubt that as the moose population declines  
 4 the packs -- I mean from what I've seen the packs stray  
 5 farther and farther, and farther, and that's one thing I  
 6 did notice that, you know, when we had a healthy moose  
 7 population the packs, especially when the snows got  
 8 deep, they would camp out on moose and really not move a  
 9 whole lot during the winter. You know, in these days  
 10 now wolves range many times further than what they used  
 11 to.  
 12 Q Okay. The -- so based on your interest in protecting  
 13 this resource, the moose that you rely on, it's more for  
 14 -- well, primarily a commercial aspect, your livelihood  
 15 as a guide. To some extent as well as you've indicated,  
 16 you eat the moose. That's why you became involved in  
 17 the program?  
 18 A I became involved in the program because I don't want to  
 19 see the moose resource, population go away. You know, I  
 20 can -- you know, you can make it seem like it's just a  
 21 commercial operation, and in a sense I have, you know, a  
 22 stake in that; but a healthy moose resource benefits  
 23 everybody out here. And I -- I'm not willing to turn my  
 24 back on it and not have my kids be able to go out and  
 25 hunt moose. I just won't do that.

1 Q But you don't hunt moose up in 19-D east?  
 2 A I may. My daughters might.  
 3 Q Years and years from now? Only three years old?  
 4 A Yeah. You know what. She wants to go hunt moose right  
 5 now. Every day she asks me, daddy, take me moose  
 6 hunting.  
 7 Q Okay. Have you ever hunted moose in 19-D east?  
 8 A I have never, not myself, no.  
 9 Q So you personally didn't have, at the time you applied,  
 10 a direct interest or connection to the moose population  
 11 or wolf population in the predator control zone?  
 12 A Like I told you, what happens there affects everything.  
 13 Q Okay. So you applied for the predator control program,  
 14 and....  
 15 MR. LEADERS: May I approach with....  
 16 MR. ROBINSON: This is on the table (indiscernible). Oh,  
 17 no, that's a different one.  
 18 Q Exhibit 23, correct?  
 19 A (Pause)  
 20 THE COURT: Was that a yes?  
 21 Q Is that the exhibit number, 23?  
 22 A Yeah, 23. Yes.  
 23 Q Okay. And that's -- is that the application you filed  
 24 with the Department of Fish and Game to participate in  
 25 the predator control program?

1 A Yes, it is.  
 2 Q Okay. And it was out of that hope of controlling the  
 3 wolves?  
 4 A Yeah, it was out of the hope of -- of bringing some sort  
 5 of balance back to the moose and wolves, yes.  
 6 Q Okay. You were at the -- after you applied and you find  
 7 out -- you get a call from fish and game was it, in  
 8 February of 2004?  
 9 A I believe so. Like I said, I was in Pennsylvania at the  
 10 time they called, yes.  
 11 Q Okay. What were -- and down in Pennsylvania you were  
 12 attending a sportsman's show and picking up some  
 13 airplanes or.....  
 14 A There was a wrecked airplane that I was looking at, yes.  
 15 Q Okay.  
 16 A And there was a sportsman's show there, yes.  
 17 Q The sportsman's show you were there -- then you go to  
 18 those throughout the year of winter to advertize and --  
 19 for clients, is that correct?  
 20 A Yes, I do.  
 21 Q At that time you went to the sportsman's show in  
 22 Pennsylvania to advertize for clients?  
 23 A Yes.  
 24 Q Do you advertize for clients for your moose hunts out in  
 25 19-B and C?

- 808 -

1 A I do, but like I said we're -- you know, cutting back,  
 2 but yes we do.  
 3 Q Okay.  
 4 A And we have -- I mean we have in the past and we, you  
 5 know, hope to in the future, but that's not looking  
 6 likely.  
 7 Q And so you've -- and so at that show in Pennsylvania you  
 8 were attempting to book clients for to hunt -- hunt  
 9 moose. I assume this fall, is that -- or whatever?  
 10 A It's possible. Like I said, we're -- we're doing more  
 11 brown bear than anything else now. Just because the  
 12 resource is, you know, it.....  
 13 Q Well, let me ask -- I guess that does raise one question  
 14 I forgot to ask. You said about eight or nine clients  
 15 in 2003. You had booked you thought around seven in  
 16 2004. What historically would have been the numbers of  
 17 clients you've taken to hunt moose out in 19-B and C?  
 18 Years prior to 2003?  
 19 A I would say that on average to take good care of the  
 20 clients and not put on a strain on anything we would  
 21 take -- well, my wife would probably know this better  
 22 than me, but probably about, oh, 11 moose hunters.  
 23 Maybe 12. That was, you know, years ago when, you know,  
 24 before things started going downhill.  
 25 Q Okay. Now -- so you've reduced, you know, like on your

- 809 -

1 average by maybe a couple a year?  
 2 A Yeah. I guess I would like to point out that the guide  
 3 I started working for there at one time used to take  
 4 almost 30 hunters.  
 5 Q And that was before you took over the.....  
 6 A I thought -- that was when I was working for him and I  
 7 thought that was way excessive.  
 8 Q You -- your guiding operations are -- you're based out  
 9 of Soldotna, isn't that correct?  
 10 A That's my home, yes.  
 11 Q It's your home, you have -- do you consider that your  
 12 base? I mean business office, that type of stuff.  
 13 Where you keep most of your gear?  
 14 A Yeah. The lodge that we have out in Unit 19, that's  
 15 kind of also a base also, but for communication for  
 16 contacting people, yeah, I would say Soldotna is our  
 17 base for that.  
 18 Q What all do you have at your Soldotna base then?  
 19 A We have an apartment that's built in the back of the  
 20 hangar, you know, a couple sheds. And actually been  
 21 working on a cabin from a beetle killed tree that the  
 22 beetles came through and killed. And I have a runway.  
 23 Q Okay.  
 24 MR. ROBINSON: What's the relevance of this?  
 25 (Whispered conversation)

- 810 -

1 MR. LEADERS: May I approach the witness, Judge?  
 2 MR. ROBINSON: Yeah, take your time (indiscernible).  
 3 THE COURT: Well, how much longer do you have, Mr.  
 4 Leaders?  
 5 MR. LEADERS: I guess we could take a break, we can do  
 6 this. We've been about an hour. If you want to take a  
 7 break, that's fine.  
 8 THE COURT: Well, I'm debating. It is kind of the lunch  
 9 hour.  
 10 MR. LEADERS: Oh.  
 11 THE COURT: How much longer do you have? Should we take  
 12 a lunch hour now or.....  
 13 MR. ROBINSON: You've got more to go.....  
 14 MR. LEADERS: I've got a ways to go on cross examination,  
 15 yes, Judge. We'd need a lunch hour.  
 16 THE COURT: All right. Why don't we go ahead and -- I  
 17 have a hearing at 1:00 o'clock, so that's why I'm somewhat  
 18 concerned. I have to make sure we're not working at 1:00  
 19 here.  
 20 MR. ROBINSON: I asked you that yesterday.  
 21 THE COURT: Let's go ahead and take the lunch hour now.  
 22 I know you've only been here since 10:00 but I know you all  
 23 were at the airport much earlier this morning, so I'm sure it  
 24 must be getting close to lunch hour. Let's plan to be back  
 25 at 1:30, to start up at 1:30 promptly. Okay. Don't talk to

- 811 -

1 each other, don't think about anything, have a nice lunch.  
 2 We'll see you here back at 1:30. Off record.  
 3 (Off record)  
 4 THE COURT: All right, we're back on record. Sorry.  
 5 Ladies and gentlemen, I apologize. My status hearing, we  
 6 couldn't find an attorney so my hearing started late and I  
 7 just finished a minute ago. I apologize for my delay in  
 8 getting here, but I'm not usually last, so hopefully you'll  
 9 forgive me this time. All right, gentlemen, we ready to  
 10 continue?  
 11 MR. LEADERS: Right.  
 12 THE COURT: Okay. Mr. Haeg, I need to remind you that  
 13 you are still under oath.  
 14 A Okay.  
 15 THE COURT: All right. Mr. Leaders, you want to  
 16 continue, please.  
 17 MR. LEADERS: Thank you, Judge. Can I approach the  
 18 witness?  
 19 THE COURT: Sure.  
 20 MR. ROBINSON: I don't have any objection if you use  
 21 (indiscernible). You can have him identify (indiscernible).  
 22 (Whispered conversation)  
 23 Q Mr. Haeg, I'm going to have you look at a few exhibits.  
 24 They're going to be Exhibits 84 through 89. First, I'll  
 25 just have you look at them real quick and then we'll go

- 812 -

1 through them.  
 2 A Okay.  
 3 Q Just make sure -- see if you know what each of them are.  
 4 A (Pause)  
 5 Q Okay. Thank you. We'll start with Exhibit 84, correct?  
 6 A Yep.  
 7 Q Okay. What does that depict?  
 8 A My apartment hangar.  
 9 Q Okay. And that's the one -- when we left off, that's  
 10 what we were beginning to discuss. Your kind of central  
 11 base or main base of operations or base, at least is out  
 12 of Soldotna, that location?  
 13 A Yeah, that's where I base out of for flight seeing and  
 14 herring spotting and other things also. But it's also  
 15 where we base for our guided hunts.  
 16 Q Take your planes both in and out of that place, correct?  
 17 You've got.....  
 18 A Yeah, and people come out and we -- like I said, take  
 19 them flight seeing off of our runway, and bear viewing  
 20 and stuff like that.  
 21 Q Okay. There's a lake right there you can -- I know in  
 22 the winter you can use the skis to go off of, or the  
 23 floats in the summer?  
 24 A Yeah. Well, when I built the place I was into herring  
 25 spotting, and I needed a place to go on floats for going

- 813 -

1 down to Sitka to spot herring, so -- and we continued  
 2 from there to Prince William Sound, Cook Inlet, Togiak.  
 3 (indiscernible) and that's what financed that hangar,  
 4 had it built before I ever bought my guiding business.  
 5 Q Your -- you also have a runway then out there for wheel  
 6 runway, right?  
 7 A Yeah, built the wheel runway so I could switch my planes  
 8 on and off the floats by myself in my hangar because you  
 9 come back from Sitka, hit Prince William Sound on  
 10 floats. Then we had to go to Togiak on wheels, had to  
 11 be able to switch on and off. Sometimes in a matter of  
 12 hours, so I wanted to buy a piece of land, build a  
 13 building that I could operate and -- and do my own work  
 14 on my planes. Also spotted salmon out in Cook Inlet.  
 15 Flew off of Brown's Lake on floats.  
 16 Q When did you used to do that type of stuff?  
 17 A I did it up here until fairly recently. The price  
 18 dropped out of herring in about '90 -- '99 or so.  
 19 Salmon spotting just opened up again. Now I'm thinking  
 20 about getting back into it, so.....  
 21 Q So you've also done all that stuff then in conjunction  
 22 with your guiding?  
 23 A Yes.  
 24 Q You've been guiding since the 80's, right?  
 25 A Yeah, but when I first started I was working for another

- 814 -

1 guide, paying me peanuts, flying his plane. You  
 2 know.....  
 3 Q How long have you been flying your own plane and  
 4 guiding?  
 5 A Flew his plane and stuff, gosh -- started in I think '80  
 6 -- approximately -- I bought him out I think in like '90  
 7 -- gosh, I think it would be like '90 -- man, '92, '93.  
 8 I don't know.  
 9 Q Okay.  
 10 A I -- you know, I'm not a good chronological.....  
 11 Q So that (indiscernible).....  
 12 A .....order person. I just jump through stuff.  
 13 Q So for the last 12, 13 years or so at least then it's  
 14 been flying your own plane for the guiding?  
 15 A Yeah. But it took me years to -- to, you know, poured  
 16 all the money back into stuff, used all my resources  
 17 from, you know, the money I made herring spotting and  
 18 stuff, commercial fishing. I continued to do that for  
 19 quite a while with my folks in the summer. And I'd, you  
 20 know, go guiding and stuff but -- and then in spring  
 21 times back before I really got into guiding big time,  
 22 you know, I made -- when the herring prices were really  
 23 up I did really well. I was buying great boats, we  
 24 went.....  
 25 Q Okay. Let's go.....

- 815 -

1 A .....to a lot of places, and did really well.  
 2 Q What percentage of your income is your guiding?  
 3 A Right now it is -- I'd say it's about 80 percent guiding  
 4 right now. The other 15 or 20 percent is flight seeing,  
 5 bear viewing.  
 6 Q And how long has it been this approximately 80 percent  
 7 or more?  
 8 A Well, let's see. I took and started -- gosh, I don't  
 9 even remember too -- too well when that happened. I'd  
 10 say about the last three or four years we started  
 11 getting out of. You know, the fishing industry, it --  
 12 you know, wasn't doing very well. We're -- we were --  
 13 we were just building up our flight seeing business,  
 14 doing more and more of that around the local area. More  
 15 tourists coming.....  
 16 Q (Indiscernible).....  
 17 0455  
 18 (Tape change)  
 19 4MC-05-20/Side A  
 20 0455  
 21 THE COURT: Go ahead, Mr. Leaders.  
 22 Q So at the same time you're decreasing the number of  
 23 clients you're taking on moose hunting hunts it's  
 24 becoming a greater percentage of your income?  
 25 A We got in -- more into bear hunting. Like I said, the

1 Now that you're getting away from it.  
 2 A Well, I would say moose hunting was always probably only  
 3 about -- I don't even think it was quite half of the  
 4 income we made because we did brown bear hunts and then  
 5 in addition to moose hunts we do black bear, caribou,  
 6 grizzly out there. And so moose isn't just the -- you  
 7 know, the only income we have. And, you know, a lot of  
 8 you people may think that, you know, \$11,000 for a moose  
 9 hunt is a lot. I pay state leases out there. I've got  
 10 a whole pile of guides. The amount of money that --  
 11 that we, you know, spend on those hunts are -- you know,  
 12 quite a bit. And it -- you know, it's not an easy  
 13 business to be in. I'm sure all of you know guides,  
 14 been out hunting yourself, know how expensive it is.  
 15 It's just -- you know, it's not what it's cracked up to  
 16 be.  
 17 Q You -- in addition to -- now this is your I guess  
 18 central base of operations. You also said you've got  
 19 this lodge, right? Trophy Lake Lodge?  
 20 A Yep. Yeah.  
 21 Q Okay. That was.....  
 22 MR. ROBINSON: Did you want to introduce that photograph?  
 23 THE COURT: Well, we've got a (indiscernible).  
 24 MR. LEADERS: I will.  
 25 Q Number 39, is that correct?

1 flight seeing thing is growing by leaps and bounds. I  
 2 mean the first year we did it I had just maybe, I don't  
 3 know, 10 or 15. The next year we had, you know -- I  
 4 mean it probably doubles each year. It's something that  
 5 I just do it with my specialized little planes. Two  
 6 people in the back, they can see out really well. Go  
 7 along the mountains. I grew up with animals, I know  
 8 where the black bears hang out above the timber line,  
 9 and where the moose are. Brown bear fish in  
 10 McKilley(ph) River and stuff around there, so as -- you  
 11 know, as I said, as guiding and, you know, some of the  
 12 resources change you have to adapt so I -- you know,  
 13 getting away from having to depend up -- you know, upon  
 14 moose hunting or whatever for our main income, and  
 15 getting into bear hunting, getting into flight seeing  
 16 and as a -- you know, a really -- I mean in the -- like  
 17 three years we've done it it's doubled probably each  
 18 year easily.  
 19 Q Okay, great. Now why don't we're talk -- so you're  
 20 getting away from relying so much on moose hunting? You  
 21 just said it used to be your primary? How long ago was  
 22 that?  
 23 A That's right. I mean you have to change -- if you're not  
 24 adaptable you're going to wash up and blow away.  
 25 Q So for what period of time was it your primary income?

1 A Yeah.  
 2 Q Okay. Is that -- that's a photograph of the main lodge  
 3 out at Trophy Lake?  
 4 A Yep.  
 5 Q Okay.  
 6 MR. LEADERS: And I guess I'll seek to admit 84 at this  
 7 time. That's the.....  
 8 MR. ROBINSON: No objection.  
 9 THE COURT: 84 will be admitted.  
 10 (Plaintiff's Exhibit 84 admitted)  
 11 Q There's also additional out -- or buildings out there at  
 12 the lodge, right?  
 13 A What was that?  
 14 Q There's also additional buildings out at the lodge?  
 15 A Yeah, the guide that I worked for and then bought out he  
 16 had a bunch of pretty old run-down buildings, so I got a  
 17 -- oh, a permit from the state to cut down some trees  
 18 and we -- I built my own lodge. I mean we stayed out  
 19 there and built it, but yes, there are other buildings  
 20 out there. Some of them -- well, I think Trooper  
 21 Gibbens has been out there. Some of them are pretty  
 22 poor buildings, all down.  
 23 Q And you use a couple different planes in coordination  
 24 with your guiding business, correct?  
 25 A Yep. I have the one plane I built back when I was a

1 youngster. I bought as a wreck, and then I bought  
 2 another Supercub, oh, gosh, I don't know, five or six  
 3 years ago and I rebuilt it in my hangar, winter time.  
 4 You know, fixed it up, and yeah.  
 5 MR. LEADERS: May I approach again?  
 6 THE COURT: Uh-huh.  
 7 Q Exhibit 85, correct? Is that the Supercub you bought  
 8 recently?  
 9 A Yeah.  
 10 Q Okay. And Exhibit 26? That's....  
 11 A That's the Batcub.  
 12 Q The Batcub. That's the one you've had for years that  
 13 you.....  
 14 A Yeah.  
 15 Q .....rebuilt a long time ago?  
 16 A Yeah.  
 17 Q Okay.  
 18 A And actually -- I actually had one more plane other than  
 19 that. Actually I've had several others. Had a PA-11,  
 20 flight instructed in for a while. Thought I wanted to  
 21 get into flight instructing and sold it.  
 22 Q So you've had various planes over the years?  
 23 A Yep. And.....  
 24 MR. LEADERS: Judge, may I.....  
 25 A .....had another plane when I was 16.

1 know.....  
 2 Q That was years ago?  
 3 A Yeah, but it was -- you know, there are restrictions on  
 4 it, but there used to not be.  
 5 Q So you've been -- okay. Restrictions on using a plane  
 6 in hunting? And you've been involved in -- if -- or  
 7 when that was permitted?  
 8 MR. ROBINSON: I thought it was trapping was your last  
 9 question.  
 10 MR. LEADERS: It was his comment that it was hunting.  
 11 MR. ROBINSON: No.....  
 12 A Oh, I said it was involved for trapping for shooting on  
 13 the same day airborne.  
 14 Q Right; you said under trapping involved same day and  
 15 then.....  
 16 A Yeah, you had to have a trapping license to -- to do  
 17 that sort of activity, so it is -- it was the only  
 18 activity other than, you know, caribou hunting down in  
 19 Unit 17 and deer hunting across the state that you  
 20 couldn't use an airplane the same day or, you know, or  
 21 shoot animals the same day you're airborne.  
 22 Q Under -- now a wolf, you're well aware is classified as  
 23 both big game and as a fur bearer, correct?  
 24 A Yes.  
 25 Q Okay. And under big game you cannot -- a person who has

1 MR. LEADERS: That's fine.....  
 2 A PA-12 that was a nice plane.  
 3 MR. LEADERS: May I publish Exhibits 84 and 85? Or seek  
 4 to have them admitted.....  
 5 THE COURT: 85.....  
 6 MR. LEADERS: .....and then.....  
 7 MR. ROBINSON: Admit 85?  
 8 MR. LEADERS: Yeah, just seek to have it admitted.....  
 9 MR. ROBINSON: No objection.  
 10 THE COURT: Okay. You can -- 84 and 85 are both admitted  
 11 and you can publish.  
 12 (Plaintiff's Exhibits 84 & 85 admitted)  
 13 Q And so using these planes and you've flown, like I said,  
 14 for -- since you were about 16 or so, and you've used  
 15 these planes, you've flown as part of your guiding  
 16 operation, correct?  
 17 A Yes.  
 18 Q Okay. So you're well aware of there's some very  
 19 specific restrictions on taking game the same day  
 20 airborne, correct?  
 21 A Yes.  
 22 Q For both hunting -- under both a hunting license and a  
 23 trapping license, correct?  
 24 A Yes, the -- the trapping license, however, they -- I was  
 25 involved when it was legal to use a plane and hunt, you

1 been airborne may not take or assist in taking a big  
 2 game animal until after 3:00 a.m. following the day in  
 3 which the flying occurred, correct? And there are some  
 4 exceptions?  
 5 A Yeah, there are.  
 6 Q Caribou, deer?  
 7 A Yeah.  
 8 Q Caribou in certain areas, deer in certain areas, is that  
 9 correct?  
 10 A Yep.  
 11 Q And as a fur bearer you're aware as well that the  
 12 regulation is a person who has been airborne may not use  
 13 a firearm to take or assist in taking a wolf, as well as  
 14 other fur bearers, until after 3:00 a.m. on the date  
 15 following the day in which the flying occurred?  
 16 A Yeah, unless you had a permit for one of the aerial  
 17 shooting programs, or it was, you know, previously.....  
 18 Q Now the programs are specific though to specific areas,  
 19 isn't that correct?  
 20 A Yeah, just like lots of other permits are.  
 21 Q And so the programs -- and you sought to be involved in  
 22 a predator control program, that's what you were  
 23 speaking about?  
 24 A That's true. We applied for and received a permit.  
 25 Q And you're aware, as well, that the laws and regulations

1 about these predator control programs specified that the  
 2 programs or the game management control program was  
 3 limited -- it was designed and limited to a very  
 4 specific geographical area, right?  
 5 A Yeah, we.....  
 6 Q And so any authority you got under the predator control  
 7 program was limited to that area, right?  
 8 A That is correct, yes.  
 9 Q It didn't authorize any behavior outside the area?  
 10 A Yes.  
 11 Q And there were conditions on the permit, one of which  
 12 indicated it was limited to the area?  
 13 A Yep, along with other conditions also.  
 14 Q Right. And so because -- the conditions didn't apply  
 15 outside the area either, right?  
 16 A Yeah, the conditions that were also there didn't apply  
 17 inside the area either if you violated them.  
 18 Q Well, they applied but you violated them, right?  
 19 A I -- I understand, but being outside the area is a  
 20 violation of the permit, or any of the other conditions  
 21 is a violation of the permit even inside the area.  
 22 Q You weren't allowed to fly outside the area?  
 23 A You were allowed to fly outside the area but when you  
 24 were inside the area hunting you had conditions that you  
 25 had to abide by also.

1 Q So it sounds like you perceived this here predator  
 2 control program, did you perceive it to -- and the  
 3 permit you obtained to give you just free rein or  
 4 general predator control ability wherever you desired to  
 5 use it?  
 6 A No, it was meant to be used inside the area.  
 7 Q Right, and if you didn't -- if you weren't inside the  
 8 area you weren't involved in predator control through  
 9 the state of Alaska, were you?  
 10 A Yes, I was. The -- when we went out there our intent  
 11 and purpose was to go out and do predator control, get  
 12 rid of some of the wolves so that there can be more  
 13 moose for subsistence, for guides for sport hunters and  
 14 everything. So our.....  
 15 Q So it's your.....  
 16 A .....intent when we went out, when we obtained the  
 17 permit our intent was to go out there, stay inside the  
 18 area, do our job and help -- help with the program and  
 19 make it a success so that there's moose here for  
 20 everybody. I mean that is what our whole intent was,  
 21 it's what we came here to do. Okay, we fly around. We  
 22 put in hours -- I mean it's hard to explain to someone  
 23 flying around when you see so few moose, so many dead  
 24 moose, and so many wolves, it -- it -- the frustration,  
 25 it just skyrockets because I know -- you know, I have

1 enough experience to go around and see the way it should  
 2 have been, or the way it used to be.....  
 3 Q And that frustration caused you to lose control when it  
 4 came to the predator.....  
 5 A It's.....  
 6 Q .....control program?  
 7 A It's -- you know, it had to be something, and I think  
 8 frustration at the years of inactivity, them having  
 9 predator control programs on the books for eight or nine  
 10 years and waiting that eight or nine years, and the  
 11 progression of things. You know, they should have  
 12 started something back before it hit rock bottom. I  
 13 mean it's.....  
 14 Q And they didn't, and so.....  
 15 A You know.....  
 16 Q .....you took it into your own hands?  
 17 A No, I didn't. I came out to.....  
 18 Q Wait a second, Mr. Haeg. Because you got a permit that  
 19 authorized you to take wolves in this area right here,  
 20 isn't that correct?  
 21 A Yes.  
 22 Q You took wolves -- how many wolves did you take in the  
 23 predator control area?  
 24 A Well, we followed a group out and we killed one that  
 25 wasn't in the area, so we did not take any inside the

1 area.  
 2 Q How many wolves did you kill under what you're saying  
 3 with the intent of predator control?  
 4 A Nine.  
 5 Q Now Trooper Gibbens says, you know, I don't like the  
 6 wolves around here, I'd like to engage in predator  
 7 control and goes up, flies and shoots wolves anywhere,  
 8 even in the permit area or out, and doesn't have a  
 9 permit, is that okay because he's engaged in predator  
 10 control because that's his intent?  
 11 A No, it's not okay. What I -- what we did.....  
 12 Q Well, that's what you're telling us.....  
 13 A No, what we did was wrong, and I understand that.  
 14 There's no getting around that. I am -- I am guilty of  
 15 same day airborne shooting wolves, but I did it-- I  
 16 didn't go out with the intent of doing something other  
 17 than following the -- the permit. I mean.....  
 18 Q I mean I guess I've got to ask you about that, because  
 19 you said you took nine wolves all of them outside the  
 20 permit area. And how many days did you actually fly in  
 21 the permit area to take wolves? Three days, correct?  
 22 A I believe so, yes.  
 23 Q One of those days because that's the day you had to go  
 24 to McGrath to pick up the permit. You flew around in  
 25 the area a little bit and you flew through the permit

1 zone back to your lodge, right?  
 2 A Yes.  
 3 Q On that day you took a wolf outside the boundaries,  
 4 correct?  
 5 A Yeah, that we followed from inside the boundaries.  
 6 Q It was -- you -- okay. I think when you testified when  
 7 Mr. Robinson was asking you questions you said you came  
 8 across kind of a partial wolf kill. You said like a  
 9 wolf -- a leg bone or something.....  
 10 A Yes.  
 11 Q .....out on the river?  
 12 A Yeah.  
 13 Q And you met -- you said you knew it was near the  
 14 southern boundary, right?  
 15 A Yeah.  
 16 Q You knew it was near the southern boundary but you  
 17 contin -- you didn't see wolves right there. You saw  
 18 lots of tracks?  
 19 A Yeah.  
 20 Q You continued flying south out of the boundary. Or you  
 21 continued flying south along the river?  
 22 A Yeah.  
 23 Q When you picked up -- you find the wolves, there's three  
 24 of them, right?  
 25 A Yes.

- 828 -

1 that's something you come up with.....  
 2 A I mean if you had to make the summation, but it was -- I  
 3 don't know exactly how far from the -- the kill we flew  
 4 before the boundary came up. I mean we looked -- when  
 5 we seen the kill we were inside the area, because we  
 6 circled there looking for awhile.  
 7 Q And that's the moose kill?  
 8 A Yep. And then, you know, wolves aren't here, let's look  
 9 for them. So we set off down the river.  
 10 Q Okay. And so you do that and then when you see the wolf  
 11 then, even though you know you're at the southern  
 12 boundary there's no discussion about are we in the  
 13 boundaries or not. It's you see a wolf, you and Tony,  
 14 whatever discussion there was, it's the decision is  
 15 made, get ready, we're setting up, we're going to take  
 16 this wolf?  
 17 A Yeah. I remember saying what do you think. And Tony's,  
 18 you know, I mean we're both -- you know.....  
 19 Q So you had doubts then at that time? And.....  
 20 A And then you look and there's -- this is your job that  
 21 you're -- you're essentially an agent for the state to  
 22 go out and address this problem, and here's your job in  
 23 front of you running down and they're -- you know, you  
 24 only have a minute or two.  
 25 Q Okay. Wait a second. Your job is to take the wolves

- 830 -

1 Q So you knew at the time -- and so how -- and it was,  
 2 what, a couple miles or so you flew from the time you  
 3 saw the partial wolf kill -- or moose kill to.....  
 4 A Yeah, it was a ways from the moose kill to the boundary.  
 5 I mean we -- you know, we had the map out, it's hard to  
 6 exactly tell where you're on the map by watching the  
 7 GPS, and when I seen the wolves, you know, you're -- I  
 8 don't know, it -- you have just a couple moments to make  
 9 up your mind if you're going to try to get them or not.  
 10 They're, you know, heading to the woods, and we -- I  
 11 honestly thought we were inside the area when we took  
 12 the wolf.  
 13 Q Even though you knew that the kill -- the partial kill  
 14 was near the boundary, you go further.....  
 15 A It was a ways. I mean it was several miles, four miles,  
 16 five miles, six miles I think into the area I know. And  
 17 we just -- you know, you're flying along in a plane at  
 18 90 miles an hour.....  
 19 Q Well, I mean I guess I'm trying to make.....  
 20 A You know, a mile goes by pretty quick.  
 21 Q I guess I'm trying to make sense. Now you said it's  
 22 four, five, six whatever miles inside the boundary you  
 23 find a kill and you go down another couple miles and you  
 24 take the wolf, but the wolf is clearly out of the  
 25 boundary by a couple miles. Isn't that -- isn't that --

- 829 -

1 inside the boundary, right?  
 2 A Yeah.  
 3 Q So a pretty key determination in doing your job or not  
 4 is, is this wolf in the boundary? Within the  
 5 boundaries, correct?  
 6 A Yes, it is.  
 7 Q Okay. But there was -- although you had doubts, you  
 8 said you and Tony kind of did the, do we go for it or  
 9 not, the decision was made. You go for it?  
 10 A Yeah, if you want to look at it that way you can, and  
 11 that's probably a pretty fair way of looking at it.  
 12 Q Okay. That wolf was taken to the lodge that night and  
 13 that's -- when is it that you confirm with GPS  
 14 coordinates that it was outside the boundary?  
 15 A I don't think it was -- was until the next day. I don't  
 16 think that we actually, you know, marked on a -- or pa  
 17 -- plugged it into the GPS and actually plotted it out  
 18 on the chart to see exactly if we were there, you know,  
 19 on the boundary or not, until the next day. The next  
 20 day we came back, we went up there.....  
 21 Q So the next day you -- so the first day you get the  
 22 permit and you take this wolf. That's the one -- that's  
 23 one of the three days you're in the permitted area?  
 24 A Yes.  
 25 Q The next day you head back to the permitted area, right?

- 831 -



1 A Yes.

2 Q But before you get to the permitted area, approximately,

3 what, 20 some miles outside the permitted area you saw

4 two wolves, right?

5 A Yeah. Well, we were going back up to, you know, conduct

6 predator control in the area, you know, flying back up

7 there. We find tracks further up Big River. You know,

8 a ways off there's a moose kill, so we look at it.

9 We're like, yep, wolves have killed another moose. And

10 we -- we look at the tra -- where the tracks are going

11 and they're headed back into 19-D east. They're --

12 they're -- they're heading north from this -- they had

13 come off the river, killed a moose, hung around there,

14 and we start following the tracks and then they're

15 headed back north and when we see them it just -- you

16 know, you're -- I don't know, it's -- it's -- we screwed

17 up, there's.....

18 Q Let me ask you....

19 A .....no doubt about that, but it wasn't that -- we went

20 out there with the intentions to help with the program

21 and that's what we had on our mind. We were trying to

22 save moose for subsistence users, for everybody out

23 there. I mean, you know -- and.....

24 Q To help yourself, too, right? I mean the wolves in

25 these areas are.....

- 832 -

1 A It isn't just myself. I mean it's everybody out there.

2 There's hunters that stayed over that -- that depend

3 upon those moose for subsistence, for -- for guiding. I

4 mean there's a whole pile of guides everywhere. There's

5 people that sport hunt from the state, and there's

6 people that come up from the states and go -- if we

7 don't have a moose resource everybody is going to

8 suffer.

9 Q Okay. These wolves are -- these wolves in particular and

10 these moose populations in particular -- I mean you're

11 talking about on the second day, you haven't even told

12 us yet. You got back into the boundaries at some point

13 on that second day, right?

14 A Yeah, and we looked a long, long time.....

15 Q But it's only.....

16 A .....and we didn't find a wolf in the area. I mean.....

17 Q Wasn't much success in the permitted boundaries, were

18 there -- was there for you?

19 A Well, we looked. We went -- you know, we flew a lot of

20 hours up there looking, doing, you know, what we.....

21 Q Can you tell me, what do you mean a lot of hours. How

22 many hours did you spend in the permitted area?

23 A I figured it up. We spent -- I don't know if I figured

24 up exactly, but I think we spent 15 or 16 hours,

25 probably.

- 833 -

1 Q Over three days? Over the three days you're in the

2 permitted boundaries you spent 15 or 16 hours?

3 A We -- I mean if you look at it we flew -- flew up there

4 to pick up the permit. I mean we don't have a permit

5 yet, but it's.....

6 Q Right.

7 A .....you know, we fly up there. We probably spent two

8 -- two or three hours that first day in the area. The

9 second day when we were headed back to the area I think

10 we probably spent -- we had a lot of fuel, full tanks,

11 went up there, had gas in the back so we could dump in

12 fuel.

13 Q So how many hours did you spend inside the permit area

14 the second day?

15 A I don't know, I would say, you know, we had 60 gallons

16 in the wings and we probably had, you know, 20 gallons

17 in the back, so we had 80 gallons. We probably could

18 have spent six hours probably. Five hours.

19 Q So you could have but you don't know how much you really

20 spent out there?

21 A We did a lot of -- I mean we came in -- well, we came in

22 the second day and we went up and we went -- I mean and

23 we zigzagged back down. I think we down the Windy Fork

24 for a good portion of it, but we -- I don't know, up --

25 where was it -- by Takotna or -- no, by Medfra we found

- 834 -

1 tracks there. We tried finding the wolves. We did a

2 lot of circling back and forth. There were a few moose,

3 I think, around that area, and we spent a lot of time.

4 We spent as much time as we could in the area and just

5 have enough gas to get back to our lodge. I mean we

6 burnt virtually all of our gas inside the area there.

7 Q Okay. On the way up -- have you seen sites A and B that

8 Mr. Zellers put on the map?

9 A Yes.

10 Q Is that where, in fact, you took those two wolves?

11 A Yeah, we were coming up, found tracks, went over, found

12 the kill, and where they were going was headed back --

13 you know, back north. So.....

14 Q Okay. In fact, they were heading back north but they're

15 still approximately -- can you tell me about how far

16 they were? Want to show me how far they were outside

17 the permitted boundaries?

18 A I don't know, there's no legend on it but.....

19 Q I think you have (indiscernible) over here.

20 A It's actually on the bottom, but it's, you know, I don't

21 know. I remember it was maybe 20 miles.

22 Q Okay. And those three wolves -- part of the permit

23 requirements was that you provide GPS coordinates for

24 the kill sites, right?

25 A Yes.

- 835 -

1 Q And you report other information. You know, when they  
2 were taken, where the wolves -- well, the colors, that  
3 type of stuff?  
4 A Yes.  
5 Q You called in a report to fish and game, Al Root, on  
6 March 9th, isn't that correct?  
7 A I believe so, yes.  
8 Q You reported you killed three gray wolves, because these  
9 were all three gray wolves, right?  
10 A Yes.  
11 Q You reported three gray wolves killed at a GPS location  
12 of a mile -- a few miles inside the permit boundaries,  
13 isn't that correct?  
14 A Yeah, it was.....  
15 Q On Big River?  
16 A Yeah. We -- we kind of wanted to report where that  
17 moose kill was to -- you know, to.....  
18 Q So you lied about where they were taken?  
19 A That is correct.  
20 Q You did that because you wanted to be successful in this  
21 program, right? Initially?  
22 A No, I did not.  
23 Q You didn't?  
24 A I wanted the program to be a success.  
25 Q And part of that would have successful participants. If

- 836 -

1 here?  
2 A Yes.  
3 Q Okay. This is Exhibit number 20, right?  
4 A Yes.  
5 Q That's the permit you obtained from Mr. Root on March  
6 5th, the first day you went into the control area?  
7 A Yeah.  
8 Q Okay. Mr. Root went over that condi -- that permit with  
9 you?  
10 A Yes, he did.  
11 Q Including the conditions regarding that the permit  
12 itself is only applicable in the permit boundaries?  
13 A Yep.  
14 Q Okay. As well as the reporting requirements?  
15 A Yep.  
16 Q Those types of things. He provided you as well a copy  
17 of number 22, correct? This is 22. Did he provide you  
18 a copy of that?  
19 A This doesn't look like quite the same map, but, yes, we  
20 got one that's like it.  
21 Q Okay. That's not maybe the exact, but similar to that?  
22 A Yeah, it was -- it was more, I think, a fa -- it looked  
23 like a fax or a photocopy.  
24 Q Okay. So maybe not the color copy, but this is.....  
25 A Yeah, and it was -- I think it was smaller, but

- 838 -

1 you were successful the program is successful, right?  
2 A I could have cared less who was the participants. When  
3 I was at the Board of Game meeting in Anchorage, you  
4 know, I was -- I wouldn't say inundated, but there was  
5 lots of people that came up to me and said this program  
6 has been going, they've taken very few wolves, you know,  
7 we need to -- you know, we're afraid that if we don't  
8 take more wolves or afraid if more wolves aren't taken  
9 that the program will be seen as a.....  
10 MR. LEADERS: Objection, at this point it's hearsay.  
11 MR. ROBINSON: You asked him for his reason, he's giving  
12 you his reason, that's not hearsay.  
13 MR. LEADERS: That is -- it's his basis.  
14 MR. ROBINSON: It's not -- it's not hearsay.  
15 THE COURT: It's not responsive.  
16 MR. ROBINSON: It was responsive. He asked him why.  
17 MR. LEADERS: No, I asked him if he wanted to be  
18 successful in the program, and he went off.....  
19 A I said no.  
20 MR. LEADERS: .....from there. Right, so it's non-  
21 responsive.  
22 THE COURT: (Indiscernible).  
23 Q The -- you -- at the time you took these three wolves  
24 you were very clear as to the boundaries, is that  
25 correct? Permit boundaries? These three wolves up

- 837 -

1 essentially, yeah, it's.....  
2 Q Did it -- depicted the same area?  
3 A Yeah, it's -- that would be fair to say.  
4 Q Okay. And so you were well aware of the area at the  
5 time you take the wolf that night, or that afternoon or  
6 evening, and when you take the two the next day outside  
7 the permit boundaries?  
8 A Yeah, we knew they were outside the boundaries, but we  
9 were.....  
10 Q Engaged in predator control?  
11 A Engaged in predator control.  
12 Q Because that's what your intent was, right?  
13 A That's.....  
14 Q Okay. You take -- so after you report -- you falsely  
15 report where you took those to Mr. Root, you -- part of  
16 the requirements as well was the -- that you had to seal  
17 the hides from the wolves taken, right?  
18 A Yes.  
19 Q You had to have them sealed through the Department of  
20 Fish and Game. You have to do that with any wolf hide  
21 taken, right?  
22 A Yep.  
23 Q But there was special sealing -- there were special  
24 sealing requirements or at least identification  
25 requirements for wolves taken under the predator control

- 839 -

1 program. right?

2 A Yeah. I think they had, oh, a different tag that they

3 went.....

4 Q Little yellow metal tag that we saw on some of the

5 exhibits here earlier?

6 A Yeah, I think there was some gray ones or -- I think

7 they were gray -- regular (indiscernible).

8 Q They weren't the yellow ones you saw on the hides in

9 here?

10 A Oh, yeah. There were two -- well, the sealing for the

11 wolves they had to be sealed -- essentially sealed

12 twice, so, yeah, there was a metal locking tag. I

13 believe there was a metal locking one that we had to put

14 on or it was the gray one, but when they were sealed

15 again there was a second -- a second tag put on.

16 Q That one was put on by fish and game?

17 A Yeah.

18 Q When it's sealed. Okay. You first understood that you

19 could have, once you reported where you took these

20 wolves, whatever, you could have the hides sealed

21 anywhere. Mr. Root apparently told you the first time?

22 A Yes.

23 Q So after two days of flying in the permit area and

24 taking three wolves outside the permit area some time

25 around March 9th or so you folks -- you and Mr. Zellers

- 840 -

1 head back to Soldotna, correct?

2 A Yeah. Before then we had tried for two more days to get

3 up to the control area.

4 Q But didn't get in?

5 A Yeah, just bad weather and at that time I was getting --

6 I mean I wouldn't say extremely sick, but.....

7 Q You were getting very sick?

8 A .....I was pretty sick.

9 Q Okay.

10 A And the weather got pretty cold and it just -- you know,

11 it's not fun to be out there trying to do stuff when

12 you're sick and it's 30 below zero and windy and snowy.

13 Q You take the hides with you when -- to go back to

14 Soldotna?

15 A Yeah.

16 Q Some time around the 15th you get a call to -- that you

17 need to actually seal those in McGrath, correct?

18 A It was something like that, and I don't know if it was a

19 fax or a call, but we did -- we -- I think it was Al

20 Root that called and said that he had made a mistake and

21 we needed to come back.

22 Q The -- and you don't do that immediately but you do it

23 within the next several days, correct?

24 A Yeah. We're -- you know, busy getting ready for bear

25 season, doing stuff. I don't know, I think I was still

- 841 -

1 kind of sick, wanted to get a little better, so we --

2 you know, we knew we were going to have to come back to

3 McGrath at some point or -- or some -- we would have to

4 get the wolves back here to get them sealed, so -- yeah,

5 we, you know, waited a few days before we came back.

6 Q Come back out to the lodge approximately, what, the 20th

7 of March.....

8 A Yeah.

9 Q It sounds like you guys just fly directly into the lodge

10 on your way out, right?

11 A Yes.

12 Q The 20th, spend the night there?

13 A I think we fly into the lodge and I forget if we spent

14 the night or not. I mean it's been quite a while ago, a

15 long time ago, but I know we.....

16 Q It wouldn't have been.....

17 A I know we tried to -- when we got there we tried to get

18 a hold of somebody to get, you know, that we could meet

19 to get the -- the hides sealed, and, you know, I'm not

20 positive if it was that day or the next day that we, you

21 know, went to McGrath to get the hides sealed.

22 Q So -- okay. You go in -- you actually do have the hides

23 sealed in McGrath, right?

24 A Yes.

25 Q You do that with Toby Boudreau?

- 842 -

1 A Yes.

2 Q So Exhibit 24, do you recognize that?

3 A Yeah.

4 Q Okay. That's -- it's dated the 21st of March, right?

5 A Yeah.

6 Q Does that help refresh your memory then it was the next

7 day that you actually went into McGrath?

8 A Yeah, I guess it would be.

9 Q You didn't immediately go into McGrath though to have

10 those sealed, did you? The -- on the 21st. That's not

11 the first thing you did that day?

12 A No.

13 Q What did you do, or actually in fact that day, that

14 morning you guys got up, you did some stuff around the

15 lodge and then instead of going north, northwest to

16 McGrath to have these sealed, you and Mr. Zellers get in

17 the plane and go south?

18 A Well, if I remember right we tried calling ADF&G in

19 McGrath to see if there would be somebody available to

20 seal the hides. And I don't think that we could get a

21 hold of anybody, so we thought we would burn some time,

22 go look around where I, you know, trap out there and

23 check on camps and -- you know, any time I'm out there I

24 always fly around to look at moose populations, what's

25 going on, how many -- you know, just generally what's

- 843 -

1 going on. I just.....  
 2 Q And those are your guiding camps?  
 3 A Yeah, and.....  
 4 Q Okay.  
 5 A .....some of them are permanent camps that are up year  
 6 around. Sometimes bears get into them. It's just good  
 7 to know what's going on. We'll just fly along, look at  
 8 them. And if we do.....  
 9 Q So you and Mr. Zellers, on the morning of the 21st, have  
 10 time to kill because you haven't got a hold of anyone at  
 11 fish and game, right? To seal them?  
 12 A Correct, yeah.  
 13 Q So you get in your plane, the two of you, and you have  
 14 everything you need to take wolves in the plane, right?  
 15 The guns, whatever you need.....  
 16 A Yeah, because we were planning on flying up to McGrath  
 17 to get them sealed and to -- you know, when we're there  
 18 we've got lots of fuel, we thought we would go do.....  
 19 Q Because you're out there for predator control, right?  
 20 A That is right.  
 21 Q And you got the permit that authorizes predator control?  
 22 A Yeah.  
 23 Q So you've got time to kill because you can't get a hold  
 24 of anybody at McGrath, you're out there for predator  
 25 control and you get in your plane and you fly south?

- 844 -

1 A I mean I would say it's.....  
 2 Q Could you show us on the map?  
 3 A (Pause) This is our camp. We went down south this way  
 4 and this is -- I guess there's a red spot there,  
 5 that's.....  
 6 Q It's marked with a D, is that correct?  
 7 A Yeah.  
 8 Q Okay. Mr. Zellers identified that as where you took a  
 9 wolf on the Stony River.  
 10 A Yes.  
 11 Q You saw three, took one?  
 12 A Yeah.  
 13 Q Tried at two out of the three at least, correct?  
 14 A Yep.  
 15 Q Does that fairly represent where you took that wolf?  
 16 A Yes.  
 17 Q And that was on the morning of the 21st?  
 18 A Yes.  
 19 Q You took it -- it was shot by Mr. Zellers from the air  
 20 while you were flying the plane?  
 21 A That's correct.  
 22 Q As were the first three you had taken back on the 5th  
 23 and 6th of March?  
 24 A Yep, that's correct.  
 25 Q You -- how far was that wolf from your lodge?

- 846 -

1 A We had not been down there to look at camps. We've got  
 2 snare sets down there and stuff, so, yeah, we fly south,  
 3 but it isn't with the intent of, you know, -- you know,  
 4 we're flying south to just look at camps, look at what's  
 5 going on, look for moose. Just -- I mean it's just  
 6 something that I do, year in, year out. I mean I just  
 7 keep track of what's going on if I can.  
 8 Q You don't have any active trap or snare sets or anything  
 9 going on down there that you're checking, right?  
 10 A No, I don't. But I've got sets that are closed. I mean  
 11 they're -- the traps are set off, the snares are -- are  
 12 pulled tight.  
 13 Q Right.  
 14 A And if -- you know, if there's something up or whatever,  
 15 we could, you know, get them up and running. You  
 16 know.....  
 17 Q Okay. So when you guys head south you come across some  
 18 wolves. Three of them, in fact, right?  
 19 A Yes.  
 20 Q All the way down on the Stony River?  
 21 A Yes.  
 22 Q From your camp about how far south was that? And it's  
 23 almost due south, right?  
 24 A I.....  
 25 Q You can go up to the map and show us.

- 845 -

1 A I don't know. You had me look, but I don't know.  
 2 Q Okay.  
 3 A It's -- right around 35 miles.  
 4 Q We can probably find a scale up there. Approximately 35  
 5 miles. Approximately 35 miles.....  
 6 A 40 miles, I don't know.  
 7 Q 30, 35 miles then from your hunting grounds as well?  
 8 A We hunt down to Rock Creek. This would be down to where  
 9 we hunt here.  
 10 Q So, what, about 10 miles maybe from your.....  
 11 A Yeah.  
 12 Q .....hunting grounds? How far was that wolf taken from  
 13 the permit boundaries?  
 14 A I don't know. This is probably 80 miles, I think.  
 15 Q Not sure?  
 16 A (Indiscernible).  
 17 Q Okay. You -- it's -- so the 21st you're out there,  
 18 you've got time to kill -- oh, the -- you still have  
 19 your permit to take wolves under the predator control  
 20 program at that time, don't you?  
 21 A Yes.  
 22 Q And the program is still active up in the permit  
 23 boundary -- within the permit boundaries, correct?  
 24 A Yes.  
 25 Q McGrath is within the permit boundaries, correct?

- 847 -

1 A Yes.

2 Q And you have to go to McGrath to have those three wolves

3 sealed by someone at fish and game?

4 A That's correct.

5 Q And you have time to kill and instead of going -- flying

6 towards McGrath into the predator control area to

7 legally take wolves from the area, you fly to the south?

8 A Like I said, we were -- we wanted to go look at our area

9 that, you know, we just look at the camps, do stuff. I

10 hadn't done that all winter. It's just -- it's

11 something that I do.

12 Q Now when Mr. Robinson was talking with you about that

13 little -- called the fourth wolf you killed at this

14 point, the one way down there on the Stony, you

15 justified it by saying your intent was predator control.

16 That's why you killed it?

17 A That's correct.

18 Q So did your -- when did your intent -- did you turn that

19 intent on and off, because you're saying you didn't have

20 intent for predator control when you left your lodge and

21 flew south, but you do when the trigger is being pulled

22 and you're flying -- by Mr. Zellers, and you're flying

23 down on that wolf?

24 A You know, when you -- I don't know. It -- I guess it's

25 the frustration and everything else. You know, lack of

- 848 -

1 control and to, you know, -- I don't know. Like I said,

2 the frustration out there is -- is beyond, you know.....

3 Q Okay. The -- because I mean one of the things you had

4 mentioned with Mr. Robinson's questions earlier is you

5 finally had the ability to do something, based on the

6 permit?

7 A Well, it's kind of like opening -- opening Pandora's

8 box. You know, I don't -- you know, they finally have a

9 program that can help. We go with the intent of -- of

10 carrying out the program, and you know, moose move,

11 wolves move. You know, the wolves that are -- are there

12 probably end up who knows where. The moose that are

13 down there in Unit 19-D east they come and go. I mean I

14 guess it was just our intent to, you know, conduct

15 predator control, but.....

16 Q Under the guise of the permit? Conduct predator control

17 in areas you wanted under the guise of the permit?

18 A No, that was not it.

19 Q Well, because you said you now had the -- you finally

20 had an opportunity to do something, or the ability to do

21 something, but, in fact, like you said, the permit

22 didn't authorize you to take them down there or anywhere

23 outside the permit boundaries, so where you're taking

24 these wolves, you didn't have -- there's no new change

25 in the law -- the area you're taking wolves then what

- 850 -

1 moose. You know, those wolves were on a moose kill. To

2 us it was predator control and.....

3 Q It's the frustration -- because that's just what you

4 feel you're doing, you're controlling the predators?

5 A No.

6 Q Do you feel you're authorized to do predator control

7 when and where you want to for wolves?

8 A No, I don't -- I don't feel that way.

9 Q And you knew the permit didn't authorize you to do

10 predator control outside the permit boundaries?

11 MR. ROBINSON: Asked and answered, lots of times.

12 THE COURT: It.....

13 MR. LEADERS: It's relevant to each wolf that's taken,

14 Judge.

15 MR. ROBINSON: Judge, that question has been asked and

16 answered over, and over.

17 THE COURT: It's -- I think it's already been asked and

18 answered to this wolf.

19 MR. LEADERS: Okay.

20 Q So did you believe then that the permit authorized --

21 there was something special about the permit that

22 authorized you to take this wolf under predator control

23 on the Stony River?

24 A (Pause) I guess if you put it that way, no, the permit

25 did not authorize it, but we were trying to conduct wolf

- 849 -

1 had been without the predator control program; it was

2 still illegal, right?

3 A Yeah. I mean it.....

4 Q Okay. Now the -- so you take that wolf the morning of

5 the 21st, then you go back to your lodge and then you

6 fly into the permit boundaries to have those-- the three

7 first -- the first three wolves sealed, correct?

8 A Yes.

9 Q You are there and that's the sealing certificate you

10 filled out with Mr. Boudreau, right?

11 A Yeah.

12 Q Falsified where they were taken and signed that permit

13 -- or that sealing certificate?

14 A Yes, I did.

15 Q It indicates under penalty of the crime of sworn

16 falsification, right?

17 A Yep.

18 Q You're not disputing you committed that crime when

19 you.....

20 A I -- yep, I admit, we -- I admit that that's what we

21 did. I mean -- and.....

22 Q Did you.....

23 A .....I have nothing, you know, to say about it, other

24 than we did it, and -- but -- so.....

25 Q Let me ask you, did you tell -- you killed a wolf

- 851 -

1 earlier that day under, as you're telling us, predator  
2 control. One of the requirements of the predator  
3 control program was to report when and where you've  
4 taken wolves. Did you report to Mr. Boudreau at that  
5 time the wolf you had taken? That fourth wolf you had  
6 taken?  
7 A No, we didn't.  
8 Q Why not? You didn't have to have it sealed right then  
9 but you have to report it anyway? Why -- if it's part  
10 of predator control as you've told us, why didn't you  
11 report it?  
12 A Well, we knew it was outside the area, and, you  
13 know.....  
14 Q How was that different than the first three?  
15 A Well, at some point we're probably going to have to get  
16 it sealed or whatever, but, you know, we didn't have it  
17 skinned. We left it at the lodge and just went up and  
18 we called and Toby was there so we....  
19 Q I understand, but how is -- the first three were taken  
20 outside the permit boundaries, the fourth one was, too.  
21 You report the first three with false coordinates inside  
22 the boundary, but you don't report the fourth one with  
23 false coordinates inside the permit boundaries. So --  
24 and you've told us they're both under predator -- all of  
25 them were under predator control in your mind, why

- 852 -

1 didn't you report the fourth one?  
2 A Because we know it's outside the boundary. I mean it  
3 just, you know.....  
4 Q You knew that -- well, by the time you called in you  
5 knew all three of the first ones were outside the  
6 boundaries.....  
7 A Yeah.....  
8 0075  
9 (Tape change)  
10 4MC-05-20/Side B  
11 0075  
12 THE COURT: We're back on record, go ahead, Mr. Leaders.  
13 MR. LEADERS: Thank you.  
14 Q So this -- on the 21st, that's the third of the three  
15 days that you're actually inside the permit boundaries  
16 and do -- is that correct?  
17 A Yes.  
18 Q And you do some more flying inside the permit boundaries  
19 that day?  
20 A Yeah, we talked to everybody to see where there were  
21 wolves in -- in the area, and we went to each of those  
22 areas that we had been told there were wolves. Most of  
23 that I think was on the Nixon River.  
24 Q And it -- so it was -- you were able to get information  
25 -- because whenever you tried you were able to get

- 853 -

1 information about where the wolves were in the permit  
2 boundaries, is that correct?  
3 A Yeah, most of it was just -- you know, seen some tracks  
4 here or somebody heard there were wolves there, but all  
5 of it was pretty vague and old and we, you know -- we  
6 went up, checked, looked for ourselves, found, you know,  
7 tracks here and there. But, you know, we never did find  
8 any wolves. And I think that day we probably spent --  
9 we spent a lot of time in the area that day. You know,  
10 we fueled up, we probably spent another -- I don't know,  
11 six hours probably in the area.  
12 Q What were the daylight hours? What -- we're talking,  
13 what, March 21st?  
14 A Well, when we got back that night I remember it was  
15 dark. When we landed it was dark.  
16 Q You heard that -- so you spent the morning down  
17 patrolling the Stony area, take a wolf down there, go  
18 back to the lodge. Mr. Zellers said you guys had lunch  
19 or whatever there, then you go to McGrath, seal.....  
20 A Yeah. Well, like I said we -- when we got back it was  
21 late, we were almost out of gas and it was dark. And we  
22 landed in the dark.  
23 Q Now the next day, the 22nd, you guys get up, you're  
24 still out there predator controlling, right? Is that  
25 correct?

- 854 -

1 A Yeah, we're, you know.....  
2 Q But at that time you don't fly again. You don't fly  
3 back to McGrath. You fly mostly east and slightly to  
4 the south down along the Swift River?  
5 A Well, we're still.....  
6 Q Or to the left, excuse me.  
7 A Well, looking at how many moose are around, see what's  
8 going on, yeah.  
9 Q Your -- this permit was a big deal to you, getting the  
10 permit, right? Or you were very interested in getting  
11 the permit to be able to be involved in the program?  
12 A Like I said, it wasn't necessarily me getting it. I  
13 just wanted the -- the program to be, you know.....  
14 Q Successful?  
15 A Well, yeah, I wanted the program to grow and expand and  
16 if the first program that was -- that happened failed  
17 because they didn't, you know -- things, you know, they  
18 didn't take enough wolves or it didn't work that would  
19 not be good. They wouldn't expand the program, they  
20 wouldn't do this. You know, I mean they -- they -- you  
21 know, it -- it.....  
22 Q What I need to know, Mr. Haeg, or what the jury I think  
23 needs to know is you -- and you had -- you've been very  
24 proactive with the game board about getting these  
25 predator control programs into place, right?

- 855 -

1 A Yeah.

2 Q You were -- I'm assuming very pleased that they finally

3 got something going on out here in 19-D east, right?

4 It's a first program somewhere. That's a good thing,

5 right?

6 A Yeah.

7 Q You applied back with the original wave of applicants,

8 is that correct, for out there?

9 A No, I don't think I did. We waited, you know, I

10 didn't.....

11 Q Okay. For whatever reason you wait a little bit, but

12 you apply and you want that program to be successful,

13 right?

14 A That's correct.

15 Q Because these things that you've been advocating for are

16 finally -- they're finally happening on an experimental

17 basis, and now you have concerns that if they don't get

18 enough wolves it might negatively affect the program,

19 right?

20 A Yeah, that's the truth, yes.

21 Q And the wolves were only authorized to be taken -- and

22 the whole intent of the program was just one specific

23 area, right? The authorized boundaries?

24 A Yep.

25 Q And despite all this concern you don't think -- seem to

1 Q The -- you knew that that wolf wasn't anywhere near the

2 regulated permit boundaries, right?

3 A Yeah, that's.....

4 Q Why did you shoot that wolf?

5 A We were out there trying to do predator control to

6 reverse a moose population that was being wiped out.

7 And I mean it -- you know, I.....

8 Q But you've already.....

9 A I understand that you're, you know, -- you want to turn

10 it into or make it seem something different, but alls we

11 wanted is to bring back a healthy moose population.

12 And.....

13 Q Well, wait a second. That wasn't the program objectives

14 to bring back a healthy moose population down on the

15 Swift and down on the Stony, was it?

16 A No, it was not.

17 Q The objective was to help the moose population up in the

18 McGrath area, within 19-D east, right?

19 A That was the objective, yes.

20 Q So you took the objectives of that program and used it

21 as a guise for you controlling the wolf control -- or

22 the predators down in the areas you hunt and guide out

23 of?

24 A No, I didn't. We did it to help -- anything we do.....

25 Q Well, let me ask. So you think any wolves you're taking

1 be -- once you get a permit you don't seem to be

2 spending much time in the permit boundaries, right? The

3 morning of the 21st you fly south, right? Isn't that

4 the way you flew? You spent the first half of the day

5 to the south, around your camps?

6 A That's correct.

7 Q On the morning of the 22nd you again don't go back into

8 the permit boundaries, you head off to the left, along

9 the Swift River, correct?

10 A Yep.

11 Q Your -- as you fly along the Swift River you encounter

12 some more wolves -- or actually you encounter what's a

13 moose kill first, correct?

14 A Yeah, we flew down there, found a moose kill, and we

15 seen, you know, wolf tracks and -- but, yes, we did, we

16 found a moose kill.

17 Q Found a moose kill and this is the morning -- the 22nd.

18 You find a moose kill and then a short distance from

19 that moose kill you find some wolves. You find a wolf,

20 correct?

21 A Yep.

22 Q You and Mr. Zellers, again, set up on this wolf and it's

23 shot from the air. While you're flying Mr. Zellers is

24 shooting?

25 A That's correct.

1 are helping that program then is what's going through

2 your mind?

3 A I think any wolf we take is.....

4 Q A dead wolf is a good wolf, right?

5 A No. Well, I think Mr. Gibbens told me that.

6 Q Not disputing that. I'm not saying that may not be a

7 belief that a lot of people have and it may be a very

8 valid belief. The issue is that's the mentality you

9 went out there and killed wolves with. It didn't matter

10 what the law was, a dead wolf is a good wolf, and you

11 used the guise of the permit to take them -- what you

12 call predator control in an area that the state was not

13 authorizing predator control?

14 A No, that's not true. We -- we went out with.....

15 Q The state was authorizing predator control in that area?

16 A No, they weren't. We went out to help conduct predator

17 control in Unit 19-D east, and we did what we could and,

18 you know, maybe got carried away but we wanted to do

19 what we could anyway.

20 Q Well, you got frustrated because you weren't finding

21 anything in 19-D east in the couple days you were there,

22 so anywhere you found -- you could find kills, you could

23 find wolves, that was fine with you?

24 A No.

25 Q You said you wanted to help the program. Don't you

1 think you were jeopardizing this program by taking  
 2 wolves illegally?  
 3 A There's probably some truth to that, yes.  
 4 Q The -- and so this permit that you obtained to be able  
 5 to lawfully take wolves from the air inside the permit  
 6 boundaries, you told us that didn't change any of the  
 7 law from years past, or even the current state of the  
 8 law anywhere else in the state, right?  
 9 A Can you ask that question again.  
 10 Q And the same answer because that's correct, right?  
 11 A Can you ask that question again.  
 12 THE COURT: He asked you to rephrase.  
 13 MR. LEADERS: Oh, I'm sorry.  
 14 Q That permit did not authorize you -- it didn't change  
 15 the law that existed anywhere else in the state, other  
 16 than in that it authorized aerial taking of wolves and  
 17 land and shoot wolves within the permit boundaries only,  
 18 right?  
 19 A That's correct.  
 20 Q And the law everywhere else in the state says it's  
 21 against the hunting and trapping regulations under both  
 22 big game and fur bearer animals to shoot an animal -- a  
 23 wolf from the air, correct?  
 24 A That's correct.  
 25 Q As well as shoot it the same day you're airborne. With

- 860 -

1 the exception trapping if it's in a trap or snare?  
 2 A Yeah.  
 3 Q And that's the way the law had been for years and years.  
 4 There's been some predator control programs in the past,  
 5 but outside those programs that's the way the law has  
 6 been for a while?  
 7 A That's correct.  
 8 Q And you wanted to control predator for years, right?  
 9 Wolves specifically?  
 10 A Well, that's true to say and we've been working hard to  
 11 have programs put in place like this one.  
 12 Q The -- so that's the 22nd. You also set up a bunch of  
 13 -- that's the same day you set up a bunch of snares and  
 14 you said eight leg hold traps on that moose kill on the  
 15 Swift River?  
 16 A There had been -- I believe so. It's been a year and a  
 17 half ago. There's a lot of water over the bridge since  
 18 then.  
 19 Q Okay. And where did you get -- you didn't have any  
 20 active traps or snares out in this area at the time,  
 21 right?  
 22 A No. No.  
 23 Q And -- but you find these from one of your closed sets?  
 24 A Yes.  
 25 Q How many different sets did you have to go to get

- 861 -

1 snares?  
 2 A I think we went to two different places. I believe.  
 3 Q So how many of -- how many snares or sets or traps did  
 4 you have at the two different places?  
 5 A Well, I think we had some snares and traps, or snares or  
 6 whatever at the lodge. I think we had some at what we  
 7 call Pike Lake, and then we had some down on the Swift  
 8 River.  
 9 Q Okay. So from three different locations you go and  
 10 get.....  
 11 A Well, the lodge we always, you know, have snares there,  
 12 and traps.  
 13 Q Understand. But you bring in snares and traps from the  
 14 lodge and these two other sets. And so how many did you  
 15 actually set on this wolf kill on the Swift?  
 16 A We set 40 snares and I believe eight leg holds. I mean  
 17 it's been a long time ago.  
 18 Q So what, the.....  
 19 A I mean.....  
 20 Q .....eight different traps, leg hold traps that Trooper  
 21 Gibbens had photos of that seems to accurately reflect  
 22 what was out there?  
 23 MR. ROBINSON: Well, that's.....  
 24 A Like I said, I.....  
 25 THE COURT: I'm sorry?

- 862 -

1 MR. ROBINSON: I thought you said just the leg holds  
 2 or.....  
 3 MR. LEADERS: Yeah, that's what I indicated. The eight  
 4 different leg hold traps.  
 5 Q That is consistent with your memory of what was out  
 6 there?  
 7 A Like I said, it's been a year and a half ago. It's hard  
 8 to remember exactly how many. I -- I think that's  
 9 close. You know.....  
 10 Q The bottom line is you didn't know at the time even how  
 11 many snares or how many traps you had out there?  
 12 A At the time I knew. This is two years later. I mean  
 13 what did you do two years ago.  
 14 Q You -- after you made this set what do you and Mr.  
 15 Zellers do?  
 16 A I think we take off to head back to the lodge.  
 17 Q Okay, that was the 22nd. The 23rd you and Mr. Zellers  
 18 go back to that set, correct?  
 19 A Yes.  
 20 Q You don't fly into or even towards the predator control  
 21 boundaries?  
 22 A I don't know, I don't remember. You know, it's been a  
 23 long time ago. I don't -- I think we went out there to  
 24 look at the set. You know, fresh moose kill. We had  
 25 set a lot of snares. I think we were thinking about --

- 863 -



1 I actually think we were going to fly back home to  
 2 Soldotna and we wanted to fly out to just see if we  
 3 caught anything in the set.  
 4 Q Why are you going -- why were you planning to go back  
 5 home to Soldotna? You got this permit that was very  
 6 important to you. You're authorized for predator  
 7 control in a legal area, and you don't have an interest  
 8 in doing it now?  
 9 A Well, it's up to the time that we need to get ready for  
 10 bear season. We don't have much time, and we're --  
 11 we're getting down to the wire. We -- you know, I was  
 12 at the Board of Game, we got the permit and we went out,  
 13 tried to do what we could, you know, in the predator  
 14 control area, and, you know, bear season is coming up.  
 15 It's like we have just, you know, a little window of  
 16 time and then we have to, you know, get back to work.  
 17 Q So you knew that when you went out to the lodge on the  
 18 20th, to McGrath on the 21st, and set those -- that big  
 19 snap -- snare and trap set on the 22nd?  
 20 A Well, yeah, I mean that's fair to say that we knew that.  
 21 Q So you set out a big snare and trap set.....  
 22 A It's -- it's not.....  
 23 Q .....and you're getting -- but yet you've got these time  
 24 restraints to go get ready for bear hunts?  
 25 A Well, we've got to -- usually I haul a couple loads out

- 864 -

1 of the -- we've got some supplies, weather port, tents  
 2 and stuff, so I'll be back and forth a couple times but  
 3 we don't have tons of time to do a lot of stuff. But,  
 4 you know, if we find a fresh moose kill we set snares on  
 5 it, and that's just -- you know, doing.....  
 6 Q You encounter wolves that day, correct? The second day  
 7 there on the Swift?  
 8 A I believe so, yes.  
 9 Q How many?  
 10 A I don't remember but I know there was a pretty big pack  
 11 of wolves.  
 12 Q You encounter a pretty big pack. You and Mr. Zellers go  
 13 after those wolves?  
 14 A Yes, we do.  
 15 Q How do you guys do?  
 16 A I think we get four.  
 17 Q All in that same area?  
 18 A Yeah, I believe so.  
 19 Q You've seen the area on the map depicted with little  
 20 pink circled dots or a couple dots around the  
 21 numerical.....  
 22 A Yeah.  
 23 Q .....codes?  
 24 A Yeah.  
 25 Q Do those accurately reflect where you got those wolves?

- 865 -

1 A I believe so, yes.  
 2 Q The -- and you know it's not in the permit area, and  
 3 you're not authorized by the permit, correct?  
 4 A That is correct.  
 5 Q You .....  
 6 THE COURT: Mr. Leaders, are you going to be much longer?  
 7 MR. LEADERS: I'm going to be a little bit longer. If I  
 8 could.....  
 9 THE COURT: Okay. Let's take a break. We'll be back at  
 10 3:00. Let's go off record.  
 11 (Off record)  
 12 THE COURT: We're back on record. Mr. Haeg, I need to  
 13 remind you you're still under oath.  
 14 A Okay.  
 15 THE COURT: Mr. Leaders?  
 16 MR. LEADERS: Thank you.  
 17 Q The last day I believe we were talking about was the  
 18 23rd of March of 2004, that's the day you took the four  
 19 wolves, correct?  
 20 A Yes.  
 21 Q After that you and Mr. Zellers -- I guess you take the  
 22 four wolves or -- in a couple of different stages. Two  
 23 back to the lodge and then two back to the lodge again,  
 24 right?  
 25 A Yep.

- 866 -

1 Q You overnight there?  
 2 A I believe so. I think we skinned them out and -- I  
 3 think that's correct, spent the night.  
 4 Q The next day then you head back into Soldotna, is that  
 5 correct?  
 6 A I believe so.  
 7 Q You leave your -- you don't go out and check the snare  
 8 and traps then?  
 9 A I don't remember if we did or not. You know, I know we  
 10 -- we head back to Soldotna, but I don't remember going  
 11 back out there and checking the snares, no.....  
 12 Q In fact, Tony didn't indicate you guys went out there  
 13 either, right?  
 14 A Well, I -- like I said, it's been a year and a half ago.  
 15 I know we -- we headed back to Soldotna with all the  
 16 hides.  
 17 Q Okay. You -- with all the hides. You -- have you  
 18 caught any wolverines at that point?  
 19 A I can't remember if we had or not. I don't think so.  
 20 Q You -- so you think you just head back with the nine  
 21 wolf hides? The three you guys sealed and the other  
 22 six?  
 23 A Yeah.  
 24 Q What do you do with all the hides?  
 25 A I believe Tony took them to Anchorage to get them

- 867 -

1 tanned.  
 2 Q Okay. They were to be your hides, though, right?  
 3 A Oh, we were going to have them tanned and sell them to  
 4 kind of recoup some of the expenses of....  
 5 Q Right; but they were going to be your hides?  
 6 A I think Tony was going to get one or two for being out  
 7 there.  
 8 Q The majority were your's? Fair?  
 9 A Well, we're not doing it for me or for him, or whatever.  
 10 We're just -- we're doing it for the predator control  
 11 program, and part of it is, you know, it's horribly  
 12 expensive to fly around out here, this area. You know,  
 13 you've got to do what you can do to cover your costs.  
 14 Q And recouping costs at \$650 a wolf hide, that's -- I'm  
 15 not saying that's making money, but that's helpful?  
 16 A That -- rarely do I get \$650 for a hide, but I would say  
 17 an average, and that's tanned. We've spent \$130 each  
 18 getting them tanned, so, yeah, we tan them and we sell  
 19 them.  
 20 Q You also use them in your guaranteed wolf hunting and  
 21 trapping expeditions, right? Or hunts, guided hunts,  
 22 whatever you want to call them.  
 23 A We have a trapping/hunting -- we only guarantee a wolf  
 24 or wolverine.  
 25 Q And the guarantee is either hopefully the client's going

- 868 -

1 to get to shoot one, right?  
 2 A Or trap one.  
 3 Q Or trap one and then dispatch it? If they don't, they  
 4 get a wolf hide or wolverine hide that you have there,  
 5 or that you've taken through other means, right?  
 6 A You can look at it that way. We -- the whole time we  
 7 ever had that program or that hunt -- I think we only  
 8 had three people for seven or years or whatever we did  
 9 it. We don't do it any more. I think the -- the last  
 10 time we actually had somebody book something like that,  
 11 they booked like four years ago, so, you know, you may  
 12 imply that we're out here doing stuff to -- to help that  
 13 endeavor, but it's not. We -- we don't....  
 14 Q Well, let me ask you, though, that's what the guarantee  
 15 was, right? I mean you didn't give them back the  
 16 \$4,000, you gave them a hide if they didn't get -- if  
 17 they didn't shoot or trap their own, isn't that correct?  
 18 A Yeah, and it could have been a wolverine hide or  
 19 whatever, but we....  
 20 Q But it....  
 21 A We don't do that, and we -- I mean we've done it once or  
 22 twice and it was something that not very many people  
 23 wanted to do, it's winter time, whatever. And we didn't  
 24 really make any -- weren't very successful with it and  
 25 to be honest, we lost money at it. I mean it was

- 869 -

1 something that was not a -- a viable thing to do, so.  
 2 Q Okay. The -- Exhibit 75, correct?  
 3 A Yeah.  
 4 Q Okay. That's an advertizement that was on your website  
 5 regarding that program, correct?  
 6 A Yeah.  
 7 Q Okay. That -- what's the date that's printed out? Is  
 8 it notated on the bottom.....  
 9 A 4-1-2004.  
 10 Q Shortly after -- now April 1st, 2004 that's the date of  
 11 the search warrant at your house and hangar base of  
 12 operations out of Soldotna, right?  
 13 A Yeah.  
 14 Q Shortly after April 1st, 2004 you removed that from your  
 15 website, didn't you?  
 16 A It was a while, and we -- my wife was afraid that we  
 17 would get, you know, huge deal, people calling, you  
 18 know, I'm going to be -- have a lot of attention. We  
 19 were getting nasty e-mails already from me being, you  
 20 know, my being a hunter.  
 21 Q More negative publicity because of these charges.....  
 22 A And we don't -- we didn't really do this any more. Like  
 23 I said, the winter of 2004 we didn't have any people out  
 24 doing this. Usually.....  
 25 Q The year before you had?

- 870 -

1 A Yeah, I had a husband and....  
 2 Q Husband and wife?  
 3 A .....a girlfriend come out.  
 4 Q Okay.  
 5 A They had actually booked I think two years previously to  
 6 that.  
 7 Q According to Mr. Zellers neither one of them were able  
 8 to kill their own -- they were provided with a hide,  
 9 each, weren't they?  
 10 A Yes, we did. I had -- I think I gave one of them a wolf  
 11 hide and one a wolverine. But in my own trapping stuff  
 12 we -- I get lots of wolves snaring -- or not lots, but a  
 13 fair number each winter. We tan them all and we sell  
 14 them. I mean it's just -- it's.....  
 15 Q At that time.....  
 16 A You know, I told you that I trap -- I've trapped every  
 17 winter except this past one since I was a little kid,  
 18 that's what I do. I -- I go right, set snares, traps,  
 19 check them. And get the hides and it pays for -- I mean  
 20 you don't make money at it, but you just -- you do it to  
 21 -- you know, to try to offset the cost and, you know.  
 22 Q Okay. And all the hides, these nine hides were sent to  
 23 Anchorage with Mr. Zellers and dropped off at Alpha Fur  
 24 Dressers under your name?  
 25 A Yeah, I didn't tell him to drop them off under my name,

- 871 -

1 but that's -- usually stuff that goes in there they know  
 2 who I am. You know, we -- we deal with them quite a bit  
 3 with other things, and so they're -- you know, -- but,  
 4 yeah, they were dropped off in my name.  
 5 Q And the skulls, you took them over to Kenny Jones?  
 6 A That's correct.  
 7 Q You took 11 skulls over there, nine of which were from  
 8 the wolves taken up here, and -- well, I guess out here,  
 9 down -- these nine wolves we've killed -- or talked  
 10 about being killed. Were those the nine you traded or  
 11 were those of the two that you were having some work  
 12 done on two and.....  
 13 MR. ROBINSON: Objection. (Indiscernible).  
 14 THE COURT: What's the objection?  
 15 THE CLERK: (Indiscernible).  
 16 THE COURT: Me either.  
 17 Q Do you recall.....  
 18 THE COURT: Is there an objection?  
 19 MR. ROBINSON: I'll withdraw.....  
 20 MR. LEADERS: I'll just clarify.  
 21 THE COURT: Okay.  
 22 Q Exhibit number 5, you're familiar with that?  
 23 A Yeah.  
 24 Q That's a receipt from Kenny Jones, right?  
 25 A Yep.

1 catch animals. We sell or whatever, but yeah, these  
 2 apparently we, you know, brought in. A lot of people  
 3 don't even save -- you know, save the skulls. A lot of  
 4 people skin out the carcass and don't keep the skulls.  
 5 Well, I keep them and I have it, you know, try to  
 6 utilize what we can.  
 7 Q Okay. Now you -- you went back out to the lodge. Well,  
 8 let me ask you. There was a search warrant conducted at  
 9 your lodge, or not your lodge -- it wasn't your lodge,  
 10 but you weren't there for that, correct?  
 11 A No.  
 12 Q There's also a search warrant done on April 1st at your  
 13 hangar and residence in Soldotna, right?  
 14 A Yes.  
 15 Q You weren't originally there but you were called back  
 16 and you're there then while the troopers are there for  
 17 that?  
 18 A Yes.  
 19 Q You're -- they -- you're there and you talk with them  
 20 about why they're there, right? The wolves that were  
 21 taken out -- I guess off of Swift River?  
 22 A Yep.  
 23 Q You were there when they seized several items from your  
 24 hangar?  
 25 A Yes.

1 Q That discusses 11 wolf skulls you dropped off at his  
 2 shop, right?  
 3 A Yeah.  
 4 Q Two of them were given to him as credit for work done on  
 5 others, right? Or nine of them were -- if you've been  
 6 given for credit for work done on the other two?  
 7 MR. ROBINSON: May I see that exhibit?  
 8 THE COURT: You want to show that to Mr. Robinson.  
 9 (Pause)  
 10 MR. ROBINSON: Oh. Go ahead, Mr. Leaders.  
 11 Q Isn't that correct? Nine of the 11 skulls you dropped  
 12 off were given to Mr. Jones in -- as credit or kept it  
 13 as credit or payment for work done on the other two or  
 14 any other work you had done?  
 15 A Yeah, it says nine wolf skulls, credit.  
 16 Q Okay. The -- were the nine wolves given as credit or  
 17 payment, were those the nine from up here or were two of  
 18 the ones that you had work done from up here?  
 19 A I assume that the nine that we gave him for credit were  
 20 from when we were out there.  
 21 Q They're as good as cash in some ways to you at that  
 22 point? You used them to trade instead of paying a  
 23 bill.....  
 24 A Well, we -- we sell skulls. I don't throw anything  
 25 away, anything that I can, you know, utilize when we

1 MR. LEADERS: May I approach?  
 2 THE COURT: Yes.  
 3 Q Exhibits 86 through 89, if you'll see -- we already  
 4 actually talked but you recognized those. What do they  
 5 depict?  
 6 A It's a hangar wall.  
 7 Q Okay. And on the hangar wall are a couple guns hanging,  
 8 correct?  
 9 A It's hard to make out but it looks like there is, yes.  
 10 Q The guns that were used to take these wolves?  
 11 A Yes.  
 12 Q And 87?  
 13 A Yep.  
 14 Q That's a closeup of the guns taken, is that correct --  
 15 or used.....  
 16 A Yep.  
 17 Q .....to take the wolves, correct? 88 is a photograph of  
 18 what?  
 19 A Looks like 12 gauge shotgun shells.  
 20 Q Some double-ought buck -- double-ought buckshot for a 12  
 21 gauge? Red -- or.....  
 22 A Yeah.  
 23 Q The same -- those are the ones you used in the taking of  
 24 the wolves?  
 25 A Yep.

1 Q Same as -- the red ones, the Winchesters, same as --  
 2 three inches, same as the -- what was found in the....  
 3 A Looks like it.  
 4 Q ....stomach of one of the wolves? The -- and that was  
 5 Exhibit 52, correct?  
 6 A Looks like it.  
 7 Q And Exhibit 89, photograph of some snares, some unused  
 8 snares that you had hanging there at your hangar, at  
 9 your base?  
 10 A Yeah.  
 11 Q Same type of snares that you had used out on Swift  
 12 River?  
 13 A I imagine so. I make my own snares. Buy the cable and  
 14 make them.  
 15 Q You make your own, okay.  
 16 MR. LEADERS: State would seek to admit Exhibits -- 84  
 17 and 85 have been previously admitted.  
 18 THE COURT: Uh-huh.  
 19 MR. LEADERS: 86 through 89.  
 20 MR. ROBINSON: No objection to 86 and 87 and 88. I don't  
 21 see the relevance of 89.  
 22 MR. LEADERS: The state argues the relevance is they're  
 23 snares similar to the snares -- they're in a new condition  
 24 but similar to the snares taken from the snare site of Mr.  
 25 Haeg on the Swift River by Trooper Gibbens.

- 876 -

1 A And I think there was -- we got a wolverine, I believe.  
 2 at that time, and I don't know, went over and came back  
 3 the same day and, you know, I don't know.  
 4 Q But you -- and you got a wolverine out of the -- you had  
 5 traps there or snares?  
 6 A I think they were all traps.  
 7 Q And those were immediate -- in the area immediately  
 8 around the lodge?  
 9 A Yes.  
 10 Q Near the carcass pile and we see the pictures of -- you  
 11 had a couple carcasses under a tree?  
 12 A Yep.  
 13 Q Okay. You set off all the traps at that point in time?  
 14 A Yep.  
 15 Q What day was it that you were out there?  
 16 A Can't remember. Had to be right close to the end of the  
 17 season. Oh, trying to -- you know, get everything set  
 18 off so I think it would have been, oh, some time toward  
 19 the end of March.  
 20 Q Okay. Well, the warrant was served on April 1st. And  
 21 it was before that, right?  
 22 A Yeah. So -- yeah.  
 23 Q And you were last out there on, what, the 24th or so?  
 24 23rd, 24th?  
 25 A Something like that, yeah. I mean it....

- 878 -

1 MR. ROBINSON: You already have those snares. None of  
 2 these snares were even used. They weren't out  
 3 (indiscernible) you already have the snares. I don't  
 4 understand the relevance.  
 5 MR. LEADERS: The consistency, Judge. He's testified  
 6 that he made the ones on the wall, he made the ones out  
 7 there.  
 8 THE COURT: I'll admit all of them. 86, 87, 88 and 89  
 9 are all admitted.  
 10 (Plaintiff's Exhibits 86-89 admitted)  
 11 MR. LEADERS: May I publish them?  
 12 THE COURT: Yes.  
 13 (Pause)  
 14 Q Prior to the search warrant on April 1st you had been  
 15 back out to the lodge. From the time you brought the  
 16 wolf hides in and before the search warrant you went  
 17 back out to your lodge at Trophy Lake, right?  
 18 A Yeah. I think we went out and -- and shut down some of  
 19 the sets that -- or the -- we had set some wolverine  
 20 traps around the lodge and I think we went out and  
 21 tripped them off and brought some stuff back.  
 22 Q I'm sorry. You went out and did what?  
 23 A We had set some traps around the lodge for wolverines  
 24 and we went out and set -- set them off.  
 25 Q Okay.

- 877 -

1 Q You don't know which day?  
 2 A Well, it's been a year and a half.  
 3 Q I understand it's been a year and a half ago, sure.  
 4 A I mean trying to, you know, and this thing is -- you  
 5 know....  
 6 Q You -- so you go all the way out there to take care of  
 7 the traps around your lodge?  
 8 A Yep. And we had more supplies to get and stuff I think  
 9 for, you know, ferrying back and forth, so.  
 10 Q Did you go check your snares -- your set over on the  
 11 Swift?  
 12 A I don't think we did. We had....  
 13 Q Let me ask you why not? I mean it's how far? About 20  
 14 some miles away from the lodge?  
 15 A Something like that.  
 16 Q You set a big snare and trap set out there just a few  
 17 days prior-- you know, within four, five days prior....  
 18 MR. ROBINSON: I'm going to object to the big trap set.  
 19 There were only eight snares there.  
 20 Q You've testified you set approximately 40 snares and  
 21 eight traps on one kill site?  
 22 A Yeah.  
 23 Q And you don't go check them?  
 24 A Well, if I remember I think we got in late to the lodge  
 25 and we needed to get back home and I think we just

- 879 -

1 landed, ran around like mad people and got a load of  
 2 stuff and headed back to town.  
 3 Q No concern about -- you know, you've been out -- you  
 4 don't know exactly how many days, but you've had this  
 5 big -- this set, 40 some snares and eight leg holds. No  
 6 concern about either incidental take or targeted species  
 7 take in that set?  
 8 A I don't remember what -- you know, what the deal was. I  
 9 think maybe we were planning on going back out there the  
 10 next day. I think I had, you know, a few loads of stuff  
 11 to move. You know, I don't remember exactly what  
 12 happened but I think it was we got a late start, got  
 13 over there. By the time we got back we were thinking, I  
 14 think, about making another trip. You know, the next  
 15 day, so you know, it -- to me it didn't -- I guess it  
 16 didn't seem a big deal. A lot of times the more often  
 17 you check a snare set the worse off it is. Stuff don't,  
 18 you know, come around. You land and you know, whatever.  
 19 Q You don't have to land. Fly over, see if something's in  
 20 it though, right?  
 21 A Well, no, you don't have to land. That is correct.  
 22 Q You just told us earlier you were checking it every day  
 23 for -- you know, you'd first set it and then you'd go  
 24 back. What, two more days? Right in a row, take more  
 25 wolves in that same spot?

- 880 -

1 A Yeah. I mean -- you know.....  
 2 Q You also, when you go back out to the lodge you don't go  
 3 up into the permit boundaries to do any more predator  
 4 control up there, do you?  
 5 A No, we're getting ready for the season. I mean like I  
 6 said, we -- I don't know, I think our bear hunters were  
 7 coming in like April 3rd, or whatever, or 4th. I mean  
 8 we don't -- we're -- we don't have time to do much any  
 9 more. I mean it's time for me to go to work.  
 10 Q And knowing that you don't go out and pick up your set  
 11 that you know you're not going to have time to deal  
 12 with?  
 13 A Well, we were going to go back out, I believe the next  
 14 day, and that's when, you know, the troopers came,  
 15 seized my plane and everything -- woosh, you know, blew  
 16 up in my face. We.....  
 17 Q Okay. So then you think you're there must be on the  
 18 31st if the troopers show up on the 1st, right?  
 19 A Yeah. I mean we were planning on going back, but you  
 20 know, all this -- you know, other crap happens and, you  
 21 know, -- and even when we have bear hunters, we're at  
 22 Unit 16, if everything works out I can always just jump  
 23 across the mountain when I get time and check the sets  
 24 and stuff. It's not -- not that big a deal to have a  
 25 set going. You know, when you don't run into problems

- 881 -

1 like we did and have, you know, airplane seized and, you  
 2 know, your life turned upside down overnight and -- I  
 3 mean.....  
 4 Q So it sounds like the reason you didn't go over there is  
 5 basically you didn't have time. And then.....  
 6 A Yeah.  
 7 Q ....you're going to go out there the 1st but the  
 8 troopers show up with the search warrant?  
 9 A Yeah.  
 10 Q So then up to that point you haven't contact -- or had  
 11 any contact with Tony Lee(ph) then about your set out  
 12 there?  
 13 A I don't know when I exactly talked to Tony Lee(ph) but  
 14 it was.....  
 15 Q Well, it would have been after that because your  
 16 (indiscernible).....  
 17 A I -- I believe so, yes.  
 18 Q Okay. And so you hadn't, as of April 1st, you had not  
 19 closed the leg hold traps on your trap set around the  
 20 moose kill site on the Swift River?  
 21 A Yep, that's correct, and that was my mistake. We -- you  
 22 know, we were out there, I forgot apparently that we had  
 23 leg holds there around the moose kill, and I -- I take  
 24 full responsibility for that. You know, most of the  
 25 times.....

- 882 -

1 Q If the season is closed.....  
 2 A ....when we -- yeah. Most of the time.....  
 3 Q ....on the 31st for leg holds, correct?  
 4 A I understand. Most of the time.....  
 5 Q Okay. Well, so you understood that the season closed on  
 6 the 31st?  
 7 A Yeah, I understand it. Most of the time when we set  
 8 around a moose we just use snares and I don't -- I  
 9 rarely use traps, usually just snares, and that one we  
 10 did have traps. And we left them out. We probably  
 11 would have -- you know, if things wouldn't have happened  
 12 we'd have probably got out there on the 1st, but you  
 13 know, they were illegal. There's no doubt about that.  
 14 You know, ended the 31st for leg holds, snares are still  
 15 open, you know. That's my fault.  
 16 Q Okay. Some time after that and after the search  
 17 warrant, I guess, you talk with Tony Lee(ph)?  
 18 A Yeah, I received a phone call at my home.  
 19 Q Tony tells you -- asks you if you need some help with  
 20 your snares -- or your set out there?  
 21 A Yep, and he.....  
 22 Q There were some animals in it?  
 23 A Yeah, he said he had flown over, seen some animals,  
 24 wolves, wolverine, I don't know what.  
 25 Q He also told you that he had seen a lot of activity out

- 883 -

1 there as well, law enforcement activity, is that  
 2 correct?  
 3 A Yeah, he had -- well, I actually told him that my plane  
 4 had been seized on the 1st, that my life had just been,  
 5 you know.....  
 6 Q You -- he told you there was law enforcement activities  
 7 there, chopper and (indiscernible).....  
 8 A No, just -- just hang on. I mean.....  
 9 Q I'll ask the questions, Mr. Haeg.  
 10 A Okay.  
 11 THE COURT: Well, then let him answer them though. He  
 12 was in the process of answering and you started asking  
 13 another question.....  
 14 MR. ROBINSON: He was.  
 15 MR. LEADERS: It was non-responsive, Judge.  
 16 THE COURT: Well, then you ask me to instruct him to  
 17 respond.  
 18 MR. LEADERS: I'll ask then the court to have the witness  
 19 respond to the questions asked.  
 20 THE COURT: The question, Mr. Haeg, as I recall was  
 21 whether or not Mr. Lee(ph) had told you that he had -- that  
 22 he saw law enforcement in the area, which should just be kind  
 23 of a yes or no answer.  
 24 A Yes.  
 25 THE COURT: Okay.

1 Q Okay.  
 2 A And I said you can have all the fur in it as long as you  
 3 make sure you take care of the set. And I don't know if  
 4 I can continue on with that line.....  
 5 Q Let me ask you a couple questions, because you were very  
 6 concerned about that set being taken care of, right?  
 7 A Well, af.....  
 8 Q That's what you told him.....  
 9 A Yeah.  
 10 Q .....isn't that correct?  
 11 A After you have an airplane seized and a whole bunch of  
 12 other stuff go on you get -- I mean you're -- you start  
 13 not.....  
 14 Q Okay.  
 15 A .....sleeping at night, you start.....  
 16 Q And you.....  
 17 A I mean -- and I told him, I said.....  
 18 Q You were concerned about the sets?  
 19 A .....it would be one of the very nicest things he could  
 20 do to take care of that set and I said it -- you know,  
 21 right now my life is upside down. He said anything I  
 22 can do to help you.  
 23 Q Okay.  
 24 0698  
 25 (Tape change)

1 Q Okay. Now that contributed to your decision to -- I'll  
 2 retract (indiscernible). Now you didn't -- at that  
 3 point in time you didn't even know exactly how many  
 4 snares or traps you had out at that set?  
 5 A At that time I did. It's been a year and a half.  
 6 Q You don't now? Okay. The -- do you tell Mr. Lee(ph) an  
 7 exact number of snares and traps you had set out there?  
 8 A I believe I might have, or, you know, probably wasn't  
 9 thinking really straight with all the stuff that's been  
 10 going on, had been going on. I believe that from the  
 11 time we set the set to the time Tony Lee(ph) flew over  
 12 and wanted to take it over, that no snow had fallen and  
 13 any trapper worth his salt can go to one set no matter  
 14 how many snares there are and follow boot prints in deep  
 15 snow and find every snare, every trap, every place the  
 16 person went you're going to bump into whatever.  
 17 And.....  
 18 Q As far as no snow, you knew that at your home back in  
 19 Soldotna where you've been, but not out at the snare and  
 20 trap set, isn't that correct? You had.....  
 21 A Yeah, we had been out there though like the day before  
 22 to the lodge, or -- I mean it might have been a couple  
 23 days, but Tony Lee(ph) never, you know, -- he knew where  
 24 the set was, he seen animals and he says I'll take care  
 25 of it.

1 4MC-05-21/Side A  
 2 0698  
 3 THE COURT: Okay, we're back on record. Go ahead, Mr.  
 4 Leaders?  
 5 Q Okay. Let me state it over. But you're so concerned  
 6 about you call him within another day or two and you say  
 7 no, just close the set?  
 8 A Well, he had called back after I told him he could have  
 9 the fur if he closed the set down. He had called back  
 10 and said, hey, Dave, do you mind if I keep the set  
 11 running because wolves are continuing to come in and at  
 12 that time I was like, you know, if you take care of the  
 13 set you can do whatever you want. But when I said take  
 14 care of the set I meant take care of the set and make  
 15 sure everything gets shut down before the end of the  
 16 season. Well, when you don't sleep at night because you  
 17 know your life is turned upside down, you worry about  
 18 everything. And so I called him back and I -- you know,  
 19 I mean we have phone records.....  
 20 Q You told him to shut(indiscernible).  
 21 A I mean I -- you know, I called him back and I said,  
 22 Tony, shut the set down, I don't want you to keep it  
 23 running because I don't want to have anything happen,  
 24 and he said consider it done. No problem, thanks for  
 25 the fur, whatever. He had mentioned that he had bear

1 hunters there, they had been flying over it because he  
 2 was conducting bear hunts in the area. He had seen  
 3 wolves. He said these hunters wanted to have wolves, so  
 4 I assumed he's pulling stuff out and selling them to his  
 5 bear hunters. I mean that's what -- essentially what he  
 6 told me.  
 7 Q Mr. Haeg, the next question is if you were so concerned  
 8 about it why didn't you go out and check it? Why didn't  
 9 you confirm that that set was closed?  
 10 A You know, when you have somebody that you know, like  
 11 Tony Lee(ph), known him for quite a while, considered  
 12 him a good friend. Maybe not a great friend, but we've  
 13 been to Board of Game meetings and stuff. When somebody  
 14 tells you they're going to do something you bank on it.  
 15 Especially when you're in trouble, and you -- you know,  
 16 you -- you basically say, hey, you know, I'm in serious  
 17 trouble, can you help me out and he says I'm here to  
 18 help you out, do it -- his exact words, I'll do anything  
 19 I can to help.  
 20 Q And you were concerned, you knew you were in trouble  
 21 because as you've told us same day airborne.....  
 22 A Yeah, hey.....  
 23 Q .....you had taken those wolves?  
 24 A You know, I'm not.....  
 25 Q Yes, you were in (indiscernible)?

- 888 -

1 A Yeah. I'm not here to dispute that.  
 2 Q Okay.  
 3 A I just -- you know, I'm a.....  
 4 Q Mr. Haeg, the -- you -- with these -- during all of  
 5 these wolves that you and Mr. Zellers took, during that  
 6 time frame, from the 5th through the 23rd I think was  
 7 the last one, you -- during that entire time you had a  
 8 valid permit for the predator control area, correct?  
 9 A Yep.  
 10 Q You had a valid hunting license, correct?  
 11 A I believe so, yeah.  
 12 Q You had a valid trapping license as well?  
 13 A Yep, I had to have a trapping license. Hunting license  
 14 we weren't guiding yet but we were getting close to it  
 15 so I would have had one, yes.  
 16 Q You would have had one, right. You knew that hunting  
 17 season for wolves was open in the area out there,  
 18 correct? As well as the trapping season?  
 19 A Yeah.  
 20 Q You knew that the permit did not authorize you to take  
 21 any of these wolves in the manner that you took them, in  
 22 the locations you took them, correct? That is  
 23 outside.....  
 24 A Yeah.  
 25 Q .....the permit area from the air?

- 889 -

1 A I.....  
 2 MR. ROBINSON: That's a compound -- oop, I'm going to  
 3 object to the compound question.  
 4 THE COURT: Could you.....  
 5 MR. LEADERS: It was in the manner taken which was  
 6 described as two aspects, so it's not compound.  
 7 MR. ROBINSON: No.  
 8 MR. LEADERS: I can break it up.  
 9 Q You knew that the permit didn't auth.....  
 10 THE COURT: Now you've confused me with the question, so  
 11 why don't you see if you can break it down a little bit.  
 12 MR. LEADERS: Sure.  
 13 Q You knew that the permit did not authorize you to take  
 14 wolves from the air in the area that you took these --  
 15 any of these wolves?  
 16 A That is correct. And I thought we've been over this I  
 17 don't know how many times now.  
 18 Q You knew as to all nine of these wolves that hunting  
 19 regulations prohibited you taking them same day  
 20 airborne?  
 21 A Yeah.  
 22 Q Which included shooting from the air as Mr. Zellers did  
 23 while you flew?  
 24 A Yeah, and.....  
 25 Q And you knew as well that trapping regulations also

- 890 -

1 prohibited you from taking these wolves while flying --  
 2 having Mr. Zellers shoot while you're flying?  
 3 A Yeah.  
 4 Q You nonetheless, you participate with Mr. Zellers in the  
 5 taking of each of those nine wolves?  
 6 A Yeah, and we did it with the thought that we were  
 7 helping the program and.....  
 8 Q And I'm not asking you why, so that's -- you don't need  
 9 to respond to that.  
 10 A Huh?  
 11 Q I'm not asking why you did it, sir.  
 12 MR. ROBINSON: Yeah, you did.  
 13 MR. LEADERS: I asked him if he knew it was illegal.  
 14 Q Now Mr. Haeg, you -- we've talked about Exhibit 24.  
 15 That was the sealing certificate you signed?  
 16 A Yep.  
 17 Q And you've testified that you personally signed it and  
 18 dated it on the 21st?  
 19 A Yeah.  
 20 UNIDENTIFIED SPEAKER: (Indiscernible).  
 21 Q You did that knowing the information contained as far as  
 22 where the wolves were taken.....  
 23 MR. ROBINSON: Objection, asked and answered. You went  
 24 -- he's already gone through this exhibit.....  
 25 A I've already done this.

- 891 -

1 MR. ROBINSON: .....one time.....  
 2 MR. LEADERS: But not in regards -- he did.....  
 3 MR. ROBINSON: Yeah, you did, with regard to these three  
 4 wolves.....  
 5 MR. LEADERS: Not in regard to the sequence of signing  
 6 it, knowing.....  
 7 MR. ROBINSON: Yes.  
 8 MR. LEADERS: .....the information was false.  
 9 THE COURT: Yes, you did.  
 10 MR. ROBINSON: Yes, you did.  
 11 MR. LEADERS: Fair enough, I'll move on.  
 12 Q Are you familiar with this, sir? Exhibit number?  
 13 A 68.  
 14 Q Are you familiar with it?  
 15 A No.  
 16 Q You've never seen that before?  
 17 A Oh, fur bearing -- fur bearer sealing certificate.  
 18 Yeah, I've seen.....  
 19 Q You've never seen a copy of that with the information  
 20 provided on it?  
 21 A Yeah, this is the -- the sealing certificate that Tony  
 22 had made up for the six wolves, and I guess -- I guess I  
 23 misunderstood. It didn't have my signature on it, so.  
 24 Q Fair enough. But you're familiar that that's the  
 25 sealing certificate that Mr. Zellers prepared in

- 892 -

1 relation to the last six wolves that the two of you  
 2 killed?  
 3 A Yep.  
 4 Q You and Mr. Zellers discussed falsifying information on  
 5 the sealing certificate regarding those six wolves,  
 6 didn't you?  
 7 A We didn't -- you know, I didn't know what Tony was going  
 8 to put. I mean we had talked.....  
 9 Q Okay.  
 10 A We had said, hey, you know, we're -- you know, we shot  
 11 these wolves outside the area, you know, what are we  
 12 going to do. I said, well, I don't know, you know. Why  
 13 don't you take them in, seal them or he offered -- I  
 14 don't remember exactly what happened, but, yeah, we knew  
 15 the wolves were taken outside the area and he took them  
 16 to go get them sealed.  
 17 Q And the two of you -- the issue is the two of you agreed  
 18 or discussed that you would falsify the information on  
 19 the sealing record related to those six wolves?  
 20 A Probably. I mean I can't remember the exact words, you  
 21 know.  
 22 Q You specifically discussed that they would not be  
 23 identified as being taken on the Swift River, right?  
 24 A You know, I don't remember exactly what was said, but  
 25 yes, that's probably something that came up.

- 893 -

1 Q You can't remember a lot of what's said except for you  
 2 have pretty vivid recollection of the conversations that  
 3 you had with Mr. Lee(ph). Why is that?  
 4 A I don't know. You know.....  
 5 Q That's fine. If you don't know, that's fine. You did  
 6 specifically discuss the method of take would be from  
 7 the ground and not from the air in relation to those six  
 8 wolves being sealed?  
 9 A Yeah, I believe -- believe so, yes.  
 10 Q You wanted the information falsified so you would not  
 11 draw attention to the wolves you had taken illegally out  
 12 in Unit 19-D, below the permit boundaries, correct?  
 13 A Yeah, we were just tired of -- yeah, we didn't want to,  
 14 you know, take them up and have them sealed in McGrath  
 15 for obvious reasons. We're just out there killing  
 16 wolves that, you know, are going to eat moose that  
 17 are.....  
 18 Q Well, let me ask you, because that was done before the  
 19 search warrant on April 1st. The wolves were taken up  
 20 to Alpha Fur Dressers and they were sealed prior to  
 21 April 1st.....  
 22 A Yeah, I don't know if.....  
 23 Q .....prior to the search warrant?  
 24 A You know, I don't know exactly when Tony took them in or  
 25 whatever.

- 894 -

1 Q So I guess I'm not understanding why then -- why you  
 2 didn't want to take them up to McGrath and report them  
 3 within the predator control program. You told us  
 4 earlier you wanted (indiscernible)to be a success.....  
 5 A We're tired of the lies -- I mean we're -- we didn't  
 6 want to lie any more to Toby, whatever. I mean we  
 7 understood we had done something wrong. I mean -- you  
 8 know, hey, we shot wolves outside the area. You know,  
 9 we thought we were helping with the -- you know, the  
 10 moose problem here, the moose problem everywhere, for --  
 11 you know, all that. You know, it was just, you know, I  
 12 don't know. I wish it would have never happened.  
 13 Q Okay.  
 14 A Wish I'd have never, you know, been involved, but here I  
 15 sit today.  
 16 Q But isn't it true if you would have -- you testified  
 17 earlier that the reason you did it with the first three  
 18 is to appear to make -- to make the program appear  
 19 successful?  
 20 A Yeah, well, you -- now you start.....  
 21 Q Isn't that correct?  
 22 A .....reporting six more wolves and, you know, it's going  
 23 to be a.....  
 24 Q The program really looks successful then, doesn't it?  
 25 A Well.....

- 895 -



1 Q Isn't it -- six -- or six -- I guess nine total would be  
 2 better than three. right?  
 3 A We don't want to.....  
 4 MR. LEADERS: No further questions. Judge.  
 5 THE COURT: Okay. Mr. Leaders -- or Mr. Robinson?  
 6 DAVID SCOTT HAEG  
 7 testified as follows on:  
 8 REDIRECT EXAMINATION  
 9 BY MR. ROBINSON:  
 10 Q When you talked to Mr. Lee(ph) on the telephone did he  
 11 indicate to you that he knew where your sets were?  
 12 A He said he had flown over a big snare set on the Swift  
 13 River and he gave me an approximate location, and  
 14 said.....  
 15 Q And did that indicate to you that he knew where your  
 16 sets were?  
 17 A That is exactly what I would think.  
 18 Q When did you -- when did the wolf season for snaring  
 19 end?  
 20 A I think it's the end of April.  
 21 Q So from March 23rd until April 30 you had roughly five  
 22 weeks to deal with those sets, or you were going to  
 23 continue to deal with them?  
 24 A Yeah.  
 25 Q For the snares?

- 896 -

1 A For the snares, yes. Leg hold season would have closed  
 2 March 31st.  
 3 Q You said that your bear hunting season was about to  
 4 start. When would it have started?  
 5 A Not exactly sure, but I know our first hunters were  
 6 coming in like April 3 or 4th. Third or 4th, 5th,  
 7 somewhere in there.  
 8 Q Okay. So you're pretty much done with predator control  
 9 then after the nine wolves were shot?  
 10 A Yeah. And we have -- we're into -- you know, doing  
 11 guided bear hunts, we don't have time to go to McGrath  
 12 and spend -- yeah, we're done for that year.  
 13 Q Now that program ended April 30, too, right? Like the  
 14 trapping season for snares for wolves?  
 15 A I believe so, yes.  
 16 Q But you didn't get into that program until late into the  
 17 beginning -- or it actually started in November and then  
 18 I think Toby testified that there was a court injunction  
 19 and it stopped it for a couple weeks and then it  
 20 restarted again some time in December?  
 21 A Yeah.  
 22 Q Now you didn't get a permit until March, right?  
 23 A Yeah, I think it -- well, I know, they -- they.....  
 24 Q Well, you didn't get your permit until March, right?  
 25 A Yeah, they called us and we didn't go get -- get the

- 897 -

1 permit until, you know, March 5th.  
 2 Q So you were -- so would it be fair to say you were on  
 3 the backside of the predator control program by the time  
 4 you got your permit anyway?  
 5 A Yeah, very much so.  
 6 Q So it's not like you've -- you had gotten it in November  
 7 or December and been participating all along, right?  
 8 A No.  
 9 Q Do you recall Mr. Zellers testifying yesterday that on  
 10 March 24, '05 the two of you did fly over your trap set  
 11 to check it out?  
 12 A I believe so, yes.  
 13 Q And so if he said that yesterday, would that be true?  
 14 A Yes, it -- you know, Tony has a very good mind. I, you  
 15 know, been -- brain's been full of other stuff, but I --  
 16 if he said so, that would be true.  
 17 Q Did you see the predator control program as a  
 18 conservation program for wolves?  
 19 MR. LEADERS: Objection, relevance.  
 20 MR. ROBINSON: It is relevant. We're talking about his  
 21 state of mind. You brought it up.  
 22 A No, we were not conserving wolves.  
 23 THE COURT: The objection is overruled, but -- go ahead.  
 24 Go ahead.  
 25 Q Now, Mr. Haeg, can you show us on this map up here where

- 898 -

1 you would ordinarily do your trapping from year to year  
 2 on this map up here?  
 3 A We had -- where I'd leave sets out -- when I say out,  
 4 that means that they're hooked to trees but shut down,  
 5 they're not actively trapping, but where they're sitting  
 6 there. There's our main lodge, I've got traps there. I  
 7 actually have some down here on the little lake right in  
 8 here. We've got a string of snares kind of down in this  
 9 area, and then I've got, I think, two or three sets out  
 10 on the Swift out here. Some right in here on this lake.  
 11 And I usually have a couple of sets up kind of, I guess,  
 12 up in here. This is the Babel River in here. So.....  
 13 Q So how long have you been personally trapping in this  
 14 area to identify (indiscernible)?  
 15 A About as long as I've been working for -- started  
 16 working for Eberhart Brunner out there, so I would say  
 17 1990, so.....  
 18 Q So up until 2004 has it been about 14 years?  
 19 A Oh, yeah.  
 20 Q Now with regard to personal hunting, not guided hunting,  
 21 but personal.  
 22 THE COURT: Can you sit back down or do you need the  
 23 map.....  
 24 MR. ROBINSON: You can have a seat.  
 25 THE COURT: All right.

- 899 -

1 Q With regard to personal hunting, where you just go out  
 2 and hunt for yourself. Not taking somebody else out.  
 3 When was the last time you think you did that on a  
 4 regular basis?  
 5 A I'd say 10 years ago.  
 6 Q Now Mr. Leaders introduced these photographs of your  
 7 place in Soldotna.  
 8 THE COURT: I think they're over there. Or  
 9 (indiscernible).  
 10 MR. ROBINSON: No, I have two of them here.  
 11 THE COURT: Thank you, Mr. Robinson. Okay.  
 12 Q Your hangar/apartment and your -- inside your hangar  
 13 showing your other airplane, the red and white one. So  
 14 how many years did it take you, Mr. Haeg, to get enough  
 15 income and economic status to get that hangar built?  
 16 A I -- well, my whole working life until I think I built  
 17 it in 1980 -- gosh, '94 I think. I -- like I said, I  
 18 did very well herring spotting for a number of years.  
 19 Did well salmon fishing, but it took until 1994 and I --  
 20 when I was growing up I was working on a commercial  
 21 salmon fishing site, since I was 10 years old, and my  
 22 parents paid me a wage and I worked my -- I worked my  
 23 butt off.  
 24 Q So these -- you build that building and the airplane  
 25 that's represented inside of it. Is that the result of

1 when all this stuff happened, you know, it was coming  
 2 along great, you know, bear viewing and stuff are -- I  
 3 don't know, it seems like tourism in general has.....  
 4 Q Picking up on the Peninsula?  
 5 A Yeah. A booming business.  
 6 Q On the Kenai Peninsula?  
 7 A Yes. Yeah, now they have cruise ships coming into  
 8 Seward and I think Homer even, there's lots of people  
 9 running around.  
 10 Q Now do you do any other hunting besides the bear hunting  
 11 and the moose -- I mean the guiding of that. Do you do  
 12 any other kind of guiding other than the bear and moose?  
 13 A Well, caribou, black bear. You know, at times I've  
 14 taken, you know, fishermen out, but that's not a -- not  
 15 really a business.  
 16 Q But you do caribou?  
 17 A Yeah.  
 18 Q And does the money you generate from the caribou hunts  
 19 help maintain your headquarters in Soldotna?  
 20 A Yes, but, you know, caribou along with the moose are on  
 21 the decline, so -- we have tried to, you know, -- you  
 22 know, out where we hunt moose and caribou out in Unit 19  
 23 we now -- you know, if somebody wants to come out there  
 24 and hunt just to come out to the area because it's so  
 25 beautiful, we try to just sell grizzly hunts, black bear

1 just your guiding in area -- in game units 19-C and D?  
 2 I mean C and B?  
 3 A No, it's not. Most all that I had before I got into  
 4 guiding. When I did get into guiding we dumped  
 5 everything back into, you know, whatever, but most all  
 6 of this was -- by the time I really got into guiding I  
 7 had already done relatively well for someone of my age.  
 8 I've been -- you know, worked hard and done well.  
 9 Q Well, with regard to maintaining. You said you also  
 10 guide in other areas for bear?  
 11 A Yes.  
 12 Q Which units do you guide for bear in?  
 13 A 9-A and 9-B, and 16-B.  
 14 Q Part of the money you make for that help you to maintain  
 15 your hangar and apartment and things inside your hangar?  
 16 A Yeah. I would say bear hunting now is, you know --  
 17 well, bear hunting now brings in more money than, you  
 18 know, moose hunting. So, yeah, it's over -- you know,  
 19 probably the biggest portion of what supports what I  
 20 have now.  
 21 Q And your flight seeing business, does that help.....  
 22 A Yeah.  
 23 Q .....contribute to maintaining the expense of.....  
 24 A Yeah, it's just kind of somewhat started, but it's grown  
 25 leaps and bounds. Like I said -- well, until this year

1 hunts, but, you know, moose is a big draw that we've  
 2 just -- you know, we just have to do something else.  
 3 Q You mentioned something about getting threats, and  
 4 threatening e-mails?  
 5 MR. LEADERS: Objection, Judge, as to relevancy.  
 6 MR. ROBINSON: About the wolf hunting business.  
 7 (Indiscernible).  
 8 THE COURT: Well.....  
 9 MR. ROBINSON: The wolf hide advertisement you brought  
 10 up.  
 11 THE COURT: No, it's not relevant, and the objection is  
 12 sustained.  
 13 MR. ROBINSON: Well, as to -- Your Honor, it's within the  
 14 scope and it is relevant. He wanted to know about the wolf  
 15 hide deal and he said that he wasn't doing it anymore and he  
 16 shut it down. And I want to know why he shut it down. He  
 17 brought it up.  
 18 MR. LEADERS: He testified about why he shut it down.  
 19 MR. ROBINSON: No. Well, great, but that's why the scope  
 20 is there. Because the issue came up, that's why it's within  
 21 the scope.  
 22 MR. LEADERS: It was a non-responsive response to one of  
 23 my questions. It's not relevant as to the charges brought.  
 24 MR. ROBINSON: (Indiscernible). Listen, well, it wasn't  
 25 relevant then why did you bring it up?

1 MR. LEADERS: I didn't, Judge. All I did was.....  
 2 MR. ROBINSON: You did bring it up.  
 3 MR. LEADERS: In response to.....  
 4 THE COURT: Gentlemen, that's enough.  
 5 MR. ROBINSON: Your Honor, I would like to ask this  
 6 witness why he's no longer doing that program, and that is  
 7 relevant because.....  
 8 THE COURT: You can ask that question. That was not the  
 9 question you were posing.  
 10 MR. ROBINSON: But he mentioned in his testimony about e-  
 11 mails.  
 12 THE COURT: And if -- his -- the question from Mr.  
 13 Leaders was why he closed it down and he indicated and part  
 14 of his response was of the concern due to some of the things  
 15 they had received. We're not going to get into the specifics  
 16 about what those were.  
 17 MR. ROBINSON: I'm not asking about the specifics.....  
 18 THE COURT: That's what the question it sounded like you  
 19 were phrasing, started off to be, so if you want to ask why  
 20 he.....  
 21 MR. ROBINSON: It's mainly preliminary foundation as to  
 22 what kind of e-mails he had gotten, not the content.  
 23 THE COURT: We're not going to go into -- that's what I'm  
 24 saying, it's not relevant, the kind. If you want to ask why  
 25 he closed the program down, ask the question. But.....

- 904 -

1 Q Why did you close the program down, Mr. Haeg?  
 2 A Well, we didn't do many of them to begin with, and you  
 3 know after all this happened we had a big fear that you  
 4 know we'd get more threatening e-mails, et cetera. We  
 5 got, I don't know, some of them that were pretty graphic  
 6 and nasty. And -- like I said, the -- our, you know,  
 7 program or whatever was never a significant portion of  
 8 my business anyway.  
 9 Q In comparison to the bear hunting (indiscernible) or the  
 10 flight seeing and the bear viewing, things of that  
 11 nature, what kind of revenue did you generate from this  
 12 wolf trap/hunting?  
 13 A Well, like I said, I think we only had three people do  
 14 it, and we charged \$4,000 a piece to do it, and I would  
 15 say that we spent more than that doing it. I -- you  
 16 know, my.....  
 17 Q How many people over what period of time?  
 18 A I don't know, about six years, five years I'd say. It  
 19 was on the website but it was -- you know, sometimes you  
 20 have stuff on a website, it doesn't cost you anything to  
 21 keep it going, you know.  
 22 Q Keep the ad going you mean?  
 23 A Yeah. I mean it's -- it's like free advertisement and  
 24 if you -- you know, it doesn't cost you anything, so it  
 25 isn't a big concern to take stuff down or change stuff

- 905 -

1 unless it's, you know, inaccurate or whatever. But.  
 2 like I said, we -- you know, there's no reason for it  
 3 there and.....  
 4 Q When you and Mr. Zellers were taking the wolves back in  
 5 March in unit -- game unit 19-D -- game unit 19 -- 19  
 6 units C and D, were you conducting any guides -- guiding  
 7 services?  
 8 A No, we were not.  
 9 Q Were you intending to get the hides in order to give  
 10 them away under this wolf and trapping program?  
 11 A Absolutely 100 percent not.  
 12 Q What were you intending to do with the hides?  
 13 A Intended on getting them tanned so we could then sell  
 14 them.  
 15 Q Now you mentioned that in the fall of 2004 you didn't do  
 16 any guiding?  
 17 A That's correct.  
 18 Q Was that partially because you didn't have the equipment  
 19 to do guiding like the airplane had been seized?  
 20 A No, we had entered plea negotiations.....  
 21 MR. LEADERS: Objection, Judge. (Indiscernible)  
 22 relevance.  
 23 MR. ROBINSON: Well, (indiscernible).  
 24 MR. LEADERS: I think we should approach.  
 25 (Bench conference as follows:)

- 906 -

1 MR. LEADERS: The plea negotiations are relevant.  
 2 THE COURT: I certainly don't want -- I don't want either  
 3 side to bring that up.  
 4 MR. ROBINSON: Well, the truth that he opened the door.  
 5 I asked him why.....  
 6 MR. LEADERS: I asked him if it was because of this case  
 7 and it was not because of plea negotiations.....  
 8 MR. ROBINSON: Well, because of this case -- well, isn't  
 9 this case the case?  
 10 THE COURT: The theory behind it is about plea  
 11 negotiations, they're not relevant. What do you want to ask  
 12 him about? (Indiscernible).  
 13 MR. ROBINSON: I want to ask him if (indiscernible).  
 14 THE COURT: Well, he's bringing it up.  
 15 MR. LEADERS: Well, it's been -- that's what my question  
 16 relates.....  
 17 THE COURT: It's .....  
 18 (End of bench conference)  
 19 THE COURT: Go ahead, Mr. Robinson.  
 20 Q Selling those skulls, was that part of the recouperation  
 21 of costs?  
 22 A Yeah.  
 23 Q Nothing illegal about selling those skulls is there?  
 24 A Not that I know of.  
 25 Q No, I mean selling the skulls in general from wolves?

- 907 -

1 Is that okay generally?  
 2 A Yes, I believe any trapped animal you can sell any part  
 3 of it I believe.  
 4 Q In your experience, Mr. Haeg, as a trapper, hunter,  
 5 guide, whatever, do moose always stay in the same area  
 6 or do they range, too, like wolves?  
 7 A Well, they range quite a bit. Certain times of year,  
 8 especially, and, you know, they do not -- I mean I would  
 9 say that they have a smaller range than wolves, but they  
 10 range considerable distances.  
 11 MR. ROBINSON: No further questions.  
 12 THE COURT: Anything else, Mr. Leaders?  
 13 MR. LEADERS: No, recross, Judge.  
 14 THE COURT: Okay. Mr. Haeg, you want to have your seat  
 15 back at counsel table, please. Mr. Robinson, you want to  
 16 call your next witness?  
 17 MR. ROBINSON: The defense rests.  
 18 THE COURT: Okay. Mr. Leaders, any.....  
 19 MR. LEADERS: We're going to have to do some  
 20 (indiscernible).  
 21 (Whispered conversation)  
 22 MR. LEADERS: Judge, the state's not going to put on a  
 23 rebuttal case.  
 24 THE COURT: Okay. All right, ladies and gentlemen, we've  
 25 reached a point in the trial where all the evidence has been

- 908 -

1 presented, and what that means to you all is that we need a  
 2 little bit of time to go over some things before we can  
 3 proceed to the next step. Have you had a chance to review  
 4 the instructions much?  
 5 MR. ROBINSON: No, I think we need a little bit of time  
 6 to read through them.  
 7 THE COURT: Yeah.  
 8 MR. LEADERS: Could I suggest that it's a break for the  
 9 jury and for us to do jury instructions and for everyone to  
 10 do dinner, and.....  
 11 MR. ROBINSON: Yeah, and then come back.....  
 12 THE COURT: Well, that's why I'm -- that's why I was  
 13 asking.....  
 14 MR. LEADERS: All right, that's.....  
 15 THE COURT: I'm -- just so that I can start planning  
 16 here.  
 17 MR. LEADERS: (Indiscernible).  
 18 THE COURT: We're going to take an early dinner break. I  
 19 think we will come back after dinner because we should be  
 20 able to get to the point perhaps to give the trial -- give  
 21 the case to you all -- to the jury tonight if it's a  
 22 reasonable hour, we'll do that.  
 23 Let us -- let's see. If I say 6:00 o'clock that should  
 24 give you all time to review and us to go through it.  
 25 MR. LEADERS: I propose 6:00 to 6:30 so that we

- 909 -

1 could.....  
 2 THE COURT: Mr. Robinson? Mr. Robinson?  
 3 MR. ROBINSON: Pardon me?  
 4 THE COURT: If I say 6:00 o'clock for the jury to be back  
 5 will that give you sufficient time to review them and for us  
 6 to discuss them?  
 7 MR. ROBINSON: Yes, it would. If we can maybe -- for us  
 8 to be back.....  
 9 THE COURT: That's two hours.  
 10 MR. ROBINSON: .....by 5:00, so -- if the jury's coming  
 11 back at 6:00. If we come back at 5:00 and talk to you about  
 12 the jury instructions.  
 13 THE COURT: Okay. All right, ladies and gentlemen, I'll  
 14 caution you again or admonish you again, please not to talk  
 15 to each other or anybody else about the case. Have dinner  
 16 and be back here at 6:00 o'clock, okay? Thank you.  
 17 (Off record)  
 18 THE CLERK: On record.  
 19 THE COURT: Okay. We're back on record, the parties are  
 20 present and the jury is absent. All right, gentlemen, have  
 21 you both had a chance to look over the jury instructions?  
 22 Mr. Robinson before you came Mr. Leaders noticed that  
 23 intentionally was omitted. That was accidentally on my.....  
 24 MR. ROBINSON: No problem.  
 25 THE COURT: I put it in right after the elements of

- 910 -

1 unsworn falsification.  
 2 MR. ROBINSON: Right. No problem.  
 3 THE COURT: Okay.  
 4 MR. ROBINSON: I have read -- now I just needed some -- I  
 5 didn't quite hear the court this morning when you said which  
 6 instructions you're going to give.  
 7 THE COURT: The ones that start off with.....  
 8 MR. ROBINSON: The evidence has now been.....  
 9 THE COURT: At the close of trial you have the -- counsel  
 10 have the right to argue the case to the trial -- to the jury.  
 11 MR. ROBINSON: Right.  
 12 THE COURT: That stack is the ones I usually read  
 13 before.....  
 14 MR. ROBINSON: Before argument?  
 15 THE COURT: Before argument.  
 16 MR. ROBINSON: Okay.  
 17 THE COURT: That way you don't have to say as the judge  
 18 is going to tell you later, here.....  
 19 MR. ROBINSON: (Indiscernible).  
 20 THE COURT: .....is what it's going to say. They will  
 21 have heard it already.  
 22 MR. ROBINSON: And then the other stack is after.....  
 23 THE COURT: And then the other stack, the evidence has  
 24 now been presented, those are my closing.....  
 25 MR. ROBINSON: I've got it right then. I was -- I wrote

- 911 -

1 it down but I wasn't.....  
 2 THE COURT: Yeah.  
 3 MR. ROBINSON: .....sure I had it right.  
 4 THE COURT: Yeah, I -- I have not taken judicial notice  
 5 of anything so I don't intent to even give that one.  
 6 MR. ROBINSON: Give that, okay.  
 7 THE COURT: That was just kind of hanging around in case  
 8 I needed it.  
 9 MR. ROBINSON: All right.  
 10 MR. LEADERS: We can stipulate about the boundaries.  
 11 MR. ROBINSON: Yeah, but we admitted it.  
 12 THE COURT: It's admitted with it.....  
 13 MR. ROBINSON: (Indiscernible) condition of the  
 14 (indiscernible) and.....  
 15 MR. LEADERS: Yeah, I mean -- yeah, that's fine. I don't  
 16 -- we don't need to go over them.  
 17 THE COURT: I mean that's still not judicial notice. It  
 18 was a stipulation.....  
 19 MR. ROBINSON: Well, we stipulated (indiscernible).  
 20 THE COURT: And it was done on record, so.....  
 21 MR. LEADERS: No, I was just saying there's usually a  
 22 stipulation instruction.  
 23 MR. ROBINSON: Well, what you might want to do, and I  
 24 won't object to it, is you might want to now get rid of the  
 25 limited admission and just have it admitted.

- 912 -

1 MR. LEADERS: Yeah, thank you, I appreciate that because  
 2 it is true, we had red -- there are no more.....  
 3 MR. ROBINSON: Right.  
 4 MR. LEADERS: .....marks on it. So I guess now I'd ask  
 5 in this form.....  
 6 THE COURT: Okay.  
 7 MR. LEADERS: .....be admitted.  
 8 THE COURT: Okay. With the yellow sticky on it?  
 9 MR. ROBINSON: I don't -- and I don't object to it.  
 10 MR. LEADERS: Yeah, the yellow sticky. Mr. Robinson and  
 11 I discussed putting a legend on there.....  
 12 MR. ROBINSON: And that's from the testimony of Tony  
 13 Zellers.....  
 14 MR. LEADERS: I'll.....  
 15 MR. ROBINSON: .....so that there's more legend to it.  
 16 MR. LEADERS: Maybe.....  
 17 THE COURT: Oh, okay. It identifies his.....  
 18 MR. LEADERS: And I'll tape that so it's a little bit  
 19 more secure.  
 20 THE COURT: I was going to say we'll attach it more  
 21 securely unless you have.....  
 22 MR. ROBINSON: No.  
 23 THE COURT: .....any objection to that. Just.....  
 24 MR. LEADERS: No, no, that.....  
 25 MR. ROBINSON: No.....

- 913 -

1 THE COURT: .....with clear plastic tape so that it  
 2 doesn't fly off and they wonder what it came from.  
 3 MR. ROBINSON: Right. What happened to the yellow  
 4 sticky.  
 5 THE COURT: Yeah.  
 6 MR. LEADERS: And that's part of the exhibit.  
 7 THE COURT: Yeah, we will do that then, okay.  
 8 MR. ROBINSON: So I don't have any objection to the  
 9 addition of it, so it's in.  
 10 THE COURT: Okay. We'll admit 25, right? I can't read  
 11 it from here. Is the map 25?  
 12 UNIDENTIFIED SPEAKER: Yes. The map is 25, correct, Your  
 13 Honor.  
 14 THE COURT: Okay. All right, we'll do that and we'll get  
 15 some Scotch tape and tape that yellow sticky where it is.  
 16 (Plaintiff's Exhibit 25 admitted)  
 17 MR. ROBINSON: I need to do a short exhibit list for A  
 18 and B.  
 19 THE COURT: Yeah, please.  
 20 MR. ROBINSON: Just so that it's part of the record.  
 21 THE COURT: Yeah, we'll do that.  
 22 THE CLERK: I have one here.  
 23 THE COURT: I think the clerk did -- yeah, Ms. Markus did  
 24 one.....  
 25 MR. ROBINSON: Oh, okay.

- 914 -

1 THE COURT: .....so.  
 2 MR. ROBINSON: All right, great.  
 3 THE CLERK: I've got one.  
 4 THE COURT: Unless you need another one, or want copies  
 5 of it.  
 6 MR. ROBINSON: No.  
 7 THE COURT: Any objection or any additions or exclusions  
 8 or anything we need with the instructions on anything?  
 9 MR. ROBINSON: I read through the before argument  
 10 instructions and the after argument instructions and I have  
 11 no objections to the instructions.  
 12 THE COURT: Okay.  
 13 MR. LEADERS: I have just -- I want say a lot of  
 14 objections, just a couple maybe additions we need. One,  
 15 we've got the definition of hunting. I'd ask -- I think we  
 16 need the definition of taking, because hunting says it's  
 17 taking.  
 18 MR. ROBINSON: Yeah, we need that definition. I don't  
 19 disagree with that.  
 20 MR. LEADERS: So I think we need taking. We've got the  
 21 seasons -- trapping seasons for wolf and.....  
 22 MR. ROBINSON: .....wolverine.  
 23 MR. LEADERS: .....wolverine. I think we need the  
 24 hunting season for wolf, because that's an issue that the --  
 25 and that's -- it's a legal issue. It's set out in

- 915 -

1 regulation. I can provide that. The.....  
 2 THE COURT: I'm assuming we're talking just in Unit 19?  
 3 MR. LEADERS: Yeah, exactly, just Unit 19.  
 4 THE COURT: You're not going to.....  
 5 MR. LEADERS: Oh, I agree, we don't need the whole thing,  
 6 just for Unit 19, that's where everything is applicable.  
 7 The.....  
 8 THE COURT: Do you have the cite from the statute on  
 9 that?  
 10 MR. LEADERS: Yeah, 5 AAC 85.056.  
 11 THE COURT: That's the hunting season isn't it?  
 12 MR. LEADERS: Hunting seasons and bag limits for wolf.  
 13 THE COURT: I meant -- well, I need that, too. 85 what?  
 14 MR. LEADERS: 5 AAC 85.056.  
 15 THE COURT: What about.....  
 16 MR. ROBINSON: With the understanding that there's no bag  
 17 limit in trapping so we don't need a bag limit.  
 18 (Indiscernible).  
 19 THE COURT: Right.  
 20 MR. LEADERS: Right.  
 21 THE COURT: Well, bag limit is not an issue, is it?  
 22 MR. LEADERS: No, but.....  
 23 THE COURT: I mean there's no charges relating to -- for  
 24 hunting or trapping.  
 25 MR. ROBINSON: No.

- 916 -

1 last definition, I think, or instruction I believe was  
 2 salvage. And I think we need a little bit more language  
 3 there because it.....  
 4 MR. ROBINSON: What is the definition.....  
 5 THE COURT: That's the definition.  
 6 MR. LEADERS: That's the definition of salvage itself.  
 7 The statute sets out -- and it says based on the applicable  
 8 species or whatever. 90 -- 5 AAC.....  
 9 MR. ROBINSON: But there's no human use. Of hide of a  
 10 wolf.  
 11 MR. LEADERS: Yeah, the human consumption .....  
 12 THE COURT: That's the verbatim definition of salvage.  
 13 MR. ROBINSON: Specifically (indiscernible).....  
 14 (Whispered conversation)  
 15 MR. ROBINSON: Yes, that's the same thing.  
 16 MR. LEADERS: As long as.....  
 17 MR. ROBINSON: Necessary. These are things that have to  
 18 be done.  
 19 MR. LEADERS: Okay. As long as it's.....  
 20 MR. ROBINSON: And the edible means consumed by humans or  
 21 processing (indiscernible). Or (indiscernible) edible  
 22 (indiscernible). And the skull or hide (indiscernible).  
 23 MR. LEADERS: And I guess what I'm getting at is as  
 24 required by statute or regulation. The regulation regarding  
 25 wolf states a person taking game shall salvage or -- salvage

- 918 -

1 MR. LEADERS: Right.  
 2 THE COURT: I wasn't going to include bag limit for the  
 3 hunting season, just the.....  
 4 MR. ROBINSON: Just the seasons.  
 5 THE COURT: .....season itself.  
 6 MR. ROBINSON: Okay.  
 7 MR. LEADERS: Yeah. I would agree it's not necessary.  
 8 THE COURT: Do you have the cite for the definition of  
 9 taking?  
 10 MR. LEADERS: Taking.....  
 11 MR. ROBINSON: It's 940.....  
 12 MR. LEADERS: Yeah, 16.05.940, subsection (33).  
 13 THE COURT: Okay.  
 14 MR. LEADERS: Let's see. The other -- oh, on the -- I  
 15 request -- we've got the 5 AAC 92.085, I'd ask that we add a  
 16 sentence that states 5 AAC 92.085 is a regulation adopted  
 17 under the authority of A.S. 16.05 because that ties into the  
 18 requirements for hunting as under 16.05 of the regulations  
 19 adopted there under.  
 20 MR. ROBINSON: No problem.  
 21 MR. LEADERS: I've got a -- do you want that language  
 22 that I suggested?  
 23 THE COURT: Sure.  
 24 MR. LEADERS: 5 AAC 92.085 is a regulation adopted under  
 25 the authority of A.S. 16.05. And then I -- one other, the

- 917 -

1 the following parts for human use. The hide of a wolf. Just  
 2 so it's clear that the hide had to be salvaged, it doesn't  
 3 have to salvage anything else. It's just the hide. I mean  
 4 here's -- I'll show you where I'm looking.  
 5 THE COURT: You want to just change it then to -- I mean  
 6 this is the statutory definition. This is right from the  
 7 regulation.  
 8 MR. ROBINSON: Use the statutory definition  
 9 (indiscernible).  
 10 THE COURT: So -- I mean if you want to.....  
 11 MR. ROBINSON: You want to just.....  
 12 MR. LEADERS: I agree, but what I.....  
 13 MR. ROBINSON: Oh, you just want to add that one  
 14 sentence.  
 15 MR. LEADERS: Yeah, add that one sentence because it sets  
 16 out -- we've got the definition of salvage. What we don't  
 17 have is the requirement, what's required to be salvaged for a  
 18 wolf.  
 19 MR. ROBINSON: From a wolf.  
 20 MR. LEADERS: That's what I'm trying to add.  
 21 THE COURT: Okay.  
 22 MR. ROBINSON: I don't have any objection.  
 23 MR. LEADERS: And -- maybe if you can read my scratch,  
 24 otherwise I'll write better.  
 25 THE COURT: Well, I'm just.....

- 919 -

1 MR. LEADERS: This -- under the statute charge....  
 2 THE COURT: 92 what?  
 3 MR. LEADERS: 220(a)(1).  
 4 MR. ROBINSON: Do we have a definition of negligence in  
 5 here, too? Criminal negligence.  
 6 THE COURT: Criminal negligence, yeah.  
 7 MR. LEADERS: When criminal -- it's civil by....  
 8 THE COURT: It's right after....  
 9 MR. LEADERS: ....law but I don't care.  
 10 MR. ROBINSON: All right.  
 11 MR. LEADERS: Criminal is fine with me.  
 12 MR. ROBINSON: All right.  
 13 MR. LEADERS: I'm not going (indiscernible).  
 14 THE COURT: Well, that's....  
 15 MR. ROBINSON: And that deals with the waste question  
 16 anyway.  
 17 THE COURT: So -- that's the one I had.  
 18 MR. ROBINSON: Yeah.  
 19 MR. LEADERS: I'm not going to worry about it.  
 20 MR. ROBINSON: That's fine.  
 21 MR. LEADERS: That's fine.  
 22 THE COURT: Okay. This will take me a few minutes.  
 23 MR. LEADERS: The....  
 24 THE COURT: Is that it on the instructions?  
 25 MR. LEADERS: I think -- I believe that's it on

- 920 -

1 instructions. I just....  
 2 MR. ROBINSON: The after argument ones are just the  
 3 regular boilerplate?  
 4 MR. LEADERS: Those all look boilerplate to me as far as  
 5 I can tell. I didn't see any issues.  
 6 THE COURT: Yeah, I included the one for admission. One  
 7 that the....  
 8 MR. LEADERS: Right.  
 9 THE COURT: ....defendant testified.  
 10 MR. ROBINSON: Right.  
 11 THE COURT: Those are pretty -- other than that I think  
 12 those are -- I mean and those are boilerplate, but I mean  
 13 those are the ones sometimes that aren't included. State of  
 14 mind....  
 15 MR. LEADERS: The only other....  
 16 THE COURT: ....edit, yeah.  
 17 MR. LEADERS: ....possible instruction and I guess I'd  
 18 need to know for clarification from the court, and I guess  
 19 Mr. Robinson as well, if there's argument that this -- I mean  
 20 I think the court's already ruled as far as the argument  
 21 can't be made that it is not hunting.  
 22 THE COURT: Right.  
 23 MR. ROBINSON: No.  
 24 THE COURT: That isn't -- that's the ruling I made  
 25 before, it may.

- 921 -

1 MR. ROBINSON: Well, we've got a problem, because we have  
 2 now testimony that says that the predator control program is  
 3 not hunting.  
 4 THE COURT: That's fine. But the argument....  
 5 MR. ROBINSON: All right.  
 6 THE COURT: ....can't be made that because it's --  
 7 whether it's hunting or not is -- the ruling I made was that  
 8 the argument can't be made that what Mr. Haeg engaged in was  
 9 not hunting. The argument can be made that he did not  
 10 knowingly violate a state game law or regulation that  
 11 prohibited same day airborne hunting. That's what the ruling  
 12 was before. That's the ruling that was made in May.  
 13 MR. ROBINSON: I don't understand the difference, myself.  
 14 THE COURT: The difference is you can't -- the -- it's  
 15 not whether it's hunting or not, it's whether he knowingly  
 16 violated a game law, a state law that required....  
 17 MR. ROBINSON: No. Prohibited hunting.  
 18 MR. LEADERS: Right.  
 19 THE COURT: Same day airborne hunting. But it's -- the  
 20 issue is knowingly violated. It's not whether or not it was  
 21 hunting.  
 22 MR. ROBINSON: No, it's knowingly violating a state law  
 23 prohibiting hunting. There's no way you can detach the two.  
 24 THE COURT: But the issue is knowingly violate it. By  
 25 definition....

- 922 -

1 MR. ROBINSON: But knowingly violating what? But you've  
 2 got to say knowingly violating what? Knowingly violating  
 3 wasted food animal? Prohibiting wasting food animal or  
 4 prohibiting hunting, meaning it's not just hanging out there  
 5 by itself.  
 6 THE COURT: Right.  
 7 MR. ROBINSON: All right. So the question is did he  
 8 knowingly violate a state game law that prohibits hunting.  
 9 MR. LEADERS: I agree with that. Did he knowingly  
 10 violate a state regulation or statute prohibiting....  
 11 MR. ROBINSON: Yeah, but -- right, prohibits hunting  
 12 as....  
 13 MR. LEADERS: ....hunting, but....  
 14 MR. ROBINSON: ....opposed to prohibit prostitution or  
 15 something else. All I'm saying....  
 16 MR. LEADERS: But that's different than that if what he  
 17 did was not hunting.  
 18 THE COURT: Right.  
 19 MR. LEADERS: And that's the -- as I understand  
 20 (indiscernible).  
 21 MR. ROBINSON: Well, but he should be able to argue --  
 22 no, he should be able to argue that the conduct that he was  
 23 engaged in was not hunting, so....  
 24 THE COURT: No.  
 25 MR. ROBINSON: ....he couldn't have been knowingly

- 923 -

1 violating a hunting law.  
 2 THE COURT: No. No. You can argue that he -- that --  
 3 you can't argue the conduct was not hunting. By definition  
 4 it falls within the legal definition of hunting.  
 5 MR. ROBINSON: It doesn't. The board took it out of the  
 6 legal definition of hunting, so it can't possibly.....  
 7 THE COURT: It took the predator control game program out  
 8 of the definition.....  
 9 MR. ROBINSON: That's right.  
 10 THE COURT: .....of legal hunting.  
 11 MR. ROBINSON: And that's.....  
 12 THE COURT: He was not in the predator control program  
 13 area.  
 14 MR. ROBINSON: Yes, he was in the predator control  
 15 program and he violated that law.....  
 16 THE COURT: He was not.....  
 17 MR. ROBINSON: He violated that law.  
 18 MR. LEADERS: I mean I guess that's what gets to whether  
 19 or not hunting (indiscernible).  
 20 MR. ROBINSON: I mean that's the -- I mean he violated  
 21 that law.  
 22 THE COURT: That is whether he knowingly violated the one  
 23 that prohibited hunting. You can't argue that the conduct  
 24 was not hunting.  
 25 MR. ROBINSON: He can argue.....

- 924 -

1 THE COURT: That he didn't knowingly violate because he  
 2 believed it wasn't hunting, he believed he was only violating  
 3 the predator control program, but you can't argue that it  
 4 wasn't hunting. It's a fine line, and I understand that, but  
 5 you're not going to -- that's.....  
 6 MR. ROBINSON: Well, I don't understand if -- if predator  
 7 controlling is not hunting or trapping specifically by  
 8 regulation and we have testimony that it's neither, and he  
 9 violates the conditions of his permit, because that's what he  
 10 had. He had a permit (indiscernible).  
 11 THE COURT: Then you're talking about the knowing  
 12 violation that -- I mean it sounds like then the argument you  
 13 want to make is that he knowingly violated a condition of his  
 14 permit but he didn't realize that by violating a condition of  
 15 the permit he was also violating a state game law that  
 16 prohibited same day airborne hunting.  
 17 MR. ROBINSON: Because that law that permits the predator  
 18 control program is not a hunting law.  
 19 THE COURT: But that's not arguing that the conduct is  
 20 not hunting. That's arguing that he didn't knowingly violate  
 21 the law.  
 22 MR. ROBINSON: The law prohibiting hunting. Not the.....  
 23 THE COURT: That's -- but that's not -- that's not the  
 24 same thing as saying that the conduct is not hunting.  
 25 There's a difference there.

- 925 -

1 MR. ROBINSON: Well, let's say -- let me just say this.  
 2 Let's say that he was fishing, and the state through their  
 3 discretion decided to charge him with violating a state law  
 4 prohibiting hunting. And so you're saying he can't argue  
 5 that his conduct was fishing instead of hunting? Certainly  
 6 he would be able to do that.  
 7 THE COURT: Because the conduct wouldn't fall under the  
 8 legal definition of hunting.  
 9 MR. ROBINSON: And neither does the conduct here fall  
 10 under the legal definition.....  
 11 THE COURT: Yes, it does.  
 12 MR. ROBINSON: It doesn't because the board says that it  
 13 is neither hunting or trapping.  
 14 THE COURT: The board says that the activity in the area  
 15 defined geographically is the predator control program. That  
 16 conduct, for reasons that nobody made clear on the record, is  
 17 neither hunting -- well, except for the public perception.  
 18 They don't want to define as either hunting or.....  
 19 MR. ROBINSON: Well, let's say he was trapping.  
 20 THE COURT: .....trapping.  
 21 MR. ROBINSON: Let's say he was trapping fur bearers  
 22 instead of hunting. The same thing. It's out of the hunting  
 23 or the trapping.....  
 24 THE COURT: It's.....  
 25 0906

- 926 -

1 (Tape change)  
 2 4MC-05-21/Side B  
 3 0906  
 4 MR. ROBINSON: .....hunting or trapping. I -- I was -- I  
 5 had no trapping license.  
 6 THE COURT: But that goes to whether he believed and  
 7 that's in the definition of knowingly. That's not -- the  
 8 issue of -- a factual issue as to whether it was hunting or  
 9 not, it's not a factual issue. That's a legal issue. It  
 10 meets the legal definition of hunting, but what you're  
 11 arguing is that he didn't knowingly violate the statute  
 12 because he didn't believe he was engaged in that conduct.  
 13 MR. ROBINSON: Well, I guess what I'm trying to say  
 14 though is that if the prohibition is hunting, that's the  
 15 conduct that's prohibited.  
 16 THE COURT: Uh-huh.  
 17 MR. ROBINSON: That is a factual question. That's not a  
 18 legal question. Even Mr. Leaders recognized that in his  
 19 opposition to a motion to dismiss. That is a factual  
 20 question. Because if he was fishing, he was trapping, that's  
 21 not hunting. So it's the conduct that matches up with what  
 22 is prohibited.  
 23 MR. LEADERS: The issue isn't what conduct he was  
 24 involved in whether it was -- whether he believed it was  
 25 predator control, he believed it was hunting or trapping, is

- 927 -



1 did his conduct violate a hunting regulation.  
 2 MR. ROBINSON: That's -- and if he wasn't hunting.....  
 3 MR. LEADERS: That's the issue. Did he knowingly --  
 4 if.....  
 5 MR. ROBINSON: If he wasn't hunting there's no way --  
 6 listen. let's say.....  
 7 THE COURT: It's.....  
 8 MR. ROBINSON: Let's, for example.  
 9 THE COURT: The jury is not going to decide whether he  
 10 was hunting or not, the jury is going to decide whether he  
 11 knowingly violated a hunting regulation. If you want to  
 12 argue that he didn't know his conduct violated a hunting  
 13 regulation because he did not believe he was engaged in  
 14 hunting, he believed he was in predator con -- engaged in  
 15 predator control. That's an acceptable argument. You cannot  
 16 tell the jury that they have to decide whether or not he was  
 17 hunting. They are not to.....  
 18 MR. ROBINSON: Isn't that what the state's going to  
 19 argue? The state's going to argue he was hunting.  
 20 THE COURT: No, the state's -- I.....  
 21 MR. ROBINSON: That's what they're going to argue.  
 22 MR. LEADERS: He hasn't so far. I'm assuming he's not  
 23 going to, but.....  
 24 MR. ROBINSON: Well.....  
 25 THE COURT: .....we can clarify that.

- 928 -

1 MR. ROBINSON: Yes, he is going to. He's charged with  
 2 big game hunting, same day airborne under 9.70 -- 9 -- 5 AAC  
 3 .085.  
 4 MR. LEADERS: The state's argument is that his conduct  
 5 violated.....  
 6 MR. ROBINSON: Was hunting.  
 7 MR. LEADERS: .....a hunting regulation.  
 8 MR. ROBINSON: Exactly.  
 9 MR. LEADERS: Whether he calls himself trapping, whether  
 10 he calls himself doing predator control, whether he calls  
 11 himself as hunting, the issue isn't what you -- you don't  
 12 self-define what you're doing. The issue is did his conduct  
 13 knowingly violate a hunting regulation.  
 14 MR. ROBINSON: But in order for that to be a hunting  
 15 regulation, the only thing that the hunting regulation can  
 16 cover is hunting conduct. And the state -- if you put this  
 17 protective order in without prohibiting them from arguing  
 18 that the conduct was hunting, they're going to argue that the  
 19 conduct was hunting because of this charge of -- under 5 AAC  
 20 92.085. Which gives -- which is the predicate for the Title  
 21 8 charge.  
 22 MR. LEADERS: The difference is -- it's.....  
 23 MR. ROBINSON: And if it's big game, as we went through,  
 24 I don't know, ad infinitum, it's hunting. If it's fur bearer  
 25 it's trapping.

- 929 -

1 MR. LEADERS: The jury doesn't have to decide if it's  
 2 hunting or trapping. They (indiscernible) to decide did his  
 3 conduct violating hunting regulation.  
 4 MR. ROBINSON: The state.  
 5 MR. LEADERS: And that's.....  
 6 MR. ROBINSON: It's direct testimony from both Toby  
 7 Boudreau and Officer Gibbens, says if you have both a hunting  
 8 violation and a trapping violation aren't you violating both  
 9 the conduct of hunting and the conduct of trapping.  
 10 MR. LEADERS: Right.  
 11 MR. ROBINSON: It's a conduct question.  
 12 MR. LEADERS: The -- Judge, the state's request under the  
 13 protective order is that he's not allowed to argue basically  
 14 that this is not a -- properly charged as a hunting violation  
 15 because that was where this whole.....  
 16 MR. ROBINSON: Exactly. I'm not saying that we  
 17 could.....  
 18 MR. LEADERS: And that we -- that it should be predator  
 19 control or it should be trapping. It's other charges  
 20 (indiscernible).  
 21 MR. ROBINSON: We don't disagree that we can't make the  
 22 legal argument about the state's discretion to charge  
 23 whatever they want to charge. That's fine. They have the  
 24 discretion to charge whatever they want to charge. But when  
 25 it comes to the elements of those charges, then we should be

- 930 -

1 able to argue whether or not the action and the intent,  
 2 that's both conduct and mental state that's required in a  
 3 crime, fit into the elements of what the state charged. And  
 4 Mr. Leaders wants to argue that what he was engaged in was  
 5 hunting. Clearly, through the evidence that he's put on in  
 6 this case.  
 7 MR. LEADERS: I'm going.....  
 8 MR. ROBINSON: As a conduct question. And an intent  
 9 question. I mean if there's a statute that says knowingly  
 10 violating a law that prohibits prostitution, and it was for  
 11 free, then it's not prostitution. I mean you -- that's what  
 12 it's about. It's about conduct.  
 13 MR. LEADERS: But it gets down to the issue is the jury  
 14 doesn't have to determine it's hunting. The jury has to  
 15 determine did the conduct violate a hunting regulation.  
 16 MR. ROBINSON: But a hunting regulation deals with  
 17 hunting conduct.  
 18 MR. LEADERS: Right; but it can also -- the same conduct  
 19 regulated -- this conduct can be regulated under both hunting  
 20 or trapping. If it was in the permitted.....  
 21 MR. ROBINSON: And that's not.....  
 22 MR. LEADERS: .....area it could be -- it could be  
 23 regulated under the predator control program.  
 24 MR. ROBINSON: That's all conduct, that's all activity.  
 25 Different categories. I mean it's -- a wolf is a big game

- 931 -

1 animal for purposes of hunting, it's a fur bearer animal for  
 2 purposes of trapping, and it's a predator control animal for  
 3 purposes of predator control. It's neither hunting nor  
 4 trapping. It's about the activity. Otherwise it doesn't  
 5 make any sense to say prohibiting what? Prohibiting this  
 6 kind of conduct.  
 7 MR. LEADERS: The type of argument they're trying to make  
 8 is what it gets at is predator control essentially comes down  
 9 to a defense to these types -- to this type of charge. Now  
 10 if he's engaged in lawful predator control we're not going to  
 11 charge him because we know he's engaged in lawful predator  
 12 control. But I mean that's essentially what we've been  
 13 trying to argue is (indiscernible).....  
 14 MR. ROBINSON: No, there's a possibility he was also  
 15 engaged in trapping.  
 16 MR. LEADERS: Or the rea -- it doesn't matter. He's --  
 17 because he's -- this conduct is not -- it wasn't engaged in  
 18 trapping, he was engaged in conduct that violates  
 19 hunting.....  
 20 MR. ROBINSON: All I -- I'm not.....  
 21 MR. LEADERS: .....regulations.  
 22 MR. ROBINSON: Our argument isn't that the state can't  
 23 charge that he knowingly violated a state law prohibiting  
 24 hunting. They can charge that as long as they want to. But  
 25 there's evidence here as to whether or not his conduct was

1 was knowing. And they have to prove that he violated a state  
 2 law prohibiting hunting.....  
 3 THE COURT: Same day airborne hunting.  
 4 MR. ROBINSON: Those are two -- those are two separate  
 5 elements.  
 6 THE COURT: Well, actually they have to prove that he's a  
 7 licensed guide and they have to prove.....  
 8 MR. ROBINSON: I'm just dealing with those elements.  
 9 That those elements.....  
 10 THE COURT: (Indiscernible).  
 11 MR. ROBINSON: .....are separate. The knowing element is  
 12 not the same element as a state law prohibiting hunting.  
 13 That's a different element.  
 14 THE COURT: But that doesn't mean that they have to prove  
 15 that his conduct was hunting.  
 16 MR. ROBINSON: They have to prove he was hunting. In  
 17 violation of the law.  
 18 MR. LEADERS: No, (indiscernible).....  
 19 THE COURT: No.  
 20 MR. ROBINSON: They have to prove that his conduct was  
 21 hunting in violation of state law.  
 22 THE COURT: No. That's.....  
 23 MR. ROBINSON: How would that not make sense, Judge  
 24 Murphy?  
 25 THE COURT: That's not what the -- one of the elements of

1 PC, predator control, hunting or trapping. Those are the  
 2 activities.  
 3 THE COURT: All right. But it's not an element of the  
 4 offense whether his conduct was in fact one of those  
 5 activities.  
 6 MR. ROBINSON: No, I understand that.  
 7 THE COURT: Okay.  
 8 MR. ROBINSON: But it is an element of the offense that  
 9 they have to prove that he -- that it was hunting that was  
 10 prohibited.  
 11 THE COURT: No.  
 12 MR. ROBINSON: No?  
 13 THE COURT: Well, yeah, they have to.....  
 14 MR. ROBINSON: Yeah, they have to prove that it was.....  
 15 THE COURT: .....prove that he knowingly violated a  
 16 hunting regulation.  
 17 MR. ROBINSON: Right, (indiscernible).....  
 18 THE COURT: They don't have to prove -- and he's not  
 19 going to -- this is what you can't argue. You can't argue  
 20 that the state has to prove that his conduct was hunting in  
 21 order to have him found guilty under those unlawful acts  
 22 charges.  
 23 MR. ROBINSON: They have to prove two things.  
 24 THE COURT: They have to prove two things.  
 25 MR. ROBINSON: They have to prove that his criminal mind

1 the offense. The elements of the offense say that he had to  
 2 knowingly violate a state game statute -- a state statute or  
 3 regulation prohibiting hunting on the same day airborne.  
 4 MR. ROBINSON: Exactly.  
 5 THE COURT: That doesn't mean they have to prove that is  
 6 to.....  
 7 MR. ROBINSON: They have to prove that he was hunting,  
 8 same day airborne.....  
 9 THE COURT: They have to prove that what his conduct  
 10 did.....  
 11 MR. ROBINSON: .....in violation -- no.  
 12 THE COURT: Can you make sure that none of the jurors  
 13 come up here.  
 14 MR. ROBINSON: They have -- he has to prove that he was  
 15 hunting in violation of the same day airborne hunting law.  
 16 That's what he has to prove.  
 17 THE COURT: They have to prove that the hunting means the  
 18 taking of game which we've got a definition for hunting,  
 19 we'll get a definition for the taking of game.  
 20 MR. ROBINSON: You have a definition for trapping, too.  
 21 THE COURT: Uh-huh.  
 22 MR. ROBINSON: All right. And trapping and hunting  
 23 aren't the same.  
 24 THE COURT: Okay. I'm not arguing that.  
 25 MR. ROBINSON: All right. Well, what if the law

1 said.....

2 THE COURT: I'm not arguing either side. I'm trying to  
3 make sure that the rules and the regulations are the.....

4 MR. ROBINSON: Okay, but what if law said knowingly  
5 violated a law prohibiting trapping? He'd have to prove that  
6 he was engaged in unlawful trapping.

7 MR. LEADERS: We'd have to prove that his conduct  
8 violated a trapping statute.

9 MR. ROBINSON: Exactly.

10 THE COURT: Right.

11 MR. ROBINSON: But you've got to show -- but in order to  
12 say that it violated a trapping statute or a hunting statute  
13 the conduct has to be violative, otherwise there's no  
14 violation. So it's got to be conduct that violates that  
15 prohibited conduct. There's no way around it. I mean I  
16 don't understand how it's difficult to understand that you  
17 can take any unlawful -- you can take any conduct, you can  
18 substitute that word hunting for anything, but if it's -- it  
19 isn't -- but it's not the conduct. The state has the  
20 discretion to charge somebody for hunting when they're  
21 fishing if they want to. But if the conduct was fishing,  
22 then there's no way it could violate a law prohibiting  
23 hunting. It would be impossible. The state still has the  
24 discretion to charge that if they'd like, but if you say, I'm  
25 sorry, I had a rod and reel going after salmon. I didn't

- 936 -

1 have a rifle going after moose, then there's no -- then that  
2 element can't be proven.

3 THE COURT: Right.

4 MR. LEADERS: It can't be proved but we can't prove that  
5 he knowingly violated a -- I guess fishing regulation.....

6 MR. ROBINSON: No, hunting. You charged him with  
7 hunting.....

8 MR. LEADERS: Or hunting violation.....

9 MR. ROBINSON: .....and his conduct was fishing, his  
10 defense would be my conduct was fishing. Therefore I  
11 couldn't knowingly violate hunting. It's about conduct.  
12 It's got to be about activity or it doesn't make -- it  
13 doesn't even make common sense.

14 MR. LEADERS: I agree it's about conduct, and it's about  
15 the activity, but it's not -- it doesn't have to be defined  
16 as -- the jury doesn't have to decide (indiscernible).....

17 MR. ROBINSON: You defined it under A.S.....

18 MR. LEADERS: You -- they have to decide he's taking big  
19 game.....

20 MR. ROBINSON: Well, you defined it under 5 AAC 92.085.

21 MR. LEADERS: Right. It means it's.....

22 MR. ROBINSON: Which is the conduct.

23 MR. LEADERS: .....taking big game.

24 MR. ROBINSON: That's the conduct. That's the  
25 prohibited conduct.

- 937 -

1 MR. LEADERS: Right; so there's no element that requires  
2 the jury to find he was hunting. It requires them to find he  
3 violated this hunting regulation, that he took big game.....

4 MR. ROBINSON: Which is a hunting regulation.

5 MR. LEADERS: Right.

6 MR. ROBINSON: Right. Okay, so you're saying that he  
7 unlawfully hunted. That's what he's saying, and that's  
8 exactly what he's going to argue.

9 MR. LEADERS: I'm sure going to argue.....

10 MR. ROBINSON: Now if you say the protective order means  
11 that the state can't come in and show that his conduct was  
12 hunting, that would be fine. But he's going to argue that  
13 his conduct was hunting.

14 THE COURT: I'm not going to tell you what -- you two  
15 what to argue. I just want to make sure that the statute --  
16 or that the arguments don't tell the jury they have to  
17 decided something they don't have to decide.

18 MR. ROBINSON: They have to decide whether or not his  
19 conduct was prohibited hunting conduct. And he's going to  
20 argue it's prohibited hunting conduct because it's big game  
21 taking, same day airborne. That conduct. And he should be  
22 able to say that's not my conduct.

23 MR. LEADERS: He can argue I didn't knowingly violate a  
24 hunting statute. I thought I was trapping, I thought I was  
25 -- and here's why. It's a fur bearer. I would set out traps

- 938 -

1 or I could still shoot under a fur bearer license, under a  
2 trapping license. I could still engage in predator -- I  
3 thought it was predator control. He can argue those things  
4 and say I wasn't violate -- I did not knowingly violate  
5 hunting regulations.

6 MR. ROBINSON: And one of the ways you could say I didn't  
7 knowingly violate a hunting regulations is I wasn't hunting,  
8 I was fishing, I was driving, I was doing something else, but  
9 I wasn't hunting. I mean that is a way to defend against  
10 that because it's the conduct is what's the question. You  
11 just can't -- it doesn't -- the law doesn't stop at knowingly  
12 violate a state law. It doesn't end there. It goes what  
13 kind of state law? A law that prohibits this conduct. You  
14 can't separate those two out. There's just no way.....

15 THE COURT: What I.....

16 MR. ROBINSON: Unless the state's not going to be able to  
17 argue that his conduct was hunting.

18 MR. LEADERS: But it was. I mean that's what I'm going  
19 to be arguing.

20 MR. ROBINSON: See. He's going to argue that his conduct  
21 is hunting.

22 THE COURT: What I don't want to hear is that -- from  
23 either one, is that they have to decide the validity of the  
24 program and whether the program is hunting or trapping, or  
25 what it is. Because that's not an issue.

- 939 -

1 MR. ROBINSON: It is an issue.  
 2 THE COURT: What he believed to be or -- which goes to  
 3 the knowing.  
 4 MR. ROBINSON: It's an issue.....  
 5 THE COURT: But.....  
 6 MR. ROBINSON: .....because it's a permit with  
 7 conditions.  
 8 THE COURT: You can make that argument to the.....  
 9 MR. ROBINSON: And if you violate those conditions you've  
 10 violated a conduct that you were permitted to do under those  
 11 conditions.  
 12 THE COURT: Which is not the same as saying that they  
 13 have to decide that it was not hunting.  
 14 MR. ROBINSON: It's already been decided that it's not  
 15 hunting. It's already been decided that predator controlling  
 16 is not hunting. That's already been decided. The board has  
 17 already written regulation that says it isn't hunting, it  
 18 isn't trapping. They've already said that. That's already  
 19 done. Now the question is was he predator controlling or was  
 20 he hunting or was he trapping. That's the issue.  
 21 MR. LEADERS: Trapping may be an issue but not predator  
 22 control, because legally there was no predator control.  
 23 Predator control did not exist in the area he took those.....  
 24 MR. ROBINSON: Listen, I made the argument before and it  
 25 makes sense now. If I -- if you were given permission under

1 MR. ROBINSON: But it's a misdemeanor providing in those  
 2 conditions, just like it would be a misdemeanor if you  
 3 violated your limited entry permit conditions.  
 4 MR. LEADERS: The problem is -- and it's also clear that  
 5 there's no authority outside the permit boundary.....  
 6 MR. ROBINSON: There's no authority to go.....  
 7 MR. LEADERS: .....and there's no conditions outside the  
 8 permit boundary. We can't charge.....  
 9 MR. ROBINSON: Right. There's no authority.....  
 10 MR. LEADERS: .....him for a permit violation when he  
 11 does conduct outside the permitted area.  
 12 MR. ROBINSON: There's no authority to go commercial  
 13 fishing with a limited entry permit in closed waters.  
 14 There's no authority for it.  
 15 MR. LEADERS: But it's still commercial fishing if you  
 16 engage in the same activity.  
 17 MR. ROBINSON: That's right. But there's no authority  
 18 for it. There's none. It's unauthorized. Completely.  
 19 MR. LEADERS: The difference here is predator control is  
 20 defined by the.....  
 21 MR. ROBINSON: Or controls(indiscernible).....  
 22 MR. LEADERS: .....area, not the activity.  
 23 MR. ROBINSON: Yeah, I'm saying, so is your commercial  
 24 fishing activity is defined by the area.  
 25 MR. LEADERS: No commerical fishing is.....

1 a limited entry license to fish in open waters in a  
 2 geographical location, and you then go outside of that  
 3 geographical location and go fishing in closed waters is a  
 4 breach of the condition of your permit. You're not  
 5 necessarily sport fishing or subsistence fishing, you're  
 6 still commercial fishing in violation of the conditions of  
 7 your limited entry permit. Because you went fishing in a  
 8 closed area that wasn't open for what you were permitted to  
 9 do.  
 10 MR. LEADERS: There's a big difference in the legal  
 11 statutes and the definition, because by definition predator  
 12 control -- one of the definitions we're reading to them is  
 13 only in a game management program. And so once you're  
 14 outside that, and that's the difference with the commercial  
 15 fishing aspect. It's commercial fishing.....  
 16 MR. ROBINSON: That isn't true.  
 17 MR. LEADERS: .....based on the intent.  
 18 MR. ROBINSON: That isn't true because this says  
 19 violation of these conditions is a misdemeanor. Right here  
 20 on the permit.  
 21 MR. LEADERS: Right, he's.....  
 22 MR. ROBINSON: That's.....  
 23 THE COURT: He's charged with misdemeanors. That doesn't  
 24 have any bearing. I mean he's charged with misdemeanors or  
 25 we wouldn't be here, right.

1 MR. ROBINSON: If it's in closed waters that is  
 2 prohibited.  
 3 THE COURT: No, that's defined by both the area and the  
 4 activity.  
 5 MR. ROBINSON: Exactly.  
 6 THE COURT: Commercial fishing.....  
 7 MR. LEADERS: It is regulated by the area.  
 8 THE COURT: Predator control on the other hand is defined  
 9 simply by the area, not by the activity.  
 10 MR. ROBINSON: No, it isn't. It also is controlled by  
 11 open and closed periods. If you do predator control after  
 12 April 30th, that's not authorized, so it's the same thing.  
 13 THE COURT: Right, and that's.....  
 14 MR. ROBINSON: It isn't just geographical. That isn't  
 15 the only condition that they put on this was geographic.  
 16 They put time restrictions on it as well. I mean there's no  
 17 getting around that, there's a time that it's open and  
 18 there's time that it's closed. So even if you went inside  
 19 the permitted area but you did it after April 30, that would  
 20 still be a violation of the condition of the permit because  
 21 the time is now wrong. It isn't simply limited to  
 22 geographics. It just isn't.  
 23 The state wants, through this protective order, and  
 24 apparently the court agrees to handcuff a defendant from  
 25 being able to make a meritorious argument as to exact what

1 his conduct was, and he should be able to defend against  
 2 conduct.  
 3 MR. LEADERS: He can.....  
 4 MR. ROBINSON: Because the state is arguing that it's the  
 5 conduct that's bad. It's the hunting conduct. And we say,  
 6 wait a minute, it wasn't hunting, it was something else. Now  
 7 the jury may not believe that but they -- that he should be  
 8 able to argue it was something else. I wasn't hunting, I was  
 9 fishing, I was driving, I was doing -- I wasn't prohibited  
 10 from hunting. And this argument that somehow it's limited to  
 11 geographics is just not true.  
 12 THE COURT: Well, one of the.....  
 13 MR. LEADERS: The definition.....  
 14 THE COURT: .....instructions they'll get -- they're  
 15 going to get those instructions that that's what it says, the  
 16 way I read it, but.....  
 17 MR. LEADERS: Well, one of the instructions Mr. Robinson  
 18 proposed.....  
 19 THE COURT: Yeah.  
 20 MR. ROBINSON: And that instruction has time limitations  
 21 in it. Not just geographics only.  
 22 THE COURT: All right.  
 23 MR. ROBINSON: It's a time and area question.  
 24 MR. LEADERS: This is -- a game management program means  
 25 a program authorized by the Board of Game or the commission

- 944 -

1 to achieve, identify game management objectives in a  
 2 designated geographic area.  
 3 MR. ROBINSON: Just like comm -- just like having a  
 4 limited entry permit in a designated geographically area, but  
 5 it's still limited by closed waters, closed areas, closed  
 6 periods. There's no difference.  
 7 THE COURT: Well.....  
 8 MR. ROBINSON: A permit is valid from the date of  
 9 issuance until the earlier of the ensuing April 30. There's  
 10 time, right there.  
 11 MR. LEADERS: But that's not within the definition of --  
 12 that's just saying.....  
 13 THE COURT: You can.....  
 14 MR. ROBINSON: It does say that, it's only valid during  
 15 this period of time.  
 16 THE COURT: Yeah, that's -- obviously time's not the  
 17 issue in this case.  
 18 MR. ROBINSON: I know time isn't an issue in this case,  
 19 but to say that this is.....  
 20 THE COURT: Yeah.  
 21 MR. ROBINSON: .....just -- that this permit is strictly  
 22 just geographically is just untrue. It's not true.  
 23 UNIDENTIFIED SPEAKER: (Indiscernible).  
 24 THE COURT: Oh, okay.  
 25 MR. ROBINSON: It's just not true. It does have time

- 945 -

1 limitations.  
 2 MR. LEADERS: I agree the permit does, that's not the  
 3 issue.....  
 4 MR. ROBINSON: It has both, time and area limitations,  
 5 both. Not just one.  
 6 MR. LEADERS: The predator control as it was defined is  
 7 within a game management program. A game management program  
 8 is only within a specific geographic area.  
 9 MR. ROBINSON: Well, it may be, but it's also limited by  
 10 time.  
 11 MR. LEADERS: And that means predator control only is  
 12 within that specific geographic area. Then you go outside  
 13 that specific geographic area it's not predator control.  
 14 MR. ROBINSON: If you go out beyond it -- if you go  
 15 beyond the time it's not authorized, too.  
 16 MR. LEADERS: I agree. He can argue that it's -- he was  
 17 engaged in -- he believed he was engaged in predator control.  
 18 He believed he was trapping. I'm not saying that.  
 19 MR. ROBINSON: But if you're going to be able to argue --  
 20 in other words if you're going to be able to argue what the  
 21 conduct was, then he should be able to argue what the conduct  
 22 wasn't, and so if the state's going to be able to get up and  
 23 say this was hunting conduct, I don't get it.  
 24 MR. LEADERS: As I understand it you can't argue, no, it  
 25 wasn't -- it was -- it wasn't hunting, it was.....

- 946 -

1 MR. ROBINSON: You are going to argue that it's hunting  
 2 conduct.  
 3 MR. LEADERS: Right, I'm going to argue within.....  
 4 MR. ROBINSON: Right.  
 5 MR. LEADERS: .....what the issue is and we don't have to  
 6 -- the jury doesn't have to decide -- I'm going to argue it's  
 7 hunting conduct and he therefore violated a hunting  
 8 regulation. It was covered by a hunting regulation what he  
 9 did. They don't have to decide it was hunting versus  
 10 trapping, versus predator control. They have to decide was  
 11 there a regulation in effect and this is a hunting regulation  
 12 that he violated.  
 13 MR. ROBINSON: And I'm saying that if you are able to  
 14 argue that this is the hunting conduct that's prohibited,  
 15 then the defendant should be able to argue this conduct is  
 16 not hunting as a defense to that conduct.  
 17 MR. LEADERS: I don't.....  
 18 THE COURT: The -- when -- I think the question -- it's  
 19 not he believed it not to be that conduct. I mean I think  
 20 there's still the knowing element has to be tied into it.  
 21 And I guess that's my concern is that it's not a -- it's a  
 22 factual question as it relates to Mr. Haeg only. It's not  
 23 that the jury has to decide whether activity under the entire  
 24 program. We're talking about just the conduct in this  
 25 particular case.....

- 947 -

1 MR. ROBINSON: I understand, but the state has the burden  
2 of proving prohibited hunting conduct. You agree with that?

3 THE COURT: Yeah.

4 MR. ROBINSON: All right. Well, they have to show that  
5 it is hunting conduct, then the defense to that is it's not  
6 hunting conduct. That's a factual question, not a legal  
7 question.

8 THE COURT: Whether.....

9 MR. ROBINSON: It's a factual one, as to whether it was  
10 or wasn't. Like I said -- like I said.....

11 THE COURT: Well, it -- I guess my concern is that it's  
12 not -- it's only factual as it applies to Mr. Haeg. It's not  
13 factual as to whether or not what, you know, somebody down  
14 the street may have done in or outside the area. It's only  
15 as in this particular case. I don't want the jury having to  
16 decide or think they have to decide that they have to make a  
17 call as to what the predator control program, whether it fits  
18 into hunting or whether it's (indiscernible).....

19 MR. ROBINSON: They don't have to make that determination  
20 because you've already.....

21 THE COURT: They have to.....

22 MR. ROBINSON: .....instructed them that neither hunting  
23 nor trapping applies to it.

24 THE COURT: So they're only deciding whether or not Mr.  
25 Haeg knowingly violated a state game.....

- 948 -

1 MR. ROBINSON: Knowingly did a prohibited hunting act,  
2 and that is conduct.

3 MR. LEADERS: Right.

4 MR. ROBINSON: And that is factual, and it's a denial of  
5 due process to take away from this defendant.....

6 THE COURT: I.....

7 MR. ROBINSON: .....the ability to say.....

8 THE COURT: I'm not -- my concern is that you not say  
9 that they have to decide whether the program itself -- I mean  
10 you can talk about what it says in the things. It's not a  
11 political decision for them to make about whether or not this  
12 conduct is -- the instructions say what it -- that it -- the  
13 hunting and the regula -- the hunting and trapping  
14 regulations don't apply to the predator control program.

15 MR. ROBINSON: Exactly.

16 THE COURT: That's what the regulations say. But they  
17 don't have to decide that anybody with a permit is then free  
18 to go and use the permit wherever they think. That's not  
19 what they're to decide. They're to decide whether or not it  
20 was a knowing violation of the hunting regulation.

21 Hunting.....

22 MR. ROBINSON: I don't argue with that.

23 THE COURT: Okay.

24 MR. ROBINSON: All I'm saying is that.....

25 THE COURT: That's the.....

- 949 -

1 MR. ROBINSON: .....but by the same token Mr. Haeg should  
2 not be prevented because of due process and fairness reasons  
3 to say this is prohibited conduct. I wasn't doing that  
4 conduct.

5 THE COURT: Right. And.....

6 MR. LEADERS: And I agree, and the jury is going to have  
7 to find he did this, he violated a hunting regulation. They  
8 don't have to.....

9 MR. ROBINSON: No, they have to decide first of all  
10 whether.....

11 MR. LEADERS: Knowingly violated.....

12 MR. ROBINSON: .....he violated a hunting regulation.  
13 They have to decide whether he knowingly violated a hunting  
14 regulation.

15 THE COURT: Right. But.....

16 MR. ROBINSON: And one of his -- and his defense should  
17 be, just like if he was fishing, I'm sorry, I didn't violate  
18 a hunting regulation because I was engaged in a different  
19 kind of conduct.

20 THE COURT: Which goes to the knowing violation. He  
21 didn't know he was violating the hunting regulation because  
22 he thought he was engaged in a different conduct.

23 MR. ROBINSON: He either thought so or he was. Because  
24 knowing is the mental element, prohibited conduct is the  
25 conduct element of the crime. He'd have to have both. The

- 950 -

1 knowing element is the culpable mental state.

2 THE COURT: Right.

3 MR. ROBINSON: The conduct is prohibited hunting  
4 activity. And if the state can't prove either one of those  
5 elements they don't prove their case. They've got to prove  
6 beyond a reasonable doubt that it was knowing, and they have  
7 to prove beyond a reasonable doubt that it was a prohibited  
8 hunting activity.

9 THE COURT: No, they have to prove that it violated a  
10 hunting regulation.

11 MR. ROBINSON: Well, isn't that prohibited hunting  
12 activity? And in this case, same day airborne. Hunting,  
13 same day airborne. That's the activity. That's the conduct.  
14 Right, that's the conduct. Then you have the mental culpable  
15 state, and they have to prove two in order for there to be a  
16 crime.

17 THE COURT: Well, one of the -- I mean.....

18 MR. ROBINSON: I mean this is a very fundamental fairness  
19 question for Mr. Haeg. Extreme -- it's important due process  
20 right.

21 MR. LEADERS: So you're arguing that we have to prove  
22 that he was.....

23 MR. ROBINSON: Hunting, same day airborne.

24 MR. LEADERS: .....hunting, same day airborne.

25 MR. ROBINSON: Exactly.

- 951 -

1 MR. LEADERS: As opposed to did he violate a hunting  
2 (indiscernible)....  
3 MR. ROBINSON: As opposed to trapping, same day airborne.  
4 MR. LEADERS: No, see, that's the issue. It's not  
5 opposed to it's did -- because that's one of the arguments is  
6 his conduct violate both. It violated.....  
7 MR. ROBINSON: No.  
8 MR. LEADERS: It violated -- well, either.....  
9 MR. ROBINSON: .....I mean that's your argument.  
10 MR. LEADERS: .....or both.  
11 MR. ROBINSON: That's your argument though. We've had  
12 evidence that that doesn't make any sense, but.....  
13 MR. LEADERS: Trapping.....  
14 MR. ROBINSON: .....you can argue that. All I'm saying  
15 is that you have to argue that the conduct is prohibited.  
16 MR. LEADERS: I agree with that.  
17 MR. ROBINSON: All right. So that's the conduct element  
18 of the crime. Then the knowing element is a different  
19 element all together different, separate.  
20 MR. LEADERS: And that's the issue of -- all right, we  
21 have to show that he -- his conduct violated a hunting  
22 regulation.  
23 MR. ROBINSON: But the conduct is what he should be able  
24 to argue say I wasn't engaged in that conduct.  
25 MR. LEADERS: He.....

- 952 -

1 MR. ROBINSON: Now that's a factual question for a jury  
2 to decide. Was he engaged in this conduct. And did he know  
3 that he was engaged in this conduct. Without one -- you  
4 can't have one without the other, you have to have both.  
5 THE COURT: The knowing has to do with whether he  
6 knowingly violated a state game law.  
7 MR. ROBINSON: But a state game law controls conduct,  
8 right? There's just no way around that. And it isn't just  
9 any state game law, it's a state game law that prohibits a  
10 certain conduct. It prohibits hunting, same day airborne.  
11 Hunting. It could be another hunting activity instead of  
12 same day airborne. Hunting beyond bag limit or whatever.  
13 I'm just saying that it's the -- it's a -- knowingly violated  
14 a state game law is not the charge. The charge is knowingly  
15 violating a state conduct prohibits this conduct. And  
16 that.....  
17 THE COURT: But they don't have to prove beyond a  
18 reasonable doubt that he knowingly engaged in hunting.  
19 MR. LEADERS: Right.  
20 MR. ROBINSON: I don't see why not.  
21 THE COURT: Because the law doesn't require them to.  
22 MR. ROBINSON: The law requires them to prove that he  
23 knowingly violated prohibited hunting conduct. That happened  
24 to be a state law as opposed to a federal one, or a municipal  
25 one. But it's still the conduct.....

- 953 -

1 THE COURT: That means if I think it's okay to go take  
2 your car.....  
3 MR. ROBINSON: Right.  
4 THE COURT: .....the state has to prove that -- well,  
5 wait a minute, let me think this through. I had this figured  
6 this out a minute ago.  
7 MR. ROBINSON: All the state law does is just describe  
8 whose authority it is, whether it's federal, municipal, or  
9 state.  
10 (Pause)  
11 THE COURT: If I believe that borrowing the state trooper  
12 truck is an acceptable activity, it doesn't mean that that --  
13 the state has to prove that my conduct -- that I thought it  
14 was okay. If I think that borrowing the state trooper truck  
15 that that state truck is here just for to service me because  
16 I'm walking in town and I want to use it, the state doesn't  
17 have to prove that I -- the state has to prove that that  
18 conduct violated a law prohibiting vehicle theft.  
19 MR. ROBINSON: No, what the state has to prove is that  
20 you took a car that you didn't have a right to take. And if  
21 you had a right to take it, that would be a defense because  
22 your conduct was rightful.  
23 THE COURT: Okay. And if I believed.....  
24 MR. ROBINSON: So that's what.....  
25 THE COURT: But I believe I had a right to take it, so

- 954 -

1 they have to prove that.....  
2 MR. ROBINSON: Right. No, no, it's not a question  
3 whether you believed you had a right to take it, it's whether  
4 you did have a right to take it. And if you had a right to  
5 take it, they could charge you all day with at least stealing  
6 it, but if you had a right to take it, that's conduct that's  
7 lawful.  
8 THE COURT: I think I have a right to take it because I'm  
9 a state employee.  
10 MR. ROBINSON: Okay. And the question is do you have  
11 that right. If you did.....  
12 THE COURT: Well, there's nothing -- there's no law that  
13 says that I.....  
14 MR. ROBINSON: .....they can charge with that.....  
15 THE COURT: .....don't have the right.  
16 MR. ROBINSON: I understand. But if they charged you  
17 with stealing saying you didn't have a right, and you say,  
18 oh, yeah, here's a letter from the Governor that says I do  
19 have a right. Then all of a sudden your conduct is not  
20 unlawful anymore. It's about conduct. It makes no -- the  
21 only thing about state law is whose authority it is. The  
22 guidebook just said violating a federal law that prohibits  
23 same day airborne hunting. That's just an authoritative  
24 deal. A state law as opposed to a federal one, or a  
25 municipal one. But what's prohibited is the conduct.

- 955 -

1 There's just no way around that. And the predicate for this  
 2 law is the one you get an instruction on which is 5 AAC  
 3 92.085. Which is the conduct. That's the state law conduct.  
 4 MR. LEADERS: It's the state's position we have to prove  
 5 that he knowingly violated.....  
 6 MR. ROBINSON: No, you've got to prove that he knowingly  
 7 hunted same day airborne. That's why you've charged him with  
 8 5 AAC 92.085.  
 9 THE COURT: If that's what the state law -- this is the  
 10 instruction that's going to be read. The state is free  
 11 to.....  
 12 MR. ROBINSON: Right.  
 13 THE COURT: .....argue that all they have to prove is  
 14 that he knowingly violated a state law that prohibits the  
 15 same day airborne. They don't have to prove and they can  
 16 argue that they don't have to prove that he was knowingly  
 17 hunting. If you want to make that argument I'm not going to  
 18 stop you from it, but they don't have to -- I'm not going to  
 19 keep the state from arguing that they have to knowingly or  
 20 instruct that they have to knowingly -- that they have to  
 21 prove that he was.....  
 22 MR. ROBINSON: Well, then what.....  
 23 THE COURT: .....knowingly hunting.  
 24 MR. ROBINSON: Well, then what's the purpose for having  
 25 the 5 AAC 92.085?

1 MR. ROBINSON: That prohibited conduct?  
 2 THE COURT: Make that argument to the jury.....  
 3 MR. LEADERS: Prohibited same day airborne.  
 4 MR. ROBINSON: Right, exactly. And when you add that to  
 5 it that means they've got to show that he was -- that he  
 6 had.....  
 7 THE COURT: The jury is going to get the instruction  
 8 (indiscernible).....  
 9 MR. ROBINSON: In order to violate.....  
 10 THE COURT: I'm not going to break that down into two  
 11 elements. The statute -- the instruction as written is going  
 12 to be given the way it is.  
 13 MR. ROBINSON: You don't have to break it down in two  
 14 elements but I'm going to argue, as I've been taught to argue  
 15 all my 32 years of legal experience, is that a crime takes  
 16 two. Mental culpable state and conduct. And without both  
 17 there's no crime.  
 18 MR. LEADERS: Right, and the conduct here is that he shot  
 19 these wolves.  
 20 MR. ROBINSON: And what is the conduct?  
 21 MR. LEADERS: He shot -- he assisted in the killing.....  
 22 MR. ROBINSON: No, but there again, that is  
 23 (indiscernible).....  
 24 THE COURT: Those -- I -- you two can.....  
 25 MR. ROBINSON: Yeah.

1 THE COURT: Because the statute says that -- or the  
 2 element is that he knowingly violated a state game -- a state  
 3 statute or regulation prohibiting hunting on the same day  
 4 airborne.  
 5 MR. ROBINSON: Uh-huh.  
 6 THE COURT: 5 AAC 92.085 is that regulation.....  
 7 MR. ROBINSON: And what does it do? It prohibits  
 8 conduct, right?  
 9 THE COURT: To -- but that doesn't mean you have to prove  
 10 that he knowingly was hunting. He knowingly violated the  
 11 statute. That's what the -- the argue -- it.....  
 12 MR. ROBINSON: No, I'm having a hard time trying to  
 13 figure out what the difference is between arg -- between the  
 14 conduct.....  
 15 UNIDENTIFIED SPEAKER: Gees.  
 16 THE COURT: It's -- I'm not saying you can't argue that  
 17 he -- that the conduct wasn't hunting. But you can't -- but  
 18 the state is going to argue, and I'm not going to -- that --  
 19 because the way the statute is written, the state is not  
 20 going to have to -- or is going to be able to argue they  
 21 don't have to prove knowingly hunted. They have to prove  
 22 knowingly violated state game law.  
 23 MR. ROBINSON: That prohibited what?  
 24 MR. LEADERS: (Indiscernible).  
 25 THE COURT: Right.

1 THE COURT: .....make that argument to the jury. If they  
 2 come up with the question of whether they have to decide that  
 3 we'll decide that at that time.  
 4 MR. ROBINSON: All right.  
 5 THE COURT: The instruction as written, which is a direct  
 6 quote from the statute.....  
 7 MR. ROBINSON: I don't have any problem with the  
 8 instruction.....  
 9 THE COURT: .....is going to be given. I will add these  
 10 in there.  
 11 MR. ROBINSON: I'm just talking about the argument.  
 12 THE COURT: There are two other things I need to address  
 13 and then I have to type, so.  
 14 MR. ROBINSON: All right.  
 15 MR. LEADERS: So it sounds like you're allowed to argue  
 16 what you.....  
 17 MR. ROBINSON: I'm allowed to argue, great.  
 18 MR. LEADERS: And you're not -- you don't have a problem  
 19 with the instruction?  
 20 MR. ROBINSON: No.  
 21 MR. LEADERS: I don't have a problem with the instruction  
 22 and I'm allowed to argue that this was hunting.....  
 23 THE COURT: Yeah.  
 24 MR. ROBINSON: Right; and I'm allowed to argue that it  
 25 wasn't. Right, that's fine.



1 THE COURT: And we'll see what the jury thinks. Two  
2 things, other things. One is you've both been up in the  
3 room, that's the jury deliberation room. That side of it.  
4 MR. ROBINSON: So the bathroom is going to be....  
5 THE COURT: No, no, no. We'll close the door to the  
6 office.  
7 MR. ROBINSON: Oh, okay.  
8 THE COURT: They'll be instructed that they can only be  
9 on that side.....  
10 MR. ROBINSON: Oh.  
11 THE COURT: .....of the office.  
12 MR. ROBINSON: Okay.  
13 THE COURT: We'll let them put the cover on the vent, or  
14 not. I want to make sure -- check if you have any issues.  
15 The phone in there will be taken out, the tape player will be  
16 taken out, we'll make sure everything is secured. They won't  
17 have access to anything. There are some instructional  
18 manuals, booklets, whatever on the shelves in this side.  
19 There is nothing on that side. They'll be told they're not  
20 allowed to go over to that side. I don't think we're going  
21 to have an issue with them, but check and see if you see  
22 anything in there that you don't want out. We can always  
23 cover them with a drape or something, but just check it  
24 before we start in closing because I want to make sure that  
25 if there's any issues we deal with them, so we can get the

- 960 -

1 THE COURT: No, no, I'm just.....  
2 MR. LEADERS: I can have them pull them out before we get  
3 much further, so they thaw.....  
4 UNIDENTIFIED SPEAKER: They'll thaw quicker if they get  
5 set out.  
6 MR. LEADERS: My guess is they're not going to want to  
7 see them, but if.....  
8 THE COURT: That's -- my guess is they're not going to  
9 want to see them either, so.....  
10 MR. LEADERS: Well, will you tell them if they want to  
11 see them let us know, we'll pull them out, they can see them  
12 in the morning. They're going to have to continue up until  
13 then.  
14 THE COURT: Well, I don't know that we'll do that.  
15 We'll.....  
16 MR. ROBINSON: Then they won't want to see them, right.  
17 MR. LEADERS: (Indiscernible).  
18 THE COURT: We'll just tell them -- but my intent is to  
19 tell them that we'll leave the guns and the traps here, and  
20 the live ammo here. If they want to see it they're going to  
21 knock at the door, get the bailiff, they can come out, they  
22 can't talk while they're looking at the evidence here. They  
23 go back in and continue deliberation. Okay. That's my  
24 intent for those two things. And I guess I had more than  
25 that. Closing arguments? An hour?

- 962 -

1 jury moving.  
2 The other issue is I am not going to send back guns and  
3 live ammo and traps into a jury's deliberation room.  
4 MR. LEADERS: I agree.  
5 THE COURT: It ain't going.  
6 MR. ROBINSON: That's the state's issue.  
7 THE COURT: Not going to send those back. No, well, you  
8 have to sign off on what's going to go back to them, so.....  
9 MR. ROBINSON: Oh, that's true.  
10 MR. LEADERS: No, I agree.  
11 MR. ROBINSON: I'm not signing off on guns and live ammo  
12 either.  
13 THE COURT: I'm not going to send the traps either. I'm  
14 concerned that.....  
15 MR. ROBINSON: That they might....  
16 THE COURT: .....those are potentially dangerous. They  
17 will be here at all times. What we'll -- I'll tell them is  
18 if they want to see any of that evidence, and also the hides  
19 I presume are available for viewing if so required?  
20 MR. LEADERS: Yes, Your Honor. They're frozen.....  
21 MR. ROBINSON: It's in a frozen state, but they're  
22 available.  
23 MR. LEADERS: Do you want them thawed out?  
24 UNIDENTIFIED SPEAKER: If you want them thawed out I'll  
25 get them out of the.....

- 961 -

1 MR. ROBINSON: An hour.  
2 MR. LEADERS: Yeah.  
3 THE COURT: Okay.  
4 MR. ROBINSON: At the max, hour.  
5 MR. LEADERS: Yeah.  
6 THE COURT: Okay.  
7 MR. LEADERS: (Indiscernible) a lot, but it's just.....  
8 THE COURT: And just because we'll have to deal with it  
9 later, playbacks. Do you want to present if they request  
10 playbacks?  
11 MR. ROBINSON: No.  
12 THE COURT: Okay.  
13 MR. ROBINSON: One other issue -- well, go ahead, and  
14 then I have one issue.  
15 THE COURT: Go ahead.  
16 MR. ROBINSON: Sealed verdict.  
17 THE COURT: Not going to happen.  
18 MR. ROBINSON: We've got to stay here for the verdict?  
19 THE COURT: No. Well, my guess is we'll have one before  
20 the plane leaves in the morning. I think they're going to  
21 spend.....  
22 MR. ROBINSON: Well, that may be. I mean I'm just --  
23 we're all reading tea leaves, I'm just saying in the event  
24 that tea leaf reading doesn't work out. I mean I  
25 (indiscernible).....

- 963 -

1 THE COURT: What I'm saying is if they come out at -- if  
 2 they come in at 2:00 in the morning. I'm calling you.  
 3 MR. ROBINSON: Okay, fine. But what I'm saying is  
 4 that.....  
 5 THE COURT: Okay.  
 6 MR. LEADERS: Could we do a sealed verdict and take it at  
 7 7:30.....  
 8 THE COURT: No.  
 9 MR. ROBINSON: .....we need to have some period.....  
 10 MR. LEADERS: .....in the morning or (indiscernible)?  
 11 THE COURT: No.  
 12 MR. ROBINSON: Some period of time in which if they reach  
 13 a verdict.....  
 14 THE COURT: I'm not a morning person. We'll do at 2:00  
 15 in the morning.  
 16 MR. LEADERS: Okay.  
 17 MR. ROBINSON: Well, there should be some period of time  
 18 if they reach a verdict, that's fine. We can take the  
 19 verdict later.  
 20 MR. LEADERS: That's -- she wants to take it -- you want  
 21 to take the verdict.....  
 22 THE COURT: If it's before the plane goes in the morning  
 23 then we'll do it probably at the time they.....  
 24 MR. ROBINSON: And if it's not?  
 25 THE COURT: Then.....

- 964 -

1 arrangements.  
 2 MR. ROBINSON: Yeah, I've done that -- been there, done  
 3 that.  
 4 THE COURT: The other thing that I want to address  
 5 quickly is I'm assuming we're probably looking at a late  
 6 night. I'm -- if it's midnight or 11:00 or 12:00 even, and  
 7 I'm not assuming that a verdict is going to be guilty, but  
 8 assuming there is a sentencing issue I'd rather talk now  
 9 about what the plan is for sentencing.  
 10 MR. ROBINSON: Well, I would like that.....  
 11 MR. LEADERS: If there's sentencing I'd ask for delayed  
 12 sentencing.  
 13 MR. ROBINSON: I will ask for delayed sentencing. That  
 14 we put sentencing off another day.  
 15 THE COURT: Well.....  
 16 MR. ROBINSON: And we can do sentencing in Homer.  
 17 THE COURT: Well, I think there's some interest in it  
 18 here, and since it is a McGrath case I'd rather do it here.  
 19 MR. ROBINSON: Oh, but I'm just saying that sentence  
 20 could be done -- it doesn't necessarily have to be done here.  
 21 THE COURT: Well, my -- I guess my question is, are you  
 22 going to want to do sentencing briefs or would you be  
 23 ready.....  
 24 MR. ROBINSON: Well, all I'm saying is that if we get a  
 25 late verdict I would prefer, and so does Mr. Leaders.....

- 966 -

1 MR. ROBINSON: Then you'll consider a sealed verdict?  
 2 THE COURT: .....I'll have to stay here. I'll stay here.  
 3 And.....  
 4 MR. ROBINSON: Well, even you don't have to be here for a  
 5 verdict.  
 6 THE COURT: Well, no.  
 7 MR. ROBINSON: All right. So all I'm saying is that it  
 8 seems to me that.....  
 9 THE COURT: Because there's other issues I have to be  
 10 here for.  
 11 MR. ROBINSON: .....if we all don't read the tea leaves  
 12 correctly, and we're here tomorrow morning and it looks like  
 13 a sealed verdict.....  
 14 THE COURT: I'm not going to give them the sealed verdict  
 15 instruction at this time, but.....  
 16 MR. ROBINSON: Okay. I'm just throwing it out as a  
 17 suggestion.  
 18 THE COURT: But I will, if it looks like it really is  
 19 going to be late, and -- but as far as I'm.....  
 20 MR. ROBINSON: Okay.  
 21 THE COURT: .....concerned, you know, I'm a night person  
 22 so midnight, 2:00, is not a big deal to me. I'd rather have  
 23 it then to know for sure what's.....  
 24 MR. ROBINSON: Sure.  
 25 THE COURT: .....going on so that I can make

- 965 -

1 MR. LEADERS: I think there's going to be evidence at  
 2 sentencing, so.....  
 3 MR. ROBINSON: And evidence at sentencing. We do a  
 4 delayed sentencing hearing.  
 5 MR. LEADERS: We're going to need -- yeah, delayed  
 6 sentencing hearing of some sort, Judge. And  
 7 (indiscernible).....  
 8 THE COURT: Okay. I just -- I was talking to the city  
 9 administrator just because I know her, to see what the public  
 10 interest was, looking at the time ahead of time, just trying  
 11 to plan ahead a little bit to see whether or not there would  
 12 be interest locally. I mean I don't -- my concern is  
 13 that.....  
 14 MR. ROBINSON: I don't know whether there's any more  
 15 interest locally for this than there would be for Mr.  
 16 Zellers.  
 17 THE COURT: His sentencing was done here. His hearing  
 18 was done here.  
 19 MR. ROBINSON: Oh, Oh.  
 20 THE COURT: Right. I'm not saying that you all have to  
 21 come -- I'm saying that I think the court needs to be here.  
 22 MR. ROBINSON: Oh, oh, I see.  
 23 THE COURT: That's what I'm saying. And obviously if  
 24 that's the case, it can't -- you know, I don't want to do it  
 25 like Monday because I have to be back in Homer.

- 967 -

1 MR. LEADERS: No, I think we need a delay for some  
2 period.  
3 MR. ROBINSON: Yeah. for a period of time to -- yeah.  
4 MR. LEADERS: That would be.....  
5 THE COURT: Okay. Well, that's fine. We'll figure.....  
6 MR. LEADERS: Whether we file an actual brief or not I  
7 don't know, that.....  
8 THE COURT: And.....  
9 MR. LEADERS: I don't know if I'll have that, but.....  
10 THE COURT: Yeah, I'm not requiring one or saying  
11 anything that.....  
12 MR. LEADERS: Okay.  
13 THE COURT: .....it has to be done, I'm just -- I was  
14 just inquiring. We can discuss a specific date later, but  
15 I'm thinking that it would be important for the court to be  
16 here. If the parties want to be here or not I think is.....  
17 MR. LEADERS: I guess my suggestion on that is why don't  
18 we set a -- if there's a sentencing issue, set a status  
19 hearing some time next week.....  
20 MR. ROBINSON: Right, next week.  
21 MR. LEADERS: You can check your schedule.....  
22 THE COURT: Right.  
23 MR. LEADERS: .....and.....  
24 MR. ROBINSON: We can check our's and we can come up with  
25 a more firm date.

- 968 -

1 THE COURT: Yeah, that's -- I.....  
2 MR. LEADERS: I'm not asking for (indiscernible).  
3 THE COURT: And that's -- that's -- so I just want to  
4 make sure that was okay.  
5 MR. ROBINSON: Right.  
6 THE COURT: Because I didn't want to do that, but I'm  
7 thinking that it would be important from what I'm hearing  
8 that it would be better for the court to be here.....  
9 MR. ROBINSON: Okay.  
10 THE COURT: .....to do that, but I'm not going to re -- I  
11 wouldn't require necessarily anybody but court personnel to  
12 be present.  
13 MR. LEADERS: So it sounds like -- I just want to make  
14 sure because it sounds like we're kind of back, despite all  
15 the argument we went through.  
16 MR. ROBINSON: You can argue your's and  
17 I(indiscernible).....  
18 MR. LEADERS: I can argue mine, he can -- your's. We're  
19 fine with the instructions.....  
20 THE COURT: Well, I need to make those .....  
21 MR. LEADERS: Okay.  
22 THE COURT: I need to.....  
23 MR. ROBINSON: We'll give you a few minutes to make those  
24 and we'll be ready to go.  
25 THE COURT: Go type up some additions and get them

- 969 -

1 printed and.....  
2 MR. ROBINSON: Okay.  
3 THE COURT: They're all ones that have to go with the  
4 first set, so.....  
5 MR. ROBINSON: (Indiscernible).  
6 THE COURT: .....I can't do them during closing.  
7 UNIDENTIFIED SPEAKER: Should I have the jury come in and  
8 sit if they want or would you prefer.....  
9 THE CLERK: Off record?  
10 UNIDENTIFIED SPEAKER: .....that they're outside?  
11 THE COURT: Let's.....  
12 MR. ROBINSON: You need about 15, 20 minutes or what.....  
13 THE COURT: Yeah, it's going to take me 15 or 20 to type  
14 this.  
15 MR. ROBINSON: Okay.  
16 THE COURT: Why don't we tell the jury 6:30.  
17 MR. ROBINSON: That would be fine.  
18 MR. LEADERS: That's fine.  
19 THE COURT: I don't want them -- in case I run into  
20 typing problems or something.  
21 MR. LEADERS: Okay.  
22 THE COURT: Do you want to tell them that administrative  
23 delays took longer than we expected, et cetera, and to come  
24 back at 6:30. Go get dessert and come back at 6:30.  
25 MR. LEADERS: Did you need anything else from me on the

- 970 -

1 instructions, Judge, as far as.....  
2 THE COURT: No, I'm just.....  
3 MR. LEADERS: You've got the -- right, that will be  
4 great.  
5 THE CLERK: I'm almost at the end of the tape so I'm  
6 going to just let it run. It's so close to the end.  
7 THE COURT: Yeah, the -- and the tape -- oh, just so that  
8 both of you know. The tapes are only 45 minutes long on one  
9 side.  
10 MR. ROBINSON: Oh, okay.  
11 THE COURT: So I will try not to, but.....  
12 MR. ROBINSON: You might have to break.....  
13 THE COURT: Might have to break you up and say, it's --  
14 change the tape.  
15 MR. ROBINSON: Okay.  
16 THE COURT: So I just wanted to let you know that ahead  
17 of time. I will not try to do that, but -- so start a new  
18 tape.  
19 THE CLERK: Yeah, this is just about out.  
20 THE COURT: Okay. But I mean start a new tape and leave  
21 it (indiscernible).  
22 THE CLERK: Yeah, I'll get.....  
23 THE COURT: (Indiscernible) leave instructions so at  
24 least flip it over.  
25 THE CLERK: Oh, okay. Well, this one's almost out, so.

- 971 -

1 THE COURT: Okay.  
 2 THE CLERK: I'm going to put a new tape in for the jury  
 3 instructions.  
 4 THE COURT: Okay.  
 5 MR. ROBINSON: Okay. Scot.....  
 6 THE COURT: Okay, and then make sure.....  
 7 THE CLERK: And then I can flip it over.  
 8 THE COURT: Flip over, make sure it starts on the new  
 9 one, the new side and I can do that. Rewind it back to the  
 10 new side, and then the new one when Mr. Robinson starts, so  
 11 at least we can get.....  
 12 (Whispered conversation)  
 13 THE COURT: .....as much as possible.  
 14 THE CLERK: We're still on record. I'm just going to let  
 15 this run out.  
 16 THE COURT: Oh. But that's -- you know what I mean?  
 17 THE CLERK: Yeah. I know what you mean.  
 18 (Whispered conversation)  
 19 THE CLERK: Well, we can go off record.  
 20 (Whispered conversation)  
 21 THE CLERK: Go off record.  
 22 (Off record)  
 23 0906  
 24 (Tape change)  
 25 4MC-05-22/Side A

1 THE COURT: It's right before the hunting season. Right  
 2 after the definition of take. Which is after the definition  
 3 of hunting. Okay. Do you just want -- it will take probably  
 4 Mr. Leaders a moment to get set up to start, so if you just  
 5 want to like stand up in place and stretch for a moment, or  
 6 not.  
 7 (Whispered conversation)  
 8 THE COURT: Use the bathroom real quick. Yeah, go ahead.  
 9 (Whispered conversation)  
 10 MR. LEADERS: I'm sure I have it, it's probably from  
 11 another case or something. I'll make sure -- I can give this  
 12 right back to you.  
 13 THE COURT: Yeah. Well, I don't -- I mean you can -- I  
 14 just need it back at some point.  
 15 MR. LEADERS: Understand. I'll just make sure I  
 16 have.....  
 17 (Whispered conversation)  
 18 (Off record)  
 19 0506  
 20 (Tape change)  
 21 4MC-05-22/Side B  
 22 0506  
 23 THE COURT: .....the parties are all present, the jury is  
 24 present. Mr. Leaders?  
 25 MR. LEADERS: Thank you, Judge. Bad choices, ladies and

1 0906  
 2 THE COURT: We're back on record, the parties are present  
 3 and the jury is present. Ladies and gentlemen, I apologize  
 4 for the delay getting started. I usually try to estimate how  
 5 long things will take and frequently they take longer than I  
 6 guessed, but I appreciate your patience. We are nearing the  
 7 end, I think, so I know it's been a long week for all of you  
 8 and I appreciate it. All right. This is a time where I get  
 9 to read to you, so you can just sit back and relax. You will  
 10 get a copy of these instructions to go with you into the jury  
 11 room when you deliberate, so I would ask that you pay  
 12 attention. These instructions are ones that counsel may  
 13 refer to during their closing arguments. But you will also  
 14 have a copy of them with you to review later if you need to.  
 15 All right.  
 16 0906  
 17 (Court reads jury instructions)  
 18 0350  
 19 THE COURT: We're going to hear the arguments from  
 20 counsel at this time. This could be a little bit long. Do  
 21 you all want to just like stand up and stretch in place  
 22 before we get started. It will.....  
 23 MR. ROBINSON: Yeah, the only thing, I just need to know  
 24 -- it will just help me. Where are the Title 5,  
 25 administrative code 92.058 -- I mean .085 was in the packet?

1 gentlemen, that's exactly what this case has been all about,  
 2 the bad choices of Mr. Haeg back in March of last year. The  
 3 bad choices that led to the killing of seven -- or excuse me,  
 4 nine wolves illegally. That is they were shotgunned from a  
 5 plane in an area that was not permitted.  
 6 An area that was under the same regulations that applied  
 7 to the rest of the state that was not within this special  
 8 management area, the predator control area right here  
 9 surrounding the McGrath area, that prohibited the same day  
 10 airborne shooting of big game animals. Wolves included  
 11 within that.  
 12 Bad choices to shoot not just one or two but over a  
 13 course on five different days, and that's the five different  
 14 charges. Yes, there was nine wolves, but five different days  
 15 Mr. Haeg and his gunner, Mr. Zellers, engaged in the aerial  
 16 shooting of wolves illegally because he had no authorization,  
 17 either under a predator control permit which he had for the  
 18 very specific predator control area surrounding McGrath, nor  
 19 under any hunting, trapping or any other game statute.  
 20 The game laws specific prohibit anyone who has been  
 21 flying from taking game that same -- big game that same day.  
 22 They have to wait until after 3:00 a.m. the next day before  
 23 they can take big game, includes a wolf. Bad choices, and  
 24 then also -- of course, the possessing of the game, which was  
 25 illegal on Mr. Haeg. That one there will be a short

1 discussion when we discuss it a little bit more. As Mr. Haeg  
 2 tells you, he's guilty of that. He possessed game that was  
 3 illegally taken. That's right, he did. Game that was  
 4 illegally taken because he took them same day airborne,  
 5 hunted them same day airborne.

6 The -- there's two charges relating to that, possessing  
 7 them. The first three wolves that he possessed, March 5th  
 8 through the 6th, and then the second set of wolves he  
 9 harvested illegally March 21st and 23rd. As well, the  
 10 charges of unsworn falsification, that relates to that  
 11 sealing certificate. They flew into McGrath specifically to  
 12 sign after he had called and falsely reported the first three  
 13 wolves he took as inside the permit boundaries. He then came  
 14 and signed the sealing certificate which states that it  
 15 certifies that it's true under penalty of criminal  
 16 prosecution. And he told you he signed that, he knew it was  
 17 false, he committed the offense as well (indiscernible) and  
 18 that offense becomes sworn falsification.

19 As well the bad choices of trapping, closed season, both  
 20 for wolverine and for wolf. With the traps -- leg hold traps  
 21 and snares that he set out on the kill site down on the Swift  
 22 River. The season -- he set out as you've heard somewhere  
 23 around 40 snares. We've heard eight leg hold traps at that  
 24 set, and he left those there after the -- first of all, the  
 25 leg hold traps open as well as there was a wolverine even

- 976 -

1 caught in one of the snares after March 31st. The 1st -- the  
 2 close of both leg hold trap season and the close of wolverine  
 3 season.

4 As well the unlawful taking of the wolf. That wolf that  
 5 was caught in a snare. The snares that were open after the  
 6 close of snare season or wolf trapping season, which was  
 7 April 30th. That same set on the Swift River. The -- and  
 8 the failure to salvage that wolf. The -- one of the wolves.  
 9 We didn't even charge the second because it had been there  
 10 for a while, but it had been pretty eaten away. Failure to  
 11 salvage both of those wolves from that site, as well.  
 12 All those bad choices, ladies and gentlemen, have led to  
 13 the charges that you're here and you've been sitting here,  
 14 very accommodatingly, very patiently for the last several  
 15 days, and you've heard a lot of testimony. A lot of  
 16 testimony shows that beyond a reasonable doubt the defendant  
 17 committed each of those offenses. So let's talk about that  
 18 evidence in a little bit more detail.

19 Let's talk about the same day airborne. The court's  
 20 read you that instruction. It says -- sets out -- there's  
 21 several elements the state has to prove. The -- that it  
 22 happened at or near McGrath and on or about the first count,  
 23 the 5th of March and we'll go through each of the counts, but  
 24 at or near McGrath, and read the instruction, and it doesn't  
 25 have to be exact. Near McGrath, but in the general area.

- 977 -

1 McGrath is the court location nearest to these offenses.  
 2 It's in the general area, the McGrath area that these  
 3 offenses were committed in this jurisdiction. It doesn't  
 4 have to have been right in McGrath, that's not the point of  
 5 that. And on or about March 5th.

6 You've heard that they on -- it was March 5th that Mr.  
 7 Haeg and Mr. Zellers flew into McGrath in order to get their  
 8 permit. They flew into McGrath and met with Toby Boudreau.  
 9 And they met with Toby Boudreau who went over the terms of  
 10 the permit with them, and the conditions of the permit, and  
 11 went over specifically the fact that the permit, as stated on  
 12 the back, and you'll get to look at the permit as an exhibit.  
 13 The permit that David Haeg -- it was issued to Mr. Haeg on  
 14 March 5th of '04. That indicates at the top, Mr. Haeg. And  
 15 it states this permit allows the taking of wolves using  
 16 aircraft only within a portion of Unit 19-D east. That  
 17 includes the experimental micro-management area. The  
 18 attached map and written description specifically identify  
 19 the control area within which his permit is used.

20 That permit they picked up, that Mr. Haeg signed that he  
 21 understood the conditions. His signature there on the bottom  
 22 that allowed -- would have allowed him to take wolves using  
 23 his plane from -- to take wolves from the air, shooting them  
 24 or land and shoot within the control area. But that day he  
 25 didn't see any wolves in the control area so on his flight

- 978 -

1 home he sees a wolf right at the boundary you've heard -- he  
 2 said he thought it -- well, it might have been but when you  
 3 really assess the testimony that you heard from Mr. Haeg and  
 4 Mr. Zellers, they caught -- they first picked up on that leg  
 5 of the wolf -- of the moose, the kill. Mr. Haeg told you,  
 6 right at the edge of the boundary, right near the boundary.  
 7 He flies -- they don't see any wolves there, they see a bunch  
 8 of tracks, they fly on further south, further out of the  
 9 permit boundaries, and they come across the wolves. They  
 10 come across the three of them. As Mr. Haeg tells you, there  
 11 actually was some discussion. There was some consideration.  
 12 Was it in or out. What he told you as well is ultimately  
 13 that he didn't make the determination whether it was in or  
 14 out, he shrugged his shoulders. They set up on the wolf and  
 15 they killed it.

16 They killed the wolf approximately one to two miles  
 17 outside the permit boundaries. Now outside the permit  
 18 boundaries as Mr. Haeg admits to you and everyone else that  
 19 testified told you, this permit had no authority. This  
 20 permit gave Mr. Haeg no authority to kill that wolf outside  
 21 the permit. By shooting it from the air. As he admitted, he  
 22 was under the general jurisdiction, general law applied out  
 23 here, hunting, trapping, whatever the regulations and those  
 24 general laws and regulations, as the court has read to you,  
 25 stated that it is illegal for someone to take a wolf the same

- 979 -

1 day they're airborne, which would include aerial shooting.  
 2 Now what the state has to prove to you on these offenses  
 3 is that Mr. Haeg -- these same day airborne offenses are  
 4 several things. First, that Mr. Haeg was a registered guide.  
 5 Well, we've talked about the on or about March 5th, et  
 6 cetera, but second, that Mr. Haeg was a licensed guide. Now  
 7 you've seen through the testimony -- there's been a lot of  
 8 discussion of what is Exhibit number 29. This is the  
 9 verification of licensure, indicating Mr. Haeg was in fact  
 10 from the time period of -- from November 13th, 2003 through  
 11 this -- the date of termination on this, or expiration was  
 12 December 31st, 2005, a master big game guide.

13 He's also testified about the same thing, as has Mr.  
 14 Zellers, about Mr. Haeg's guide status. As to those first  
 15 five counts there's no doubt at all that can be in your mind  
 16 as to whether or not Mr. Haeg was a guide, a licensed guide.  
 17 The state also has to prove to you that Mr. Haeg knowingly  
 18 violated a state statute or regulation prohibiting hunting on  
 19 the same day airborne. The -- some of the law that the  
 20 court's discussed -- first of all, knowingly. Knowingly is  
 21 that either Mr. Haeg -- that he was aware that his conduct --  
 22 when he was shooting these wolves he was doing it -- that he  
 23 knew that his conduct was of the nature or the circum -- or  
 24 that the circumstance exists. That he was violating the same  
 25 day hunting airborne law. Or that he was aware of a

- 980 -

1 substantial probability of its existence, unless he actually  
 2 believed it didn't exist. What we know in this case is he's  
 3 told you he knew that he gets out here, and the permit  
 4 doesn't apply.  
 5 So for all nine of these wolves he knew he gets out  
 6 there and the permit doesn't apply. And he knew -- he told  
 7 you he knows he's very familiar with these -- at -- these  
 8 regulations relating to flying and shooting. You can't shoot  
 9 from the air, you can't shoot the same day you're airborne  
 10 unless -- you have to wait until after 3:00 a.m. the next day  
 11 for the taking of big game. You can't shoot the same day  
 12 you're airborne for fur barriers[sic] unless it's an animal  
 13 in a trap and you're dispatching it. You can't shoot free  
 14 ranging fur barriers[sic] either.  
 15 So he certainly knowingly took each of those animals.  
 16 He knowingly violated a big game statute or regulation.  
 17 We'll talk about that regulation. So it's big game hunting  
 18 regulation prohibiting same day airborne. Hunting, as the  
 19 court's told you, is the taking of game under statutes and  
 20 Title 16.05 through 16.0 -- 16.40 and the regulations adopted  
 21 thereunder. And that taking game means taking it, pursuing  
 22 it, hunting, fishing, trapping or in any manner disturbing,  
 23 capturing or killing or attempt to take, pursue, hunt, fish,  
 24 trap or in any manner capture or kill either fish or game, as  
 25 in this case.

- 981 -

1 What we know -- the regulation that's really relevant  
 2 for you to determine whether or not Mr. Haeg in fact violated  
 3 a hunting statute or regulation is found at -- as the court's  
 4 read to you, at Title 5 of the administrative code, 92.085,  
 5 states a person who has been airborne may not take or assist  
 6 in taking, which is what Mr. Haeg did, for each of these nine  
 7 wolves. Assist in taking a big game animal until after 3:00  
 8 a.m. following the day in which the flying occurred. And  
 9 that that stat -- that regulation 5 AAC 92.085 is a  
 10 regulation adopted under the authority of A.S. 16.05, which  
 11 means it's a hunting regulation.

12 The big game, as the court's instructed you, wolf is  
 13 included in the definition of big game. Now wolf is also a  
 14 fur bearer, but it's included in the definition of big game,  
 15 and that's one of the things we're going to be discussing is  
 16 this interplay between the big game hunting regulations that  
 17 Mr. Haeg violated and whether or not he violated a trapping  
 18 regulation as well regarding fur bearers, and there's going  
 19 to be -- you might believe at some point in time that he --  
 20 he actually -- there may be evidence that he actually  
 21 violated both. I think you heard from the testimony of both  
 22 Mr. Buist and Mr. Spraker, when you get in that situation,  
 23 the decision -- the enforcement decision is a decision for  
 24 law enforcement.

25 It's not a decision for Mr. Haeg whatever he decides he

- 982 -

1 wants to be doing, whether it's hunting, trapping or if he  
 2 wants to call it predator control or anything else. It's an  
 3 issue for law enforcement. The issue -- and that's -- is did  
 4 he, in fact, violate a hunting regulation. And, ladies and  
 5 gentlemen, he certainly did. He shot wolves from the air.  
 6 He certainly didn't wait until after 3:00 a.m. the next day  
 7 he had been airborne.  
 8 Now the hunting regulations and laws applied because as  
 9 Mr. Haeg admitted, and as this court's read to you, the  
 10 instruction on the issue; the hunting season for wolves in  
 11 Unit 19 went from August 1st to May 31st. They were -- some  
 12 hunting season was open at the time each of these animals  
 13 were taken. And as Mr. Haeg told you, he had a hunting  
 14 license. Submitted him to -- certainly to the regulations as  
 15 well, indicating he had a hunting license. You heard his  
 16 discussion about well, he doesn't really hunt any more.  
 17 You've got to be thinking he must be kidding because, in  
 18 fact, that's what he is. He's a professional hunter.  
 19 Now he may not hunt just for his personal use and just  
 20 for himself, but he takes his experience and assists others.  
 21 Remember that definition of hunting which is taking, and  
 22 that's the pursuing or assisting in taking of game.  
 23 Certainly he hunts, he hunts for a living. He certainly knew  
 24 he was hunting on the day that he took each of these wolves  
 25 in Unit 19 -- outside the permitted predator control area.

- 983 -

1 The -- those are the laws and regulations that apply to  
2 that -- these first five counts, the same day airborne. The  
3 facts were really quite simple and pretty much undisputed.  
4 We've heard -- we've talked about the first wolf taking on  
5 the 5th. They go back to the lodge that day, that evening.  
6 They skin it out. They decide to go back the next day, on  
7 the 6th, back in the direction of where that wolf was taken  
8 originally, back towards the permit area. So the first day  
9 is the first -- when they first got the permit that's the  
10 first time they're in the permit area. The second day  
11 they're heading back in that direction and before they get  
12 there approximately -- we've heard approximately 20 miles or  
13 so outside the permit boundaries they take the second and  
14 third wolf.

15 Identified as A and B by Mr. Zellers on Exhibit number  
16 25. The first one is identified by number C -- or the letter  
17 C. They see the wolves. They know they're outside the  
18 permit area at that time, clearly outside. Again, there's no  
19 discussion. They set up on the wolves and they kill. They  
20 kill the first, the female, the smaller one, and kill it  
21 immediately. The second one they did -- they chase for a  
22 little bit, a couple passes and then they put down the male  
23 as well. They then go into the permit area, fly around for a  
24 while and head back out, hours later, and they stop in, they  
25 pick up both of those wolves as well. Again, Mr. Haeg flying

- 984 -

1 the plane, Mr. Zellers shooting. Shooting with the 12 gauge  
2 Benelli right there, and dispatching finally the second wolf  
3 with the .223 from the ground to put it -- to finally --  
4 after it's put down to finally kill it.

5 Again, clearly -- now that relates to -- those two  
6 wolves relate to the second charge, same day -- or being an  
7 unlicensed guide, violating -- knowingly violating a hunting  
8 regulation prohibiting same day airborne on March 6th. Both  
9 of those wolves relate to that count.

10 Again, they certainly knew at that time, there's no  
11 doubt about where they were. They didn't -- it wasn't that  
12 they were close, they didn't really figure it out and make a  
13 decision like the first one was where they reason -- they  
14 should have known they were out, if they would have thought  
15 about it. Saying that they knew they were out, and it didn't  
16 matter to them. Didn't matter -- you've heard some of the  
17 reasons. Mr. Haeg wanted to be successful in the program, as  
18 Mr. Zellers told you. Mr. Haeg tells you, well, he didn't  
19 care who was successful, as long as wolves were taken.  
20 When you think about it, ladies -- when you -- but the  
21 reality is, ladies and gentlemen, these kills didn't make the  
22 wolf -- the program successful. Especially these wolves down  
23 here, they weren't taken in the control area. I guess  
24 certainly C could be argued that it ranges into the area  
25 because, you know, the pack just came off the border, but

- 985 -

1 it's still a violation of the permit, violation -- that -- so  
2 it didn't authorize Mr. Haeg to conduct -- to kill that wolf.  
3 He was under the general hunting regulations that prohibited  
4 same day airborne.

5 The -- they do -- the next -- what you hear from there  
6 is knowing that they -- this as well goes to the knowledge  
7 they clearly knew at this point, they go back to the lodge.  
8 A few days later they call into Toby -- or to Al Root,  
9 rather, and give false information. They lie about where  
10 those wolves were taken. They lie again to make themselves  
11 look successful in the program. And to, as Mr. Haeg tells  
12 you all, to give additional information, give -- let other  
13 hunters know where wolves are because they've not just told  
14 about the three wolves they had taken, but they also pointed  
15 out there were some other wolves down on the southern  
16 boundary. There was no need to do -- to report illegally  
17 taken wolves to indicate there's wolves on the southern  
18 boundary. They could have simply reported that. His intent  
19 was not to comply with the terms of the permit. Mr. Haeg's  
20 intent was to use the permit as a guise to kill wolves. Same  
21 day airborne. Any wolves he came across, any wolves he  
22 wanted.

23 What you didn't hear from Mr. Haeg was a single wolf he  
24 turned down. Now I'm not saying we're trying to protect  
25 wolves, because we do need to reduce the wolf population in

- 986 -

1 order to protect the prey population, the moose, the caribou  
2 and such. But it has to be done legally in order -- as  
3 you've heard, we don't know to the extent the conduct has  
4 jeopardized the program at this point. We know other  
5 programs have also developed and we don't know the extent to  
6 which they're vulnerable based on his conduct.  
7 The -- they go into -- or they call in the coordinates  
8 and then you hear -- it's several days later, or they go back  
9 to Soldotna. They have the wolf hides back there, when  
10 they're contacted by Mr. Root regarding the hides have to  
11 actually be sealed in McGrath. So they load the plane back  
12 up, some -- they -- some time around the 20th of March and  
13 head back out.

14 When they head back out, as Mr. Haeg tells you,  
15 basically just to go have the wolf hides sealed. But  
16 interesting, the morning of the 21st he gets up and they  
17 haven't been able to get a hold of Mr. Boudreau. They don't  
18 know for sure if they can go seal them, and this is what  
19 really speaks to Mr. Haeg's intent. You heard all of his  
20 testimony about how important this predator control program  
21 was, how he had advocated for it, how he had advocated for  
22 other proposals as well for the taking of wolves.  
23 But what you realize, especially beginning the 21st, is  
24 Mr. Haeg's interest wasn't in insuring that the program  
25 objectives up here were met, his interest was in eliminating

- 987 -

1 wolves that affected his hunting grounds, his area,  
 2 predominantly. Because despite the fact that he still has a  
 3 valid permit to go into the permit area and take wolves  
 4 legally from the air, and despite the fact that on March 21st  
 5 his plan, his intent, and what he needs to do is get to  
 6 McGrath in order to seal these wolves, he gets -- they get up  
 7 in the morning after doing some stuff around camp, or the  
 8 lodge, they head south to his hunting grounds, to check out  
 9 his hunting camps. To kill time.  
 10 You've got to be asking, why kill time when you've got  
 11 what you're telling us you've always wanted. This permit to  
 12 kill wolves from the air and you're going to McGrath anyway,  
 13 why not go to McGrath. Why not kill -- search for wolves and  
 14 kill them under the authority of the permit. But, no, he  
 15 goes south and pursues his hunting grounds. Checks out some  
 16 of his camps, those such things. Comes across three more  
 17 wolves near a kill down on the Stony.  
 18 In the area that, as Mr. Haeg tells you, approximately  
 19 80 miles from the permit area. An area like the rest of them  
 20 that is not authorized for same day airborne and was under  
 21 general principles of hunting, trapping, whatever it may be.  
 22 Which prohibits same day airborne. Again, they see the  
 23 wolves. They set up on the wolves and they kill one of them,  
 24 pursue at least one of the others, and then the third gets  
 25 off without even being shot at, as I believe the testimony

- 988 -

1 that as you've heard from the testimony, the game -- the  
 2 moose -- some of the moose that he hunts come in along the  
 3 Swift River, or come in from along the Swift River. And  
 4 there he comes across a moose kill site and comes across  
 5 another wolf. The same thing as before. No discussion, no  
 6 questions about it, they -- this permit they have as a guise,  
 7 and as -- like I say, he told you well now he has the  
 8 opportunity, he has the ability to do something about it, but  
 9 when we discussed that there's no change in the law when Mr.  
 10 Haeg's out here from the way it's been previously. The  
 11 permit and the predator control area didn't authorize  
 12 anything down here. There's no change in the law down there.  
 13 And as Mr. Haeg told you, he knows it's against the law  
 14 under the big game regulations, hunting regulations for big  
 15 game to take wolves from the air, and he knows it's against  
 16 the law. Same thing under the fur bearer regulations  
 17 relating to trapping, to take big game from the air, and  
 18 there's no change in law so he knows what he's doing is  
 19 violating hunting regulations. That's exactly what he does  
 20 when he sees that first wolf near the kill site, moose kill  
 21 site. And they pulled down on that, and kill that wolf as  
 22 well.  
 23 The -- they also set out a bunch of traps and snares at  
 24 that point. And we don't have -- we've heard approximate  
 25 numbers. About 40 snares and eight leg hold traps, all

- 990 -

1 was recounted to us.  
 2 Pick up that wolf and take it back to the lodge and drop  
 3 it off. Now and this again shows you that they hadn't --  
 4 they weren't really trying to take wolves under the predator  
 5 control program, they're using this permit as a guise to take  
 6 wolves where they wanted to, because they then fly into  
 7 McGrath with the three wolves they had originally killed and  
 8 falsely reported as being in the control area. And they  
 9 don't even mention -- when they go to get sealed and they --  
 10 this sealing certificate, number 24, which Mr. Haeg signs on  
 11 that day. Despite it says falsification of information on  
 12 this form is punishable under A.S. 11.56.210, that's the  
 13 unsworn falsification statute he's charged under. Mr. Haeg  
 14 signs stating I certify that the information provided herein  
 15 is accurate and true to the best of my knowledge. 3-21-04.  
 16 He signs this sealing certificate lying about where these  
 17 wolves were taken.  
 18 But he doesn't even mention this fourth wolf that  
 19 they've now taken just that morning that's -- that was 80  
 20 miles out of the permit area. The next day again we see Mr.  
 21 Haeg's intent because on the 22nd he gets up again instead of  
 22 heading towards the permit area he heads away from it, -  
 23 slightly to the south of his camp. Or even on the same -- or  
 24 maybe even directly due west, but nonetheless, doesn't head  
 25 towards the camp but he follows the Swift River. An area

- 989 -

1 around one kill site trying to heavily set it -- a fairly  
 2 heavy set for -- to make sure they can get as many of these  
 3 wolves as possible. And that's the first point in time that  
 4 we've heard anything about snares or traps at all.  
 5 You've heard none were set around anything up here, even  
 6 though they knew there were wolves, none down on the Stony.  
 7 Take the first wolf as well off the Swift before any traps,  
 8 snares, anything in that regard are set at all.  
 9 That first wolf taken on the Swift on March 22nd relates  
 10 to the fourth count, the one down on the Stony on the 21st  
 11 relates to the third count. The -- again, they -- they've  
 12 made that set there. They don't do any more flying back into  
 13 the predator control area. They've been there now three  
 14 times total. The -- oh, I'm sorry, because there's something  
 15 I forgot before we got to the 22nd, and that's when they go  
 16 in on the 21st and talk with Toby Boudreau. Mr. -- and have  
 17 those furs, the first three actually sealed on the sealing  
 18 certificate.  
 19 We've talked, I guess, a little bit about that, but we  
 20 haven't talked about the conversation they had with Trooper  
 21 Gibbens on that day, or with Mr. -- Trooper Gibbens made sure  
 22 they were very clear on the permit boundaries and where they  
 23 could and couldn't take wolves. Made sure they didn't have  
 24 any questions about that. He even kind of tipped them in,  
 25 let them know, look, I was aware you were outside the permit

- 991 -



1 boundaries at some point in time. But despite that Mr. Haeg  
2 goes -- and he'd -- knowing he'd already taken this one on  
3 the 21st, the next day he still doesn't go back into the  
4 permit area, he goes due to the west and takes that wolf --  
5 first wolf on the Swift.

6 Goes back to the Swift then after taking that first  
7 wolf, go back to the lodge and then leave the morning of the  
8 23rd. Again, they don't go into -- where do they head after  
9 -- when they head out in the morning. They head over to the  
10 trap site or the wolf-- moose kill, and where they had seen  
11 the wolves before on the Swift.

12 Not really to check the traps and snares. I'm sure they  
13 were going to do that, but what they do is they see wolves,  
14 not in the traps or snares, but on the ground. And as  
15 they've done each of the times before they've seen a wolf  
16 outside that predator control zone, they set up and they kill  
17 the wolves. They kill four that day, bringing our count to  
18 the total of nine wolves that were taken by Mr. Haeg  
19 illegally, same day airborne.

20 The -- in violation of the hunting regulation which  
21 would have required him to land his plane and wait until 3:00  
22 a.m. the next day before he could shoot those wolves. The --  
23 we know certainly that -- or I guess other evidence of --  
24 that's indicative of his intent to simply kill wolves in an  
25 area that helps him, was, you know, certainly what he did.

- 992 -

1 He didn't really go into the permit zone. Two of the times  
2 were basically mandatory. He had to go there to obtain the  
3 permit originally, that was the 5th. And he had to go there  
4 on the 21st in order to get the three wolves sealed. And the  
5 only other time he did that was on the 6th. He went in on  
6 the 6th, but why not. He knew there were wolves up here, so  
7 let's go up to try and get those. Well, he's seen those, so  
8 maybe it would have been nice to have been able to get those  
9 inside the permit area. But what does he do. He first -- he  
10 kills outside the permit area and flies around inside and  
11 doesn't do anything. He tells us he flies around inside,  
12 doesn't kill any wolves in there.

13 The -- indicative of his knowledge that each of these  
14 wolves were taken unlawfully, that is violation of hunting  
15 regulations requiring him to -- that prohibit him from  
16 shooting from the air, requiring him to land and wait until  
17 3:00 a.m. the next day, was the discussion he had with Tony  
18 Zellers about falsifying the sealing certificate for the  
19 remaining six wolves. Tells you, you know, he didn't know  
20 exactly what Tony was going to put on it, but they made the  
21 decision between them they weren't going to report them where  
22 they were taken. They weren't going to report them as taken  
23 on the Swift River, they were going to report -- and they  
24 weren't going to report them as taken from the air. Going to  
25 be reported land kills in a different area. Tells you

- 993 -

1 because he didn't want to draw attention. If he -- but yet  
2 that's totally contradiction to what he told you why he  
3 reported the first three in there. He wanted the program to  
4 look successful, so the program wouldn't be in jeopardy.  
5 What his conduct did is jeopardize the program by taking  
6 wolves outside of it with the guise -- under the guise of his  
7 permit. The charges relating to the unlawful possession, the  
8 law that applies and those the court's instructed you. First  
9 he was charged with unlawful possession of the wolves, the  
10 first three wolves taken on March 5th and 6th, and state  
11 that, you know, the events occurred at or near McGrath on the  
12 -- around those dates, the 5th and 6th. That Mr. Haeg  
13 possessed game or parts of game that he knew or should have

14 known were taken in violation of state game laws. Again,  
15 these are the things Mr. Haeg tells you. He's guilty of  
16 that. He knows -- he knew they were illegally taken, he knew  
17 -- he shouldn't have possessed them. It was illegal to do  
18 so. They were illegally taken because he shot them same day  
19 airborne. Violation of the hunting laws and regulations.

20 The second count, or Count VI -- that's Count VI. Count  
21 VII relates to the second time they go back out there and  
22 they take all these -- the wolf down on the Stony and the  
23 several over on the Swift. And it's that exact same thing.  
24 Again, he knows they were taken illegally, he tells you that.  
25 He tells you, yes, I am guilty of that offense as well. And

- 994 -

1 that's true, he is, because he's simply stating to you  
2 exactly what the evidence shows you as well. The wolves were  
3 taken illegally. Certainly he was the one possessing them as  
4 he and -- was flying around, as well as having them sent up  
5 to the tanner. Those things. They were his possession, they  
6 were unlawfully possessed game.

7 The unsworn falsification charge. Again, that's when he  
8 says, yep, I did it. I knew it wasn't true and I signed it.  
9 That's what we know as well, and we know that his intent in  
10 doing so, as he told us, was to mislead the -- the law says  
11 that a person commits that offense if they have the intent to  
12 mislead a public servant in the performance of a public duty.  
13 Or of a duty. And they submit a false written or recorded  
14 statement they didn't believe to be true. And that the form  
15 had notice of false statements made on the form were  
16 punishable.

17 We discussed on the bottom certainly is notice that  
18 false statements are punishable. It's a false statement to a  
19 public servant in the performance of public duty. Mr.  
20 Boudreau's doing his public duty, he's a public servant, he's  
21 recording the number of wolves loc -- he's sealing wolf hides  
22 and reporting the information relating to the wolves taken in  
23 the predator control program, as well as taking general  
24 reporting information which is required for all wolves.  
25 Whether hunted, trapped or whatever. And Mr. Haeg wanted to

- 995 -

1 Ladies and gentlemen, all the evidence tells you beyond  
2 a reasonable doubt Mr. Haeg is guilty of each of the offenses  
3 for which he is charged. I thank you for what has been a  
4 long trial, some long days, and I ask for your thoughtful  
5 consideration and I think that once you consider all the  
6 evidence you will be left with that conclusion, beyond a  
7 reasonable doubt that Mr. Haeg committed each of the offenses  
8 he's charged.

9 THE COURT: Thank you, Mr. Leaders. Mr. Robinson, it  
10 will be just a second. We've got to get the tape switched in  
11 and out.

12 MR. ROBINSON: I believe I'll go use the restroom  
13 before.....

14 THE COURT: Well, that's where I'm headed, too, so we'll  
15 go off record, switch the tapes out and everybody else that  
16 wants to line up for a restroom break can go, and then we'll  
17 get started. So please don't go anywhere else if you don't  
18 need to.....

19 MR. LEADERS: Some exhibits -- should we get them all  
20 out?

21 (Off record)

22 0074

23 (Tape change)

24 4MC-05-23/Side A

25 0074

- 1000 -

1 child. He continued to do these things through his adult  
2 life. He has a family and two daughters, who also are  
3 residents of Alaska.

4 When we started this case we started this case with the  
5 presumption of innocence, which alone is sufficient to acquit  
6 a defendant in a criminal case unless and until you are  
7 satisfied beyond a reasonable doubt of his guilt. After a  
8 careful and impartial consideration of all of the evidence in  
9 the case.

10 Now that last mentioned requirement that you be  
11 satisfied beyond a reasonable doubt is what's known as the  
12 burden of proof. It's not -- it's required that the  
13 prosecution prove to you reasonable doubt, which is a doubt  
14 based on reason -- beyond reasonable doubt. Proof beyond  
15 reasonable doubt. And reasonable doubt is a doubt based on  
16 reason and common sense, the kind that you would make as a  
17 reasonable person to make you hesitate and act on important  
18 affairs in your life. Like purchasing a car, or a house. Or  
19 even taking a trip or a vacation. Things that are important  
20 to you.

21 It has to be of a convincing character that after your  
22 thorough deliberation you'd be willing to rely and act on it,  
23 without hesitation in your important affairs. And the  
24 defendant is never to be convicted on mere suspicion or  
25 conjecture.

- 1002 -

1 THE COURT: .....jury is present. Mr. Robinson, go  
2 ahead, please.

3 MR. ROBINSON: Well, we've come to the end of my work and  
4 Mr. Leaders work, and to some degree Judge Murphy's work.  
5 Because now this case is going to be turned over to you as  
6 jurors and then you're going to have to work and have to  
7 deliberate to determine whether or not the state has proved  
8 beyond a reasonable doubt each and every element of the  
9 offenses charged.

10 The evidence in this case is closed. Done. Finished.  
11 Now your role as open minded, fair minded, objective people  
12 is to make a decision on 11 counts. Now I only get to argue  
13 to you one time. Unlike Mr. Leaders, who gets to come back  
14 and argue again after I'm done. So I may not say all I can  
15 say or need to say in the time that I have to argue to you.  
16 All I can say is that I hope that you would think of things I  
17 might say in response to Mr. Leaders when he comes up to talk  
18 to you again.

19 David Haeg is a resident of Alaska. Even though he  
20 lives in Soldotna and he doesn't live in McGrath, he's still  
21 a resident of our state. He was raised in Alaska. A little  
22 place called Chinitna Bay on the west side of Cook Inlet.  
23 Four people in his village. Until he was an adult and moved  
24 down into the Soldotna area. He learned how to hunt, he  
25 learned how to commercial fish, he learned how to trap as a

- 1001 -

1 Now when we started this case I asked all of you about  
2 being charged with something specifically. The state having  
3 to prove it specifically, and if they don't prove that  
4 specifically there's reasonable doubt as to whether somebody  
5 is guilty.

6 Now I'm going to tell you right up front, just like Mr.  
7 Haeg told you right up front. There are some charges here  
8 that he does say beyond a reasonable doubt I'm guilty, he's  
9 truthful about it. Unlawful possession of the wolf hides.  
10 The wolves. He violated the conditions of the permit which  
11 is a state game law. Therefore he unlawfully possessed those  
12 wolves. He falsified the sealing certificate. He told Toby  
13 Boudreau and wrote it down that the wolves were taken inside  
14 the predator control area when in fact they were taken  
15 outside.

16 He admitted to you about the closed season with the leg  
17 hold traps. In other words those six traps that were still  
18 open after the wolverine season, he said those were his  
19 responsibility. But he didn't say that the wolverine that  
20 was trapped in that snare on August 2nd he was guilty of.  
21 And you know what, Trooper Gibbens said that on the 28th of  
22 March of 2004 when he and a helicopter with Trooper Roe(ph)  
23 and another trooper flew over Mr. Haeg's trap line. They saw  
24 a live wolf and a wolverine. What they originally believed  
25 to be in snare -- in traps, turned out when they got on the

- 1003 -

1 ground that it was snares. The wolverine season was still  
2 open, and the wolf season was still open. So those two  
3 animals weren't taken out of season.

4 They came back four or five days later on April 2nd and  
5 saw the wolverine that Mr. Leaders showed you a photograph,  
6 in a snare. And he said, oh, that was caught out of season.  
7 I'd like to remind you specifically that I asked Trooper  
8 Gibbens do you have evidence beyond a reasonable doubt that  
9 that wolverine was caught after the season closed. And his  
10 answer was no. So there's an admission on the part of the  
11 state that as far as that wolverine is concerned, they don't  
12 have evidence beyond a reasonable doubt that that wolverine  
13 was trapped after season.

14 With regard to the other traps, the other snares. The  
15 state has to prove to you that Mr. Haeg with criminal  
16 negligence was trapping after the season closed, and the wolf  
17 and also by criminal negligence failed to salvage the hide of  
18 that wolf. Now criminal negligence is defined to you. The  
19 court read you an instruction on what it means. Criminal  
20 negligence means that Mr. Haeg has to fail to perceive a  
21 substantial and unjustifiable risk that the wolf wasn't going  
22 to be salvaged, or the wolf may be caught after closed season  
23 in those snares.

24 Now you heard from Mr. Buist, and you heard from Mr.  
25 Spraker, who are long-time trappers in Alaska. That it's

- 1004 -

1 common practice, even sometimes customary, for someone to  
2 take over a trap line and become responsible for taking the  
3 animals out of it and closing those snares at the end of the  
4 season. You heard testimony from Mr. Haeg that he was called  
5 by Tony Lee(ph), not as Mr. Haeg says he called Tony Lee(ph).  
6 Tony Lee(ph) called him and said, hey, I've flown over that  
7 trap line, I've seen animals in it. Wolverines and wolves.  
8 Can I take it over. The agreement was, yes, you can take it  
9 over, you can have all the animals in it, so long as you take  
10 them out and close those snares down by the end of the  
11 season. Three conversations about it.

12 Now is that somebody who has failed to perceive a  
13 substantial and unjustifiable risk that Mr. Lee(ph) wouldn't  
14 do what he said he would do, and therefore that wolf would go  
15 unsalvaged. Other wolves would be caught after the season is  
16 closed. I submit to you, no. That he was doing what's  
17 customary in the industry. And somebody took responsibility  
18 for them and therefore he wasn't negligent. He didn't fail  
19 to perceive an unjustifiable or substantial risk. He was led  
20 to believe on the part of Tony Lee(ph), that, hey, I'll deal  
21 with the problem. Now if that wasn't the case don't you  
22 think the state would have brought Tony Lee(ph) in here.  
23 For those of you who were here back in May, Tony Lee(ph)  
24 was listed on the witness list as a potential witness for the  
25 state. Where is he now. Because there's just no dispute as

- 1005 -

1 to what happened. Tony Lee(ph) agreed to close down that  
2 trap line of snares, and he didn't. And it's not now Mr.  
3 Haeg's responsibility but Tony Lee's(ph) responsibility, and  
4 it is not now any criminal negligence on the part of Mr. Haeg  
5 with regard to that trap line. So he didn't trap the wolves  
6 after season, he didn't fail to salvage those wolves and he  
7 told you that.

8 Now let's come down to the other charges, the ones that  
9 are really the main charges in this case concerning the  
10 taking of wolves same day airborne, shooting them from the  
11 air; those nine wolves outside of the predator control area.  
12 Permission is an interesting concept to all of us. We've all  
13 some time or another either asked for permission, were

14 granted permission to do something. In this case permission  
15 was granted to Tony Zellers, David Haeg to take wolves from  
16 the air, shoot them, same day airborne under conditions. And  
17 when those conditions were set in the permit, then it was  
18 those conditions that controlled the conduct of both Mr.  
19 Zellers and Mr. Haeg. It was the permission that was granted  
20 to them that under those conditions that determined whether  
21 their conduct would be lawful or unlawful. Because it was a  
22 specific grant of permission.

23 For instance, if you want to go gill netting in Bristol  
24 Bay to do commercial fishing for salmon, you have to have  
25 permission to do so. And that permission is in the form of a

- 1006 -

1 limited entry permit. And that limited entry permit says you  
2 can go commercial fishing in a certain geographical area in  
3 open waters in that geographical area and that's the  
4 permission you have. Now they have all kind of other fishing  
5 regulations but you are now controlled under the limited  
6 entry act because that's where you got your permission from.

7 And so, if as a gill netter in Bristol Bay with a  
8 limited entry permit you go into closed waters to go fishing  
9 commercially, you're not going to be charged with sport  
10 fishing in closed waters, or subsistence fishing in closed  
11 waters. You're going to be charged with commercial fishing  
12 in closed waters because your permit doesn't authorize you to  
13 fish in closed waters. But the conduct is the same. The  
14 conduct of commercial fishing doesn't change simply because  
15 you're now doing it in an area you're not authorized to do it  
16 in.

17 You are now commercial fishing in a closed unauthorized  
18 area. And you're controlled by the conditions of your  
19 permission. Now the state showed you this permit but I don't  
20 think it ever published it to you. This is the permit that  
21 Mr. Haeg was granted by the Department of Fish and Game to  
22 engage in predator control of wolves. At the very end of  
23 this document it says, I have read the above listed  
24 conditions and understand that violation of these conditions  
25 is a misdemeanor, and in parentheses, 5 AAC 92.050 and

- 1007 -

1 92.052. Have you seen the charge in this case for those  
2 violations. No. But when he agreed to become part of the  
3 predator control program he agreed if he violated the  
4 conditions of this permit it would be a misdemeanor under  
5 these charges. Not the same day airborne hunting big game,  
6 not trapping big game, same day airborne before 3:00 o'clock  
7 after the day you landed. These are the conditions. And so  
8 when he went out of the area in violation of his conditions  
9 of the permit, just like if you went out of the area of open  
10 waters into closed waters as a commercial fisherman, he was  
11 predator controlling in violation of these conditions, just  
12 like you would be commercial fishing in violation of  
13 conditions of your limited entry permit.

14 This is the violation penalties and consequences that a  
15 permit holder having this permit would suffer under. So the  
16 state has to prove beyond a reasonable doubt that Dave Haeg  
17 from March 5th, March 6th, March 21st and March 23rd of 2004  
18 knowingly violated a state law prohibiting hunting same day  
19 airborne. Now what do we know about the predator control  
20 program.

21 You heard from Toby Boudreau himself that there is a  
22 distinction between hunting, trapping and predator control.  
23 They're not the same kind. They're three separate  
24 activities. You heard from Peter Buist and Ted Spraker that  
25 said it was the board's intent specifically to not make

- 1008 -

1 predator control either hunting or trapping. They couldn't  
2 explain why, as you heard in the instructions, you had to  
3 have a trapping license, not a hunting license to get a  
4 permit, but clearly the conduct and activity itself is not  
5 hunting or trapping. It's predator control.

6 So when you get this permit and you agree to abide by it  
7 you agree to do predator controlling under these conditions  
8 and if you do predator controlling and you don't do it under  
9 these conditions, then you're subject to the misdemeanor  
10 that's in this piece of paper. Which is (indiscernible) and  
11 I'll publish it to you. Now. You can read it yourself.  
12 So is Mr. Haeg charged with those violations. No, he's  
13 charged with something different that are unrelated to what  
14 he said he would -- promised to be subject to for the  
15 permission that he was granted. Now some of you think, oh,  
16 well he lied to Toby about the, you know, the falsification  
17 on the certificate, the sealing of the wolves,  
18 (indiscernible) and therefore might convict him simply  
19 because he lied on that. That is not the issue when it comes  
20 to those first five counts, however.

21 That is not the issue. Not the issue of whether he lied  
22 to Toby, is not the issue of whether he unlawfully possessed  
23 game. He did because if he violated the conditions of that  
24 he violated a state game law. The question is was he  
25 hunting big game same day airborne. No. Because predator

- 1009 -

1 control is not hunting. It's predator control. Albeit it in  
2 violation of his conditions, he was still predator  
3 controlling.

4 Remember I asked Mr. Spraker, well, what about if you,  
5 you know, this requires that you carry the permit with you on  
6 your person, like a driver's license. And you violate a  
7 condition of that permit, now if you violate a condition of  
8 that permit like you don't carry that permit even if you are  
9 shooting wolves from the air or from the land inside this  
10 permitted area, you would be subject to a misdemeanor under 9  
11 -- 5 AAC 92.05[sic] and the other one, .052. Because that's  
12 what you were told would happen to you if you violate a  
13 condition of these permits.

14 He said, well, you know, under that situation it might  
15 be like a driver's license, you know, you do have a driver's  
16 license. So a policeman might give you a warning and say,  
17 you know, I'll give you a warning ticket and if you show us  
18 this driving license then we'll dismiss it. Because it might  
19 be a minor violation. But it's still a violation and you  
20 would be subject to whatever the penalties were for failure  
21 to carry your driver's license on your person.

22 It wouldn't all of a sudden turn you into an unlicensed  
23 driver. You still have a license, you just didn't have it on  
24 you. Now there's no question that going outside the area and  
25 taking those wolves was probably a serious violation of the

- 1010 -

1 conditions that you agreed to abide by. The permission,  
2 specifically that was granted to you. You know, you might  
3 not get a warning for that one, you might actually get cited,  
4 charged with that misdemeanor, but it better be that  
5 misdemeanor and not the one that the state wants to prove  
6 which is knowingly violating a law prohibiting hunting, same  
7 day airborne. That's different than what's there.

8 You all said that they have to prove the specific  
9 charges that he's specifically charged with, not something  
10 else. And so in the deliberation room it would be wrong for  
11 you as a juror to say, well, he did this wrong so why don't  
12 we just convict him of what the state says he did wrong.  
13 That's not how it works.

14 Your job as a juror is to ask yourselves, did the state  
15 prove to me beyond a reasonable doubt each and every element  
16 that is in those first five charges. Knowingly violated a  
17 state law prohibiting hunting same day airborne. Not  
18 predator controlling same day airborne, not trapping same  
19 day, but hunting same day airborne. This is not hunting.  
20 So of course people like Mr. Buist or Mr. Spraker or Mr.  
21 Boudreau, and Sergeant Gibbens would say, he was  
22 unauthorized. Well, what that really means is that he  
23 violated his permission which is contained in that document.  
24 And what he knew was that if he violated that he would be  
25 charged with those misdemeanors, not something different.

- 1011 -

1 Because the state has to prove that he knew that he was  
2 violating a state game law prohibiting hunting, not  
3 prohibiting the conditions of the permit.  
4 He has to be aware that he was violating the state game  
5 law prohibiting hunting, same day airborne. He wasn't  
6 violating that law, and he admitted to you he violated the  
7 conditions of his permit. Because that's where it all comes  
8 from. The original grant of the permission. Yes, you can do  
9 A, B and C if you agree to do F, G and E. Or F -- whatever.  
10 One, two, three if you agree to do four, five and six.  
11 That's the permission and that's the condition. And then if  
12 you violate it this is what's going to happen to you. This  
13 is what you've been given notice of if you violate the

14 conditions. If you go outside of this area you're going to  
15 be subject to a misdemeanor under 5 AAC 92.050, .052.  
16 We don't have a lot -- we have the instructions and  
17 they're done, we have the evidence and that's it. This case  
18 is done as far as evidence and law is concerned and the state  
19 had every opportunity before this trial started to charge him  
20 with violation of the permit conditions, because that's what  
21 the permission was based on, and they didn't.

22 Tony Zellers. He was the gunner, he shot the wolves.  
23 Did you hear one lick of evidence in this case that he was  
24 convicted of anything.

25 MR. LEADERS: Objection, Judge.

- 1012 -

1 MR. ROBINSON: Oh, no, I can go on lack of evidence, I'm  
2 sorry.  
3 MR. LEADERS: It's not relevant.  
4 MR. ROBINSON: It is relevant.  
5 MR. LEADERS: It's not....  
6 THE COURT: It's not re -- the objection is sustained.  
7 MR. LEADERS: It's misleading as to the evidence.  
8 MR. ROBINSON: You had every opportunity to bring up that  
9 evidence....

10 THE COURT: It's not relevant, the objection has been  
11 sustained.

12 MR. ROBINSON: Well, I'll take -- I'd note the objection  
13 to your sustaining it.

14 THE COURT: It's noted.

15 MR. ROBINSON: Okay. So what Mr. Haeg has admitted to  
16 with regard to this case and these wolves (indiscernible) is  
17 that he admitted that he shot those wolves, same day airborne  
18 in violation of his permit conditions. Because that's what  
19 controlled his conduct. That's the permission that was  
20 given. And this business about oh, once he went outside and  
21 all of a sudden he was like everybody else, he wasn't like  
22 everybody else because he had been given permission with a  
23 permit. That's not like everybody else.

24 And then the everybody else business is kind of  
25 convoluted because the state wants you to believe, well,

- 1013 -

1 let's see, big game, wolf, it would be hunting, fur bearer it  
2 would be trapping, which conduct is it. Where is this bright  
3 line. The state wants you to believe that, oh, you could be  
4 doing both. It's impossible. You're doing one or the other,  
5 just like Mr. Buist said. If you have a trapping license,  
6 you're trapping. Even if you shoot them before 3:00 o'clock  
7 same day it's a fur bearer, not big game.  
8 If you're acting like a hunter, and you choose to hunt  
9 them with your hunting license then that's a different story,  
10 but you can't have both. It just doesn't work, and the  
11 choice really is not of the law enforcement. It may be up to  
12 law enforcement to which they want to charge, but it is not  
13 up to law enforcement to determine what conduct was going on.

14 That is to -- again, a permission dealing with the licensee.  
15 I choose to use my trapping license. Because the sealing  
16 requirements might be different or the bag limits might be  
17 different, or the means and methods of taking this wolf as a  
18 fur bearer may be different. And I have a trapping license  
19 and I'm trapping. The intent and purpose. Just like in  
20 subsistence and sport fishing.

21 Remember I asked where is this bright line between when  
22 you're out with a 30.06 pursuing a moose for food. Is it  
23 sport hunting or subsistence hunting. It all depends on your  
24 purpose. Sometimes it's real easy if you're just going out  
25 for the trophy of it versus food and shelter, transportation,

- 1014 -

1 customary and traditional. You think, oh well, the intent  
2 and purpose here is subsistence, not sports. That's not left  
3 up to law enforcement, that's left up to the individual to  
4 decide what activity and purpose they want to engage in.  
5 And when it came right down to it when I asked Trooper  
6 Gibbens I said, Trooper Gibbens, do you know whether it's big  
7 game or whether it's fur bearer, if you have a trapping  
8 license, or hunting license, which one is it, and his answer  
9 was, I don't know. But yet ordinary citizens who have these  
10 licenses they're supposed to know whether they're violating a  
11 state game law. It is a personal choice, just like Mr. Buist  
12 said, just like Mr. Spraker said. I choose to use this  
13 license in this pocket as my trapping license, therefore I'm  
14 governed by trapping regulations while I was out here  
15 pursuing a wolf.

16 Not hunting, because that's different. If it wasn't  
17 different you wouldn't need different licenses, which you  
18 wouldn't need different permissions if it was all the same.  
19 Now Mr. Haeg gave you his reasons and motivations for why he  
20 went outside the permitted area and took these wolves, and  
21 just did it out of frustration, over zealotness, he wanted  
22 to see wolves gone so that moose populations could increase.  
23 I'm sure that's the very reason why they set up the program.  
24 And that may have been a good motivation but it was a  
25 wrong act with regard to that permit. That permit says that

- 1015 -

1 conduct is not hunting. It's predator control, and we  
 2 specifically wanted it to be not hunting. So what David Haeg  
 3 did was predator controlling in violation of that permit.  
 4 Told that if he did that he would be subject to those  
 5 regulations, not the one that the state has charged with.  
 6 They could have, but they didn't.  
 7 Never gave him notice in any kind of complaint,  
 8 information or anything else that he was being charged with  
 9 those violations. Had every opportunity to, months. But  
 10 they didn't. And now they want to change the nature of the  
 11 conduct to something else. Oh, it's hunting. Well, if it  
 12 isn't hunting it's trapping. Even though it's neither. It's  
 13 just like I said before. If you have your limited entry  
 14 permit, which is permission from the State of Alaska to go  
 15 commercial fish, you go commercial fishing with the intent  
 16 and purpose to commercial fish in an area that's unauthorized  
 17 and closed, it doesn't change the nature of the conduct.  
 18 It might make the conduct illegal, the commercial  
 19 fishing in closed waters, but it doesn't change that kind of  
 20 activity to something different. The same thing here. He  
 21 was predator controlling in violation of his permit  
 22 conditions. It didn't change the nature of the conduct, it  
 23 made it illegal but it didn't change the type of conduct it  
 24 was, and subject to the penalty that he agreed to under the  
 25 permission he was given.

- 1016 -

1 Now you may be wondering why I didn't call Kevin Saxby.  
 2 I didn't need to call Kevin Saxby after we got testimony from  
 3 Tony Boudreau who admitted that there's a distinction between  
 4 hunting, trapping, predator controlling, they're three  
 5 different types of conduct. Mr. Saxby wasn't needed to make  
 6 that (indiscernible). Besides that, there's -- the judge has  
 7 instructed you earlier Mr. Haeg really doesn't have the  
 8 burden of proving anything. Proving his innocence or  
 9 anything else. So if he chooses not to call a witness you  
 10 can't really hold that against him, because he doesn't have  
 11 the burden of proof, Mr. Leaders does.

12 And in conclusion I can say about those first five  
 13 counts, the state has failed to prove beyond a reasonable  
 14 doubt that the conduct that Mr. Leaders -- I mean Mr. Haeg  
 15 and Mr. Zellers did outside of their permitted area was  
 16 hunting. It was unauthorized predator control. It could  
 17 have been prosecuted as a misdemeanor under the permit  
 18 violation of conditions, but it wasn't. And I can say to you  
 19 based on the evidence in this case that the state has failed  
 20 to prove beyond a reasonable doubt that Mr. Haeg was  
 21 criminally negligent, failed to salvage that wolf or wolves  
 22 or trapped or snared the wolves in closed season. Because  
 23 once Tony Lee(ph) agreed to take over the trap line and  
 24 become responsible for closing it out and taking the  
 25 animals out, a common thing in this industry, he did no

- 1017 -

1 longer fail to perceive the risk. I'll take care of it, man,  
 2 I'll do it. Don't worry. I've got it covered. Okay.  
 3 That's not negligence on his part. And he brought it up a  
 4 couple times. Are you sure. Yes, don't worry about it, I'll  
 5 do it. That can't be negligence.  
 6 And then about that wolverine, that second. Where the  
 7 state has admitted through Trooper Gibbens, and I'd submit to  
 8 you that he says we don't have proof beyond a reasonable  
 9 doubt. Well, that's what you've got to have in order to find  
 10 him guilty of that wolverine, is proof beyond a reasonable  
 11 doubt. He says we don't have proof beyond a reasonable doubt  
 12 that that wolverine was caught after the season was closed.  
 13 So in summary I'm just saying that Mr. Haeg has lived up  
 14 to what he -- takes responsibility for which was the unlawful  
 15 possession because that's a violation of his permit  
 16 conditions. The falsifying of the sealing certificate is a  
 17 violation of the permit conditions. He admits those things.  
 18 He admits that the leg holds should have been up  
 19 (indiscernible) 31. But as far as those other charges are  
 20 concerned, the state has failed to prove beyond a reasonable  
 21 doubt based on reason and common sense that Mr. Haeg is  
 22 guilty of knowingly violating a state law prohibiting hunting  
 23 same day airborne. Or criminally negligently failed to  
 24 salvage the hide of the wolf. Now here's a guy who takes  
 25 illegal wolves and salvages hides, tans them and takes them

- 1018 -

1 up to Alaska Fur Dressing. Why would he fail to not dress  
 2 out -- salvage the hide of those wolves in the photograph.  
 3 Because that was left up to Tony Lee(ph), he could have the  
 4 animals that were in those snares, as he closed down the  
 5 season, close up those snares.  
 6 I thank you for your time. I know this has been a very  
 7 long and drawn out affair because of the long days that all  
 8 of us have gone through. Probably none of us are used to  
 9 this. This is Mr. Haeg's only chance at trial. I'll have  
 10 more trials, Mr. Leaders will have more trials, the judge may  
 11 have more trials, and maybe even you might have another trial  
 12 or two in your lifetime. But this is Mr. Haeg's last chance.  
 13 Particularly with these charges, those first five counts.  
 14 Salvaging of the wolf, the wolverine. So on his behalf I'm  
 15 asking you to do your job. Your job is if the state doesn't  
 16 prove it beyond a reasonable doubt you must acquit. You  
 17 can't say, oh, he did something wrong so we're going to  
 18 convict him anyway. You have to carefully look at the  
 19 evidence and see if the state has proved each and every  
 20 element of the offense. Crimes make up two things. Mental  
 21 -- culpable mental state and conduct. You've got to have  
 22 both of them beyond a reasonable doubt to be convicted.  
 23 Now Mr. Leaders is going to get up and say some things  
 24 in rebuttal, but I won't get a chance to say anything else  
 25 after he talks. I already told you. I'm just asking you to

- 1019 -

1 us the benefit of the doubt and think of things I might  
2 (indiscernible) or could have said in response to what he's  
3 going to tell you in rebuttal. (Indiscernible) acquit David  
4 Haeg of the charges that he hasn't (indiscernible) and has  
5 put the state to its burden of proof, because they can't  
6 prove beyond a reasonable doubt those first five charges, the  
7 falsification (indiscernible). Failure to salvage the wolf  
8 hide, and the wolverine that was in the trap.  
9 (Indiscernible). Thank you.

10 THE COURT: Thank you, Mr. Robinson. Just a moment, Mr.  
11 Leaders. Why don't we change the tape (indiscernible).  
12 (Whispered conversation)  
13 (Off record)

14 0685

15 (Tape change)

16 4MC-05-23/Side B

17 0685

18 THE COURT: Go ahead. Excuse me. Mr. Leaders.

19 MR. LEADERS: Thank you. Ladies and gentlemen, it's true  
20 I do get this second opportunity to address you and if you  
21 think about it, it makes sense. I started speaking first, by  
22 the time Mr. Robinson spoke -- or spoke he knew what my  
23 arguments to you were, and he did rebut them. I can't  
24 presuppose his, I don't know what he's going to say, now I  
25 get this chance to address and rebut his arguments. And I'm

- 1020 -

1 going to do that. I'll take you -- take this opportunity to  
2 redirect you on what the law is and what the evidence is in  
3 this case, and why the law and the evidence show you that  
4 beyond a reasonable doubt Mr. Haeg committed the offenses.  
5 The one specific Mr. Robinson wants to dispute regarding the  
6 trapping and the same day airborne.

7 First of all, let's talk about this trapping of the  
8 wolverine. You'll recall from the testimony of Trooper  
9 Gibbens about how he was out there on the 28th at the Swift  
10 River kill sites, he inspected the sites. The wolverine, the  
11 wolf in the snare at the time, and then how he comes back on  
12 the 2nd of April and there are still leg hold trap opens --  
13 open, the same leg hold traps Mr. Haeg says that he's  
14 responsible for the set. He has no dispute that he's  
15 responsible for what's happened at that set as of April 2nd.  
16 He's responsible for it.

17 In addition, there's another wolverine in a snare. Now  
18 Robinson went through a long series of interaction with Mr.  
19 -- Trooper Gibbens regarding the word caught. He can't prove  
20 when that -- that that wolverine was caught after March 31st.  
21 We can't prove that it wasn't caught, beyond a reasonable  
22 doubt, before or can't prove beyond a reasonable doubt that  
23 it was caught after March 31st. And you'll recall what  
24 Trooper Gibbens said was I don't have the information beyond  
25 a reasonable doubt that the animal didn't -- wasn't first

- 1021 -

1 caught. He clarified, distinguished. It was still caught  
2 after April 2nd. He couldn't tell you when it entered that  
3 trap, that snare, beyond a reasonable doubt. Either way  
4 those snares that -- or that wolverine on April 2nd was still  
5 caught illegally in that snare set.

6 It was caught, it had not been harvested, it was still  
7 captured. The trapping as defined by the court for you means  
8 the taking of mammals declared by regulation to be fur  
9 bearers or read the instruction that wolverine is a fur  
10 barrier [sic], taking means the taking, pursuing, hunting,  
11 fishing, trapping or in any manner disturbing, capturing, or  
12 killing or attempting to take pursue, hunt, fish, trap or in  
13 any manner capture or kill fish or game.

14 Certainly that wolverine was not free on April 2nd when  
15 Trooper Gibbens went out there and had to kill it and the  
16 other one, kill the wolverine. It was caught. The  
17 wolverines were caught in those traps as of April 2nd. Those  
18 snares. Those snares were illegal catching the wolverine.  
19 That's the evidence that shows beyond a reasonable doubt that  
20 Mr. Haeg committed that offense.

21 The -- as some wolf snares and the failure to salvage  
22 the -- Mr. Robinson tells you that, yes, -- and he's right.  
23 Part of criminal negligence is a person fails to perceive a  
24 substantial and unjustifiable risk that the result will occur  
25 or the circumstance exists. In this case that the snares

- 1022 -

1 set, the wolf trap snares would still be set as of May 1st,  
2 and that the wolf that was captured in one of those snares  
3 would be -- would fail to be salvaged.  
4 Ladies and gentlemen, the evidence from Mr. Haeg tells  
5 you he actually perceived that risk, that concern. He had  
6 that concern, that's why he called Mr. Lee(ph) back and he  
7 was all concerned about it, he told you he couldn't sleep.  
8 At points it was really upsetting him. He called back, or  
9 there was additional communication, pull them, don't let them  
10 stay out. And he's still concerned about it when he goes out  
11 to his lodge but he's not concerned enough to go over and  
12 check, apparently. He was concerned, he just didn't want to  
13 be there is what the evidence is. He negligently disregarded  
14 the fact that there could be open snares and could be --  
15 actually I'll take that back. That's right, he did not go  
16 out there. We don't have evidence as of that point in time.

17 But it wasn't important to him -- or excuse me. Although it  
18 was so important he didn't follow up on it, which he should  
19 have been. He should have done. So he negligently  
20 disregarded the possibility that -- as he tells you Tony  
21 Lee(ph) says he would take those sets.

22 Because you have to take into consideration the  
23 testimony and the court has read you an instruction at the  
24 beginning of trial to -- how to assess the credibility of a  
25 witness, and that's to look at what interest or motive they

- 1023 -

1 have in the case. Certainly Mr. Haeg doesn't want to be  
2 found responsible for that, failure to salvage that wolf.  
3 The snares that were left out there. And you have to look at  
4 the consistency of the evidence. Certainly he was -- told  
5 you how concerned he was about that set being open still.  
6 That tells you that's why he tells you he called Tony Lee(ph)  
7 for the last time.

8 Well, let's talk about the first five charges, these  
9 same day airborne charges relating to the wolf. Mr. Robinson  
10 tells you that the state has not met its burden on these  
11 charges because the state has not proven to you beyond a  
12 reasonable doubt that Mr. Haeg violated a hunting regulation  
13 prohibiting same day airborne hunting of wolves. In fact, we  
14 have. You heard the regulation. A person cannot take big  
15 game, which includes wolves, until after 3:00 a.m. the day  
16 following the day he was flying. Mr. Haeg told you he knew  
17 about the -- he was well aware of it, he knew about that  
18 regulation, he knew its existence, he knew it applied to  
19 anyone -- or to everyone. He says he knew it applied to him  
20 out here. They try to tell you that it didn't apply because  
21 he had a permit. That he had a permit, this predator control  
22 permit that, according to Mr. Robinson, apparently gives Mr.  
23 Haeg -- think of his argument. Mr. Robinson's argument is  
24 that that permit is -- although the express terms of the  
25 permit are limited to this area by statute. The court's read

- 1024 -

1 some of those -- or read those to you and I'll read some of  
2 them again. The court read that a person may not shoot or  
3 assist in shooting a free ranging wolf, that's one that's not  
4 in a trap or snare, or wolverine the same day that a person  
5 has been airborne. However, the Board of Game may authorize  
6 a predator control program as part of a game management plan  
7 that involves airborne or same day airborne shooting. The  
8 court read the definition as well that state -- tells you  
9 that a game management program means a program authorized by  
10 the Board of Game or the Commissioner to achieve, identify  
11 game management objectives in a designated geographic area.  
12 We went through this with Mr. Boudreau, Mr. Spraker, and  
13 Mr. Buist as well. By definition the predator control is  
14 limited to this area. By definition and by the statements on  
15 the permit, condition number 3 on the permit. This permit  
16 allows the taking of wolves using aircraft only within a  
17 portion of 19-D east. That includes the experimental micro-  
18 management area. It talks about the attached map. That was  
19 Exhibit 22 that was -- I don't know where that went to at the  
20 moment. The attached map that everybody's testified this  
21 fairly represents at least the southern boundary and the  
22 eastern and the western.

23 By the express conditions of the permit this permit and  
24 the statements of Mr. Spraker, Mr. Buist, Mr. Boudreau, this  
25 permit only has authority within these boundaries. And this

- 1025 -

1 permit can only regulate activity within these boundaries.  
2 This permit has no authority outside those boundaries. Mr.  
3 Haeg, and anyone else that's ever obtained one of these  
4 permits can call their activities anywhere else they --  
5 whatever they want, including predator control. But it's not  
6 predator control under the laws of the state of Alaska  
7 because it's not within a game management program in a  
8 predator control area. His activities are limited to the  
9 area. His grant of authority.

10 So because of that, he can't be charged out here for  
11 violating his permit. He's not under his permit out here.  
12 If you think of Mr. Robinson's argument it goes like this.  
13 Now that Mr. Haeg and Mr. Zellers and anyone else who's ever  
14 obtained one of these permits, have a permit, they can for  
15 the rest of their lives kill wolves from a plane anywhere  
16 they want to in the state of Alaska and the only thing that  
17 could happen to them is they could be charged with a  
18 violation of this permit. Because now they've exceeded not  
19 just the geographic area of the permit, but also the time  
20 restrictions on the permit. But they had a permit.

21 That's what his argument is telling you. It's  
22 ridiculous, and it has no foundation in the law. The law  
23 that you heard, the analysis and explanation of this program  
24 that came from Mr. Boudreau, Mr. Buist and Mr. Spraker that  
25 this program, predator control, is here only. You can call

- 1026 -

1 it whatever you want out there, you can have whatever  
2 purpose, whatever intent when you go out and kill those  
3 wolves, but you're not doing predator control, you're not  
4 covered by this permit. You're not under the conditions of  
5 this permit when you go out here.

6 When it gets down to it you realize -- Mr. Haeg realized  
7 that because that's -- remember, he didn't even put -- this  
8 permit required the yellow locking tags, it required the  
9 calling in to fish and game about where you -- the GPS  
10 coordinates of where you took the wolves. Mr. Haeg's own  
11 activity -- he didn't do that with any of these six wolves.  
12 Why. Because he knew it didn't have anything to do with the  
13 permit. He did it with the first three and he told why,  
14 because he wanted to make it look like he was being  
15 successful under the permit. Once he got down here and he  
16 realized oh, no, I'm too far out of the area, he tells you I  
17 don't want to draw any more attention to it. I don't want,  
18 you know, don't want it to now look too successful.  
19 Interesting.

20 Mr. Haeg's own behavior tells you he didn't have any  
21 belief at all that he was operating under this permit. So,  
22 yes, it's true, it tells you that -- I read the above  
23 conditions listed and I understand that violation of these  
24 conditions is a misdemeanor under these couple subsections --  
25 or based on these authorities. These statutes. The problem

- 1027 -



1 is if we would have charged Mr. Haeg with permitting these  
 2 permit violations out here. Mr. Robinson's argument at that  
 3 point would have been you can't charge him with a permit  
 4 violation. The permit only applies in the control zone.  
 5 Ladies and gentlemen, based on the evidence that you've  
 6 heard, based on the law as the court's instructed you, it's  
 7 very clear. Permit only applies here. Predator control as  
 8 authorized by the State of Alaska, as -- authorized control  
 9 by this permit only applies here. As you heard from -- Mr.  
 10 Spraker put it best. You leave the permit at the boundaries.  
 11 Mr. Haeg in reality only accepted the authority of the  
 12 permit on three different occasions. The three occasions he  
 13 flew into the boundaries. When he flew out, each time he  
 14 flew out he left the conditions and the authorities, the  
 15 penalties, the punishments for that permit. And as he told  
 16 you out here it's a violation of the hunting laws to take a  
 17 wolf same day airborne. And as he told you, he knew that at  
 18 the time, as he knows it now. He knowingly violated a  
 19 hunting regulation. The hunting regulation that says you  
 20 cannot take a big game animal, including a wolf, the same day  
 21 you're airborne. That's what the evidence in this case tells  
 22 you beyond a reasonable doubt. Don't let Mr. Robinson  
 23 confuse you as to the application of the permit, and the  
 24 interaction of Mr. -- that -- he tries to tell you is what  
 25 should apply down here. It doesn't apply down there.

- 1028 -

1 He tries to tell you this issue of -- it's just like a  
 2 limited entry permit. You're fishing under that and you go  
 3 fish in another area, or whatever, and you want to call it  
 4 sport fishing, you're not doing sport fishing, you're not  
 5 doing subsistence, you're still doing commercial. There's a  
 6 great difference. The activity is defined by the intent  
 7 there. And here the activity, predator control, and so it  
 8 doesn't matter where you're going, you're commercial fishing.  
 9 Here the activity is defined by the geographic area.  
 10 Predator control in that -- is in that area only.  
 11 As you heard, you can have this predator control permit  
 12 and you could go try and take a wolf over in 19-A -- I guess  
 13 not this one, but the one that was issued for this area this  
 14 year. You can go into another area that authorizes predator  
 15 control and you have no authority to take a wolf same day  
 16 air. You've got to be asking, why is that the case if this  
 17 is a permit, and I'm authorized to take the permit -- or take  
 18 a wolf, same day air with the permit, then Mr. Haeg or anyone  
 19 else would be able to go to any predator control area they  
 20 want to take a wolf and it not be a problem.  
 21 The -- what is clear, ladies and gentlemen, is that Mr.  
 22 Haeg was engaged in hunting. Now you've heard Mr. Spraker --  
 23 or Mr. Spraker -- excuse me. Mr. Buist, we tried to go  
 24 through this discussion and they both really got stumped when  
 25 it came down to the real issue. I mean consider their

- 1029 -

1 testimony and what came out through their testimony is that  
 2 both the hunting and trapping laws and regulations can apply  
 3 to the same activity, the same conduct. And both of their  
 4 analysis was their opinions for different reasons was it's  
 5 the hunter that gets to decide am I hunting for wolves or am  
 6 I trapping for wolves. But neither one of them could tell  
 7 you when it comes to violating the regulations which are you  
 8 violating. As Mr. Spraker told you and what we know is it's  
 9 law enforcement who determines which regulations, what rules  
 10 are applicable to you when a violation has occurred.  
 11 And that's what Mr. -- that was Mr. Spraker's response.  
 12 It was also Mr. Buist's. He says, I don't know, I guess  
 13 that's up to law enforcement. And that's the situation here,  
 14 if you want to consider -- if you think in any way Mr. Haeg  
 15 was trapping down there as opposed to hunting for wolves.  
 16 I'd point out the evidence says that certainly there's no  
 17 issue at all about trapping as to the first wolf, the second  
 18 or the third, the fourth. The fifth wolf. It's not until  
 19 after that fifth wolf is taken on the fourth -- after four  
 20 days of illegally taking wolves by hunting them from the air  
 21 that they finally set up a trap set. And so that's what you  
 22 have to look at as the intent. And what the intent is based  
 23 on all the other conduct. Sure, they fly over the trap and  
 24 snare set on the final day that he's charged. On the 20th --  
 25 the 23rd, and that relates to Count V, and they take four

- 1030 -

1 more wolves, and I'm sure they probably did. They probably  
 2 looked to see if there was any in the traps and snares.  
 3 That's what they told you they did, and it makes sense. Just  
 4 because they had set traps and snares out doesn't mean that  
 5 they're no longer hunting. The trapping. You look at do  
 6 both sets -- would both sets of regulations apply to the  
 7 conduct.  
 8 The conduct is they shot a wolf -- no, they shot four  
 9 wolves from the air. They can be charged under either. In  
 10 this case they're charged for violating hunting regulation.  
 11 That's the hunting aspect of same day airborne. And as Mr.  
 12 Haeg tells you -- told you from the stand, under oath, he's  
 13 guilty of same day airborne.  
 14 Ladies and gentlemen, Mr. Haeg is guilty of each of the  
 15 offenses for which he's charged, and that's what the evidence  
 16 tells you in overwhelming fashion. That despite Mr. -- what  
 17 Mr. Haeg would call any of his activities, it was not  
 18 authorized, it was not -- it's not legally predator control  
 19 so even if that's what he wants to call it, it doesn't apply.  
 20 His conduct was hunting wolves, same day airborne on March  
 21 5th, March 6th, March 21st, 22nd and 23rd. He's guilty of  
 22 each of those offenses. He was hunting as a big game guide,  
 23 not -- and he doesn't -- and we've discussed that and the law  
 24 doesn't require that he's guiding at the time, but as a guide  
 25 he's held to the standard of if you're a guide you cannot

- 1031 -

1 knowingly violate hunting laws and regulations relating to  
 2 same day airborne. Hunting same day airborne. And that's  
 3 what he did on each of those five occasions, and he's guilty  
 4 of same day airborne hunting wolves, or being a guide  
 5 knowingly violating hunting regulations prohibiting same day  
 6 airborne hunting of wolves on Counts I through V. Thank you.  
 7 THE COURT: Thank you, Mr. Leaders. All right, ladies  
 8 and gentlemen, I have another step now. It's not as big a  
 9 stack, but I do have some more instructions to read to you  
 10 before we can dismiss the alternates and begin deliberations.  
 11 Do you want a moment to like stand up or use the restroom or  
 12 anything before I start reading these? Otherwise.....  
 13 MR. ROBINSON: I would like to have.....  
 14 THE COURT: I'm sorry?  
 15 MR. ROBINSON: I would like to have a bathroom break.  
 16 THE COURT: Okay. Why don't we take five minutes, is  
 17 that enough time?  
 18 MR. ROBINSON: That's fine.  
 19 THE COURT: Smoke fast.  
 20 (Off record)  
 21 THE COURT: We're back on record, the parties are present  
 22 and the jury is also present. All right.  
 23 0017  
 24 (Court reads final jury instructions and excuses jury  
 25 for deliberations)

1 Count VI, we the jury find the defendant David Haeg  
 2 guilty of unlawful possession of game as charged in the  
 3 information.  
 4 Count VII, we the jury find the defendant David Haeg  
 5 guilty of unlawful possession of game as charged in the  
 6 information.  
 7 Count VIII, we the jury find the defendant David Haeg  
 8 guilty of unsworn falsification as charged in the  
 9 information.  
 10 Count IX, we the jury find the defendant David Haeg  
 11 guilty of trapping in a closed season as charged in the  
 12 information.  
 13 Count X, we the jury find the defendant David Haeg not  
 14 guilty of trapping in a closed season as charged in the  
 15 information.  
 16 Count XI, we the jury find the defendant David Haeg not  
 17 guilty of failure to salvage game as charged in the  
 18 information. It's dated today's date and signed by Mr.  
 19 Parker.  
 20 Mr. Leaders and Mr. Robinson, do you want the jury  
 21 polled?  
 22 MR. ROBINSON: Sure.  
 23 THE COURT: All right. Polling the jury, what that means  
 24 is I'm going to ask each and every one of you individually if  
 25 those verdicts as I read them were your verdicts.

1 0155  
 2 (Off record)  
 3 THE COURT: All right. We're back on record, the parties  
 4 are present and the jury is present. Mr. Parker, you gave me  
 5 a note that indicated that you all had reached a verdict?  
 6 THE FOREPERSON: Yes, Your Honor, that's correct.  
 7 THE COURT: Okay. And the verdict forms you put in this  
 8 folder and gave to me, is that correct?  
 9 THE FOREPERSON: That's correct.  
 10 THE COURT: Okay. All right. Verdict reads as follows.  
 11 Count I, we the jury find the defendant David Haeg guilty of  
 12 unlawful acts by a guide, same day airborne, as charged in  
 13 the information.  
 14 Count II, we the jury find the defendant David Haeg  
 15 guilty of unlawful acts by a guide, same day airborne, as  
 16 charged in the information.  
 17 Count III, we the jury find the defendant David Haeg  
 18 guilty of unlawful acts by a guide, same day airborne, as  
 19 charged in the information.  
 20 Count IV, we the jury find the defendant David Haeg  
 21 guilty of unlawful acts by a guide, same day airborne, as  
 22 charged in the information.  
 23 Count V, we the jury find the defendant David Haeg  
 24 guilty of unlawful acts by a guide, same day airborne, as  
 25 charged in the information.

1 0176  
 2 (Court polls jury - verdicts unanimous)  
 3 0196  
 4 THE COURT: Anything else before we excuse the jury?  
 5 MR. LEADERS: Not from the state, Judge.  
 6 THE COURT: Okay. Ladies and gentlemen of the jury,  
 7 thank you very much. I know this has been a long and  
 8 difficult week for all of you and I appreciate your time and  
 9 your patience as I'm sure the parties do also.  
 10 0206  
 11 (Tape malfunction)  
 12 0223  
 13 (Off record)  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

1 IN THE DISTRICT COURT FOR THE STATE OF ALASKA

2 FOURTH JUDICIAL DISTRICT

2007 NOV 14 AM 11:16

3 CLERK, APPELLATE COURTS  
BY: \_\_\_\_\_  
DEPUTY CLERK

4	STATE OF ALASKA,	)
5		)
6	Plaintiff,	)
7	vs.	)
8	DAVID HAEG,	)
9	Defendant.	)

A09455

10 Case No. 4MC-04-24 CR

11 VOLUME III

12 TRANSCRIPT OF PROCEEDINGS

13 September 29, 2005 - Page 1037 through Page 1454

17 DISCLAIMER

18 Transcripts prepared for the Alaska Court System

19 The Alaska Court System accepted this transcript based on either review of a random  
 20 sample or without review because the transcriber's prior work has consistently met court  
 21 system standards. Because it is possible that this transcript may contain some errors, the  
 court system encourages parties to listen to the recordings of critical portions of the  
 proceedings and to bring any significant errors to the ACS Transcript Coordinator's  
 attention immediately.

25 AURORA COURT REPORTING

1  
2  
3  
4  
5 SENTENCING  
6  
7 BEFORE THE HONORABLE MARGARET L. MURPHY  
8 District Court Judge  
9  
10 McGrath, Alaska  
11 September 29, 2005  
12 1:00 p.m.  
13  
14 APPEARANCES:  
15 FOR THE PLAINTIFF: SCOT HENRY LEADERS  
16 Assistant District Attorney  
17 120 Trading Bay Drive  
18 Suite 200  
19 Kenai, Alaska  
20  
21 FOR THE DEFENDANT: ARTHUR ROBINSON  
22 Attorney at Law  
23 35401 Kenai Spur Highway  
24 Soldotna, Alaska  
25

- 1037 -

1 Supreme Court cases starting with a case called  
2 (indiscernible) Winship. Actually it's 397 U.S. 358 decided  
3 back in 1970, up through at least another case called  
4 Apprendi versus New Jersey which is 530 U.S. 466 in 2000,  
5 where the court seemed to say that for purposes of  
6 sentencing, if somebody is going to be accused of a crime  
7 that that cannot be considered for purposes of sentencing  
8 unless there's been a determination beyond reasonable doubt  
9 that the crime was committed.  
10 In fact, the United State's Supreme Court unanimously  
11 explained in the case called Pruden(ph) 515 U.S. 510, that  
12 the historical foundation for recognition of the principles  
13 that a jury determination that the person was guilty of every  
14 element of a crime which he was accused of beyond a  
15 reasonable doubt. Extends down through centuries of common  
16 law that to guard against the spirit of oppression and  
17 tyranny on the part of the rulers, and is the great bullwork  
18 of our civil and political liberties, trial by jury has been  
19 understood to require that the truth of every accusation  
20 should afterwards be confirmed by unanimous (indiscernible)  
21 of 12 of the defendant's peers.  
22 In this case the court [sic] is trying to have the court  
23 determine whether or not Mr. Haeg is guilty of an alleged  
24 crime of big guided same day airborne hunting of moose back  
25 in 2003 without giving him an opportunity for a jury to

- 1039 -

1 PROCEEDINGS  
2 4MC-05-23/Side A  
3 0000  
4 THE COURT: .....State of Alaska at McGrath, Judge Murphy  
5 presiding. Today is Thursday, September 29th at 1:00  
6 o'clock, and we're here in case number 4MC-04-024 CR, State  
7 of Alaska versus David Haeg. Mr. Haeg is present here in  
8 court along with Mr. Robinson. Mr. Leaders is present for  
9 the state. We're here for sentencing this afternoon. Before  
10 we begin gentlemen, there was a media request, just so that  
11 you both know. The young lady from the local radio station  
12 is present in the courtroom and asked if she could digitally  
13 record. I told her as long as it didn't interfere with the  
14 court's recording equipment that she was free to do that.  
15 Anything else we need to take up before the state calls their  
16 first witness?  
17 MR. ROBINSON: Yes, Your Honor. I would -- my  
18 understanding is the state intends to put on some form of  
19 evidence in an accusatory manner that would accuse Mr. Haeg  
20 of big game guide, same day airborne hunting of moose, in  
21 September of 2003. And I don't believe that for purposes of  
22 sentencing that that's permissible under the due process  
23 clauses of both the United States Constitution and Alaska  
24 Constitution.  
25 There have been a number of Supreme -- United State's

- 1038 -

1 decide that question. And if the purpose of it is to enhance  
2 the sentencing for Mr. Haeg in this case then he should have  
3 been given the opportunity to have that question presented  
4 before a jury to determine whether or not that is appropriate  
5 to use as an enhancement factor, or what people call them  
6 nowadays a sentencing factor, which is still an accusation in  
7 this case as to whether or not he was guilty of this offense.  
8 So we think that if the court allows Mr. Haeg -- I mean Mr.  
9 Leaders to proceed in this sentencing with a charge or an  
10 accusation or a crime, then that should have been something  
11 that he took before a jury so that Mr. Haeg had an  
12 opportunity to have a jury trial. And, of course, he's never  
13 been charged with that offense. And it would be, as we read  
14 the cases from the United State's Supreme Court, denial of  
15 his duc process rights. That protects the accused against  
16 conviction except upon proof beyond a reasonable doubt of  
17 every necessary element that constitutes the crime for which  
18 he's charged.  
19 It isn't fair for you to have to look at this as a  
20 preponderance of evidence and if he's been accused of a crime  
21 the real standard of the burden of proof is proof beyond a  
22 reasonable doubt. If that is the standard then he would be  
23 entitled to have a jury rather than a judge make that  
24 determination. And here we are. I think that would be a  
25 serious violation of his due process rights under both the

- 1040 -

1 state and federal constitutions if now the state is going to  
 2 put on evidence to convince you under a whole different  
 3 standard whether or not, one, he was guilty of this offense:  
 4 and two, it should be used as some factor to enhance  
 5 sentencing.

6 THE COURT: Mr. Leaders?

7 MR. LEADERS: Thank you, Judge. Judge, the state's not  
 8 asking the court to find whether or not Mr. Haeg should be  
 9 convicted of the con -- for -- of a criminal offense for the  
 10 conduct from September, 2003. The evidence the state is  
 11 going to present is that he did unlawfully assist in the  
 12 taking of moose by same day airborne by flying and  
 13 identifying the location of the moose, allowing his clientele  
 14 who were on the ground, to know the location and take the  
 15 moose with his assistance from the air.

16 He has not been charged. The matter is being presented  
 17 to the court for consideration as to other bad act, other  
 18 conduct that probative -- which is probative for the court's  
 19 determination of appropriate sentence in this case.  
 20 The -- there is a long line of cases in re Winship  
 21 through Apprendi that do discuss the requirements for finding  
 22 a defendant guilty, first of all; and his due process rights.  
 23 And then with more recent cases such as Apprendi regarding  
 24 sentencing as to the type of evidence and -- that must be  
 25 presented to a jury before a court can enhance maximum

- 1041 -

1 an acquitted charge, but nonetheless, view the evidence under  
 2 the lesser standard of preponderance of evidence to -- for --  
 3 enhance -- to take that evidence into consideration in  
 4 sentencing an individual if he was convicted on other charges  
 5 in that same trial. It's a similar process here, it's a  
 6 similar process that happens with any type of sentencing  
 7 hearing. Under Mr. Robinson's argument the only evidence  
 8 that could ever be considered is only if an individual has  
 9 been convicted or not, and the case law is well established  
 10 when presenting aggravators that a -- it doesn't require even  
 11 charges to have been filed or considering such aggravators as  
 12 to whether or not there was prior assaultive conduct or not,  
 13 or it doesn't -- it certainly doesn't require a jury verdict  
 14 on that issue.

15 This is not an issue where the Apprendi line of cases  
 16 applies because the state is not seeking to enhance what  
 17 would otherwise be maximum sentences that are allowable for  
 18 Mr. Haeg.

19 THE COURT: Mr. Robinson, it's your motion. If you want  
 20 to....

21 MR. ROBINSON: Well, it's a little incredulous to believe  
 22 that the state is now presenting this evidence to prove the  
 23 commission of a crime as a prior bad act. I mean that  
 24 obviously is the only reason that they are presenting this  
 25 evidence, to try to prove that there was a prior crime

- 1043 -

1 sentences. We're not seeking to enhance any maximum sentence  
 2 in this case. We're not trying to get him sentenced for the  
 3 moose offense. We're not going to seek a sentence outside  
 4 the permissible, maximum sentence that the court can impose  
 5 in this case. We're not even actually going to be seeking  
 6 the maximum sentence the court can impose based on the facts  
 7 solely of cases and the charges on which he was convicted.

8 But it's the type of evidence that courts have long  
 9 considered and can consider. And they -- the courts can  
 10 consider it, whether or not it is verified information for  
 11 sentencing purposes. The court can apply a preponderance of  
 12 the evidence and determine whether or not the evidence, as  
 13 presented, is sufficient to cause the court to view the  
 14 totality of Mr. Haeg's conduct not only in the case in which  
 15 he was convicted of and being sentenced for, but whether the  
 16 totality of his conduct warrants what the appropriate  
 17 sentence should be in light of other factors.

18 It's something that is routinely done. It -- the case  
 19 law in Alaska is well established that the court -- the state  
 20 can present uncharged conduct. The state -- the court can  
 21 even consider, according to the case law in the state of  
 22 Alaska, evidence presented to a jury which the jury  
 23 determines was not sufficient to convict an individual beyond  
 24 a reasonable doubt. The court can ignore a jury's verdict --  
 25 not ignore, but take into consideration a jury's verdict on

- 1042 -

1 committed by Mr. Haeg that the court should consider in  
 2 sentencing him. But what Mr. Leaders doesn't understand is  
 3 that even since Apprendi the United State's Supreme Court has  
 4 looked at sentencing guidelines in the federal court and  
 5 thrown them out. Even for things that weren't necessarily to  
 6 be considered by the jury to determine because these are  
 7 facts upon which the defendant has never had an opportunity  
 8 to defend against. And as in this case, it -- the question  
 9 is -- the court made clear in Winship that the reasonable  
 10 doubt requirement has a vital role in our criminal procedure  
 11 for the following reasons, and those reasons are in fact the  
 12 possibility that a defendant may lose his liberty upon  
 13 conviction; and certainly would be stigmatized by the  
 14 conviction and also for the purposes of if he faces  
 15 punishment then if the court is going to use a prior bad act  
 16 in terms of a crime, then there has to be some determination  
 17 beyond a reasonable doubt that that crime was committed. And  
 18 you, unfortunately, can't be in that position when he had a  
 19 right to have a jury to determine whether or not there was a  
 20 commission of an offense back in September, 2003. Because  
 21 you would just be looking at it as a preponderance of  
 22 evidence -- or clear and convincing evidence standard or  
 23 something beyond the reasonable -- something different than  
 24 beyond a reasonable doubt standard.

25 So -- I mean the problem is that prosecutions all over

- 1044 -

1 America now are faced with this problem since Apprendi  
 2 through the latest Supreme Court cases concerning what is  
 3 proper evidence that you would use in the sentencing to  
 4 enhance someone's sentence. And it just doesn't seem fair as  
 5 -- it's a substantive due process question as well as a  
 6 procedural. (Indiscernible) to both fairness for purposes of  
 7 (indiscernible) fairness for purposes of procedure that --  
 8 that if the state wants to use a prior crime -- they can use  
 9 a prior conviction, there's no problem with that, but if  
 10 there is no conviction and all they want to do is just put on  
 11 evidence for the sentencing judge to determine whether or not  
 12 that occurred, it denies him due process under the law  
 13 because he should have a jury make that determination as to  
 14 whether the crime was committed, not a judge.  
 15 THE COURT: What I'm going to do, I'll take the issue  
 16 under advisement. I'll let the court -- the state proceed at  
 17 this time. If it's something I decide shouldn't be  
 18 considered, I won't consider it. I can make that  
 19 determination. I'll hear what the evidence is. If it's not  
 20 there, then it's not there, and it won't make any difference  
 21 or not.  
 22 MR. ROBINSON: Well, I don't know whether it's a question  
 23 whether the evidence is there or not, it's just a question of  
 24 whether or not it's admissible in terms of sentencing  
 25 procedure. It's not a question of whether or not you think

- 1045 -

1 THE COURT: Hang on just a moment, I'm going to put you  
 2 on the speaker phone, okay. Hold on. Mr. Ellnor, this is  
 3 Judge Murphy, can you hear me okay?  
 4 MR. ELLNOR: Yes, I can.  
 5 THE COURT: Okay. Yeah, you're probably going to --  
 6 the.....  
 7 MR. LEADERS: I (indiscernible).  
 8 THE COURT: That's the mike for the speaker phone, so  
 9 you'll probably have to move up. Mr. Robinson, if you want  
 10 to come up at this time, that's fine.  
 11 MR. ROBINSON: No, I'll come over when I get ready to  
 12 question him. If I can hear.....  
 13 THE COURT: Okay. That's fine.  
 14 MR. ROBINSON: .....him from here, that's.....  
 15 THE COURT: You should be able to hear him, I think, from  
 16 there. It's just that the -- him hearing us might be a  
 17 little tricky. Mr. Ellnor, before we begin I need to swear  
 18 you in. Do you want to raise your right hand, please.  
 19 (Oath administered)  
 20 MR. ELLNOR: I do.  
 21 THE COURT: Okay. Go ahead, Mr. Leaders.  
 22 MR. LEADERS: Thank you.  
 23 MARK ELLNOR  
 24 called as a witness on behalf of the plaintiff, testified  
 25 telephonically as follows on:

- 1047 -

1 at the end that the state has proved something.  
 2 THE COURT: Well, if it's -- if it hasn't proved anything  
 3 then it doesn't matter whether it's admissible or not. If it  
 4 hasn't proved something then I'll make a decision as to  
 5 whether it's admissible. If I determine at that time it's  
 6 not, then I will. I'm just -- I'd rather proceed at this  
 7 time then stop and make a decision now. I can look at it  
 8 later after we've -- because I know that I'm not -- I'm going  
 9 to hear everything, I'm going to need to think through it  
 10 anyhow, and I can do that all at the same time and make that  
 11 determination at that time. So I'm not going to exclude at  
 12 this point, I'm going to take the issue under considerations  
 13 -- under advisement until later. Okay. Mr. Leaders, are you  
 14 ready to proceed?  
 15 MR. LEADERS: Yes, Judge. And just for the court's  
 16 information, the state has three telephonic witnesses and  
 17 then Trooper Gibson [sic], who testified (indiscernible).  
 18 THE COURT: Which do you want to do?  
 19 MR. LEADERS: We'll have a telephonic number, this is  
 20 Mark Ellnor, E-I-I-n-o-r.  
 21 THE COURT: Do you have the phone number?  
 22 MR. LEADERS: Yes, it's 812-949-8093.  
 23 (Pause)  
 24 (Whispered conversation)  
 25 (Court on phone with witness)

- 1046 -

1 DIRECT EXAMINATION  
 2 BY MR. LEADERS:  
 3 Q Mr. Ellnor, where are you testifying from today, sir?  
 4 A I live in New Albany, Indiana.  
 5 Q Okay. And, sir, have you been to the state of Alaska at  
 6 any time?  
 7 A Yes.  
 8 Q When was the most recent time you've been to Alaska?  
 9 A The first of this month, the 1st of September.  
 10 Q Okay. Were you here as well back in September of 2003  
 11 in Alaska?  
 12 A Yes. Yes, I was.  
 13 Q And what was your purpose for being in Alaska at that  
 14 time?  
 15 A I was on a moose hunt. Moose, caribou and grizzly bear,  
 16 kind of combination. Ken Powers was my outfitter and  
 17 flew us into Under Hill, Alaska.  
 18 Q Okay. Under Hill -- the Under Hill Creek or river area  
 19 of Alaska, is that correct?  
 20 A That is correct.  
 21 Q Game management unit 19? Do you recall if that's where  
 22 you were hunting?  
 23 A I don't know. I have the -- I had a GPS transponder  
 24 with me.  
 25 Q Okay.

- 1048 -

1 A And I made a note of the -- where -- where I was, so it  
 2 was north 61 degrees by 25.297 degrees -- or minutes,  
 3 and then west 54 degrees, 22.157 minutes of -- that's  
 4 what my GPS transponder said and that's what I wrote  
 5 down.  
 6 Q Okay. Out on the west side of the Alaskan range, is  
 7 that correct?  
 8 A That is correct.  
 9 Q Kind of south of McGrath, Alaska?  
 10 A I don't know exactly about that.  
 11 Q Okay. Fair enough. And you were there -- you indicate  
 12 Ken Powers was the guide that was conducting your hunt?  
 13 A He was the outfitter. Yes, I had -- we were with two  
 14 other.....  
 15 Q Outfitter.  
 16 A .....boys. Corky, that was his nickname, I don't even  
 17 know his real name. Corky and Dale Payne, that was  
 18 Pete's guide and Corky was mine.  
 19 Q Okay. How long were you there hunting?  
 20 A We were there from -- let's see, I guess we flew in  
 21 August the 31st and started hunting then September the  
 22 1st, until we left, 9-9.  
 23 Q Okay. And.....  
 24 A Eight days.  
 25 Q Excuse me?

- 1049 -

1 A Go ahead.  
 2 Q Can you explain to the court I guess what occurred  
 3 during your hunt?  
 4 A Yes. Let's see. We started hunting on the 1st.  
 5 Everything was fine. The 2nd we didn't see anything,  
 6 but on the 2nd we saw some game moving around, saw a  
 7 couple car -- small caribou. And things were, you know,  
 8 looking very promising. On the 3rd Pete's guide saw a  
 9 grizzly bear and went after him, but he ended up with a  
 10 caribou. A nice caribou, and Pete actually -- Pete  
 11 Rivera, he actually shot the caribou.  
 12 Q Okay, now Pete Rivera is a friend of your's?  
 13 A Yes, he -- he and I were hunting together.  
 14 Q Okay. Go ahead. So Pete shot a caribou on the 3rd of  
 15 September in 2003?  
 16 A That is correct.  
 17 Q Okay.  
 18 A Okay. So then we meet back at camp again and -- well,  
 19 actually my guide and I, we walked over toward where we  
 20 heard the shot and hooked up with Pete and his guide, to  
 21 help them, you know, get the caribou back. But by the  
 22 time we got there it was getting dark and we simply  
 23 quartered the car -- skinned the caribou, quartered it  
 24 out and left everything there and high tailed it back to  
 25 the camp because, you know, it's not safe to be in the

- 1050 -

1 woods in the dark. So anyways we did that. And the  
 2 next morning my guides and I -- Pete -- Pete just laid  
 3 there, he was exhausted, at the flight camp. And  
 4 anyways, we -- we went back up and picked up all the  
 5 meat and brought it back to the camp. The two guides  
 6 went back and brought the head back. I suppose then on  
 7 the 5th I started hunting the gut pile and Pete was back  
 8 up on the ridge spotting.  
 9 Q So you -- on the 5th you began hunting the gut pile of  
 10 that caribou?  
 11 A That's correct.  
 12 Q And why was that?  
 13 A That's what -- pardon me?  
 14 Q And why?  
 15 A Why? Because they had seen -- they had seen a grizzly  
 16 bear and that's what Pete had gone after, so we knew  
 17 that there was a grizzly bear in the area.  
 18 Q Okay.  
 19 A So, you know, that's a perfect setting to take a grizzly  
 20 bear when you have a -- a caribou gut pile.....  
 21 Q Right.  
 22 A .....in a griz -- grizzly area.  
 23 Q Okay. What happens then on the 5th as you're hun --  
 24 explain what you mean you hunted the gut pile?  
 25 A Well, I was up on a ridge. I don't know, some 500 yards

- 1051 -

1 away from the gut pile, and just glanced that -- that  
 2 area to see if the grizzly bear would come out to eat.  
 3 Q Okay. So you're looking through your binoculars and  
 4 spotting scope to try and find the grizzly?  
 5 A That's correct. Now at 8:00 a.m. -- or real close to  
 6 that, things became real interesting. A plane flies  
 7 over me and circles the grizzly -- where we think the  
 8 grizzly is, behind the gut pile, and he -- the plane  
 9 just circles it, you know. And -- and I thought why in  
 10 the world would somebody do this to me, you know. So --  
 11 because, you know, he's keeping the bear from coming  
 12 out.  
 13 Q Okay.  
 14 A So that was 8:00 a.m., okay. At 7:30 p.m. the plane  
 15 comes back again and he circles -- circles me again,  
 16 okay. Everything's the same. And about 7:45 or so I  
 17 hear the plane circle, make -- make a long circle, and I  
 18 think, well, you know, he's over there by Pete now. As  
 19 I say, I can't see the plane, but I can hear -- you  
 20 know, you can tell about where things are. And I -- you  
 21 know, so I don't think too much of it but at 8:15 the  
 22 plane actually lands. Okay. And then in about 15  
 23 minutes the, you know, it's up again. I hear the plane  
 24 take off again. So, you know, I go back to camp, Pete  
 25 comes back to the camp. When I get back there Pete, he

- 1052 -

1 is just so angry he can hardly stand it. He said he saw  
 2 a 60 inch moose, at least, or what he thought.....  
 3 MR. ROBINSON: Objection.  
 4 THE COURT: Mr. -- just.....  
 5 MR. LEADERS: Hold on a second, Mr. Ellnor.  
 6 MR. ROBINSON: I'm going to object to what Pete had to  
 7 say.  
 8 MR. LEADERS: What basis?  
 9 MR. ROBINSON: It's hearsay.  
 10 MR. LEADERS: This is a sentencing hearing, Judge.  
 11 According to the rules of evidence the evidence.....  
 12 MR. ROBINSON: Yeah, but (Indiscernible) that's.....  
 13 MR. LEADERS: The -- those evidence rules don't apply.  
 14 He can testify about hearsay.  
 15 THE COURT: He can, I'll give it the weight it's due.  
 16 MR. LEADERS: Right. I understand that.  
 17 MR. ROBINSON: Well, that's precisely the problem we have  
 18 with proof beyond a reasonable doubt, (indiscernible)and  
 19 that's precisely the problem.  
 20 THE COURT: I understand. I understand. I understand  
 21 the issues. Go ahead.  
 22 Q So, Mr. Ellnor, you saw Mr. Rivera that night and he was  
 23 upset and you were telling us why. What did Mr. Rivera  
 24 tell you?  
 25 A Well, he -- he said that this plane pushed this moose

1 happening there, Mr. Ellnor.  
 2 A Okay. so anyway, Pete was upset about the moose being  
 3 pushed away from him, so the 6th.....  
 4 Q Let me ask you this, Mr. Ellnor. Can you -- this plane  
 5 that circled over the gut pile, were you visible to this  
 6 plane?  
 7 A Oh, yes, I know I was.  
 8 Q Why do you say that?  
 9 A Well, my guide and I -- we did not have anything  
 10 chambered in our rifles, but Corky, he said, you bring  
 11 your gun up at the same time I bring my gun up and see  
 12 what happens. And we just brought our gun up and aimed  
 13 it toward the plane, and he veered away from us. So I  
 14 know he could see me.  
 15 Q Veer away, and did it leave the area?  
 16 A Well, he veered away, circled my bear and then left.  
 17 Q Okay. The -- and you -- okay, you were on a ridge you  
 18 said?  
 19 A Yes, I was up on a little knoll or ridge, whatever.  
 20 Q Okay. The -- were you able to see clearly the plane  
 21 that was circling over your area?  
 22 A Yes. Yes. Yes, I could see it perfect.  
 23 Q What -- could you -- was there anything particularly  
 24 descriptive about the plane?  
 25 A Yes, we nicknamed him Batman because he had a bat wing

1 away from him, so -- you know, just cir -- making a long  
 2 circle and just pushed the moose away. Now, as you  
 3 know, it's difficult to walk in Alaska out in the bush,  
 4 so every mile takes -- that you push an animal away from  
 5 you, it takes probably an hour to get there. And then  
 6 you have to take an hour -- figure an hour to pack.....  
 7 MR. ROBINSON: Objection, specula -- wait a minute.....  
 8 THE COURT: Let's keep on point here.  
 9 MR. ROBINSON: Speculation.  
 10 THE COURT: And that's sustained, I'll ignore it.  
 11 Q Okay. As to your experience how long does it take when  
 12 you're stalking moose to travel about an hour, or about  
 13 a mile?  
 14 A It was an hour. Every mile -- well, every mile that we  
 15 could see it took us roughly an hour to walk there.  
 16 Q Okay. So.....  
 17 A I mean that was our rough area. When I was walking the  
 18 creek bed from the caribou gut pile to our camp it was  
 19 just -- just a tad over a mile, and the first night --  
 20 now creek bed walking is easier than walking through the  
 21 -- the brush. And we walked it the first night in about  
 22 50 minutes. The -- after I got in halfway decent shape,  
 23 after the end of the nine days, I walked it in about 40  
 24 minutes, so.  
 25 Q Okay. Well, let's get back to kind of what was

1 on the -- the tail of it.  
 2 Q A bat wing? What do you mean?  
 3 A Yeah, a bat. Like -- like Batman.  
 4 Q Okay. Like a Batman type insignia?  
 5 A Yeah. Yeah, we called him Batman.  
 6 Q Okay. The -- when you talked with Pete later that  
 7 evening did Pete describe the plane that had been -- as  
 8 he desc -- indicated to you herding the moose away from  
 9 him?  
 10 A Yes, he did.  
 11 Q And how did he describe that plane?  
 12 A He called him Batman. Now at this time.....  
 13 Q So did you guys compare the plane? Did they seem to be  
 14 the same?  
 15 A Yes.  
 16 Q Okay.  
 17 A At this time -- at this time Dale told us that the guy's  
 18 name was Dave Haeg.....  
 19 MR. ROBINSON: I'm going to make the same objection.....  
 20 A .....that was flying the plane.  
 21 MR. ROBINSON: .....as hearsay.  
 22 THE COURT: Okay.  
 23 MR. ROBINSON: That Dale said that.....  
 24 THE COURT: I understand.  
 25 Q Okay. So Dale told you that it was whom?



1 A Dave Haeg, I think it is.  
 2 Q Okay. I guess any other problems throughout the hunt or  
 3 anything else happen?  
 4 A Oh, yes, yes. That was just on the 5th. On the 6th at  
 5 7:30 in the morning he buzzed me again and -- and my  
 6 grizzly bear, and then I hear the plane buzzing in the  
 7 background, and then he leaves. And about 30 minutes  
 8 later I hear a gunshot, and then 15 minutes I hear the  
 9 plane buzzing in just kind of the same area, but, you  
 10 know -- you know, over a little bit. And I hear the  
 11 plane buzzing again and then I -- he leaves, in 30  
 12 minutes I hear another shot. And then I hear the plane  
 13 back and about 15 minutes then he lands. And so that's  
 14 -- you know, he starts hauling meat out then because I  
 15 figured -- I can only assume that he shot.....  
 16 MR. ROBINSON: Objection,  
 17 A .....the moose.  
 18 MR. ROBINSON: Whoa, whoa, whoa.  
 19 MR. LEADERS: Okay, wait a second, Mr. Ellnor, there's an  
 20 objection.  
 21 MR. ROBINSON: I'm going to object again unless he has  
 22 some personal knowledge or was able to see what was going on  
 23 and if not then it's.....  
 24 THE COURT: That is speculation. Let's.....  
 25 MR. ROBINSON: That's just speculation.

- 1057 -

1 MR. LEADERS: Sure, I'll go through some questions.  
 2 MR. ROBINSON: May I have it stricken from the record?  
 3 THE COURT: Okay.  
 4 Q Mr. Ellnor, after the second time the plane has come --  
 5 buzzed, circled the area and the second time you heard a  
 6 gunshot, about 15 minutes later the plane returns and  
 7 lands, correct?  
 8 A That is correct.  
 9 Q And then the plane leaves and comes back several times,  
 10 is that correct?  
 11 A Yes, that is correct.  
 12 Q Okay. Any estimation as to kind of the timing between  
 13 the plane leaving and coming back? How long was taken  
 14 between those landings?  
 15 A You know, I can't hardly remember that. You know, we're  
 16 going back two years now.  
 17 Q Sure.  
 18 A I'm going to -- I'm going to say it's about.....  
 19 MR. ROBINSON: Objection.....  
 20 A .....15 minutes to a half hour trip, something like  
 21 that.  
 22 MR. ROBINSON: Objection. It sounds more like  
 23 speculation. He says he can't remember.  
 24 MR. LEADERS: He has a basis to speculate, Judge, he was  
 25 there. He's just trying to recall.

- 1058 -

1 THE COURT: Yeah, that's all right. I'll allow that. Go  
 2 ahead.  
 3 Q Let's see -- what happened -- anything else happen after  
 4 that?  
 5 A On the 7th the plane buzzed me a.m. and p.m. I never  
 6 saw the grizzly bear. I saw where the grizzly bear was.  
 7 We went down in and saw the actual pawed up place where  
 8 the bear had been, you know, rooting and was kind of  
 9 just mad, so that's the only thing I can figure.  
 10 Q Okay. Anything else?  
 11 A The grizzly bear did eat the entire remains of the gut  
 12 pile so.....  
 13 Q Okay. Let me ask you. Did you have any more contact  
 14 with this plane or experiences with it after the 7th?  
 15 A He -- from the 7th, let's see. No, I don't guess I did.  
 16 After -- after the 7th I don't guess I did.  
 17 Q Okay. Let me ask you. Back on the 6th, this is the  
 18 date you said the plane came a few -- a couple times and  
 19 there were gunshots after the first two times, and then  
 20 there were later multiple trips, right?  
 21 A That is correct.  
 22 Q It had earlier buzzed you over the bear?  
 23 A That was the first thing he did.  
 24 Q Okay. What -- did you observe which -- was it the same  
 25 plane that had done -- that had buzzed you the day

- 1059 -

1 before, this plane you called the Bat plane, or Batman?  
 2 A Yes. Yeah, Batman, it was the same plane.  
 3 Q Okay. Did you talk with Mr. Rivera about what had  
 4 occurred after -- or there on the 6th?  
 5 A Oh, yeah.  
 6 Q And did.....  
 7 A Yeah.  
 8 Q Okay. Did Mr. Rivera have the same observations that  
 9 you did?  
 10 MR. ROBINSON: Objection.....  
 11 A Yes, he.....  
 12 MR. ROBINSON: .....hearsay as to what Mr. Rivera told  
 13 him.  
 14 THE COURT: I know, there's a sustained.....  
 15 MR. ROBINSON: I know, I mean this is to make an  
 16 impact.....  
 17 THE COURT: A running objection to the hearsay, I  
 18 understand that.  
 19 MR. ROBINSON: Right.  
 20 Q Okay. You and Mr. Rivera talked about it and he had the  
 21 same observations?  
 22 A Yes.  
 23 Q And did he also -- what plane did he observe engaged in  
 24 that conduct?  
 25 MR. ROBINSON: Asked and answered.

- 1060 -

1 A Batman's.  
 2 MR. LEADERS: This is as to the 6th.  
 3 THE COURT: That -- did.....  
 4 MR. ROBINSON: Asked and answered.  
 5 MR. LEADERS: I asked.....  
 6 THE COURT: He had the same observations, he had the same  
 7 plane. I get it.  
 8 MR. LEADERS: Okay.  
 9 THE COURT: Let's move on.  
 10 Q The.....  
 11 A Now Dale -- Dale Payne told us that this wasn't the  
 12 first time that he had done it.....  
 13 MR. ROBINSON: Objection. The same objection as to Dale  
 14 Payne.  
 15 THE COURT: I understand.  
 16 A .....the previous year.  
 17 MR. ROBINSON: Hearsay I guess.  
 18 Q So throughout that Mr. Payne was indicating that it had  
 19 happened prior in his experience?  
 20 A Yes. Right.  
 21 Q Okay. Now.....  
 22 (Whispered conversation)  
 23 MR. LEADERS: I have no further questions for Mr. Ellnor.  
 24 THE COURT: Okay. Thank you, Mr. Leaders. Mr. Robinson?  
 25 MARK ELLNOR  
 - 1061 -

1 can't -- I don't know what Corky was wearing. I don't  
 2 know whether he had camo on or not.  
 3 Q Do you remember being interviewed on -- let's see. I  
 4 think it was September the 18th. No, January 15th,  
 5 2004, do you remember being interviewed by an Alaska  
 6 state trooper by the name of Mitch Doerr?  
 7 A Yes.  
 8 Q All right. And do you remember in that interview asking  
 9 you what you guys were all in in terms of camouflage  
 10 dress?  
 11 A No, I do not.  
 12 Q So if in that interview with Mr. -- with Trooper Doerr  
 13 on January 15th, 2004 where he asked you -- or he says  
 14 to you, because you guys -- you guys all in camo. And  
 15 your answer was, ah, yeah. I had a orange beanie top  
 16 on, a red beanie top -- or red beanie top. Do you  
 17 remember telling him about being dressed in camo?  
 18 A No, I do not. I -- I do know that I had a fleece  
 19 jacket. I have a fleece jacket that I wear all the time  
 20 and I have fleece -- zip mountain hardware pants that I  
 21 wear all the time.  
 22 Q So if it's in the rec.....  
 23 A I didn't.....  
 24 Q So if it's in the recording -- do you know that that  
 25 January 15th, 2004 interview with Trooper Doerr was  
 - 1063 -

1 testified as follows on:  
 2 CROSS EXAMINATION  
 3 BY MR. ROBINSON:  
 4 Q Mr. Ellnor, can you hear me?  
 5 A I can hear you fine.  
 6 Q Oh, good.  
 7 THE COURT: Okay. Sometimes it doesn't work, sometimes  
 8 it does.  
 9 MR. LEADERS: Yeah.  
 10 Q On the 5th of September of 2003 how were you dressed for  
 11 your hunt?  
 12 A How was I dressed?  
 13 Q Yeah.  
 14 A Well, I had -- I had an orange backpack and then I had  
 15 basically black, you know, fleece jacket and pants on.  
 16 But I had a bright orange back plack -- backpack and I  
 17 know anybody can see me.  
 18 Q So you had a backpack that was orange and what else?  
 19 A A black fleece pants and jacket.  
 20 Q Black fleece?  
 21 A I had a -- yeah. I also had a red toboggan on.  
 22 Q All right. Did you have any camouflage dress on at all?  
 23 A No.  
 24 Q What about your guide, Mr. Corky?  
 25 A Corky. You know, I don't know what Corky had. I -- I  
 - 1062 -

1 being recorded?  
 2 A No, I did not.  
 3 Q You didn't think.....  
 4 A I don't know whether I did or I didn't, that -- that was  
 5 the last -- that was January of 2004.  
 6 Q All right.  
 7 A I think this.....  
 8 Q But if -- well, let me just ask you this, Mr. Ellnor.  
 9 If you admitted to Trooper Doerr that you had camouflage  
 10 clothes on or that -- are you saying you did -- you  
 11 never did have it on but you may have admitted to that  
 12 to Trooper Doerr?  
 13 A If I did I made a mistake telling him that.  
 14 Q Oh. So your memory is better today, September 29, 2005  
 15 than it was early on on January 15th, 2004 which was  
 16 less than six months from September the 5th of 2003? Is  
 17 that what you're saying?  
 18 A Possibly.  
 19 Q Well, possibly or is it that the case? Your memory is  
 20 better today than it was early on, closer to the event?  
 21 A Are you trying to badger me or what?  
 22 Q No, it's called cross examination, Mr. Ellnor.  
 23 A Is that what this is called?  
 24 Q Yeah, that's what it's called. It's called trying to  
 25 get to the truth.  
 - 1064 -

1 A Okay. Okay, the truth is I do not remember whether  
 2 Mitch Doerr -- whether I answered Mitch Doerr that I  
 3 was dressed in full camo or not, but I do know today,  
 4 and yes I do know because I wore my gear just this last  
 5 September, okay. And it was the same gear that I wore  
 6 then. So maybe my memory is better because it was  
 7 refreshed by wearing just again at the end of this month  
 8 -- or the beginning of this month.

9 Q What is an orange beanie top or red beanie top?  
 10 A It's a red toboggan, a red sock cap.  
 11 Q On your head?  
 12 A Yes.  
 13 Q Do you remember -- all right, well -- so did you ever  
 14 see this moose that Pete Rivera told you about?  
 15 A No, I did not see the moose.  
 16 Q So you don't even know if there was a moose out there?  
 17 A Well, unless Pete was lying to me.  
 18 Q Well, I mean you personally don't know whether there was  
 19 a moose out there or not, do you?  
 20 A I -- I did not see the moose.  
 21 Q And you don't know -- so since you didn't see the moose  
 22 you don't even know where the moose was, right?  
 23 A No, I do not know exactly where the moose was.  
 24 Q And since you didn't see the moose and you don't know  
 25 where the moose was, you don't know whether the airplane

- 1065 -

1 actually pushed it away, do you?  
 2 A All I can go by is what Pete told me.  
 3 Q Well, I know, but we're trying to go by what you know.  
 4 A What I know is I heard a plane circling over and landing  
 5 and taking off and guns being fired.  
 6 Q Okay. Well, we'll get to that. I just want to figure  
 7 out where -- about your knowledge of this moose that the  
 8 plane flew over and pushed away.....  
 9 A I did not -- I did not see the moose. So if I didn't  
 10 see the moose, I can't be exactly precise in saying,  
 11 yes, this guy herded a moose away from me.  
 12 Q Well, if that's the case you also can't say that the  
 13 plane was circling the area where the moose was, can  
 14 you? .  
 15 A You probably could say that, but.....  
 16 Q Well, you can't say otherwise, right?  
 17 A Pardon me?  
 18 Q You cannot say otherwise, right?  
 19 A Well, I can because Pete told me.....  
 20 Q Well, we're talking about just what.....  
 21 THE COURT: I get it.  
 22 Q We're just talking about what you know, Mr. Elinor.  
 23 When you say that you saw this plane circling on the 6th  
 24 of September.....  
 25 A I saw the plane circle me and buzz me and my bear.

- 1066 -

1 Q But you said -- I know. I know what you said. My  
 2 question is you also said buzzed you, which means you  
 3 and Corky, the bear.....  
 4 A Right. Right.  
 5 Q .....and where the moose was. But you don't know where  
 6 the moose was, right?  
 7 A Well, I can only assume where the moose was.....  
 8 Q I don't want you to assume. I just want you to say yes  
 9 or no. You didn't know where the moose was, right?  
 10 MR. LEADERS: He's already asked and answered.  
 11 THE COURT: He's already.....  
 12 A Well, the direct -- the directions that Pete Rivera gave  
 13 me.....  
 14 THE COURT: .....answered where the bear was, so.  
 15 A .....I knew where the moose was.  
 16 Q All right. So if you didn't know where the moose was  
 17 then you don't know that a plane was actually buzzing a  
 18 moose, right?  
 19 A Well, apparently not. But that's -- that's -- if Pete  
 20 Rivera told me the truth, then I do. If he lied to me,  
 21 then I don't.  
 22 Q How far away were you from -- on the 6th of September  
 23 you said about 7:30 in the morning you saw a plane buzz  
 24 you and Corky and the bear, right?  
 25 A That's correct.

- 1067 -

1 Q How far away was the bear?  
 2 A The bear. Well, if I knew exactly where the bear was I  
 3 would have shot it.  
 4 Q So you didn't even know where the bear was, right?  
 5 A No, I never got a shot off.  
 6 Q Because you couldn't see the bear, could you?  
 7 A (Indiscernible) thousand dollars on a -- on a hunt, and  
 8 never fired a shot.  
 9 Q I understand that, but you didn't know where the bear  
 10 was because you couldn't see the bear, right?  
 11 A That is correct.  
 12 Q So you're just assuming that there was a bear there, you  
 13 don't even know if there was a bear there, right?  
 14 A Well, he ate a gut pile and he pawed.....  
 15 Q I understand he ate the gut pile that you found later, a  
 16 day or so later. My question is at the time at 7:30 in  
 17 the morning on September the 6th of 2003 when you say  
 18 that at 7:30 in the morning you saw this Bat plane buzz  
 19 you and Corky and the bear, you don't know where the  
 20 bear was, you didn't see a bear so you don't even know  
 21 if there's a bear out there, right? I mean you don't  
 22 know what the plane was circling because you didn't see  
 23 a bear, right?  
 24 A Well, I can -- I think there was a bear there.  
 25 Q I understand what you think. My question is what you

- 1068 -

1 saw.  
 2 A There was all-- there was all kinds of sign of a bear  
 3 being there.  
 4 Q I understand what you think, my question is what did you  
 5 see? Did you see a bear.....  
 6 A I did not -- I saw a plane buzzing over the top of me.  
 7 Q Okay.  
 8 A Saw the plane buzzing over top, just behind the gut  
 9 pile.  
 10 Q Okay. So the gut pile. But the question is not the gut  
 11 pile, not you, not Corky, but whether or not you saw it  
 12 buzzing over a bear? You didn't see that, did you?  
 13 A No, I can only assume that there was a bear there from  
 14 all the signs.  
 15 Q So basically you're just guessing that a bear was there,  
 16 right?  
 17 A If that's what you want to say.  
 18 Q Well, it's not what I want to say, it's what you saw.  
 19 THE COURT: I think he's -- you've gotten the best answer  
 20 you're going to get on that, and let's just move on.  
 21 Q How far away was this gut pile from where you swear when  
 22 the plane buzzed you at 7:30 in the morning?  
 23 A I didn't -- I didn't hear that question.  
 24 Q The question is, how far away were you from the gut  
 25 pile.....

- 1069 -

1 A Okay.  
 2 Q .....when you saw the plane buzz you and Corky at 7:30  
 3 in the morning on September the 6th, 2003?  
 4 A Okay. Corky and I were hunting up on the knoll about  
 5 500 yards away from the gut pile.  
 6 Q Could it have been closer?  
 7 A It could have been closer by maybe 100 yards, and it  
 8 could have been further by maybe 100 yards, but.....  
 9 Q Well, do you remember telling Trooper Doerr when you had  
 10 your interview with him over the phone on January 15th,  
 11 2004 that the gut pile was just 250 to 300 yards away?  
 12 A No, I do not. But I do remember telling Trooper Doerr  
 13 that I had hunted on a flat spot up to 250 yards away  
 14 from the gut pile.  
 15 THE COURT: Okay, hang on just a minute. I need to  
 16 change the tape, please. Hold on just a minute. Okay, off  
 17 record here.  
 18 0588  
 19 (Tape change)  
 20 4MC-05-23/Side B  
 21 0604  
 22 THE COURT: Go ahead, Mr. Robinson.  
 23 (Whispered conversation)  
 24 Q Mr. Ellnor.....  
 25 A Yes.

- 1070 -

1 Q .....on January 15th of 2004 when you were interviewed  
 2 over the telephone by Trooper Doerr, do you remember him  
 3 asking you how far from the gut pile were you and your  
 4 answer was 200 to 300 yards. I guess.  
 5 A Okay. Now we hunted one evening within about 250 to 300  
 6 yards from that gut pile.  
 7 Q Uh-huh.  
 8 A Where we came down off of that knoll and repositioned  
 9 ourselves.  
 10 Q Uh-huh.  
 11 A Okay. So maybe that would have been the time that he  
 12 was talking about, or I was talking about. But the  
 13 normal rest that we decided upon was somewhere around  
 14 500 yards.  
 15 Q I think we're talking about September the 6th when you  
 16 were hunting the gut pile which you've testified is.....  
 17 A Well, in the morning -- okay, in the morning we were up  
 18 on the -- the knot, 500 yards away, and in the evening  
 19 we were down closer -- closer in.  
 20 Q All right. Well, do you remember you said you did that  
 21 with a range finder regarding how far away you were from  
 22 the gut pile and you said, oh, no, I guess we just  
 23 guesstimated that?  
 24 A That is correct.  
 25 Q Okay.

- 1071 -

1 A Did not have a range finder.  
 2 Q And that -- and you remember telling him I guess we just  
 3 guesstimated that?  
 4 A Yes. Sounds like me.  
 5 Q And then you said it was about 300 yards, I -- I -- we'd  
 6 say?  
 7 A Okay.  
 8 Q And today you're now saying that it was two occasions.  
 9 500 yards one time, 300 yards another time?  
 10 A Well, it might have been 300 yards. There again, it  
 11 might have been 500 yards. This is.....  
 12 Q Are you familiar with.....  
 13 A .....foolish.  
 14 Q .....American football?  
 15 MR. LEADERS: Judge, objection.  
 16 MR. ROBINSON: Well.....  
 17 A I know what a football -- I know what a football field  
 18 looks like.  
 19 Q All right. I'm just asking if you're familiar with  
 20 American football?  
 21 A Yes.  
 22 Q And you know that in American football a football field  
 23 is about 100 yards?  
 24 A Yes.  
 25 Q So if your guesstimate was 300 yards then you were like

- 1072 -

1 three football fields away?  
 2 A Okay.  
 3 Q And that's when you saw -- that's when you saw the plane  
 4 flying around?  
 5 A I was.....  
 6 Q Three football fields away?  
 7 A .....(indiscernible).  
 8 Q Pardon?  
 9 A What are we -- what are we 300 yards away from now?  
 10 MR. LEADERS: Judge, we've spent almost 10 minutes.....  
 11 MR. ROBINSON: Well, from you. From the.....  
 12 MR. LEADERS: .....on whether it was 500 yards or 300  
 13 yards.  
 14 MR. ROBINSON: Yeah, I understand that. You wanted this  
 15 mini trial and I should be entitled to find out about his  
 16 ability to observe.  
 17 THE COURT: Well, I'm -- I completely understand his  
 18 ability to observe. I don't need to go into minute detail on  
 19 it. I mean I understand that there's an issue there.  
 20 MR. ROBINSON: That may be true, but I have a record to  
 21 preserve, as well. So I mean it's not difficult that  
 22 difficult of a deal -- I'm trying to figure out.....  
 23 THE COURT: What.....  
 24 MR. ROBINSON: .....how far away the airplane was from  
 25 this gut pile.

- 1073 -

1 THE COURT: Okay.  
 2 MR. LEADERS: He hasn't asked how far away.....  
 3 MR. ROBINSON: Well, I'm going to -- I first want to  
 4 establish.....  
 5 THE COURT: All I'm asking is that you just move on and  
 6 not spend 10 minutes on each question. But.....  
 7 MR. ROBINSON: I'm trying not to.  
 8 THE COURT: Okay. Go ahead.  
 9 Q So now we have that you were at 300 yards to 500 yards  
 10 from the gut pile. How far away was the gut pile from  
 11 the airplane you saw circling?  
 12 A How far was the airplane from the gut pile?  
 13 Q Yeah.  
 14 A He was -- he was no more than, I don't know, 50 to 100  
 15 yards behind the gut pile when he circled what I'm going  
 16 to say is the bear, but you say no. But behind the gut  
 17 pile. He was behind it.  
 18 Q Well, behind it. I need to have a better understanding  
 19 of behind it. Give me a north, west, east, south?  
 20 A That's.....  
 21 Q What?  
 22 A That would be east. I believe that would be east.  
 23 Q So he was another half a football field east of the gut  
 24 pile?  
 25 A Yes.

- 1074 -

1 Q Okay. Now on the 5th of September did you actual develop  
 2 an emotion where you wanted to shoot this airplane?  
 3 A Well, yeah, he was buzzing me and aggravating me. and  
 4 yeah, I probably had an emotion to shoot at him.  
 5 Q So you were angry enough to want to shoot a plane in the  
 6 sky because he was buzzing you and -- and you and Corky?  
 7 This was on the 5th of September.  
 8 A Yes.  
 9 Q So you developed an anger about this airplane before you  
 10 heard any shooting on the 6th of September?  
 11 A Oh, yeah. And after the shooting I became more angry.  
 12 Q And your anger on the 5th is because you thought that  
 13 the plane at that time was scaring your bear away?  
 14 A Yes.  
 15 Q The one you couldn't see?  
 16 A Yes. (Indiscernible) the.....  
 17 Q And you actually pointed your rifle at it, didn't you?  
 18 A Pardon me?  
 19 Q You actually pointed your rifle at the plane, didn't  
 20 you?  
 21 A Yeah, with an empty rifle.  
 22 Q Okay. Did you put it in the scope -- do you have a  
 23 scope on your rifle?  
 24 A Yes.  
 25 Q Did you put the airplane in your scope when you pointed

- 1075 -

1 it at it?  
 2 A Yes, I did.  
 3 Q And it was also on the 5th that according to you Pete  
 4 was upset, right?  
 5 A Pete was upset, yes. Yes.  
 6 Q Because according to you Pete was upset because he  
 7 thought the moose was being pushed away by the airplane,  
 8 right?  
 9 A Well, you have brought this up, and Pete saw the moose  
 10 being pushed away.  
 11 Q I understand that, but you understood Pete to be upset  
 12 because he believed that the plane was pushing the moose  
 13 away from him?  
 14 A No, he didn't believe it, he saw the moose.....  
 15 Q Well, okay, he saw -- he said he saw the airplane push  
 16 the moose away from him so he was upset about that,  
 17 right?  
 18 A Yes. Yes, he was.  
 19 Q Very upset, right?  
 20 A Yes, he was.  
 21 Q And that was before you heard shots on the 6th, too,  
 22 right?  
 23 A That is correct.  
 24 Q So both you and Pete were upset with this airplane even  
 25 before you heard shots on the 6th?

- 1076 -

1 A Yes. I think that's quite understandable that you'd be  
 2 upset. We've flown 220 miles or 40 miles out of  
 3 Anchorage to a place that's supposed to be basically a  
 4 wilderness and you have a plane flying over your head.  
 5 Q Well, how did you get out to your hunting area?  
 6 A Well, I flew in.  
 7 Q Oh. In an airplane?  
 8 A Landed on a lake.  
 9 Q Did you fly in in an airplane from Anchorage?  
 10 A Yes, I did.  
 11 Q Was it a float plane?  
 12 A A float plane. It was a Beaver.  
 13 Q So you flew from Anchorage to your hunting area or to a  
 14 camp, hunting camp in a Beaver, and then.....  
 15 A Yes.  
 16 Q .....where -- how did you get to where you were hunting  
 17 the bear?  
 18 A I walked.  
 19 (Whispered conversation)  
 20 Q Didn't you actually take two planes to get to where you  
 21 got to before you started walking around and looked for  
 22 the bear?  
 23 A No, I did not.  
 24 Q So -- but you understood that you had to take a plane  
 25 into the wilderness to go hunting?

- 1077 -

1 A Yes.  
 2 Q So then it shocked you that there would be other planes  
 3 flying in the wilderness?  
 4 A Directly over my head, yes.  
 5 Q How directly over your head? How high or how low was  
 6 this plane flying?  
 7 A Well, as you had pointed out, apparently I'm not real  
 8 good with distances, especially straight up and down. I  
 9 would say he would be -- I don't know, maybe 1,000 feet  
 10 straight up.  
 11 Q Okay.  
 12 A So there again, you're back to the three football  
 13 fields. Thereabouts.  
 14 Q Well, 1,000 feet better than three football fields.  
 15 Well, maybe three football.....  
 16 A About a hundred.....  
 17 Q Okay, whatever. 1,000 feet. Isn't it true that you  
 18 told the trooper that it was 1,000 to 1,200 feet above  
 19 you when you saw it buzz you?  
 20 A Okay.  
 21 Q Okay. So somewhere between 1,000 and 1,200 feet,  
 22 correct?  
 23 A Yes, that would be correct.  
 24 Q All right. Do you remember at all, Mr. Elnor, what the  
 25 weather was like around 7:30 in the morning on September

- 1078 -

1 the 6th?  
 2 A No, but I've got some pictures laying around here  
 3 somewhere. Let me think. It was cool. It wasn't  
 4 raining, and let's see. Had some cloud cover. I want  
 5 to.....  
 6 Q Now when you say some cloud cover, what do you mean?  
 7 A Just a typical Alaskan sky, just that pretty -- that  
 8 pretty sky, and it's kind of eery looking. It's not  
 9 real sunny and bright, but, you know, it had some puffy  
 10 clouds up overhead, you know.  
 11 Q You're talking about high clouds up in the sky or.....  
 12 A Yes.  
 13 Q Kind of eery and whatnot?  
 14 A Yeah.  
 15 Q What was the daylight like at 7:30 in the morning on  
 16 September the 6th?  
 17 A What was daylight like?  
 18 Q Yeah. September the 6th, 2003, what was the daylight  
 19 like?  
 20 A You're asking how bright it was?  
 21 Q Yeah, what kind of daylight was it?  
 22 A Well, it was -- it was 7:30 morning light.  
 23 Q It was light?  
 24 A It was -- it wasn't bright, but, you know, it wasn't  
 25 dark by any means either.

- 1079 -

1 Q It wasn't dark?  
 2 A No, no.  
 3 Q All right.  
 4 A 7:30 there.  
 5 Q But in any event, it wasn't a clear morning was it? You  
 6 know, with the sun out, bright, no clouds, clear as a  
 7 bell. It wasn't that kind of a morning was it?  
 8 A Well, it was pretty clear, but, you know, I could see  
 9 the gut pile, I could see a plane flying over my head.  
 10 Q Yeah, but I mean I thought you just -- you described it  
 11 as.....  
 12 A (Indiscernible).  
 13 Q .....that eery cloudy sky up in the.....  
 14 A It is, but the -- but the clouds are high.  
 15 Q Oh, I understand that.  
 16 A The clouds were pretty.....  
 17 Q But high clouds?  
 18 A High clouds.  
 19 Q As opposed to no clouds?  
 20 A (Indiscernible).  
 21 Q As opposed to no clouds, there were clouds, right?  
 22 A There were clouds, yes.  
 23 Q Okay. What about the morning of the 7th?  
 24 A Morning of the 7th?  
 25 Q Yeah.

- 1080 -

1 A You know it seems as though the 7th was a bit clearer  
2 day.  
3 Q A bit clearer or a clear day?  
4 A Well, no, no, a bit clearer, more clear. I'm not going  
5 to say -- I don't think that we had but one perfectly  
6 clear day and that was on the 8th.  
7 Q Okay.  
8 A And I know that because we were back up on the ridge  
9 away from -- Pete and I both went back to the ridge, the  
10 spotting ridge, and you know, it was just a nice sunny  
11 day that day. But the rest of the time it was just kind  
12 of off in color. Nothing -- nothing terrible by any  
13 means.  
14 Q Oh, by the way, back on the 5th you said you saw this  
15 plane at 8:00 in the morning and then you didn't see it  
16 again until 7:30 that night?  
17 A Correct.  
18 Q So -- and for how long was this plane that you saw, how  
19 long was it in the air that you saw it on the 5th, when  
20 you saw it in the air the first time?  
21 A The first time he just kind of buzzed over me and buzzed  
22 over where I assumed the bear was. How's that? Is that  
23 good for you?  
24 Q Well, the question was how long was it up in the air  
25 that you saw it. That was the question.

- 1081 -

1 A Yeah. And from the time I saw him come into view to the  
2 time I saw him actually leave, might have been as much  
3 as a half an hour.  
4 Q Half an hour. In the same area as you saw him come and  
5 then you kept track of him as he was leaving?  
6 A I could.....  
7 Q And you were able to.....  
8 A Well, I could see him coming for a long ways and he  
9 circled me and circled my bear.....  
10 Q Oh, okay. So let me get this straight. So you saw him  
11 approaching you?  
12 A I saw him approach.  
13 Q You saw him buzz you?  
14 A Right.  
15 Q You saw him buzz an area where you didn't know there was  
16 a bear but you assumed that there was?  
17 A That's right.  
18 Q And then did you see the plane leave?  
19 A Yes.  
20 Q And then you saw it fly away from you?  
21 A Yes.  
22 Q And then you -- and then it disappeared and you couldn't  
23 see it any more?  
24 A That's correct.  
25 Q And so all that time took about 30 minutes?

- 1082 -

1 A 30 minutes.  
2 Q Okay.  
3 A At the max.  
4 Q And then you didn't see it again until 7:30 that night?  
5 A That's right.  
6 Q So between the.....  
7 A They -- they (indiscernible) me again.  
8 Q All right. But so between say 8:30 to 7:30 at night,  
9 that's about, what, 11 hours you were out hunting this  
10 bear or the gut pile and you didn't -- and no plane was  
11 harassing or bugging you or some.....  
12 A That -- that is correct.  
13 Q But yet you were still upset even though you got to hunt  
14 for 11 hours before you saw the plane again?  
15 A Yes.  
16 Q And then when you saw it that evening at 7:30 was it  
17 dark, was it light?  
18 A Well, it was not dark. It kind -- I think it got dark  
19 around oh 9:00 o'clock there at that point in time. So  
20 we had another, you know, hour to hunt, maybe. Because  
21 we walked.....  
22 Q And when you saw the plane at 7:30 at night how long did  
23 you see it?  
24 A There again, it's -- it's all in the -- the half hour  
25 range. I mean.....

- 1083 -

1 Q Okay, so that would be from.....  
2 A (Indiscernible).....  
3 Q .....the time you first spotted it as it came towards  
4 you and Corky?  
5 A That's -- that's it. Pretty much.  
6 Q And then it -- and did it circle -- did it buzz you guys  
7 again or was it, you know.  
8 A Yes.  
9 Q So at about 1,000 to 1,200 feet?  
10 A That is correct.  
11 Q And then you saw it fly over where you thought there was  
12 a bear and then go back and disappear again?  
13 A That's correct.  
14 Q All right. And that all took about 30 minutes?  
15 A Yeah, at -- at the very most.  
16 Q Okay. So what did you do at 8:00 o'clock? Did you go  
17 look for the bear?  
18 A No, I'm not going in after a bear at 8:00 o'clock at  
19 night.  
20 Q Oh, I thought it didn't get dark until about 9:00?  
21 A Well, I've got to walk home, and it's a 50 minute walk  
22 for me. And we're not going to be in the woods in the  
23 dark with a grizzly bear on the loose, but we think  
24 there's a grizzly bear.  
25 Q So then would it be safe to say that at 7:30 at night

- 1084 -

1 you weren't about to go hunt the bear either, right?  
 2 A This is -- this is true.  
 3 Q So then I don't understand why you would have been upset  
 4 about hunting at 7:30 at night if you weren't going to  
 5 be hunting anyway?  
 6 A Well, we hunted for another half hour to 45 minutes.  
 7 Q But I thought you said you weren't going to go looking  
 8 because you were.....  
 9 MR. LEADERS: Judge, this is argumentative, and it's  
 10 really not to the issue. Judge.  
 11 Q Well, but isn't it true that you said that.....  
 12 A (Indiscernible).....  
 13 Q .....a half an hour later you wouldn't have gone so why  
 14 would you have gone at 7:30?  
 15 MR. LEADERS: Objection, relevance.  
 16 THE COURT: I'll sustain that. Let's move on to  
 17 something else.  
 18 Q So then I can take it then that you were really upset  
 19 from 7:30 or I mean -- yeah, or 8:00 o'clock in the  
 20 morning you said when you got upset and you remained  
 21 upset until you went back to camp that night, right?  
 22 A Well, I assumed that he kept the bear from coming out.  
 23 The only.....  
 24 Q My question is that you got upset on September the  
 25 5th.....

- 1085 -

1 MR. LEADERS: Asked and answered. He's talked about he's  
 2 been upset.....  
 3 MR. ROBINSON: No, not when he got upset.....  
 4 MR. LEADERS: .....from the first time he had contact.  
 5 MR. ROBINSON: Not when he got upset.  
 6 THE COURT: I'll allow this one. Go ahead.  
 7 Q So then I take it, Mr. Ellnor, that you got upset about  
 8 this plane when you first saw it at 8:00 o'clock that  
 9 morning, right? On the 5th of September?  
 10 A Yes.  
 11 Q And you remained upset all the way through you got back  
 12 to camp and you and Pete talked about it, right?  
 13 A Well, I actually became upset and because he kept  
 14 harassing me, I was upset then and I'm probably still  
 15 upset.  
 16 Q Now is it your testimony.....  
 17 A What he did -- what he did was not right.  
 18 Q Okay. It's your testimony that.....  
 19 A Did you get that? What he did was not right.  
 20 Q I heard your opinion, sir. But.....  
 21 A Okay.  
 22 Q .....I'm still trying to figure out what wasn't right.  
 23 The fact that he buzzed you or what? What wasn't right?  
 24 That he buzzed you?  
 25 A Well, sure.

- 1086 -

1 Q That wasn't right?  
 2 A Well, no.  
 3 Q And that was because he was 1,000 or 1,200 feet away  
 4 and, what, did it disturb your peace of mind?  
 5 MR. LEADERS: Objection, this is argumentative, Judge.  
 6 MR. ROBINSON: Well, I'm trying to figure out why wasn't  
 7 it right.  
 8 Q Was it right because he was disturbing your peace of  
 9 mind?  
 10 MR. LEADERS: Mr. Ellnor's opinion that it wasn't right  
 11 isn't relevant to your consideration.  
 12 MR. ROBINSON: Oh, well, as long as that's not relevant  
 13 then I don't have any questions. If you're going to rule  
 14 that his opinion about whether it was right or not isn't  
 15 relevant, then I don't have any more questions.  
 16 MR. LEADERS: And I have no redirect, Judge.  
 17 THE COURT: Okay.  
 18 MR. LEADERS: May the witness be excused?  
 19 MR. ROBINSON: Well, I haven't finished with the witness.  
 20 MR. LEADERS: You just said you had no more questions.  
 21 A NRA.....  
 22 MR. ROBINSON: About why -- I have no more questions  
 23 about why he thought it was right and wrong, if you stipulate  
 24 that it's irrelevant.  
 25 A Well, the NRA stipulates what's right and wrong, as far

- 1087 -

1 as these.....  
 2 MR. LEADERS: Mr. Ellnor, please just be responsive to  
 3 the questions, that will help move things along, sir.  
 4 THE COURT: Let's move on to something else.  
 5 MR. LEADERS: Sorry, Judge.  
 6 (Whispered conversation)  
 7 Q Now let's get back to the 6th here. Did you ever see  
 8 any hunters on the ground, other than you and Pete?  
 9 A No, I did not.  
 10 Q Now my understanding is that on the 6th at about 7:30 in  
 11 the morning this same plane, as you called the Bat  
 12 plane, left the area for about 30 minutes after it  
 13 buzzed you and Corky, and then you heard a gunshot,  
 14 right?  
 15 A Well, he left us, and I heard him circle over where I  
 16 assumed the moose was, and then he left, and then I  
 17 heard a gunshot.  
 18 Q About 30 minutes after he left, right?  
 19 A After he left, 15 -- yes.....  
 20 Q Now was that 30 minutes after the plane disappeared, you  
 21 couldn't see it any more?  
 22 A Did I hear it again?  
 23 Q No.  
 24 A Yes.  
 25 Q No, that's not the question. The question is did you

- 1088 -



1 hear the gunshot after the plane left and it  
 2 disappeared? You couldn't see it any more?  
 3 A Yes. The plane left and then I heard a gunshot.  
 4 Q Okay, and that was about 30 minutes after the plane  
 5 disappeared?  
 6 A That was half hour to 15 minutes, yes.  
 7 Q And then you said about a half an hour after that you  
 8 heard another gunshot?  
 9 A Yeah. No, the plane came back and circled in another  
 10 area close to the same area, but in another area.  
 11 Q Oh, in another area. So it wasn't that he came back and  
 12 buzzed you and Corky and buzzed.....  
 13 A No, no, no, he didn't -- no, he didn't buzz me. I  
 14 figured he was circling over the moose again when  
 15 somebody either missed or wounded, and the moose run  
 16 away into a different area.....  
 17 Q Now this is all your speculation, right, because you  
 18 never saw a moose shot, did you?  
 19 A That's true, I did not.  
 20 Q All right. In fact, you've already admitted you never  
 21 even saw a moose, right?  
 22 A That is correct.  
 23 Q So this is just all your speculation, right?  
 24 A This is speculation.  
 25 Q All right. We can't have speculation, Mr. Ellnor.

- 1089 -

1 thought you heard an airplane flying over?  
 2 A He's probably three to four miles away.  
 3 Q So you're three to four miles away the second time,  
 4 right?  
 5 A The first time, and three to four miles the.....  
 6 Q Oh, okay. So actually the first -- well, let's go back.  
 7 So actually the first time you never saw this plane, you  
 8 just heard a plane? And then 30 minutes later after the  
 9 plane.....  
 10 A Yes.  
 11 Q .....left or after you stopped hearing it, you heard a  
 12 gunshot, is that right?  
 13 A That is correct.  
 14 Q All right. And then the second time you heard a plane?  
 15 A That is correct.  
 16 Q And then after you stopped hearing the plane, about 30  
 17 minutes after that you heard another gunshot?  
 18 A That is correct.  
 19 Q And in both instances you would estimate that what you  
 20 heard was three to four miles away?  
 21 A This is true. And it's not a hear, this is what Pete  
 22 told me then. And that's going to be more speculation,  
 23 right?  
 24 Q Well.....  
 25 THE COURT: Let's move on, Mr. Robinson.

- 1091 -

1 A Okay.  
 2 MR. ROBINSON: So I would ask the court to strike  
 3 anything that you said that was speculative.  
 4 MR. LEADERS: Judge, the court can take it for what it  
 5 is. He.....  
 6 MR. ROBINSON: No, I can ask.....  
 7 MR. LEADERS: .....can testify about his observations  
 8 based on circumstantial evidence.....  
 9 MR. ROBINSON: He can testify about his observations,  
 10 just he's speculating and I would guess that all that stuff  
 11 that he's speculating about, that he admits he's speculating  
 12 about be stricken.  
 13 THE COURT: I'm not going to consider it, it's  
 14 speculation.  
 15 Q So then before you heard the second shot you saw the  
 16 plane buzz over or fly over another area?  
 17 A That's correct.  
 18 Q Different than the area you saw it fly over the first  
 19 time?  
 20 A You said saw, I heard.  
 21 Q Oh, you didn't see the plane fly the second time, you  
 22 just heard it?  
 23 A I -- I am in an area where I can only hear the plane  
 24 flying. I heard the plane fly over.  
 25 Q How far away were you from what you heard -- what you

- 1090 -

1 Q So you think you heard a plane land?  
 2 A Did you say I thought?  
 3 Q You didn't see a plane land, right? I mean you didn't  
 4 even see a plane flying over.....  
 5 A I heard it.....  
 6 Q .....on the 6th of September?  
 7 A I heard -- I heard a plane land.  
 8 Q So you heard a plane land. How far away was it that you  
 9 heard this plane land?  
 10 A It's that same three to four miles away.  
 11 Q Three to four miles away. And then you heard it take  
 12 off a short time after it landed?  
 13 A Yes, sir.  
 14 Q And when you say a short time after it landed, how much  
 15 time are we talking about, Mr. Ellnor?  
 16 A Probably, there again, the 15 minutes, 30 minutes.  
 17 Q Okay. So you heard it land, then 30 -- 15 to 30 minutes  
 18 later you heard it take off?  
 19 A That's correct. And then it came back, and came back,  
 20 and came back.  
 21 Q And you heard it come back?  
 22 A Yes.  
 23 Q And land?  
 24 A Yes.  
 25 Q And then you heard it take off?

- 1092 -

1 A Yes.  
 2 Q And when you say repeated -- well, how many times did  
 3 you hear that?  
 4 A You know, I -- I cannot remember. But it was probably  
 5 more than four but less than 10.  
 6 Q More than four and less than 10, and this was in the  
 7 morning?  
 8 A This was in the morning.  
 9 Q Okay. And so you don't know whether that was the same  
 10 plane you had seen the day before because you didn't see  
 11 that plane, right?  
 12 A Well, it certainly -- well, yes, I did see that plane  
 13 the first thing in the morning.  
 14 Q No, the -- you said that you didn't. I thought you said  
 15 that you only heard the plane on September the 6th fly  
 16 around.....  
 17 A Well.....  
 18 Q Said leave, hear a gunshot, fly around again, and hear a  
 19 gunshot?  
 20 A That's right.  
 21 Q So on the 6th you didn't see the plane at all, right?  
 22 A Yes, I -- yes, I did. He flew over me first. He flew  
 23 over me first and then flew over where I assumed the  
 24 moose was, and then flew away. Gunshot, flew back.  
 25 Flew around in a circle.....

- 1093 -

1 Q Well, wait a minute. I thought you said that -- at  
 2 least the second time you didn't even see the plane?  
 3 A I did not. I -- I -- he buzzed me in the morning, he  
 4 went over, he circled the moose, he flew away. The  
 5 gunshot. He flew back, he circled again.  
 6 Q But when he flew back, I guess that's the question.  
 7 A Flew away.  
 8 Q Did you see him.....  
 9 MR. LEADERS: Judge, he's trying to answer.....  
 10 MR. ROBINSON: Wait a minute. I'm.....  
 11 MR. LEADERS: Be responsive (indiscernible).....  
 12 MR. ROBINSON: Wait a minute. No, he's not being  
 13 responsive because he's now confused us as to whether or not  
 14 -- I mean I asked him specifically.....  
 15 THE COURT: Well, I'm getting confused as to what your  
 16 question is, too, but the question is when it flew back the  
 17 second time whether it flew over him and he saw it?  
 18 MR. ROBINSON: Whether he saw it the.....  
 19 MR. LEADERS: Specifically the second time or the  
 20 second.....  
 21 THE COURT: Okay.  
 22 MR. LEADERS: .....day?  
 23 MR. ROBINSON: The second time.....  
 24 THE COURT: The second time.  
 25 MR. ROBINSON: .....on September the 6th. We're still on

- 1094 -

1 September 6th.  
 2 THE COURT: Okay.  
 3 MR. LEADERS: Okay.  
 4 THE COURT: All right, did you understand the question,  
 5 Mr. Ellnor? The second time on the morning of the 6th did  
 6 you see the plane or only hear it?  
 7 A I only heard it.  
 8 THE COURT: Thank you. Okay, let's move on.  
 9 Q So then I guess now that you've changed the story being  
 10 as that you did see it first, then you heard it the  
 11 second time, so what you heard the second.....  
 12 A It's the same story.  
 13 MR. LEADERS: Judge, this is argument. It's not a  
 14 question.  
 15 THE COURT: Just ask the question, Mr. Robinson, please.  
 16 Q Because you didn't see the plane the second time you're  
 17 not -- you can't say that you actually saw the same  
 18 plane, right?  
 19 A No. But it was a plane.....  
 20 Q Well, I know it was a plane, the question now is whether  
 21 it was the same plane?  
 22 A I can't tell you that. You'd have to talk to Pete  
 23 Rivera, he saw the plane.  
 24 Q Well, we can't -- we're only talking to you right now.  
 25 THE COURT: That's -- let's just ask the questions

- 1095 -

1 and.....  
 2 Q And then you said also on the 6th, again at 7:30 that  
 3 night, the plane buzzed you and Corky?  
 4 A Yes.  
 5 Q And did you see the plane or just hear it?  
 6 A Oh, I saw it.  
 7 Q Oh, you saw it at night?  
 8 A At 7:30 at night, yes.  
 9 Q And it was still about 1,000, 1,200 feet up?  
 10 A That's what he flew at. It hasn't changed.  
 11 Q Okay. And by then you still hadn't seen the bear,  
 12 right?  
 13 A I haven't ever seen that bear from the time that he went  
 14 in. I saw him through a spotting scope at three miles  
 15 away on the -- oh, let's see. I guess it was on the  
 16 5th, the morning of the 5th. That's the last I ever saw  
 17 the bear.  
 18 Q All right.  
 19 MR. ROBINSON: No further questions.  
 20 THE COURT: Anything?  
 21 MR. LEADERS: No.  
 22 THE COURT: Mr. Ellnor, thank you very much for your time  
 23 today, that's all we need, you can go ahead and hang up, sir,  
 24 thank you.  
 25 A Thank you very much.

- 1096 -

1 THE COURT: All right.  
 2 MR. LEADERS: My next witness is Pete Rivera. Judge.  
 3 THE COURT: Do you have a phone number?  
 4 MR. LEADERS: Phone number 214-868-3568. And I'll let  
 5 the court know I'll again be expeditious in my  
 6 questioning.....  
 7 (Telephone interference)  
 8 MR. LEADERS: .....Mr. Rivera is in between flights and  
 9 he's scheduled to take off again at 3:10.  
 10 THE COURT: Okay.  
 11 MR. ROBINSON: 3:10 tonight? Our time or his time?  
 12 MR. LEADERS: Alaska time. So I'll again be as brief as  
 13 possible. No, he's flying commercially between Idaho and  
 14 Dallas.  
 15 (Pause - Court on telephone with witness)  
 16 THE COURT: Hi, Mr. Rivera. This is Judge Murphy, I'm  
 17 going to -- we're here in court in McGrath. I'm going to put  
 18 you on the speaker phone, okay. Okay, hang on. Mr. Rivera,  
 19 can you hear me okay?  
 20 MR. RIVERA: Yes, I can.  
 21 THE COURT: Okay. All right, sir, you've been called as  
 22 a witness so I need to swear you in. And then the attorneys  
 23 will have some questions for you, okay.  
 24 MR. RIVERA: All right.  
 25 (Oath administered)

- 1097 -

1 MR. RIVERA: I do.  
 2 THE COURT: All right. Go ahead, Mr. Leaders.  
 3 MR. LEADERS: Thank you.  
 4 PETE RIVERA  
 5 called as a witness on behalf of the plaintiff, testified  
 6 telephonically as follows on:  
 7 DIRECT EXAMINATION  
 8 BY MR. LEADERS:  
 9 Q Mr. Rivera, where are you testifying from today, sir?  
 10 A I'm at the airport in Salt Lake City right now.  
 11 Q Okay. When are you scheduled to get on your next  
 12 segment?  
 13 A I've got about -- a flight in 30 minutes.  
 14 Q Okay. Can you -- you were in Alaska, September of 2003  
 15 for a guided hunt, is that correct?  
 16 A Yes, sir I was.  
 17 Q Can you briefly explain to the court who you were -- who  
 18 was your guide?  
 19 A You know, I'm having trouble remembering the name, so  
 20 you might help me with the name.  
 21 Q Okay. Let me ask you. Did you contract through a Ken  
 22 Powers?  
 23 A I did, yes.  
 24 Q And then he had an assistant guide assist you either --  
 25 I believe it was Dale Payne or Corky Hendricks?

- 1098 -

1 A Yes, that's correct.  
 2 Q Mr. Payne?  
 3 A I -- Dale was my -- yes, Dale Payne was my guide.  
 4 Q Okay. Let me ask you. Did you take any game during  
 5 that hunt?  
 6 A Yes, I took a caribou.  
 7 Q Okay. When did -- and what days did you hunt, do you  
 8 recall?  
 9 A No, sir, I don't remember the days, but I believe we  
 10 hunted for nine days.  
 11 Q Okay. Was it towards the beginning of September,  
 12 middle, or end?  
 13 A You know, I'm -- I'm not certain of the dates. That  
 14 was, you know, a couple of years ago, so I did write a  
 15 letter to a trooper and I put all the dates in there.  
 16 Q Let me ask you. Did you have a hunting partner, an  
 17 associate you came to Alaska with?  
 18 A Yes, I did. Mark Ellnor.  
 19 Q Did you hunt the same days that Mr. Ellnor hunted?  
 20 A Yes, I did.  
 21 Q So if he stated he started hunting on September 1st of  
 22 2003, would that be the same day you started hunting?  
 23 A Exactly, that's true.  
 24 Q Okay. Did you -- so you -- what game did you take while  
 25 you were hunting?

- 1099 -

1 MR. ROBINSON: Objection, he already said he took a  
 2 caribou.  
 3 A I took -- I took a caribou.  
 4 THE COURT: (Indiscernible).  
 5 Q Okay. And what day did you take that caribou during  
 6 your hunt?  
 7 A It was -- I believe on the fourth day of my hunt.  
 8 Q Okay. Now is it possible it was on the third day of  
 9 your hunt?  
 10 A That's also possible, yes. I'm doing all this by  
 11 memory.  
 12 Q Okay. It's been some time ago I assume that you  
 13 considered it?  
 14 A Right.  
 15 Q The -- when -- what area were you hunting, do you  
 16 recall?  
 17 A No, we -- our camp was right at a small lake about by a  
 18 -- you know, a short mountain which we climbed every day  
 19 to go out. I don't remember the area though.  
 20 Q You don't remember the Under Hill Creek or Little Under  
 21 Hill Creek area?  
 22 A I truly don't remember that name, so I can't say I  
 23 remember that.  
 24 Q Okay. Can you tell the court what happened during your  
 25 hunt after you took the caribou?

- 1100 -

1 A Well, after I took the caribou we were, you know,  
 2 looking for moose because that was our original intent  
 3 to find a moose. And we -- I -- I believe it was the  
 4 fourth or the fifth day we spotted a moose and it was in  
 5 the afternoon. It was too late for us to pursue it so  
 6 our plan was to pursue the next morning. Then all of a  
 7 sudden we saw a plane which had a Batman insignia at the  
 8 bottom -- on the plane. And it started circling this  
 9 moose.  
 10 MR. ROBINSON: Okay. I want to object to we saw a plane.  
 11 THE COURT: Mr.....  
 12 A Excuse me?  
 13 THE COURT: Mr. Rivera, just tell us what you saw, okay.  
 14 A Yes.  
 15 Q Okay. You saw a plane with a Batman insignia on it?  
 16 A Yes, it had some kind of insignia that looked like --  
 17 like a Batman. That's what we called it anyway, the  
 18 Batman plane.  
 19 Q Okay. What did you see that plane doing? And this was  
 20 the first day you saw the moose, correct?  
 21 A Yes.  
 22 Q And what did -- what was this plane doing?  
 23 A It was -- it was circling the moose and then that day it  
 24 seemed to come back and circle it some more, and then it  
 25 seemed to have landed. Then the next morning when we

- 1101 -

1 climbed up then.....  
 2 Q Let me ask you. Where -- sir, I'm going to interrupt  
 3 just a second because -- where did -- you say it seemed  
 4 to have landed. Where did it -- why do you say that?  
 5 A Why, because it disappeared out of the sky. So.....  
 6 Q Could you still hear the.....  
 7 A .....we actually never did see it land, but.....  
 8 Q Okay.  
 9 A It disappeared and then it reappeared. So....  
 10 Q Okay. Could you hear it still operating when it  
 11 disappeared? Could you hear it flying around off in the  
 12 distance when it disappeared?  
 13 A No, I didn't hear it flying around, that's why we took  
 14 the presumption that it landed.  
 15 Q Okay. Go ahead.....  
 16 A And then the next morning when we went back up to look  
 17 for the moose.....  
 18 Q And I'm going to ask you.....  
 19 A .....we seen it again.  
 20 Q One thing, Mr. Rivera, how far -- as you're seeing this  
 21 moose how far are you away from where you took the  
 22 caribou?  
 23 A Well, the caribou we took way on the opposite side.  
 24 Q Okay.  
 25 A The moose was to my right when I was looking down the

- 1102 -

1 mountain, the caribou I took to my left.  
 2 Q Okay. And do you have any idea as to the distance  
 3 between this area where you see the moose and the  
 4 caribou, how far apart they were?  
 5 A Oh, well, they were quite a distance away. It was miles  
 6 that they were apart.  
 7 Q Was.....  
 8 A My opinion.  
 9 Q Okay. Was Mr. Ellnor hunting with you for the moose?  
 10 A No, Mr. Ellnor he was then hunting, you know -- the --  
 11 the gut pile of the caribou, trying to get a bear.  
 12 Q Okay. Thank you for clarifying that. Let's go back to  
 13 the morning after you first saw this plane with the  
 14 Batman insignia on it. What are you doing?  
 15 A Well, then we saw the plane circling again. Continually  
 16 circling and then it flew off. Then -- then we heard a  
 17 shot. Then the plane would come back and circle again,  
 18 and we thought that it was going to come and land, but  
 19 it didn't, it circled again and circled, and then it  
 20 flew off and then I heard another shot, and then the  
 21 plane came right back and it seemed to have landed  
 22 again.  
 23 Q Okay. And again you say you didn't.....  
 24 A My opinion.  
 25 Q Why do you say it seemed to have landed again?

- 1103 -

1 A Well, because it disappeared and we couldn't hear it.  
 2 Q Okay. Now.....  
 3 A (Indiscernible) a shot.  
 4 Q What time of day is when you see this plane come in,  
 5 circle, hear a shot, leave -- or leave, hear a shot and  
 6 then the plane come back, circles again and then you  
 7 hear another shot, what time of day?  
 8 A That was in the morning.  
 9 Q Okay. Early in the morning, late or mid-morning?  
 10 A Mid to early morning.  
 11 Q Okay. And what -- how long when -- when the plane first  
 12 came in how long did it circle?  
 13 MR. ROBINSON: (Indiscernible).  
 14 A I'd say the first time it circled four or five times.  
 15 It seemed to be where the -- it was pointing out the  
 16 moose.  
 17 Q Okay.  
 18 A And then it left, and then you heard you shot. And then  
 19 it came back and it -- it circled again so I don't know  
 20 if they missed or if they -- it ran off.....  
 21 MR. ROBINSON: Objection, Your Honor, as to speculation  
 22 as to what he thinks.....  
 23 MR. LEADERS: I don't oppose it being stricken. I'll  
 24 move on.  
 25 THE COURT: Yeah.

- 1104 -

1 Q Mr. Rivera, the first -- so it circles four or five  
2 times and leaves. How long after the plane leaves  
3 before you hear a shot?  
4 A Oh, I don't know, maybe five or 10 minutes.  
5 Q Okay. And then how long before the plane comes back  
6 again?  
7 A Another five or 10 minutes. It was quick.  
8 Q Okay. And then you said it left again and you heard --  
9 there was a second shot. How long before that second  
10 shot after the plane left for the second time?  
11 A It -- it seemed to be the same scenario. It left --  
12 just kind of flew off and then it came back pretty quick  
13 after the shot.  
14 Q Okay. And were you able to actually see what plane this  
15 is flying around?  
16 A Yes, it was the same plane which -- was that we called  
17 the Batman plane.  
18 Q Okay. And this -- the area that it was flying over,  
19 were you able to see that moose that you had seen the  
20 night before in that area?  
21 A No, we weren't able to see it because it looked like it  
22 was flying over a little bit thicker area, further past  
23 where -- where we saw the moose it actually was out in  
24 the river bed and that's where we saw it.  
25 Q Okay.

- 1105 -

1 A It actually looked like it was -- it was circling a  
2 little further away distance.  
3 Q Okay. Did you see the moose anywhere else down there?  
4 A We never saw the moose again.  
5 Q Okay. The -- after the second shot the plane came back?  
6 A The plane came back and -- and then it seemed to have  
7 landed.  
8 Q Okay. Was there -- did you have any -- see the plane  
9 involved in any other activity after that that day?  
10 A Well, it seemed to come back and forth that day a number  
11 of times.  
12 Q You saw it in the air several other times?  
13 A In the air and then -- and then disappear and then in  
14 the air, and then disappear.  
15 Q Okay.  
16 A So, you know, it -- in my opinion it landed, but anyway.  
17 Q Okay.  
18 MR. LEADERS: I have no further questions.  
19 THE COURT: Okay. Thank you, Mr. Leaders. Mr.....  
20 PETE RIVERA  
21 testified as follows on:  
22 CROSS EXAMINATION  
23 BY MR. ROBINSON:  
24 Q Hello. Mr. Rivera.....  
25 A Yes.

- 1106 -

1 Q Can you hear me?  
2 A Pardon me?  
3 Q Can you hear me?  
4 A I can hear you, yes.  
5 Q All right. My name is Mr. Robinson, I represent Mr.  
6 Haeg. I have some questions for you, okay?  
7 A All right.  
8 Q You said that on the third or fourth day is when you  
9 took the caribou from your hunt.....  
10 A Yes, sir.  
11 Q Okay. And it was on that day that you first saw this  
12 plane, is that right?  
13 A And I'm not sure if we saw that plane -- if that was the  
14 first time we had ever seen the plane or if we saw the  
15 plane before. I can't say that.  
16 Q Well, when was the first time you remember seeing the  
17 plane? The one you called the Batman plane?  
18 A Well, you know, there was -- I believe that the plane  
19 flew over us before that. It -- this wasn't significant  
20 to us until it was apparent that the plane was pointing  
21 out game to somebody, in our opinion.  
22 Q All right. So you had seen the plane before the day you  
23 took the caribou?  
24 A I believe we saw it a day before, yes.  
25 Q And what was it doing.....

- 1107 -

1 A I -- I don't remember.....  
2 Q Well, what was it doing the day before when you saw it?  
3 A It was just flying around it seemed like.  
4 Q Did it seem like it landed?  
5 A No, it didn't seem like it landed, no.  
6 Q And how far away from you was the plane when you saw it  
7 the day before you took the caribou?  
8 A Well, we -- I believe we were on top of the hill and it  
9 flew over us. And then it would kind of just go around  
10 the area and leave.  
11 Q When you say kind of go around the area, kind of circle  
12 around the area and then leave?  
13 A Just kind of look around the area and leave, yes.  
14 Q Okay. And then it became of significance to you when  
15 you thought it was circling around some game?  
16 A Yes, sir.  
17 Q And that was the day you took the caribou?  
18 A Pardon me?  
19 Q That was the day you took the caribou?  
20 A I don't understand your question. I'm sorry.  
21 Q The day that it became significant to you that you  
22 thought this plane was circling around game, was that  
23 the same day that you took the caribou?  
24 A No, sir, the next day or the day after when we spotted  
25 the moose that's when it became significant to us.

- 1108 -

1 Q Where were you when you spotted the moose?  
 2 A Up on the mountain (indiscernible).  
 3 Q And how far away was the moose that you spotted?  
 4 A My opinion, miles, a few miles.  
 5 Q A couple miles away?  
 6 A Yes, sir.  
 7 Q And when you -- and then how long after you.....  
 8 1208  
 9 (Tape change)  
 10 4MC-05-24/Side A  
 11 0000  
 12 Q How long is your battery going to last, Mr. Rivera?  
 13 A I don't know. I don't know, I can't tell you that.  
 14 Maybe another five or six minutes, or eight minutes.  
 15 Q All right. Well, we're back to the day you spotted the  
 16 moose, you said the moose was two miles away when you  
 17 spotted it. And when you spotted the moose how long  
 18 after you spotted the moose did you then see the plane  
 19 that we've been calling the Batman plane?  
 20 A The plane came overhead, I'd say within an hour of the  
 21 time we spotted the moose.  
 22 Q Okay. And how far away was the plane when you spotted  
 23 it? When you spotted the plane?  
 24 A It came right over our heads and circled into that area.  
 25 Q So it was circling two miles away from you?

- 1109 -

1 A Pardon me?  
 2 Q It circled two miles away from you?  
 3 A Initially it usually flew close to -- right over us.  
 4 Q I understood.....  
 5 A Go down into the valley and start circling.  
 6 Q All right. And so where it was circling was two miles  
 7 away from you or further?  
 8 A Pardon me?  
 9 THE COURT: It may be an issue -- the area where the  
 10 plane was actually circling, was that about two miles away  
 11 from you or a little further?  
 12 A When the plane was obviously circling the moose, yeah,  
 13 it was -- it was about two miles away from us then, yes.  
 14 THE COURT: Okay. Thank you.  
 15 Q And that was on the.....  
 16 A Yes.  
 17 Q All right. So -- and then you said you saw it land,  
 18 too, or you heard it? And did you see it land?  
 19 A No. No, -- no, sir, I did not say -- I -- I said it  
 20 disappeared.  
 21 Q Oh, it disappeared. Well, where did it disappear.....  
 22 A Yes.  
 23 Q .....to?  
 24 A Well, we don't know that. I mean we presume it landed  
 25 or whatever, I don't know.

- 1110 -

1 Q Okay. And then you said you -- how many times did you  
 2 -- the day that you spotted the moose, how many times  
 3 did you see the airplane in the air on separate  
 4 occasions?  
 5 A It seemed to me like the plane came over us, started  
 6 flying the area. When it got to the area where the  
 7 moose was it circled, and then it disappeared. And I  
 8 don't know if we saw it again that day.  
 9 Q Oh, okay. On the 5th, we're still on the 5th of  
 10 September; what was the weather like? We're on the day  
 11 that you first spotted the moose.....  
 12 A Hello?  
 13 Q .....what was the weather like?  
 14 A It was a pretty clear day that day.  
 15 Q Okay. Now that evening you went back to camp, right?  
 16 A Yes.  
 17 Q And you had a discussion with Mark Ellnor about this  
 18 plane, right?  
 19 A Yes, I believe so.  
 20 Q And you told Mark you were very upset, right?  
 21 A Yes, I think so.  
 22 Q And you were upset because you -- why were you upset?  
 23 A Because the plane was circling the moose.  
 24 Q But you didn't hear any gunshots that day, right?  
 25 A No, we didn't.

- 1111 -

1 Q So you were just upset that it was circling the moose?  
 2 A Yes, sir. Because it was -- kept circling the moose and  
 3 that didn't seem like the right thing to me.  
 4 Q Okay. And then Mark told you he was upset, too, right?  
 5 A Mark said that the plane was circling the area where he  
 6 was working the gut pile from the caribou, yes.  
 7 Q So he was upset, too, right?  
 8 A Yeah, he was upset.  
 9 Q So both of you guys were upset and mad?  
 10 A Yes, sir. Yes, sir.  
 11 Q Now this was before you heard the gunshots the next day,  
 12 right?  
 13 A Yes.  
 14 Q And now let me ask you this. Did you ever see a bear?  
 15 A Pardon me?  
 16 Q Did you ever see a bear?  
 17 A Oh, we saw a bear.  
 18 Q Well, the day that you spotted the moose, did you see a  
 19 bear?  
 20 A The day that we -- I spotted the moose?  
 21 Q Yeah, did you see a bear, too?  
 22 A No, sir, I -- I didn't -- I did not see a bear.  
 23 Q Okay. Now then you said the next morning at about 8:00  
 24 o'clock or something, or mid to -- mid-morning to late  
 25 morning it was. No, mid to early morning.

- 1112 -

1 A No, early morning, yes. Mid to early morning.  
 2 Q Was it early or mid?  
 3 A Mid to early morning. I -- I don't -- I can't tell you  
 4 exactly.  
 5 Q All right. And you were looking over the area where you  
 6 had seen the moose the day before?  
 7 A Right.  
 8 Q And how far away were you then from you thought you had  
 9 seen a moose.....  
 10 A Well, it was the -- the -- we were in the same area  
 11 because we were looking at the moose the day before.  
 12 Q All right. So you were still about two miles away?  
 13 A Yes, sir.  
 14 Q All right. What was the weather like in the early  
 15 morning of that day where you went to hunt the moose and  
 16 you saw it two miles away or you saw -- did you actually  
 17 see the moose again or did you just look over in that  
 18 area?  
 19 A No. No, sir, we didn't see the moose again.  
 20 Q All right. So you didn't actually see the moose that  
 21 morning, you was just looking in that area, right?  
 22 A Yes, sir.  
 23 Q All right. What was the weather like early in the  
 24 morning that day?  
 25 A It was foggy early in the morning.

- 1113 -

1 Q Okay. And how long was it foggy?  
 2 A It was foggy that morning.  
 3 Q When you were looking over to see where the moose was?  
 4 A Matter of fact it started clearing by then.  
 5 Q So about what -- by early morning it was clearing?  
 6 A By mid-morning it was cleared, yes.  
 7 Q By mid-morning it was cleared, okay. Now about --  
 8 didn't you tell Officer -- do you remember having an  
 9 interview with a Alaska state trooper named Mitch Doerr  
 10 around the 18th or so of September of 2003?  
 11 A I did have an interview with Trooper Doerr, yes.  
 12 Q Okay. And didn't you tell him that about 8:30 in the  
 13 morning you saw the same plane you had seen the day  
 14 before, circling around the area where you had seen the  
 15 moose before?  
 16 A I can't remember.....  
 17 Q Okay.  
 18 A .....what time I said.  
 19 Q All right. And then also.....  
 20 A My recollection that -- my recollection at that time  
 21 would be a lot closer than it is now.  
 22 Q Oh, okay. So you remember things closer to the time  
 23 than further away from the.....  
 24 A I would assume it was -- if I had a time that I said  
 25 back two years ago, then it was probably more accurate

- 1114 -

1 than what time I could guess right now.  
 2 Q Okay. So.....  
 3 THE COURT: I'm sorry, when was the interview?  
 4 MR. ROBINSON: September the 18th.  
 5 THE COURT: Thank you. Of?  
 6 MR. ROBINSON: 2003.  
 7 THE COURT: Okay, thank you. Go ahead, Mr. Robinson.  
 8 Q Well, isn't it true you remember during that interview,  
 9 Mr. Rivera, that you told Officer -- or Trooper Doerr  
 10 that after the plane circled and left area it was about  
 11 30 minutes after the plane left that you heard a  
 12 gunshot?  
 13 A I actually don't remember that.  
 14 Q But if you did say that, that would be more accurate  
 15 what you probably would have said because it was closer  
 16 to the time than now, right?  
 17 A I would say if that's what I said then, then I would say  
 18 it's more accurate, yes.  
 19 Q Okay. And then you said you -- did you see the plane  
 20 come back after the gunshot or did you just hear the  
 21 plane come back?  
 22 A It came back and it circled again.  
 23 Q You saw that or you heard it?  
 24 A No, I saw it.  
 25 Q Did you hear it or did you see it circle?

- 1115 -

1 A No, we -- we -- we must have seen it because it -- it  
 2 circled again.  
 3 Q All right.  
 4 A So -- you know.  
 5 Q And it circled the area where you thought there was a  
 6 moose?  
 7 A It circled approximately the same area where it -- where  
 8 it circled the first time.  
 9 Q Okay. And then you said the plane -- do you remember  
 10 telling that the plane then left the area again and then  
 11 about after another 30 minutes you heard another  
 12 gunshot?  
 13 A If that's what I said then that's probably a more  
 14 accurate timing, yes.  
 15 Q Now did you ever see any other hunters on the ground  
 16 besides yourself and Mr. Ellnor?  
 17 A Say that again, I'm sorry?  
 18 Q Did you ever see any other hunters on the ground, out in  
 19 the field, other than you and Mr. Ellnor?  
 20 A No, sir, I didn't.  
 21 Q Now, of course, on the 6th you're still in an outrage  
 22 and you're still mad about what you saw the day before  
 23 when you spotted the moose, right?  
 24 A Yeah, I think now that the -- we were upset when we were  
 25 think -- when we saw what was happening that made us

- 1116 -

1 more upset. yes.  
 2 Q When did you see the moose again?  
 3 A We never saw the moose again.  
 4 Q No moose?  
 5 THE COURT: He's answered that three times.  
 6 A No moose.  
 7 THE COURT: Let's move on.  
 8 Q Well, isn't it....  
 9 MR. ROBINSON: Wait a minute.  
 10 Q Isn't it true that you told the trooper then on the 7th  
 11 of September you saw some cow moose?  
 12 MR. LEADERS: Objection, Judge. What's the relevance.  
 13 It's not.....  
 14 MR. ROBINSON: Well, he just said he never saw any moose.  
 15 THE COURT: No, he said he never saw that moose.  
 16 MR. ROBINSON: No, I asked him whether he saw any  
 17 moose.....  
 18 Q .....and your answer was you never saw any moose, is  
 19 that right, Mr. Rivera?  
 20 A No, I didn't say that. I thought you said did I see  
 21 that moose again.  
 22 Q Well, the question -- the second question.....  
 23 A I never -- I never -- I never saw that moose again.  
 24 Q Did you see any other moose?  
 25 A Yes, there was a day we saw a small bullwinkle moose

- 1117 -

1 with a cow moose, and they crossed the lake right where  
 2 we were staying.  
 3 Q And what day did you see that moose?  
 4 A I don't remember that at all.  
 5 Q Was it the day after you heard the shots?  
 6 A I can't -- I can't remember if it was before or after.  
 7 I'm going to have to tell you I'm going to have to get  
 8 on my plane, so if you have some pertinent questions you  
 9 should ask them.  
 10 THE COURT: Anything else?  
 11 MR. ROBINSON: Yeah.  
 12 Q What was the weather like the next day after you heard  
 13 the shooting?  
 14 A I don't remember.  
 15 Q So you don't know because you never saw the moose after  
 16 you spotted it, whether the moose was pushed away or  
 17 towards you or where the moose went, right?  
 18 A We don't know what happened to the moose, no, sir.  
 19 MR. ROBINSON: No further questions.  
 20 THE COURT: All right. All right, Mr. Rivera, thank you  
 21 very much. Have a safe trip.  
 22 A Okay, thank you. Bye-bye.  
 23 THE COURT: I'm about ready for a break.  
 24 (Whispered conversation)  
 25 THE COURT: We'll take until 3:00 o'clock, you want to

- 1118 -

1 come back, off this clock.  
 2 (Off record)  
 3 THE COURT: We're back on record. All right. Trooper  
 4 Doerr, we're on record here with the -- in McGrath, and  
 5 you've been called as a witness in this case so I need to  
 6 swear you in, okay.  
 7 TROOPER DOERR: Yes, ma'am.  
 8 (Oath administered)  
 9 TROOPER DOERR: I do.  
 10 THE COURT: Okay. Go ahead, Mr. Leaders.  
 11 MR. LEADERS: Thank you.  
 12 MITCH DOERR  
 13 called as a witness on behalf of the plaintiff, testified  
 14 telephonically as follows on:  
 15 DIRECT EXAMINATION  
 16 BY MR. LEADERS:  
 17 Q Sir, you work for the Alaska State Troopers, is that  
 18 correct?  
 19 A That's correct.  
 20 Q And what's your position with them?  
 21 A I work as an Alaska State Trooper for the Wildlife  
 22 Enforcement Bureau.  
 23 Q Okay. How long have you been with the troopers with the  
 24 Wildlife Enforcement Bureau?  
 25 A Well, I've been with Wildlife Enforcement for over 20

- 1119 -

1 years now, since, oh, 1985.  
 2 Q Okay. And during September of 2003 did you investigate  
 3 a case or a complaint from a Pete Rivera?  
 4 A Yes, I did.  
 5 Q Can you explain to the court I guess the nature of the  
 6 complaint that you received?  
 7 A Well, the nature of the complaint was a -- a possible  
 8 same day airborne violation.  
 9 Q Okay. I mean I guess what information had you re -- who  
 10 did you receive information from to begin an  
 11 investigation?  
 12 A I received a initial complaint from Mr. Pete Rivera.  
 13 Q Okay. And what was Mr. Rivera's initial complaint?  
 14 A Well, his complaint was is that he -- he felt that a  
 15 particular airplane was assisting some hunters that were  
 16 on the ground.  
 17 Q Did he explain.....  
 18 A He believed that were -- pardon me?  
 19 Q Okay. Did he -- what did he explain to you as far as  
 20 why he believed that?  
 21 A Well, he explained that he observed some low altitude --  
 22 an airplane flying low altitude circles around an area  
 23 where he had spotted a bull moose. And then after the  
 24 airplane had -- had flown a few circles around this  
 25 moose the airplane landed, or he believed landed on the

- 1120 -



1 -- on the river bar nearby where the moose was -- where  
 2 he saw the moose. And then the airplane left that area,  
 3 and then that same air -- that same airplane came back  
 4 the next morning and made a couple more circles. And  
 5 during the time that the airplane was making these  
 6 circles the airplane left and about, oh, he said about  
 7 30 minutes later he heard a -- a rifle shot, and then  
 8 the airplane came back after the rifle shot and was  
 9 doing some more circling around this moose, and then the  
 10 airplane left again and they heard another shot.  
 11 Q Okay. And so that was the nature of the.....  
 12 A The plane.....  
 13 Q Go ahead.  
 14 A Yes. Then the -- then the airplane left again and came  
 15 back and did make several landings, which it appears  
 16 like they were hauling out a moose.  
 17 Q Okay. Did you get information as to any other parties  
 18 who may have witnessed these events from Mr. Rivera?  
 19 A Well, he was -- he was a guided hunter himself, and he  
 20 was being guided by an assistant guide by the name of  
 21 Dale Payne, and Mr. Payne was working for -- one minute.  
 22 Now it's going to slip my mind here.  
 23 Q Was it a Ken Powers?  
 24 A Mr. Powers.  
 25 Q Okay.

- 1121 -

1 A Yes, Kenneth Powers.  
 2 Q And were there any other hunters in the field associated  
 3 with Mr. Rivera that he identified that may have  
 4 information?  
 5 A Yes, a Mr. Mark Ellnor, and he was being guided by a Mr.  
 6 Hendricks.....  
 7 Q Okay.  
 8 A .....who was working for the same operation, Mr. Powers'  
 9 operation there.  
 10 Q Did you end up interviewing those three other  
 11 individuals as well? Well, I guess four other  
 12 individuals. The two other assistant guides as well as  
 13 Mr. Powers, the main gui -- the registered guide, and  
 14 also Mr. Ellnor, the other client?  
 15 A Yes, I did interview them.  
 16 Q Okay. The -- Mr. Ellnor and the two assistant guides  
 17 gave similar accounts as Mr. Rivera, correct?  
 18 A That's correct.  
 19 MR. ROBINSON: Objection, hearsay. My hearsay objection  
 20 is to counsel.....  
 21 THE COURT: Right.  
 22 MR. ROBINSON: .....(indiscernible) testify about their  
 23 own observations and personal knowledge.  
 24 THE COURT: Okay. Go ahead.  
 25 Q And did you receive information as to any particular

- 1122 -

1 identifying information about the plane?  
 2 A Yes, they -- they got the -- the information that I  
 3 received from them from their -- or about the airplane  
 4 was it had a Batman insignia on the tail. They did not  
 5 get the N numbers off of it.  
 6 Q Okay. Did -- from them did some of them associate -- or  
 7 did the guides in particular, assistant guides,  
 8 associate that to a specific individual as well?  
 9 A Yes, they associate -- associated that with Mr. Dave  
 10 Haeg.  
 11 Q Did you obtain the location of where they reported this  
 12 assisting in the taking of a moose occurred, as far as  
 13 the circling and the gunshots?  
 14 A Yes, we got an approximate location, and then I asked  
 15 Trooper Gibbens to -- to go make a flight over to that  
 16 area to try to locate a kill site. He was able to  
 17 locate the -- the area where the -- the airplane was  
 18 landing but he was not able to locate the kill site.  
 19 And then I went out by helicopter two days later and --  
 20 and located the kill site.  
 21 Q Okay. Can you -- that was near Little Under Hill Creek,  
 22 is that correct?  
 23 A Yes, it was on Under Hill Creek, Little Under Hill  
 24 Creek, yes.  
 25 MR. ROBINSON: (Indiscernible).

- 1123 -

1 MR. LEADERS: Rules of evidence, circumstance.....  
 2 THE COURT: Yeah. Let's just move on.  
 3 Q The -- and did you -- you were able to locate a kill  
 4 site there?  
 5 A That's correct.  
 6 Q Okay. Did you then review any information regarding  
 7 David Haeg to determine whether or not any clients of  
 8 his -- because he's a registered guide, is that correct?  
 9 A Yes, he is a registered guide.  
 10 Q And they're required to file hunt records indicating  
 11 locations of where clients take big game, is that  
 12 correct?  
 13 A That's correct. The hunt -- the guides are required to  
 14 provide hunt records to the Department -- to  
 15 Occupational Licensing, in addition to harvest records  
 16 for the Alaska Department of Fish and Game.  
 17 Q Okay. Did you review any harvest records or hunt  
 18 records from Mr. Haeg's guiding activities during that  
 19 time frame to determine whether or not he may have been  
 20 associated with that kill site you located?  
 21 A Yes, I did.  
 22 Q Okay. And did -- what did that review disclose?  
 23 A Well, I located a hunt record that reflected a hunter by  
 24 the name of Doug Jayo(ph) of Idaho who was guided by Mr.  
 25 Tony Zellers, who was an assistant guide for Mr. Haeg.

- 1124 -

1 Q Okay. And did it indicate whether or not Mr. Jayo had  
2 taken a moose in this approximate area. Little Under  
3 Hill Creek?  
4 A Yes, it did.  
5 Q Okay. And did it give a date when Mr. Jayo took that  
6 moose in that area?  
7 A Yes, that date reflected September 7th.  
8 Q Okay. Was that consistent or approximate with the dates  
9 provided to you from Mr. Rivera and Mr. Ellnor and the  
10 others?  
11 A Yes, that was consistent.  
12 Q And I guess did you, in fact -- I guess you said you  
13 were at the kill site. What did you observe -- did you  
14 observe anything at the kill site that may be able to  
15 associate -- or anything particular about the plane  
16 tracks at the landing near the kill site?  
17 A Well, the only thing that was out of the ordinary is  
18 that what Trooper Gibbens gave me some information about  
19 a tail wheel that may have been oversized tail wheel,  
20 and I took some measurements but I -- I never verified  
21 that with a particular airplane.  
22 Q Okay. But you confirmed the presence of oversized tail  
23 wheels at that landing location, or tracks from an  
24 oversized tail wheel at that landing location?  
25 A That's correct.

- 1125 -

1 Q Okay. Now did you talk with any -- Mr. Haeg or Mr.  
2 Zellers or Mr. Jayo about this?  
3 A I did interview Mr. Jayo and I was with Trooper Gibbens  
4 and Mr. Zellers attorney when we did interview him.  
5 Q Okay.  
6 A Did not -- I was not -- I did not interview Mr. Haeg.  
7 Q Okay. Mr. Jayo confirmed that he had taken a wolf [sic]  
8 in this area?  
9 THE COURT: A moose.  
10 Q A moose, excuse me.  
11 A Yes, he had taken a moose.  
12 Q I apologize. It was a moose, yes.  
13 A Yes.  
14 Q And did he discuss with you the circumstances?  
15 A Well, yeah, he told me about -- yeah, he told me about  
16 his hunt, yes.  
17 Q What did he tell you?  
18 A Well, he told me that he was hunting with -- on Little  
19 Under Hill Creek with Mr. Zellers, approximately during  
20 this same time frame, and that he had -- had taken a  
21 moose on Little Under Hill Creek.  
22 Q Okay. Did he indicate to you when you talked with him  
23 that he knew -- that Mr. Haeg had already contacted him  
24 about this situation regarding wolves and the moose  
25 taking?

- 1126 -

1 THE COURT: Moose.  
2 A Boy, I don't know if I recall that statement or not. I  
3 know that he said that he didn't communicate with Mr.  
4 Zellers.  
5 Q Okay. Did....  
6 A I don't -- I don't recall.  
7 Q Okay. Mr. Jayo did -- he talked about how they hunted  
8 though, correct? Didn't -- he indicated that -- they  
9 didn't spot any game from an airplane while he was  
10 hunting, is that correct?  
11 A Well, he stated that they -- that Mr. Haeg would assist  
12 them in spotting game, but no, he did not -- they said  
13 they did not spot any game.  
14 Q Okay. And he indicated that they -- well, one second.  
15 That they didn't -- that they did not use any radio  
16 communications during his hunt, isn't that correct?  
17 A That's correct. He said that Mr. Haeg did not direct  
18 him to a moose or did not use -- and did not use radio  
19 communications during the hunt.  
20 Q Okay. At all during the hunt?  
21 A That was my understanding.  
22 Q Okay. The....  
23 A Their first commun -- their first communication is my  
24 understanding is right after they took the -- the  
25 animal.

- 1127 -

1 Q Okay. And he didn't indicate at any point Mr. Haeg come  
2 in, taking up Mr. Zellers or he to go spot a moose?  
3 A Well, there was some indication that they came in, and I  
4 don't know if it was Mr. Jayo or Mr. Zellers that said  
5 this. That Mr. Haeg came in the night before they took  
6 the moose and what -- and showed Mr. Zellers the  
7 location of the moose.  
8 Q In fact, that's what Mr. Zellers during his interview  
9 did disclose is that Mr. Haeg had come in, flown them  
10 the night before the moose was taken....  
11 MR. ROBINSON: Flown them. Objection.  
12 Q Flown Mr. Zellers -- Mr. Haeg and Mr. Zellers flew,  
13 observed a moose and they sought to hunt that the next  
14 day, isn't that what Mr. Zellers indicated?  
15 A Yes, that's what Mr. Zellers indicated.  
16 Q But Mr. Jayo told you that no time during his hunt was  
17 -- did Mr. Haeg come in and assist them in locating game  
18 with an airplane?  
19 MR. ROBINSON: Objection.  
20 Q Isn't that correct?  
21 A Yes, that -- that -- that -- that is correct. Mr. Jayo  
22 said that there was no -- at no time did the airplane  
23 ever assist them.  
24 (Whispered conversation)  
25 Q Now did Mr. Jayo indicate how many shots it took to put

- 1128 -

1 down the moose?  
 2 A Oh, apparently Mr. Jayo had -- had shot at the moose  
 3 with his rifle and he was unable to -- it malfunctioned  
 4 and he shot the moose with Mr. Zellers rifle, and it --  
 5 so it was just one shot to take the moose down and then  
 6 when they -- when they made it over to the moose they --  
 7 he shot it again.  
 8 Q Okay. And so that was -- did he indicate approximately  
 9 how much -- how long between the two shots?  
 10 A Oh, I -- I don't recall that.  
 11 Q All right. And regarding that sequence. That was  
 12 confirmed by Mr. Zellers as far as the use of Mr.  
 13 Zellers' rifle to actually -- for the initial shot, is  
 14 that correct?  
 15 A Yes, it was.  
 16 Q And then the....  
 17 A That's correct.  
 18 Q Subsequent to that a second shot, that was -- that put  
 19 down the animal but did not kill it? And then a second  
 20 shot was used to kill the animal after it was, I guess,  
 21 located?  
 22 A Yes, the first shot was -- was -- was shot by Mr.  
 23 Zellers' rifle and then apparently they -- they worked  
 24 out the malfunction with Mr. Jayo's rifle and he used  
 25 his rifle to ultimately -- to kill the moose.

- 1129 -

1 Q Okay. And Mr. Jayo was specific in that Mr. Haeg did  
 2 not locate that moose from the airplane?  
 3 A Yeah, Mr. Jayo was pretty specific that they -- the --  
 4 the moose was not located with airplane and -- and Mr.  
 5 Haeg didn't assist them with -- with an airplane at all.  
 6 Q Even the day before it had not been located with the use  
 7 of the airplane, isn't that correct, according to Mr.  
 8 Jayo?  
 9 MR. ROBINSON: Objection.  
 10 A That's correct. That's correct.  
 11 Q And Mr. Jayo acknowledged that even he could see that  
 12 there were other hunters in the area, isn't that  
 13 correct?  
 14 A Scot, I didn't quite catch that one, I'm sorry.  
 15 Q Sure. Even -- Mr. Jayo acknowledged that even he could  
 16 see that there were other hunters hunting in that same  
 17 area?  
 18 THE COURT: Ask him a question that he can answer rather  
 19 than you telling him what the answer is.  
 20 MR. ROBINSON: You're telling him what to say. I mean  
 21 (indiscernible).  
 22 THE COURT: Just make them not so leading. Let him  
 23 testify a little bit. I just -- maybe it will make a shorter  
 24 question.  
 25 Q Were there other -- did anyone indicate if there were

- 1130 -

1 other hunters in the area?  
 2 A Yeah, I think Mr. Zellers and Mr. Jayo knew that there  
 3 were other hunters in the area.  
 4 Q You say you think they both did. Why do you say that?  
 5 A From their statements.  
 6 Q Okay. That's what they indicated to you, correct?  
 7 A Yes.  
 8 Q Okay.  
 9 MR. LEADERS: I don't have any further questions.  
 10 THE COURT: Thank you. Mr. Robinson?  
 11 MITCH DOERR  
 12 testified as follows on:  
 13 ~~GROSS-EXAMINATION~~  
 14 BY MR. ROBINSON:  
 15 Q Trooper Doerr, can you hear me?  
 16 A I can just barely hear you, I'm sorry.  
 17 Q Can you hear me now?  
 18 A Okay, that's a little bit better.  
 19 Q Okay. I'm -- my name is Mr. Robinson and I represent  
 20 Mr. Haeg.  
 21 A Yes, Mr. Robinson.  
 22 Q Did I hear you say that the record of harvest, Division  
 23 of Occupational License, that show the moose was taken  
 24 at Little Under Hill Creek on September the 7th was  
 25 consistent with what you heard from Mr. Rivera as to

- 1131 -

1 when that moose was taken?  
 2 A Yes, it was -- it was consistent within the -- the day  
 3 -- the frame of time during that -- that period of time,  
 4 yes.  
 5 Q Do you remember interviewing.....  
 6 A Mr.(indiscernible).  
 7 Q .....a Mr. Kenneth Powers -- Powell, about this  
 8 incident?  
 9 MR. LEADERS: Powers.  
 10 Q Kenneth Powers?  
 11 A Mr. Kenneth Powers?  
 12 Q Yes.  
 13 A Yes, I do.  
 14 Q In fact, you interviewed him on -- let's get the date  
 15 here. September the 19th, 2003, correct?  
 16 A Yes, I did.  
 17 Q All right. About 9:00 o'clock in the morning, right?  
 18 A Yes.  
 19 Q And he's a licensed registered guide, right?  
 20 A That's correct.  
 21 Q And he was the licensed registered guide for the  
 22 assistance guide of Kenneth Corky Hendricks and Dale  
 23 Payne?  
 24 A That's my understanding, yes.  
 25 Q Okay. Do you remember telling Mr. Powers during the

- 1132 -

1 interview that you had when you met with him on the 19th  
 2 of September, 2003 when you were asking him questions  
 3 about what he knew and he said, well, they said that  
 4 that was like on the 6th or the 7th, and your answer  
 5 was, they killed it on the 6th, meaning the 6th of  
 6 September?  
 7 A Do I recall stating that it was killed on the 6th?  
 8 Q Yeah, during that interview with Mr. Powers?  
 9 A No, I don't recall that. I don't -- I wouldn't say that  
 10 specific of a date if -- if I didn't know for sure what  
 11 the date was.  
 12 Q Well, you knew specifically what the date was didn't you  
 13 in your report that you made? Didn't you do a report  
 14 about this alleged complaint from Mr. Rivera?  
 15 A Yes.  
 16 Q And didn't you also get a written statement from Mr.  
 17 Rivera?  
 18 A Yes, I did.  
 19 Q And in his written -- and in his statement -- and you  
 20 also interviewed him, didn't you?  
 21 A Yes, I did.  
 22 Q And in both your interview with Mr. Rivera and your --  
 23 in a written statement that he gave you, didn't he tell  
 24 you that it was Saturday, September the 6th that he and  
 25 his guide had gone to the mountain so they could spot

- 1133 -

1 the moose but it was very foggy, and we could not see  
 2 anything. It started clearing about 8:30 to 9:00  
 3 o'clock in the morning, a.m. And at that time the same  
 4 airplane that had flown on the night before flew back  
 5 in, circled the same area he had circled before, and  
 6 then flew out. About 30 minutes later we heard a shot.  
 7 Isn't that right, Trooper Doerr?  
 8 A Yes, that's correct.  
 9 Q And didn't you write in your report that the incident of  
 10 this alleged same day shooting, airborne, the same day  
 11 hunting airborne, was alleged to have taken place on  
 12 September the 6th?  
 13 A I don't recall putting that in my report at all. I put  
 14 in my report what it said on the -- on the harvest  
 15 report or on the hunt record.  
 16 Q You don't recall that at all, is that what you're  
 17 saying?  
 18 A That's what I'm saying.  
 19 Q Now you had Mr. Rivera's written statement, right?  
 20 A I had Mr. Rivera's written statement, that's correct.  
 21 Q And he gave you the days from which the series of events  
 22 that he described to you occurred, right?  
 23 A Yes.  
 24 Q And then on the very first page of your report -- do you  
 25 have it in front of you?

- 1134 -

1 A Yes, go ahead.  
 2 Q The very first page where it -- where you -- after you  
 3 put down that Pete Rivera, Ken T. Powers, you give an  
 4 aircraft registration number and then you give a  
 5 synopsis of detail, correct?  
 6 A I do, yes.  
 7 Q And don't you say in the very first paragraph of your  
 8 synopsis and detail the following. On September the  
 9 17th, 2003, the Alaska State Troopers, Wildlife  
 10 investigation unit received information that on  
 11 September the 6th, 2003, small airplane -- plane with a  
 12 Batman insignia may have assisted a hunter in taking  
 13 game near the Little Under Hill River in game management  
 14 unit 19?  
 15 A That's correct.  
 16 Q So you did put in your report September the 6th, didn't  
 17 you?  
 18 A Yes, I did.  
 19 Q So when you said you didn't earlier that wasn't right,  
 20 was it, Trooper?  
 21 A It was not. I actually put in both dates, September 6th  
 22 and September 7th (indiscernible).....  
 23 Q Well, you put in September the 7th as being the day --  
 24 you put in September as being the.....  
 25 A Because of records.

- 1135 -

1 Q You put in September the 7th as the day that you  
 2 discovered from the records, right? Correct?  
 3 A Yes.  
 4 Q All right. But it was September the 6th that you  
 5 received this -- you received this complaint on  
 6 September the 17th, but it was September the 6th that  
 7 the alleged violation took place, right?  
 8 A That's correct.  
 9 Q So that's not consistent is it?  
 10 A It's not consistent with the hunt record, no, it's not.  
 11 Q Thank you.  
 12 THE COURT: Anything else, Mr. Robinson?  
 13 MR. ROBINSON: Hold on one moment.  
 14 THE COURT: Okay.  
 15 (Whispered conversation)  
 16 Q Oh. You said that Mr. Jayo told you that Mr. Haeg did  
 17 not assist him with an airplane in spotting a moose, is  
 18 that what you said he told you?  
 19 A What was the question again?  
 20 Q You testified that when you talked to Mr. Jayo, Mr. Jayo  
 21 told you that Mr. Haeg did not assist him in spotting  
 22 the moose to take, is that right?  
 23 A That's correct.  
 24 Q Didn't use his airplane to do that, correct?  
 25 A I did not hear that, again, I'm sorry.

- 1136 -

1 Q He didn't use his airplane and spot a moose for him to  
2 take? That Mr. Jayo.....  
3 A That's what he -- that's what he told me.  
4 Q All right. Now do you remember your interview with Mr.  
5 Jayo in August of 2004?  
6 A Yes.  
7 Q Okay. Now let's get that interview out. No, wait a  
8 minute. Isn't it true that Mr. Jayo told you that Mr.  
9 Haeg was flying his airplane in the area, flying other  
10 hunters around?  
11 A Yes, he did say that.  
12 Q Okay. And didn't he also say that he dropped you in --  
13 he dropped him and Mr. Zellers into an area with the  
14 airplane?  
15 A Yes, he did.  
16 Q Okay. And didn't he tell you that he never went and  
17 spotted a moose for himself personally, meaning Doug  
18 Jayo?  
19 A I -- I didn't quite hear that question.  
20 Q Isn't what Mr. Jayo told you that Mr. Haeg never  
21 personally went and spotted a moose for him? In other  
22 words, he didn't.....  
23 A Well, Mr. -- yeah, Mr. Haeg -- Mr. Jayo said that he  
24 did not use the airplane to spot a moose for him.  
25 Q Okay. And he also told you that he didn't use any radio

- 1137 -

1 contact to locate a moose as well, right?  
2 A That's correct.  
3 Q Or any other kind of communications that would be -- you  
4 know, like a satellite radio or anything like that?  
5 Satellite.....  
6 A No radio or telephone communication.  
7 Q Okay.  
8 (Whispered conversation)  
9 Q Isn't it also true that when you interviewed Mr. Jayo in  
10 August of 2004 that you told him that you weren't really  
11 interviewing him about the moose incident, it was about  
12 some wolf incident that -- the reason why you wanted to  
13 talk to him?  
14 A No, not at all. I wouldn't have been interviewing Mr.  
15 Jayo about any wolves.  
16 MR. ROBINSON: Is this (indiscernible).  
17 THE COURT: Yes.  
18 Q Okay, Trooper. Do you remember this following  
19 conversation between you and Mr. Jayo on August the 4th,  
20 2004?  
21 A Do I remember?  
22 Q Well, I'm going to read it to you and see if you  
23 remember it, from your discussions and interview with  
24 Mr. Jayo.  
25 A Okay.

- 1138 -

1 Q Okay. In your conversation where you interviewed Mr.  
2 Jayo do you remember him saying these things. And then  
3 tell you -- and you ask him about -- after you told him  
4 that you flew in there with a helicopter so it was  
5 pretty easy to hover over the place, he says, yeah. You  
6 say, okay. Then you say, yeah. That's all right, go  
7 ahead. And then it says -- then you say, all right, I  
8 was just kind of looking at my notes here if you had  
9 something to add, to go ahead. And then Mr. Jayo says,  
10 no, the only thing that I could add was I couldn't --  
11 because you know I could remember Dave Haeg saying, you  
12 know, talking about -- I mean he made -- he made the  
13 comment that we had, you know -- you know, because I  
14 didn't know you had the law you can't hunt the same day  
15 and he said, no, we can't do that. And you went Uh-huh  
16 (Affirmative).  
17 MR. ROBINSON: And then Mr. -- I'm at page 14 of 31, by  
18 the way Mr. Leaders, of the transcript that you provided me.  
19 Q And Mr. Jayo says.....  
20 MR. LEADERS: Actually, I don't think we provided that.  
21 MR. ROBINSON: Well, yeah you did.  
22 A I'm sorry, I don't have a copy of the transcript  
23 but.....  
24 Q I know you -- I'm not -- maybe you don't have a  
25 transcript. I'm just trying to jog your memory.....

- 1139 -

1 MR. LEADERS: No, it wasn't provided.  
2 MR. ROBINSON: Yes, you did.  
3 MR. LEADERS: This one. Maybe we ought.....  
4 MR. ROBINSON: Look, I can show you what you provided me  
5 in discovery.  
6 THE COURT: Does it matter who provided the transcript?  
7 MR. LEADERS: Well, the -- I guess it.....  
8 MR. ROBINSON: Yes, it does.  
9 THE COURT: Okay.  
10 MR. ROBINSON: Because this is information I got from the  
11 state, so I don't want somebody to think that this is going  
12 off in some clear blue area.  
13 MR. LEADERS: Well, then can you show me the transcript.  
14 MR. ROBINSON: Yes.  
15 THE COURT: Okay. All right, gentlemen, while you work  
16 that out I'm going to change the tape, that way it will --  
17 you can do that at this time. Hang on just a minute, Trooper  
18 Doerr.  
19 MR. LEADERS: What's the Bates stamped page number?  
20 A All right.  
21 MR. ROBINSON: I don't know the Bates stamped page  
22 number. It's 14 of.....  
23 THE COURT: Okay. Off record for a second.  
24 (Off record)  
25 0575

- 1140 -

1 (Tape change)  
 2 4MC-05-24/Side B  
 3 0608  
 4 MR. ROBINSON: ....that's what I got from you, not from  
 5 what I got from Mr. Caldwin(ph). I told the court I didn't  
 6 have that and you provided me....  
 7 MR. LEADERS: I didn't provide that. (Indiscernible).  
 8 MR. ROBINSON: Well, anyway, can I go ahead with the  
 9 witness?  
 10 THE COURT: Go ahead.  
 11 Q All right. We were at the point where Mr. Jayo says to  
 12 you in your interview with him that he was told that the  
 13 same day you've got to wait until the following day and  
 14 it even came up about the radio conversation, you know.  
 15 We can't talk -- we can't spot game, you know, and you  
 16 say sure. And then Mr. Jayo says, and then tell you on  
 17 the ground. I mean that all came up in the course of  
 18 this hunt, you know. And then Mr. Jayo tells you, and  
 19 those things aren't legal. We don't, and then you  
 20 interrupt him and say sure. And then he says, so that's  
 21 the reason I'm surprised that he's been charged with  
 22 that because evidently, I mean, we went out to the kill  
 23 site and everything. It must have been, and then you  
 24 interrupt and says, well, he's not being -- and Mr. Jayo  
 25 says, it sounds like it must have been my moose

- 1141 -

1 evidently, and you say to him, he's not being charged  
 2 with anything relating to the moose. We're just -- I'm  
 3 just -- and then Mr. Jayo says to you, well, illegal  
 4 spotting or whatever he's been charged with I guess, and  
 5 you say, well, this is dealing with the wolves. You  
 6 remember that?  
 7 A I would -- I don't remember saying anything like that,  
 8 and I -- I certainly wouldn't say anything like that in  
 9 an interview because I was interviewing him for the  
 10 moose case and the same day airborne violation and not  
 11 the wolves.  
 12 Q So if it is on the tape that you said that, then you  
 13 would have to retract what you just said that you would  
 14 never say that, right?  
 15 A Well, if it is on the tape, yes, I'd have to retract  
 16 that, but it may be the tape was misinterpreted, I don't  
 17 know. But I would not say anything like that.  
 18 Q And then after.....  
 19 A I wouldn't have a reason to say anything like that.  
 20 Q All right. But if it's on the tape and it's your voice  
 21 then apparently you did say it, right?  
 22 A If it's my voice, yeah, I'll agree that I did say it.  
 23 Q And then.....  
 24 A If it's on the tape.  
 25 Q ....after you tell him, well, this is dealing with the

- 1142 -

1 wolf, you said this is a dealing with another situation,  
 2 and then you asked him -- he told you about the wolf  
 3 issue. You asked him that question? And Doug said,  
 4 yeah, right. And then you say to him, right. This is a  
 5 whole separate deal, we got a separate complaint on this  
 6 and we're just -- and then he interrupts and says,  
 7 trying to follow up on, yeah. And so that was about the  
 8 wolf issue. And so you're saying that's -- that as far  
 9 as you know, and as far as you believe, you never  
 10 discussed that with Mr. Jayo, right?  
 11 A I would not discuss the wolf case with Mr. Jayo.  
 12 Q But you didn't say to him, well, this is dealing with  
 13 the wolves? You'd have never said that?  
 14 A Mr. Robinson.....  
 15 MR. LEADERS: Asked and answered.  
 16 A ....I don't recall saying that.  
 17 Q All right. But now I want to know whether you -- are  
 18 you making a statement that you would have never said  
 19 that?  
 20 MR. LEADERS: Asked and answered and relevance.  
 21 MR. ROBINSON: No, I didn't ask him that question.  
 22 Now.....  
 23 THE COURT: Make this the last one unless there's more.  
 24 MR. ROBINSON: Well, this is sign -- this is on this  
 25 issue, this is the last one.

- 1143 -

1 THE COURT: Okay.  
 2 Q Are you saying that you would have never.....  
 3 THE COURT: Okay, answer the question.....  
 4 Q ....said that to Mr. Jayo?  
 5 A Mr. -- Mr. Robinson, I wouldn't have any reason to say  
 6 that to Mr. -- to Jayo, and I don't recall saying that  
 7 in the interview.  
 8 Q I understand that. My question is simply, does that  
 9 mean what you just said that you had nev -- you would  
 10 have never said that?  
 11 MR. LEADERS: Objection as to relevance as to whether or  
 12 not he would have ever said that.  
 13 THE COURT: You've gotten the best answer I think you're  
 14 going to get.  
 15 MR. ROBINSON: Well, maybe not. I mean I don't want him  
 16 to go off on fudging. I just want to know is did.....  
 17 Q Are you saying that you would have never said that? Not  
 18 that you didn't have any reason to or.....  
 19 MR. LEADERS: Judge, may we play the tape?  
 20 Q ....anything, but that you would have.....  
 21 MR. LEADERS: Judge, (indiscernible).  
 22 MR. ROBINSON: Hold it, Mr. Leaders.  
 23 MR. LEADERS: May we just play the tape, if that's -- the  
 24 issue is he didn't exactly say that.  
 25 THE COURT: Well, just -- that's -- can you answer the

- 1144 -

1 question yes or no. Trooper Doerr? The question that Mr.  
2 Robinson was asking is whether you're saying you would have  
3 never said that. Can you answer that as to a yes or no?  
4 A Your Honor, I would not have said that to Mr. Jayo.  
5 THE COURT: Okay. Let's move on then.  
6 Q Trooper Doerr, you said you found the kill site, right?  
7 When you went out with a helicopter?  
8 A That's correct.  
9 Q How far was the kill site from where Mr. Rivera said  
10 that he saw the plane circling over a moose?  
11 A From what Mr. Rivera told me it was -- how far it was or  
12 how far from where.....  
13 Q How far -- when Mr. -- as I understand it Mr. Rivera  
14 told you that on the 6th of September he saw this plane  
15 with the bat insignia circling an area where he had saw  
16 a moose, right?  
17 A Correct.  
18 Q And then after the plane left he heard a shot, right?  
19 A Correct.  
20 Q All right. So my question is, when you found the kill  
21 site what did you determine to be the distance between  
22 the kill site and where Mr. Rivera said he saw the moose  
23 that was circled by the airplane?  
24 A I believe it was about four to five miles.  
25 Q So the kill site was four to five miles away from where

1 for a camp site but we were -- you know, this was well  
2 after -- well after the fact.  
3 Q So you weren't able to find it?  
4 A Well, we didn't -- we didn't see any additional landing  
5 areas.  
6 Q So you didn't -- so you could never establish how close  
7 the hunters on the ground were under this alleged  
8 incident that after the plane circled this moose, where  
9 they were in relationship to where the moose was shot 30  
10 minutes later?  
11 A No, we were never able to establish where Mr. Jayo and  
12 Mr. Zellers were on the ground, no.  
13 MR. ROBINSON: One second.  
14 (Whispered conversation)  
15 Q Oh, by the way, when you did your investigation with Mr.  
16 Rivera and Mr. Ellnor and Mr. Payne and Mr. Hendricks,  
17 let's start with Mr. Ellnor. Was he able to tell you  
18 that he, in fact, ever saw a moose on the ground?  
19 A Was he able to tell me whether or not he saw a moose on  
20 the ground?  
21 Q Right.  
22 A No, I think he was told by Mr. Rivera that there was a  
23 moose. I don't think that he ever saw a moose.  
24 Q Did Mr. Hendricks say that he saw a moose?  
25 A (Pause) You know, I -- I'm trying to review my report

1 Mr. Rivera said he saw the plane circling the moose?  
2 A That's correct.  
3 Q How close was the kill site to Little Under Hill Creek?  
4 A Oh, it was probable -- probably about 10 yards.  
5 Q And how far was the landing site from where the kill  
6 site was?  
7 A About a quarter of a mile.  
8 Q And did you ever find a camp site for any hunter that --  
9 like Mr. Jayo or Mr. Zellers, where their camp site was  
10 before the moose was shot?  
11 A No, I did not locate a camp site.  
12 Q Well, in terms of importance in trying to figure out  
13 whether or not somebody within 30 minutes could have  
14 shot a moose after they saw it circling, wouldn't you  
15 want to know where those hunters on the ground were  
16 located?  
17 A The question is what again?  
18 Q In your investigation of this same day airborne moose  
19 hunting, in your opinion do you think it would be  
20 important to know where the hunters were on the ground  
21 from the time that Mr. Rivera said that he saw this  
22 plane circling over a moose, and then 30 minutes later  
23 he heard a gunshot, as to where the hunters might have  
24 been before the gunshot went off?  
25 A Sure, I think that would be important, and we did look

1 again here and I don't -- I don't recall whether or not  
2 Mr. Hendricks or Mr. Ellnor saw the moose from their  
3 observation point.  
4 Q Okay. When you interviewed Mr. Rivera and you  
5 interviewed Mr. Payne, on the day that they said they  
6 heard the gunshot, did they tell you that on that day  
7 they saw a moose?  
8 A Yes, they had -- they had spotted the moose.....  
9 Q The day before?  
10 A The evening -- the evening before.  
11 Q Yeah, my question is on the day that they both said they  
12 heard the gunshot, did they tell you that on that day  
13 they saw a moose?  
14 A No, I don't believe they did see the moose that -- that  
15 next morning from where they were sitting.  
16 (Whispered conversation)  
17 MR. ROBINSON: That's all I have.  
18 THE COURT: Anything?  
19 MITCH DOERR  
20 testified as follows on:  
21 REDIRECT EXAMINATION  
22 BY MR. LEADERS:  
23 Q Did any of the hunters indicate whether or not they had  
24 heard or seen any of this type of activity after what  
25 they described as the 6th? As far as related to

1 possibly taking this moose and flying into this area?  
 2 MR. ROBINSON: Like hearing gunshots or anything?  
 3 Q Gunshots or planes flying into the area?  
 4 A In relation to what. Scot?  
 5 Q The reported.....  
 6 A After the -- after the shots were fired?  
 7 Q Well, let me put this -- all -- the four people, four  
 8 hunters that reported this suspected same day airborne,  
 9 they all indicated it happened on the 6th, correct?  
 10 A Correct.  
 11 Q Okay. Did they indicate if they had seen any other  
 12 moose, this type of activity, a plane circling, flying  
 13 into the area and hearing gunshots subsequent to the  
 14 6th?  
 15 A No, not that I remember.  
 16 Q Did they indicate they noticed any activity at all the  
 17 7th or thereafter?  
 18 A Well, I believe they came in that -- that same day that  
 19 it was shot and packed that moose out, so, no, I don't  
 20 believe that they -- they saw any additional activity at  
 21 that point.  
 22 Q Or anything to indicate any other moose were taken in  
 23 that area?  
 24 A No, there was no other indication.  
 25 Q Okay. The -- you said you foun -- you located the

1 signs where there was a plane had -- Trooper Gibbens  
 2 initially located a location where a plane with an  
 3 oversized tail wheel made repeated landings, right?  
 4 A That's correct.  
 5 Q He gave you those coordinates and you also then went to  
 6 that location?  
 7 A Yes, I did.  
 8 Q And then from there you located a kill site  
 9 approximately one-quarter of a mile away from that,  
 10 those plane tracks?  
 11 A Yes. That's correct.  
 12 Q Were there multiple plane tracks there indicating  
 13 multiple landings?  
 14 MR. ROBINSON: Objections, as to leading -- you know.....  
 15 MR. LEADERS: Permissible line of questioning, Judge.  
 16 Normal questioning.  
 17 THE COURT: Well, I think he's already answered it,  
 18 but.....  
 19 MR. LEADERS: I don't think he has.  
 20 THE COURT: Go ahead, Trooper Doerr.  
 21 A There were -- there were several tracks coming in and  
 22 out of that sandbar.  
 23 Q Was there any form of path or was there any connection  
 24 between that landing site and the kill site? Any  
 25 pathway or anything like that?

1 A Well, there were tracks leading up to a game trail, and  
 2 then -- and then you lose -- obviously lose the tracks  
 3 out of the game trail. but it was a -- a game trail  
 4 running along the creek itself and then I followed that  
 5 to -- to the kill site.  
 6 Q Okay. You didn't locate a camp where anybody may have  
 7 camped overnight. Would location of where someone may  
 8 have camped overnight necessarily have disclosed where  
 9 they shot from or.....  
 10 A No. No, they could be camped anywhere on the river.  
 11 there.  
 12 Q Okay. And in fact, you talked -- Mr. Zellers indicated  
 13 they camped some distance away and hiked to this  
 14 location, isn't that correct?  
 15 A Yes.  
 16 MR. LEADERS: I don't have any other questions.  
 17 MITCH DOERR  
 18 testified as follows on:  
 19 RE CROSS EXAMINATION  
 20 BY MR. ROBINSON:  
 21 Q Trooper Doerr, do you have Mr. Rivera's letter with you  
 22 as part of your report?  
 23 A Yes, I do.  
 24 Q Could you go to.....  
 25 A I have a letter that says it's a draft of his.....

1 Q Yeah, a draft. It says draft, draft, draft on the top?  
 2 A Right, to.....  
 3 Q September the 16th, 2003, Pete Rivera?  
 4 A Yes.  
 5 Q 811 Creekwood Drive, North Fairview, Texas, 75069?  
 6 A Yes.  
 7 Q All right.  
 8 A Yes.  
 9 Q Now on the last paragraph on the first page it says, on  
 10 the next day, Saturday, September 6th, my guide and I  
 11 had gone to the mountain so that we could spot the  
 12 moose, but it was very foggy, and we could not see  
 13 anything. It started clearing up about 8:30, 9:00  
 14 o'clock and at that time the same plane that had flown  
 15 in the night before flew back in and circles the same  
 16 area he had circled before. Then it flew out, about 30  
 17 minutes later we heard a shot, do you see that?  
 18 A Yes.  
 19 Q Now would you go over to the next page, on page two.  
 20 And it's still referring to the 6th of September on the  
 21 second full paragraph it says that evening my guide,  
 22 Dale Payne, called our outfitter, Ken Powers, and told  
 23 Ken what had happened that day. Dale was clearly upset  
 24 and gave Ken Powers this exact same scenario. Dale  
 25 identified the plane by the bat emblem to the tail fin



1 and said that it belonged to David Haeg, you see that?  
 2 A Yes, sir.  
 3 Q And then it says the next two days Dave Haeg's plane  
 4 continued to fly in and out of the area. He circled the  
 5 area where I had shot a caribou a few days before  
 6 because my friend Mark has spotted a bear there and was  
 7 hunting a bear. We saw the area where Mark and his  
 8 guide were hunting, and we saw Dave Haeg's plane  
 9 circling the same area where Mark was hunting the bear  
 10 and it appeared to us that he was trying to push the  
 11 bear away from Mark, you see that?  
 12 A Yes, I do.  
 13 Q So when you said that you didn't hear from anybody that  
 14 there was any other flying or circling going on by Mr.  
 15 Haeg's plane after the 6th, that isn't true, is it,  
 16 because in that letter that you got from Mr. Rivera he  
 17 says for the next two days he saw Dave Haeg's plane  
 18 continue to fly in and out of the area, correct?  
 19 A That's what it says, yes.  
 20 Q Okay. Then let's go to Mr. Ellnor. And do you have  
 21 your report for Mr. Ellnor in front of you?  
 22 A Yes, go ahead.  
 23 Q Okay. On -- it has -- I have a Bates page that says  
 24 11010. Do you have that page? At the very bottom,  
 25 right-hand corner?

1 hear a gunshot. About 30 minutes or so the plane  
 2 returns and buzzes the moose again. After about another  
 3 30 minutes I heard another gunshot. Hear that -- do you  
 4 see that?  
 5 A Yes.  
 6 Q All right. And then the next paragraph it says on  
 7 September 7th, '03 the airplane again buzzes the bear  
 8 and I in the a.m. and p.m. You see that? And at this  
 9 point.....  
 10 A Yes.  
 11 Q .....there isn't any more game in the valley, we're  
 12 getting disgusted. So Mr. Ellnor told you that again on  
 13 the 7th of September he saw the airplane buzzing around  
 14 again, right?  
 15 A Uh-huh (Affirmative).  
 16 Q So when you said that nobody else told you anything  
 17 about the plane flying and circling and buzzing -- well,  
 18 on the 7th, that isn't correct, is it? Because Mr.  
 19 Rivera wrote in his letter that he buzzed the area where  
 20 the moose was on the 7th, and then on the -- then Mr.  
 21 Ellnor also tells you that he buzzed where the bear was,  
 22 right?  
 23 A The impression that -- Mr. -- Mr. Robinson, the  
 24 impression that I got from both Mr. Ellnor and Mr.  
 25 Rivera at this point was that the airplane was

1 A My -- my pages aren't numbered, but.....  
 2 Q All right. Well, then.....  
 3 MR. LEADERS: (Indiscernible).  
 4 A .....I think I -- I have it here.  
 5 Q .....let me get you oriented here. I'm on the page  
 6 where it says interview continuation number 4, witness  
 7 Mark Ellnor. You see that? And I don't know if.....  
 8 A Okay.  
 9 Q I don't have a page number on mine so I don't know --  
 10 I'm going to start looking -- I just want to get you  
 11 where it starts at the very top, interview continuation,  
 12 colon, number 4, W.I. Mark Ellnor.  
 13 A (Pause) Okay, I'm on Mark Ellnor's interview.  
 14 Q All right. And it starts out.....  
 15 A And I don't have a transcript.  
 16 Q You don't have a transcript of it?  
 17 A I don't have a transcript. I do have my report for Mr.  
 18 Ellnor.  
 19 Q Okay. Let's talk about your summary. Then it's -- the  
 20 first paragraph on that page starts that on 9-6-03 at  
 21 about 7:30 in the morning the same plane buzzes us and  
 22 the bear again, and then buzzes the area where the moose  
 23 was, do you see that?  
 24 A Yes.  
 25 Q The plane left that area for about 30 minutes and then I

1 continuing to fly through the area and over their areas,  
 2 but at a higher altitude. He wasn't at a low altitude  
 3 circling and -- and doing that type of stuff.  
 4 Q Well, what does the word buzz mean?  
 5 A That I got that.....  
 6 Q When you wrote the word buzz in your own report. You're  
 7 -- that's your word.....  
 8 A Wrote what he told me.  
 9 Q That's your -- but you wrote the word buzz, didn't you?  
 10 A I wrote what.....  
 11 Q You wrote that word, didn't you?  
 12 A I wrote what Mr. Ellnor and Mr. -- the word buzzed is  
 13 what Mr. Ellnor told me.  
 14 Q All right. And do you fly a lot in small aircraft?  
 15 A I'm -- I'm not a pilot, no, but I've spent a lot of  
 16 time.....  
 17 Q I didn't ask you if you were.....  
 18 A .....in airplanes and helicopters.  
 19 Q I didn't ask you whether you're a pilot, I just asked  
 20 whether you fly a lot in small aircraft. Small fixed-  
 21 wing aircraft? Do you?  
 22 A So the -- the question is do I fly in a fixed-wing  
 23 aircraft or do I fly in a fixed-wing aircraft?  
 24 Q My question is up until September, 2003 did you have a  
 25 lot of experience flying in small fixed-wing aircraft?

1 Not flying it, just simply.....  
 2 A Yes. I do -- I do have a lot of time flying in aircraft.  
 3 Q Well, I'm not talking about 747's, I'm talking about  
 4 small fixed-wing aircraft?  
 5 A Yes, I -- I do have quite a bit of time sitting in the  
 6 back seat of a Supercub, if that's what you mean.  
 7 Q And in your experience as even a passenger in these  
 8 small planes, have you ever had an understanding of what  
 9 the word buzz means?  
 10 A Well, sure, it can mean anything. I mean an airplane  
 11 can fly over at -- at a high altitude and -- and scare  
 12 off game. You don't have to be at a low altitude.  
 13 Q Well, my question ins what did you understand the word  
 14 buzz to mean?  
 15 A Buzz means that they -- that the airplane flew over.  
 16 Q Oh, just flew over? It doesn't mean flying.....  
 17 A Directly over.  
 18 Q It doesn't mean flying over at low altitude, it just  
 19 means flying over? That's what it means to you?  
 20 A Yes. That would be my understanding, yes.  
 21 Q So if an aircraft flew over at 5,000 feet that would --  
 22 you would consider somebody on the ground being buzzed?  
 23 A That wouldn't be a buzz, I wouldn't think.  
 24 Q Oh, okay. So then it's not just flying over, is it?  
 25 A Wouldn't hardly be able to hear the airplane at that

- 1157 -

1 Q Well, did you put down that Mr. Ellnor said that he --  
 2 that the plane was somewhere between 1,000 and 1,200  
 3 feet above him?  
 4 A Is that -- is that question for me?  
 5 Q Yeah.  
 6 A I -- I -- at this point, no, I did -- I did not ask him  
 7 how high the airplane was flying when it -- when he  
 8 buzzed the bear if that's what -- if that's what you're  
 9 replying to.  
 10 Q Well, that isn't true because in your interview with him  
 11 he told you that the plane was 1,000 to 1,200 feet,  
 12 didn't he?  
 13 A The interview with who?  
 14 Q With Mr. Ellnor.  
 15 A Well, I don't recall the 1,200 feet.  
 16 Q 1,000 to 1,200 feet, you don't recall that? Is that  
 17 what you're saying?  
 18 A I -- I -- I don't recall Mr. Ellnor telling me anything  
 19 about 1,000 to 1,200 feet.  
 20 Q Just a second, we're going to go to this interview that  
 21 you had with him. Do you ever remember asking Mr.  
 22 Ellnor how low the airplane was?  
 23 A Well, I think I asked him how low the airplane was when  
 24 it was flying over the -- the.....  
 25 Q Overhead and the gut pile, the bear, the whole shebang,

- 1159 -

1 point.  
 2 Q So it's not just flying over then, is it, Trooper? It  
 3 has a more specific meaning.....  
 4 THE COURT: Is this his.....  
 5 Q It has a more specific meaning than just merely flying  
 6 over somebody, doesn't it, Trooper?  
 7 THE COURT: Is this his opinion? I don't.....  
 8 MR. ROBINSON: Yeah, I'm asking -- it's his word, he.....  
 9 MR. LEADERS: It's Mr. Ellnor's word.  
 10 MR. ROBINSON: No, wait a minute. I'm not.....  
 11 MR. LEADERS: He's testified it was Mr. Ellnor's word  
 12 that he used.  
 13 MR. ROBINSON: I understand, but he wrote it in his  
 14 report. He's the one that wrote the word buzz.  
 15 MR. LEADERS: So he accurately documented what the  
 16 witness said.  
 17 THE COURT: He said he wrote what Mr. Ellnor -- if you  
 18 want to ask him if Mr. Ellnor explained it, fine, otherwise  
 19 let's just move on.  
 20 MR. ROBINSON: Wait a minute, Your Honor. His -- this is  
 21 a summary of what he wrote, so it's his impression of what  
 22 was said, not the exact words.  
 23 MR. LEADERS: Ask him why (indiscernible).....  
 24 THE COURT: Sergeant -- Trooper Doerr testified earlier  
 25 that he wrote down what Mr. Ellnor said.

- 1158 -

1 right?  
 2 A Okay, you're talking about on 9-7 now, you're not  
 3 talking about on 9-5?  
 4 Q Yeah.  
 5 A I -- I -- I don't recall asking him how -- how high the  
 6 airplane was flying. I do recall asking him about the  
 7 airplane flying over, you know, 300 feet over trees on  
 8 -- on the 5th of September but not on the 7th of  
 9 September.  
 10 (Whispered conversation)  
 11 MR. ROBINSON: All right. Well, that's okay.  
 12 Q So in other words, if -- and you're saying during this  
 13 interview it was Mr. Ellnor that told you that the plane  
 14 buzzed him on the next day, on the 7th. And that's his  
 15 words and not your's, is that right?  
 16 A That's what Mr. Ellnor told me, yes.  
 17 Q Okay. Did you ever ask him what he meant by buzzed?  
 18 A No, I did not.  
 19 (Whispered conversation)  
 20 Q And Mr. Ellnor told you, didn't that -- okay. That  
 21 before the 6th of September, before he heard the shots  
 22 -- the alleged shots, that he was already upset with Mr.  
 23 Haeg, right? From the day before?  
 24 A That he was upset with the -- with.....  
 25 Q With the airplane?

- 1160 -

1 A With the airplane flying over.  
 2 Q The day before, right, on the 5th?  
 3 A Correct.  
 4 MR. LEADERS: This is beyond the scope of....  
 5 MR. ROBINSON: It's not beyond the scope.  
 6 MR. LEADERS: (Indiscernible).  
 7 THE COURT: Well, let's just move on. Let's just move  
 8 on.  
 9 Q And so did Mr. Rivera tell you the same thing, too,  
 10 then. Before he -- the day before he heard the shots he  
 11 was already upset at Mr. Haeg? Or the plane?  
 12 A Yeah, they were -- yeah, they were upset that the  
 13 airplane was flying over, yes.  
 14 Q Did either one of them tell you how far away the shots  
 15 were when they heard it?  
 16 A How far the shots were away?  
 17 Q Yeah, from them. Did either one of them say we heard  
 18 the shots and then the shots were so far away or did  
 19 they give you any distance as to....  
 20 A No, they just -- no, they just said that they heard  
 21 shots.  
 22 Q And so did you ever ask them how far away the shots were  
 23 that they heard?  
 24 A No, I don't remember asking either one of them whether  
 25 or not how far the shots were away.

- 1161 -

1 Q So as of this stage of your investigation you still  
 2 don't have an idea of how far the shots were away from  
 3 them when they heard it, right?  
 4 A No, I knew how far away they were from the moose and  
 5 that was....  
 6 Q But you don't -- well, I'm not talking this time about  
 7 the shots. You don't have a clue today....  
 8 A Did not ask them.  
 9 Q So you don't have any idea today....  
 10 A Did not ask them how far away they were from....  
 11 THE COURT: That's a yes or no question, Trooper Doerr,  
 12 can you answer it yes or no, please.  
 13 A No, I did not ask them.  
 14 Q And so therefore you don't have any evidence as to how  
 15 far away the shots were when they heard it, right?  
 16 MR. LEADERS: Argument, Judge. It's not a question.  
 17 THE COURT: He said no. Let's -- I mean that's the  
 18 answer. He said no, let's go on.  
 19 MR. LEADERS: Judge, this is beyond the scope -- my scope  
 20 addressed the location of the kill site, how far it was from  
 21 the landing site, and that there was no discussion of buzzing  
 22 the same moose kill site area again.  
 23 MR. ROBINSON: That wasn't the -- this question had to do  
 24 with hearing gunshots. You didn't talk to him about that. I  
 25 thought you did.

- 1162 -

1 MR. LEADERS: On my direct, not on my redirect, and so  
 2 it's beyond the scope of redirect.  
 3 THE COURT: Do you have much more, Mr. Robinson?  
 4 MR. ROBINSON: I don't have any more questions.  
 5 THE COURT: Okay. Anything else? Okay. All right,  
 6 Trooper Doerr, thank you very much for your time. You can go  
 7 ahead and hang up then, sir, thank you.  
 8 A Thank you, Your Honor.  
 9 THE COURT: Bye. Anybody else? Anything?  
 10 MR. LEADERS: No, we're not calling anything further on  
 11 this related issue, Judge.  
 12 THE COURT: Okay.  
 13 MR. LEADERS: Mr. Robinson and I discussed earlier -- we  
 14 kind of proposed that he would present his information  
 15 regarding the moose and then we'd move on to the wolf  
 16 specific sentencing issues that....  
 17 MR. ROBINSON: Well, I would like to get Mr. Jayo on the  
 18 stand -- on the telephone.  
 19 THE COURT: Okay.  
 20 MR. LEADERS: May I use the restroom before we....  
 21 THE COURT: Yeah. Do you have his number?  
 22 MR. ROBINSON: Yes. It is 208-322-3663.  
 23 (Whispered conversation)  
 24 THE COURT: I'm going to go off record while I do that.  
 25 (Off record)

- 1163 -

1 THE COURT: Okay, we're back on record and we have Jake  
 2 Jedlicki on the phone. Mr. Jedlicki, this is Judge Murphy,  
 3 you've been called as a witness to testify in this case, so  
 4 I'm going to swear you in and then the lawyers will have some  
 5 questions for you, okay. All right, sir?  
 6 MR. ROBINSON: Hello?  
 7 MR. JEDLICKI: Hello.  
 8 THE COURT: Did you hear me, Mr. Jedlicki?  
 9 MR. JEDLICKI: No, I -- you cut out there for a second.  
 10 THE COURT: Okay. I said you've been called as a witness  
 11 so I'm going to swear you in and then the witn -- lawyers  
 12 will have some questions for you, okay?  
 13 MR. JEDLICKI: Okay.  
 14 (Oath administered)  
 15 MR. JEDLICKI: Yeah, I do.  
 16 JOHN JEDLICKI  
 17 called as a witness on behalf of the defendant, testified  
 18 telephonically as follows on:  
 19 DIRECT EXAMINATION  
 20 THE COURT: All right, would you spell your first and  
 21 last name for the record, please.  
 22 A My real name is John, J-o-h-n, Jedlicki, J-e-d-l-i-c-k-  
 23 i.  
 24 THE COURT: Okay. Thank you, sir. Go ahead, Mr.  
 25 Robinson.

- 1164 -

1 BY MR. ROBINSON:  
 2 Q Mr. Jedlicki, is it okay if I call you Jake?  
 3 A Sure is, yeah.  
 4 Q All right. I'm Mr. Robinson. I'm the lawyer for Mr.  
 5 Haeg.  
 6 A Yep.  
 7 Q All right. Where are you at right at this moment?  
 8 A I'm at my home in Soldotna.  
 9 Q All right. Now Mr. Jedlicki, do you know David Haeg?  
 10 A Yes, I do.  
 11 Q How long have you known him?  
 12 A Probably -- well, it's about four years now.  
 13 Q Okay. How old are you?  
 14 A I'm 20 -- I just turned 27.  
 15 Q All right. And how long have you lived in Soldotna?  
 16 A Almost five years.  
 17 Q Okay. Did you graduate from high school?  
 18 A No, I didn't, I got a GED.  
 19 Q All right. And what is your occupation?  
 20 A I'm a carpenter and a big game guide.  
 21 Q All right. In the time that you've known Mr. Haeg have  
 22 you done any guiding services for him?  
 23 A Yes, I have.  
 24 Q And for how long have you done that?  
 25 A About three years now.

- 1165 -

1 Q Okay. Have you done any guiding services for Mr. Haeg  
 2 out of his lodge at Trophy Lake?  
 3 A Yes, I have.  
 4 Q For how long have you done guiding service for the  
 5 Trophy Lake operation?  
 6 A Just this -- just this past fall just where I was  
 7 guiding and then two years ago I was a packer.  
 8 Q So two years ago, that would have been in 2003?  
 9 A Yeah.  
 10 Q And would that have included the month of September of  
 11 2003?  
 12 A Yes, it did.  
 13 Q Are you familiar with the name of Kenneth Powers?  
 14 A Yes, I am.  
 15 Q And what makes you familiar with that name?  
 16 A He has a -- a camp south of the Trophy Lake Lodge and he  
 17 does -- he does a guiding operation out of there. By  
 18 the -- the Under Hill Creek.  
 19 Q Is Mr. Powers -- all right. Is Mr. Powers' camp on  
 20 Little Under Hill Creek in a direct line between Mr.  
 21 Haeg's lodge on Trophy Lake and -- how would you  
 22 describe it in relationship to Mr. Haeg's hunting  
 23 operation from Trophy Lake?  
 24 A Well, I got most of what you said, but it broke off  
 25 there on the direct line from Dave's lodge to where I

- 1166 -

1 didn't catch that.  
 2 Q All right. In addition to the Trophy Lake Lodge  
 3 facility, does Mr.....  
 4 A That.....  
 5 Q .....Haeg have any other hunting camps in connection  
 6 with his operation out at Trophy Lake?  
 7 A Yes, all his southern camps are -- you've got to fly  
 8 pretty much directly over Mr. Powers' camp to get to all  
 9 his southern camps, that are south of the Swift River.  
 10 Q Okay. Back in September, 2003 if you recall, Jake,  
 11 about how many of those camps did Mr. Haeg have?  
 12 A Let's see here. I'd say on -- on average, six to seven.  
 13 Q Okay. Now in your experience with working when you were  
 14 a packer back in 2003.....  
 15 A Yep.  
 16 Q .....with Mr. Haeg, did Mr. Haeg look for moose on  
 17 Little Under Hill Creek?  
 18 A Yes, he did.  
 19 Q Okay. And have you helped him look for moose on Little  
 20 Under Hill Creek?  
 21 A Yes, I did.  
 22 Q Tell me how that's done?  
 23 A Dave flies, you know, about 1,000 feet in the air and he  
 24 makes S turns, you know, so he can make like a grid  
 25 pattern in the sky, and in the process, you know, as he

- 1167 -

1 makes the S turns he's looking for bulls or cows on the  
 2 ground. And it's pretty much a process, you know, he  
 3 just makes his S turns back and forth in a certain area  
 4 and makes a grid of the area.  
 5 Q All right. Is there any particular time of the day when  
 6 you're assisting him that he does this kind of flying?  
 7 A Generally at night because if he does see something he  
 8 can't -- you know, he -- he can fly in at night and then  
 9 talk to the guys at night because if you go in during  
 10 the -- you know, beginning of the morning or during the  
 11 day, then they can't hunt any more because if you're  
 12 told any information about any animals, you know, with  
 13 someone that flew then you can't hunt for the rest of  
 14 the day, so he generally goes in, you know, like flies  
 15 at night, finds out where things are at, and then he'll  
 16 go and inform his guides where they're at so that the  
 17 following morning they can go out and go to that general  
 18 area.  
 19 Q In the time that you have worked for Mr. Haeg, including  
 20 back in September of 2003 have you ever seen, heard or  
 21 know of Mr. Haeg helping any hunter to take a moose the  
 22 same day it was observed from the air?  
 23 A No, I have not.  
 24 Q Okay. Have you ever in your experience with working  
 25 with Mr. Haeg ever heard or seen Mr. Haeg chase or

- 1168 -

1 disturb a moose with an airplane?  
 2 A No, I have not.  
 3 Q With regard to using an airplane to possibly chase a  
 4 moose, and particularly with bull moose, what difficult  
 5 is there in using a small aircraft like a PA-12 in  
 6 trying to chase moose?  
 7 A I wouldn't have any idea because I've never -- never  
 8 experienced anybody even trying to chase moose with a --  
 9 with an airplane because you can't -- you can't even  
 10 disturb really a moose with a plane anyways, and so  
 11 never heard of anybody even trying to chase one with  
 12 one.  
 13 Q Okay. Have you ever in your experience with Mr. Haeg  
 14 ever seen or heard of him intentionally flying over and  
 15 near any hunters from Mr. Powers' camp?  
 16 A Well, as I said earlier that Dave's camps are pretty  
 17 much in a direct line south of his lodge, you know, in  
 18 line with Mr. Powers' camps, so Dave has to fly, you  
 19 know, over his camp. Not directly over his camp, but  
 20 pretty much right in the same -- the same vicinity to  
 21 get to his other camps. So if he did fly over hunters,  
 22 you know, you -- you wouldn't know they were there  
 23 because you can't see hunters on the ground when you're  
 24 flying.  
 25 Q Okay. In your experience from working with Mr. Haeg in

- 1169 -

1 A Yes. Yeah, I do.  
 2 Q Okay. And do you remember whether or not he was hunting  
 3 with any particular assistant guide for Mr. Haeg?  
 4 A Yeah, I don't know about assistant guide but he was  
 5 hunting with Tony Zellers.  
 6 Q All right. And do you recall whether or not Mr. Haeg  
 7 took Mr. Zellers and Mr. Jayo to a place called Kenny's  
 8 Strip?  
 9 A Yes. Yeah, they -- yeah, I heard about him taking them  
 10 there to hunt on Little Under Hill Creek.  
 11 Q Okay. Do you recall whether or not Mr. Jayo ever got a  
 12 moose on this hunt?  
 13 A Yes, he did.  
 14 Q Do you recall what day that was?  
 15 A That was September 7th I do believe.  
 16 Q Okay. Now the day before he took his moose do you have  
 17 a memory of what the weather was like?  
 18 A Yeah, it -- it was pretty much fog. Pretty much right  
 19 to the ground until, you know, early afternoon.  
 20 Q And on that day, the day before Mr. Jayo got his moose,  
 21 do you recall when it was that Mr. Haeg first flew that  
 22 day?  
 23 A I don't -- I don't recall the exact time, but not, you  
 24 know -- you know, like I -- like I said, you know, right  
 25 around noon I'd say.

- 1171 -

1 his guiding business from Trophy Lake, or otherwise, are  
 2 you familiar with what Mr. Haeg or other assistant  
 3 guides tell their clients about hunting same day  
 4 airborne?  
 5 A Yeah. When -- when a client shows up either Tom or the  
 6 head camp guy or a guide informs him that as soon as  
 7 you're -- you've flown that day you can't hunt until the  
 8 next -- the following day. That's why we generally fly  
 9 hunters directly out of camp so they don't lose a day so  
 10 they can hunt the next day, and, you know, they're --  
 11 they're definitely informed on that with a guide or with  
 12 someone at the lodge.  
 13 Q And are they also informed about the use of any kind of  
 14 radio or satellite telephone communication for hunting?  
 15 A Yeah, definitely. All the aspects of any kind of  
 16 communication with anybody dealing with any kind of  
 17 taking of the animals you're not allowed to do it and if  
 18 you do you're not allow to finish hunting that day.  
 19 You've got to pretty much stop hunting if someone  
 20 informs you from a plane or on any kind of  
 21 communications about any animal, so.  
 22 Q All right. Well, now I'd like to take you, Mr. -- I'd  
 23 like to take you, Jake, back to September of 2003 and  
 24 ask you if you remember a hunter that came to hunt with  
 25 Mr. Haeg's operation by the name of Doug Jayo?

- 1170 -

1 Q Some time after noon?  
 2 A Yes.  
 3 (Whispered conversation)  
 4 Q Now the day before Mr.....  
 5 (Whispered conversation)  
 6 Q The day before Mr. Jayo got his moose do you recall ever  
 7 seeing or flying with Mr. Haeg?  
 8 A Yes.  
 9 Q And seeing moose on Little Under Hill Creek?  
 10 A Yes, I did.  
 11 Q And what were the sexes of any moose that you saw, and  
 12 how many?  
 13 A I remember seeing two bulls and three to four cows.  
 14 Q Okay. And do you know where on that day Mr. Zellers and  
 15 Mr. Jayo were camped?  
 16 A Dave pointed out to me where they're at.  
 17 Q Okay. And where were they located, these bulls and cows  
 18 that you saw from where Mr. Zellers and Mr. Jayo were  
 19 camped there?  
 20 A The -- the moose were down river a couple miles. I'm  
 21 not -- I'm not good at saying the exact miles, but they  
 22 were down river a couple miles from -- from their camp.  
 23 Q Okay. And did Mr. Haeg ever tell you that he was  
 24 thinking of moving Zellers and Mr. Jayo closer to the  
 25 moose later that evening?

- 1172 -

1 A Yes, he did.  
 2 Q And do you know if he did so?  
 3 A No, he did not because Tony -- when Dave talked to Tony  
 4 that night, Tony said it was such good walking down to  
 5 where the moose were that they'd just stay at their camp  
 6 that night.  
 7 Q All right. Now on the day, September 7th, that Mr. Jayo  
 8 did have a moose, what was the weather like that day,  
 9 when he got his moose?  
 10 A The -- the day that he got his moose?  
 11 Q Right.  
 12 A It was clear and sunny and hot.  
 13 Q Okay. And was there good visibility flying?  
 14 A It was unlimited visibility.  
 15 Q All right. Do you remember -- did you -- were you  
 16 involved at all on September the 7th in packing moose  
 17 for Mr. Jayo?  
 18 A Yes, I was flown in to pack the moose out.  
 19 Q All right.  
 20 THE COURT: Just a moment, I've got to change tapes here.  
 21 It's about ready to end, so -- hang on just a minute, Mr.  
 22 Jedlicki.  
 23 A Okay.  
 24 (Off record)  
 25 1209

- 1173 -

1 (Tape change)  
 2 4MC-05-25/Side A  
 3 0000  
 4 THE COURT: .....September 29th at about 4:30. Mr.  
 5 Jedlicki is on the phone, Mr. Robinson is questioning. Go  
 6 ahead, Mr. Robinson.  
 7 MR. ROBINSON: All right.  
 8 Q How did you happen to help -- how do you happen to get  
 9 to where you could help Mr. Jayo pack his moose that he  
 10 got.....  
 11 A Dave flew me in.  
 12 Q All right. Do you know about what time it was that Mr.  
 13 Haeg flew you to where you were going to help pack the  
 14 moose out?  
 15 A No, I don't.  
 16 Q Well, was it in the morning, afternoon, do you remember?  
 17 A I would say that -- I really honestly don't know.  
 18 Q All right. Do you recall flying on that day for some  
 19 other reason other than helping Mr. Jayo pack his moose  
 20 out?  
 21 A Yes, I was flown down to a camp that we call Rock Creek  
 22 and I flew down there to help another guide put metal on  
 23 the outside of a wall tent.  
 24 Q And was that steel siding?  
 25 A It was -- it's steel roofing that we just -- we wrap

- 1174 -

1 around wall tents to keep animals out.  
 2 Q And was that transported down to Rock Creek in the plane  
 3 by Mr. Haeg and yourself?  
 4 A Yes.  
 5 Q Okay. And did you do that before you helped Mr. Jayo  
 6 pack his moose out?  
 7 A No, that was after.  
 8 Q Okay. So give me a -- sort of a chronology of how it  
 9 was that you started and that you flew with Mr. Haeg  
 10 that day either to do the -- carry the steel siding or  
 11 help Mr. Jayo pack his moose?  
 12 A Dave flew me down to help pack out Mr. Jayo's moose.  
 13 Flew down there to take -- you know, made two packs back  
 14 to where Dave landed, and Dave flew back to the lodge a  
 15 couple times to drop off meat, and then Dave picked me  
 16 up from where I was packing out the moose, and flew me  
 17 down to Rock Creek.  
 18 Q Okay. When you were flown in to help pack out the  
 19 moose, other than Tony Zellers and Mr. Jayo was there  
 20 somebody else there?  
 21 A Yeah, Drew Hilderbrand.  
 22 Q Drew Hilderbrand. And who's he?  
 23 A He -- he was another packer. Me and Drew was the  
 24 packers that year.  
 25 Q All right.

- 1175 -

1 A And he guides for Dave now.  
 2 Q So how did he get over to where Mr. Jayo and the moose  
 3 meat were so he could help pack it out?  
 4 A By Dave's plane.  
 5 Q So Dave flew him over there, too?  
 6 A What's that?  
 7 Q So Mr. Haeg flew Drew over to also help Mr. Jayo pack  
 8 out the moose on the 7th of September?  
 9 A Yeah.  
 10 Q All right. Do you remember where you landed in  
 11 relationship to the moose that you were going to help  
 12 pack out?  
 13 A Probably -- probably (coughing) -- excuse me. Couple  
 14 hundred yards to -- south of it. (Coughing)  
 15 Q Okay, go ahead and cough, Mr. -- finish coughing.....  
 16 A (Coughing) Excuse me, I'm having a coughing attack here.  
 17 Q Clear your throat.  
 18 A Couple hundred yards south of where the moose was  
 19 dropped.  
 20 Q All right. And do you know how far that was from where  
 21 Mr. Zellers and Mr. Jayo were camped at?  
 22 A I'm not -- I'm not exactly sure miles -- mileage-wise,  
 23 but a couple miles.  
 24 Q All right. From where you saw when you helped packed  
 25 the moose out, was that pretty much the kill site?

- 1176 -

1 A Yes, it was the kill site, right on the edge of the  
 2 Under Hill Creek.  
 3 Q Okay. Do you remember whether it was north or south of  
 4 the creek?  
 5 A I didn't hear you.  
 6 Q Do you remember whether it was north or south side of  
 7 the creek?  
 8 A It was the south side of the creek.  
 9 Q Now when you went out to help pack out this moose did it  
 10 appear to you that that moose had been shot that day on  
 11 the 7th of September?  
 12 A Definitely, because the moose was still warm. The --  
 13 the meat was still hot, the blood was hot. The white  
 14 (indiscernible) were really thick because -- because it  
 15 was a fresh kill.  
 16 Q And after the moose was prepared to pack out were there  
 17 any photographs taken of the kill site or the moose at  
 18 the kill site?  
 19 A Yeah. When -- when Drew -- Drew and I hiked up to where  
 20 Tony and Mr. Zellers [sic] was at, we were there when  
 21 they were finishing up taking their pictures.  
 22 Q Okay. And was there some reason to have to wait for  
 23 pictures to be taken?  
 24 A That I'm not sure, I don't see why there would be. I  
 25 think they were taking pictures because it was -- it was

- 1177 -

1 that recent of a kill.  
 2 Q Okay. And so how did the moose get transported from the  
 3 kill site to -- well, did the moose get transported from  
 4 the -- the moose meat and cape and antlers and whatnot,  
 5 get transported from the kill site back to the lodge at  
 6 Trophy Lake?  
 7 A Yes, it did, in Dave's plane.  
 8 Q Okay. And who all helped pack it from the kill site to  
 9 back to the lodge?  
 10 A It was Drew -- it was Drew, Tony and I.  
 11 Q And do you know whether or not he flew Mr. -- he flew  
 12 Zellers back out to Under Hill Creek after the stuff was  
 13 packed into -- after the moose was packed into Trophy  
 14 Lake?  
 15 A No, he did not. Drew -- Mr. Zellers and Mr. Jayo hiked  
 16 back up to their camp.  
 17 Q All right. So that was after the moose was packed  
 18 (indiscernible)?  
 19 A Yes, yes.  
 20 Q All right. And then where did you go after the moose  
 21 was taken care of?  
 22 A I was flown down to Rock Creek.  
 23 Q And that was to help with the steel siding for the tents  
 24 at Arthur's(indiscernible)?  
 25 A Yes.

- 1178 -

1 Q In the time that you have known Mr. Haeg, Jake, what is  
 2 your opinion about his character?  
 3 A He is one of the most honest guys I've ever met. He's  
 4 very genuine. I mean he's one of the most stand up  
 5 characters I've ever met.  
 6 Q All right. Thank you.  
 7 MR. ROBINSON: I don't have any further questions now.  
 8 Right now.  
 9 THE COURT: Thank you, Mr. Robinson. Mr. Leaders?  
 10 MR. LEADERS: Thank you.  
 11 JOHN JEDLICKI  
 12 testified as follows on:  
 13 CROSS EXAMINATION  
 14 BY MR. LEADERS:  
 15 Q Mr. Jedlicki, how many moose did Mr. Haeg's clients take  
 16 September of 2003?  
 17 A I'm thinking around eight.  
 18 Q What days were they taken?  
 19 A I have no idea.  
 20 Q And how many of those moose did you pack out?  
 21 A Three of them, I think.  
 22 Q Okay. The three that you packed out, which days were  
 23 they taken?  
 24 A I have no idea except for September 7th when I helped  
 25 pack out Mr. Jayo's moose.

- 1179 -

1 Q Okay. Why is it that you particularly remember  
 2 September 7th and Mr. Jayo's moose but none of the  
 3 others?  
 4 A Because it's one hunt that -- that was brought up two  
 5 years later after the fact.  
 6 Q So it's not based on your memory of what happened but  
 7 it's based on your discussions with others about what  
 8 happened, correct?  
 9 A No.  
 10 Q Really? So no -- you had -- you've had no discussion  
 11 with anyone else that this hunt happened on September  
 12 7th of 2003?  
 13 A I've talked to other people, yes.  
 14 Q And you had an indepen -- and when did you talk with  
 15 these other people?  
 16 A Oh, probably almost a year ago now about it.  
 17 Q Okay. And you've never discussed with them the date  
 18 that it occurred?  
 19 A Yes, we have.  
 20 Q Okay. And when you discussed with it -- did you -- you  
 21 didn't have an independent recollection at that time  
 22 that it happened September 7th, 2003?  
 23 A I had a recollection it was -- it was between the 5th  
 24 and the 7th.  
 25 Q Okay. And -- but the other several moose or the other

- 1180 -

1 two that you packed out you don't have a recollection as  
 2 to any dates or times. is that correct?  
 3 A I -- I mean the -- the first one I packed out was right  
 4 around, you know, the beginning of the month and the  
 5 second one is -- I have no idea.  
 6 Q Okay. And -- so then I assume you also don't have  
 7 recollection as to the details of what time and those  
 8 types of things, right?  
 9 A Well, I -- yeah. I got better recollection of time for  
 10 the other two moose.  
 11 Q Oh, okay. You have recollection as to the weather  
 12 conditions for each of the other moose that Mr. Haeg's  
 13 clients took?  
 14 A Definitely.  
 15 Q Definitely?  
 16 A Yes.  
 17 Q Okay. You said there were seven or eight of them. What  
 18 were the weather conditions on the other days?  
 19 A Well, I -- I only packed out three so I wouldn't know  
 20 the other ones.  
 21 Q Oh, okay. The -- you wrote this down then on a calendar  
 22 somewhere or something? You documented it in some way  
 23 that it was September 7th?  
 24 A No.  
 25 Q Okay. The -- oh, Mr. Haeg when -- okay, so it sounds  
 - 1181 -

1 like you assist Mr. Haeg as he flies in locating moose?  
 2 A I have before.  
 3 Q Okay. In fact, you were according to you -- what days  
 4 did you fly with Mr. Haeg to locate moose in September  
 5 of 2003?  
 6 A I only remember one time and that was the 6th of  
 7 September.  
 8 Q Okay. And you documented that date in some way?  
 9 A No, it's all by remembrance.  
 10 Q Okay. That's just -- and that's built up from talking  
 11 with others about the day that the -- Mr. Jayo is  
 12 alleged to have taken his moose and that type of thing,  
 13 right?  
 14 A No.  
 15 Q Okay. September 6th sticks in your mind as the day you  
 16 flew that year?  
 17 A Yeah, because that was -- you know, it was my first year  
 18 of packing out and that was a big deal to me, to be able  
 19 to spot moose with Dave.  
 20 Q Okay. You had never done it before?  
 21 A No.  
 22 Q Okay. Did you do it after that? I mean have you -- or  
 23 is this the only time you've ever spotted moose with  
 24 Dave?  
 25 A That year that was the only -- only time.  
 - 1182 -

1 Q Okay. How about in subsequent years? After that you  
 2 became a guide for him, right?  
 3 A Yes.  
 4 Q And so do you go up spotting.....  
 5 A This year I've probably seen a couple moose, I spotted a  
 6 couple moose with him or.....  
 7 Q So this year you've done it as well a couple times?  
 8 A Yeah.  
 9 Q Okay. And so his method is to do an S pattern, right?  
 10 A Correct.  
 11 Q Okay.  
 12 A Correct.  
 13 Q Now -- and that's from about what altitude?  
 14 A About 1,000 feet.  
 15 Q Okay. Now could some -- and I assume back in 2003,  
 16 especially the first time you do it, it can be hard to  
 17 locate moose. I mean on the ground from that altitude  
 18 even, until you know what you're looking for, right?  
 19 A No, because if you get lower you can't see them.  
 20 Q Okay.  
 21 A Because you're too low to -- you're too low to the  
 22 ground to see them.  
 23 Q Okay.  
 24 A So 1,000 feet is the altitude that you spot animals at.  
 25 Q Okay. But it can -- none -- whatever the altitude it  
 - 1183 -

1 can still be difficult to see them until you're somewhat  
 2 experienced.....  
 3 A Right, if you don't have an eye for detail you won't see  
 4 any animals.  
 5 Q Okay. Now once Mr. Haeg spots them does he break his S  
 6 pattern or does he continue that? Does he circle the  
 7 moose or not?  
 8 A No, he keeps his S pattern to see if there's any other  
 9 ones in the area.  
 10 Q Okay. Okay. He won't circle to confirm or view the  
 11 size of the antlers or anything like that?  
 12 A Well, sometimes he will circle at that altitude, at  
 13 1,000 feet to determine the size or how many animals are  
 14 in that area.  
 15 Q Okay.  
 16 (Whispered conversation)  
 17 MR. LEADERS: No further questions.  
 18 THE COURT: Anything else, Mr. Robinson?  
 19 MR. ROBINSON: Yeah.  
 20 JOHN JEDLICKI  
 21 testified as follows on:  
 22 REDIRECT EXAMINATION  
 23 BY MR. ROBINSON:  
 24 Q Jake.....  
 25 A Yes.  
 - 1184 -



1 Q In the hunting season from Trophy Lake Lodge in 2003,  
 2 how many times did you go down to Rock Creek to help  
 3 Arthur with putting up steel siding?  
 4 A Only once.  
 5 Q And would that have helped you remember when it was that  
 6 you helped to pack out Mr. Jayo's moose because that was  
 7 the same day you went down to help Arthur with the steel  
 8 siding?  
 9 A Yeah, that -- that's only because that was the only camp  
 10 that I wrapped in steel. In fact, excuse me, that was  
 11 -- there was two camps I wrapped in steel and that was  
 12 the only camp that Arthur was at where I wrapped steel,  
 13 so definitely I knew that date.  
 14 MR. ROBINSON: No further questions.  
 15 JOHN JEDLICKI  
 16 testified as follows on:  
 17 RECROSS EXAMINATION  
 18 BY MR. LEADERS:  
 19 Q So wrapping steel around a tent with Arthur was such a  
 20 significant even that you would remember September 6th?  
 21 MR. ROBINSON: 7th.  
 22 Q Or 7th?  
 23 A Correct. No, it wasn't September 6th, it was September  
 24 7th.  
 25 Q Okay. That wrapping the tent was such a significant

1 go ahead and hang up then, sir, thank you.  
 2 A Thank you.  
 3 THE COURT: Let's come back at five after.  
 4 MR. ROBINSON: All right.  
 5 (Off record)  
 6 THE COURT: Okay, we're back on record.  
 7 MR. ROBINSON: At this time, Your Honor, I'd like to call  
 8 Tom Stepnosky.  
 9 MR. HAEG: He's on the phone.  
 10 MR. ROBINSON: Oh, he's on the phone. Well, then I'll  
 11 call Drew Hilterbrand.  
 12 THE COURT: All right. Go ahead. Mr. Hilterbrand? Come  
 13 on up. Yeah, -- Trooper Gibbens, would you just -- or Mr.  
 14 Hilterbrand, you can just back that chair off a little bit.  
 15 (Whispered conversation)  
 16 THE COURT: Face it more towards me. That's good. But  
 17 now I'm going to make you stand up again, and raise your  
 18 right hand.  
 19 (Oath administered)  
 20 MR. HILTERBRAND: I do.  
 21 THE COURT: Okay. Now you can be seated.  
 22 DREW HILTERBRAND  
 23 called as a witness on behalf of the defendant, testified as  
 24 follows on:  
 25 DIRECT EXAMINATION

1 event you would remember that day, as September 7th?  
 2 A Correct.  
 3 Q Okay.  
 4 MR. LEADERS: No further questions.  
 5 JOHN JEDLICKI  
 6 testified as follows on:  
 7 REDIRECT EXAMINATION CONTINUED  
 8 BY MR. ROBINSON:  
 9 Q Well, not only did you wrap steel siding that day you  
 10 also helped pack moose meat the same day, right?  
 11 A Yes, because I packed moose out towards the beginning or  
 12 the middle of the day and then I was flown down there to  
 13 Rock Creek to help Arthur out with the steel.  
 14 Q All right. So it was a combination of those things that  
 15 helps you remember about the day of September the 7th?  
 16 A Correct.  
 17 MR. ROBINSON: No further questions.  
 18 THE COURT: That's enough, isn't it?  
 19 MR. LEADERS: Yeah, I don't want to repeat any more about  
 20 (indiscernible) September 7th.  
 21 THE COURT: Can we excuse Mr. Jedlicki?  
 22 MR. ROBINSON: Yeah. Can we take a little break, too,  
 23 Your Honor, to.....  
 24 THE COURT: Yeah. Thank you, Mr. Jedlicki, that's all  
 25 we're going to do this afternoon or evening, almost. You can

1 THE COURT: And please state your name and spell your  
 2 first and last name for the record, please.  
 3 A Okay, the name is Drew Hilterbrand. It's D-r-e-w H-i-l-  
 4 t-e-r-b.....  
 5 THE COURT: P-e-r?  
 6 A t-e-r.  
 7 THE COURT: T-c-r, sorry.  
 8 A B-r-a-n-d.  
 9 THE COURT: Okay. Mr. Robinson?  
 10 BY MR. ROBINSON:  
 11 Q Yeah, Mr. Hilterbrand, where do you live?  
 12 A The last couple years it's been mostly out at Silver  
 13 Salmon Creek, west side of Cook Inlet.  
 14 Q All right. And before that where did you live?  
 15 A Ninilchik and originally I'm from Texas.  
 16 Q How long have you been in Alaska?  
 17 A About seven, eight years.  
 18 Q And how old are you?  
 19 A I'm 22.  
 20 Q And did you get educated in Alaska?  
 21 A I was home schooled. I -- the first three years I was  
 22 up here about six to eight months a year commercial  
 23 fishing and that sort of thing.  
 24 Q And did you wind up with a diploma or GED?  
 25 A I got a GED.

1 Q Do you know Dave Haeg?  
 2 A Yes.  
 3 Q And how do you know him?  
 4 A Met him through a mutual friend, Arthur Schwartz.  
 5 Q And for how long have you known him?  
 6 A It's probably been three, three and a half years or so.  
 7 Q In the time that you've known Mr. Haeg have you done any  
 8 work with him?  
 9 A Yes, I have.  
 10 Q And what kind of work have you done?  
 11 A Started out as a packer for him and then got my  
 12 assistant guide license and I've guided for him a couple  
 13 seasons.  
 14 Q When did you start out as packer?  
 15 A I believe in fall, August -- August 27th of '03.  
 16 Q And have you been at Mr. Haeg's lodge located on Trophy  
 17 Lake?  
 18 A Yes, I have.  
 19 Q And have you worked with Mr. Haeg in connection with his  
 20 operations for hunting and guiding out of that area?  
 21 A Yes. The fall hunting season of '03 I packed and then  
 22 this last season, or this fall I guided some out there.  
 23 Q Do you know of a person by the name of Mr. Powers, Ken  
 24 Powers?  
 25 A I'm familiar with the name.

- 1189 -

1 Q And how are you familiar with him?  
 2 A I basically know that he has a camp out south of Trophy  
 3 Lake Lodge, and does some guiding out there.  
 4 Q In addition to the facilities that Mr. Haeg has at  
 5 Trophy Lake.....  
 6 A Uh-huh (Affirmative).  
 7 Q .....up in the lodge area. Back in 2003 you were  
 8 packing. Were there any other hunting camps associated  
 9 with Mr. Haeg's operations other than the one at Trophy  
 10 Lake?  
 11 A Off to the south there's probably, I don't know, I'd say  
 12 half a dozen established spike camps and then we have  
 13 some more up to the north.  
 14 Q In order for Mr. Haeg to get to these other spike camps  
 15 from Trophy Lake is it necessary to fly near or over Mr.  
 16 Powers' camp?  
 17 A Pretty near because it's almost a direct line with some  
 18 of our southern camps from the lodge.  
 19 Q In the time that you worked for Mr. Haeg has he looked  
 20 for moose on Little Under Hill Creek?  
 21 A Yeah.  
 22 Q And have you helped him look for moose on Little Under  
 23 Hill Creek?  
 24 A Yes.  
 25 Q And when that is done and if it was done in the hunting

- 1190 -

1 season or the fall of 2003, how is that done?  
 2 A Generally we're flying over the area around 1,000 feet,  
 3 you know, give or take a little bit. Usually you kind  
 4 of follow an S pattern through a valley, a flat,  
 5 something like that or where we're looking, just to kind  
 6 of check out the area.  
 7 Q In the time that you have worked with Mr. Haeg have you  
 8 ever seen or heard or know of Mr. Haeg to help any of  
 9 his hunters take moose the same day airborne?  
 10 A No.  
 11 Q Have you ever heard of or seen Mr. Haeg chase or disturb  
 12 moose with his airplane?  
 13 A No.  
 14 Q What is the -- in your experience having flown with Mr.  
 15 Haeg in looking for moose, what is the possibility or  
 16 probability to be able to chase the moose with the  
 17 airplane?  
 18 A Very small.  
 19 Q And why is that?  
 20 A They're not especially bright animals. To them an  
 21 airplane doesn't make that much difference, especially,  
 22 you know, at the height you're usually flying, but even  
 23 at low altitudes they generally just look at you as you  
 24 pass over and go on about their business.  
 25 Q In the time that you have worked with Mr. Haeg out at

- 1191 -

1 this Trophy Lake Lodge operation, have you ever seen or  
 2 heard of him flying directly over Mr. Powers' hunting  
 3 camp?  
 4 A Not intentionally, no. Other than accessing the  
 5 southern camps.  
 6 Q Well, have you ever seen or heard of Mr. Haeg  
 7 intentionally flying near any hunters that are hunting  
 8 from Mr. Powers' camp?  
 9 A No.  
 10 Q If you're flying at a distance of a height of 1,000 to  
 11 1,200 feet, what's the likelihood that you're going to  
 12 see hunters on the ground?  
 13 A Not too likely unless they're exposing themselves on a  
 14 ridge or knoll, something like that.  
 15 Q Are you familiar with anything that the hunters are told  
 16 in Mr. Haeg's operation before they go hunting regarding  
 17 same day airborne hunting and using radio communications  
 18 for hunting?  
 19 A I know that we always either, you know, the camp manager  
 20 or us as guides go brief them on the fact that they  
 21 can't hunt the same day they've flown. We can't use the  
 22 radios that we have. They're basically for emergency  
 23 communication use or satellite phones to relay  
 24 information from Dave or anybody else about the  
 25 whereabouts of animals.

- 1192 -

1 Q Well, I'm going to take you back to September of 2003  
 2 and ask you if you remember a hunter that hunted with  
 3 Mr. Haeg's operation by the name of Doug Jayo?  
 4 A Yes, I do.  
 5 Q And do you recall about when it was that he was hunting?  
 6 A I know it was -- I -- he flew out to start hunting. He  
 7 was with us-- our operation, for about 16 days I  
 8 believe. Flew out for some brown bear hunting around  
 9 the same time that I went out to Trophy Lake, so -- and  
 10 the beginning of September somewhere around there. And  
 11 then after he had done some brown bear hunting he went  
 12 and started moose hunting, somewhere in the first week  
 13 of September.  
 14 Q Do you know of a place called Kenny's Strip?  
 15 A I'm familiar with it, flown over it.  
 16 Q What is it?  
 17 A It's basically somewhat of a spike camp strip we use to  
 18 camp out.  
 19 Q Did you ever become aware that Mr. Haeg moved Mr.  
 20 Zellers and Mr. Jayo to the Kenny's Strip for the  
 21 purpose of hunting moose?  
 22 A I know he had said something about that, what he had to  
 23 do from there.  
 24 Q Do you recall ever -- do you ever recall Mr. Jayo  
 25 actually getting a moose during this hunt?

- 1193 -

1 A Yes, he did.  
 2 Q And do you remember about when that was he got the  
 3 moose?  
 4 A Not for sure. Somewhere, like I said, the week -- I  
 5 believe the first week of September, roughly.  
 6 Q The day before Mr. Jayo got his moose do you recall what  
 7 the weather was like?  
 8 A The day before I believe it was pretty foggy in the  
 9 morning.  
 10 Q And do you know whether or not on -- in the morning on  
 11 that day before Mr. Jayo got his moose that Mr. Haeg did  
 12 any flying?  
 13 A No, he wasn't, it was pretty much fog.  
 14 Q Did you help pack the moose that Mr. Jayo got?  
 15 A Yes, I did.  
 16 Q What was the weather like that day that you helped them  
 17 pack the moose?  
 18 A It was basically clear blue, it was a nice day.  
 19 Q On the day that Mr. Jayo got his moose do you recall Mr.  
 20 Haeg flying that day?  
 21 A He did. He was headed to one of our southern camps,  
 22 Rock Creek, to take some steel down there for one of the  
 23 guides to put on a tent.  
 24 Q If you can recall, do you remember about what time of  
 25 day it was that -- on the day that Mr. Jayo got his

- 1194 -

1 moose that Mr. Haeg first flew?  
 2 A I would think it was around 8:30, maybe 9:00 o'clock  
 3 when he took off. Could have been a little earlier.  
 4 Q A.m. or p.m.?  
 5 A A.m.  
 6 Q And that was to take the steel down to Arthur's place?  
 7 A Yes.  
 8 Q And where were you when Mr. Haeg took off to take the  
 9 steel and stuff down to Arthur's camp?  
 10 A I was back at the camp in one of the cabins, out cabins,  
 11 out buildings that I was staying in.  
 12 Q While you were there did you -- do you recall whether  
 13 Mr. Haeg got called back to the lodge to report that Mr.  
 14 Jayo had taken a moose?  
 15 A He did. I was actually -- when I heard Dave take off I  
 16 was on my way up to the main lodge building to get  
 17 breakfast and get the day started, and I heard him --  
 18 the latter part of his conversation with Tom that Doug  
 19 had taken a moose and he wanted a couple packers ready  
 20 to go down -- to meet them down at the strip.  
 21 Q And when you say Tom, who is that?  
 22 A The camp manager.  
 23 Q What happened after you heard the radio saying -- or you  
 24 heard the radio call saying Mr. Jayo had taken a moose?  
 25 A Tom basically re-emphasized what I had heard, said that

- 1195 -

1 Dave wanted me to meet him down at the strip. We were  
 2 going to unload the steel that he had, that he was  
 3 taking south, and he was going to pick me up, so I  
 4 gathered up my pack frame, that sort of thing. Went  
 5 down to the strip, gathered up some tools because he  
 6 said the area we'd probably have to land in needed a  
 7 little bit of improvement as far as for landing and  
 8 taking off.  
 9 Q So did Mr. Haeg come back to the lodge and fly back to  
 10 the lodge?  
 11 A Yes.  
 12 Q Did he pick you up?  
 13 A Yes.  
 14 Q What happened with the steel -- the steel that he was  
 15 going to take down to Arthur's camp?  
 16 A We unloaded it, left it at the strip. And -- for him to  
 17 pick up later, and then he loaded me up and we went on  
 18 down to where the moose was killed.  
 19 Q And about how long after you unloaded the steel siding  
 20 were you airborne again to go down to where the moose  
 21 was?  
 22 A A matter of minutes.  
 23 Q And how long did it take you to reach the kill site?  
 24 A Roughly I'd say around 10 minutes.  
 25 Q Do you remember what time of day it was?

- 1196 -

1 A It was morning, fairly early.  
 2 Q So did you get to the kill site?  
 3 A Yes.  
 4 Q How -- what -- did you land some place first?  
 5 A We landed on the sandbar. Dave asked me to do a few  
 6 improvements, move some rocks, cut a little bit of brush  
 7 so that it would be easier for him to, you know, land  
 8 again and take off, all that kind of thing.  
 9 Q When you got to the landing strip was there somebody  
 10 there when you landed?  
 11 A No, it was just me.  
 12 Q So what happened after he told you to clean up the area  
 13 for landing on the strip?  
 14 A He took off to go pick up Jake.  
 15 Q And where did you -- what did you do?  
 16 A I started doing the improvements, cut some alders and  
 17 willows and move some rocks.  
 18 Q Did you -- after you did that did you make contact with  
 19 Mr. Zellers and Mr. Jayo?  
 20 A No, I waited until Jake got there and we both headed up  
 21 to where the kill was.  
 22 MR. ROBINSON: I don't have an exhibit sticker over here.  
 23 THE COURT: There's one in our office. We'll get one  
 24 later.  
 25 Q I'm going to show you a photograph.....

- 1197 -

1 THE COURT: I don't know what number, we have too many.  
 2 MR. ROBINSON: Huh?  
 3 THE COURT: I said I don't know what letter we're up to  
 4 anyhow, we'll just.....  
 5 MR. ROBINSON: All right.  
 6 Q I want to show you a photograph, Mr. Hildebrand, and ask  
 7 you if you recognize that photograph?  
 8 A Yes, I do.  
 9 Q And who's in it?  
 10 A Me and Jake and Tony.  
 11 Q Now was that at the kill site?  
 12 A Yes, it was.  
 13 Q All right. Was there anything about the moose that  
 14 indicated to you whether that moose had been taken that  
 15 morning?  
 16 A I know it was a fresh kill.  
 17 Q How do you know that?  
 18 A No rigor mortis had set in, hadn't stiffened up, no  
 19 coagulated blood, the meat was still somewhat warm,  
 20 especially, you know, around the gut area. You know,  
 21 had all the earmarks of being a fresh kill.  
 22 Q So what happened after -- did Mr. Haeg go back and get  
 23 Jake and bring him back?  
 24 A Yeah, he did.  
 25 Q And what happened after Jake got back?

- 1198 -

1 A Well, like I said, he jumped out of the plane. Me and  
 2 him went up to the kill site. We -- Tony hadn't taken  
 3 pictures yet because it was still pretty early. He was  
 4 waiting for the sun to get up above the trees, you know,  
 5 where they had some good light, and when we got there  
 6 Dave had brought a camera to take some pictures, so when  
 7 we got there we took pictures and then about three of us  
 8 that worked for Dave and then Doug Jayo helped him  
 9 quarter the moose.  
 10 Q After Jake came to the landing strip and you and he went  
 11 up to the kill site where was Dave?  
 12 A I believe he headed back to the lodge.  
 13 Q And did he return at some time or another?  
 14 A After we had packed out the moose.  
 15 Q And did you use the airplane to pack the moose meat?  
 16 A Well, to -- we packed it, you know, on our backs from  
 17 the kill site to the sandbar and then transported it  
 18 from there to the lodge.  
 19 Q Okay. And how long did that take?  
 20 A Well, once we, you know, field dressed the moose and  
 21 everything, packed it out, I'd say it probably took a  
 22 few hours.  
 23 Q The place that you landed on the strip in relationship  
 24 to where the moose kill site was, about how far away  
 25 were those two areas?

- 1199 -

1 A The sandbar where we landed was roughly a quarter mile  
 2 downstream I'd say.  
 3 Q Did you know where Mr. Zellers and Mr. Jayo's hunting  
 4 camp was?  
 5 A We had -- I believe we had flown past it. Dave had  
 6 pointed it out earlier. I'd say close to three miles  
 7 upstream.  
 8 Q From the kill site?  
 9 A Yes.  
 10 Q Where did Mr. Zellers and Mr. Jayo go after the moose  
 11 was taken care of?  
 12 A They -- Tony had helped pack all the meat down to the  
 13 sandbar there. The last trip I took the cape and the  
 14 rack and they headed back to camp.  
 15 Q To their hunting camp (indiscernible)?  
 16 A Yes.  
 17 Q And then where did you go after the moose was taken care  
 18 of?  
 19 A I went back to the sandbar and the last trip we got, you  
 20 know, cape and rack and I think there might have been a  
 21 little bit of meat, maybe, and Dave flew me back to the  
 22 main camp.  
 23 Q At Trophy Lake?  
 24 A Yeah.  
 25 Q During the time that you've known Mr. Haeg.....

- 1200 -

1 A Uh-huh (Affirmative).  
 2 Q .....what would you say about his character? .  
 3 A I'd say it was impeccable. He's one of the most honest  
 4 people I've ever known. One of the few people I feel  
 5 like I -- I can really trust. and he's been fair in all  
 6 my dealings with him.  
 7 Q What is it. Mr. Hildebrand, that causes you to remember  
 8 that it was a nice clear day the day that Mr. Jayo took  
 9 his moose?  
 10 A I remember, you know, of course, like I said. The day  
 11 before it was foggy, so I remember, you know, getting  
 12 up, it was a real nice day. I remember flying into the  
 13 area, you know, where the kill was, you know, flying  
 14 past and landing. You know, there wasn't a cloud in the  
 15 sky. It was beautiful, you know, sunny day.  
 16 Q Was that sort of an unusual weather condition for the  
 17 time you've been out there hunting?  
 18 A Not especially, but, you know, when it's that clear, you  
 19 know, you generally remember it.  
 20 Q About how many other times have you packed moose  
 21 out.....  
 22 A I think I helped pack moose on maybe all but one or two  
 23 of the moose that we took that year.  
 24 Q And is there some reason why packing out Mr. Jayo's  
 25 moose on that day stands out in your mind?

- 1201 -

1 A No, it doesn't stand out any more than any of the  
 2 others.  
 3 Q Do you know of any other time that David was flying  
 4 steel siding to -- down to Rock Creek?  
 5 A No, just that one time.  
 6 MR. ROBINSON: I don't have any other questions.  
 7 THE COURT: Thank you. Mr. Leaders?  
 8 MR. LEADERS: Thank you.  
 9 DREW HILTEBRAND  
 10 testified as follows on:  
 11 CROSS EXAMINATION  
 12 BY MR. LEADERS:  
 13 Q So you -- that was the first I guess season you were  
 14 employed by Mr. Haeg?  
 15 A Right, yeah.  
 16 Q That was kind of a packer status, that's what you were  
 17 doing?  
 18 A Uh-huh (Affirmative). Yes.  
 19 Q You -- and then since then now you've become assistant  
 20 guide working under Mr. Haeg?  
 21 A Right.  
 22 Q And that's how you operated this last fall?  
 23 A Yes. Uh-huh (Affirmative).  
 24 Q And out of the same area then?  
 25 A Yes.

- 1202 -

1 Q The -- and you're still, I guess I assume -- assume  
 2 you've continued employment with Mr. Haeg?  
 3 A Yes.  
 4 Q You -- I guess you've indicated you packed out most of  
 5 the moose that his -- or assisted at least with most of  
 6 the moose his clients took that fall?  
 7 A A good portion of it.  
 8 Q A good portion. Okay. And nothing really in particular  
 9 about this day other than maybe there's this connection  
 10 with the metal that was transported?  
 11 A Oh, I know, you know, that night we fired up the hot tub  
 12 and filleted moose. It was -- it -- the day somewhat  
 13 stands out. It was somewhat different. It was a lot  
 14 more laid back or in between some hunters.  
 15 Q But in the sense of knowing what day in September it  
 16 was, nothing like that? I mean you.....  
 17 A I have never kept track of dates.  
 18 Q Okay. You're out there for a season, sometimes they  
 19 kind of run together?  
 20 A Yeah, I haven't carried a watch for maybe two years, so.  
 21 Q Okay. That's fair enough. Now -- but you particularly  
 22 remember, you know, the weather you said was clear and  
 23 sunny. Of course, that picture seems to corroborate  
 24 that certainly.  
 25 A Right.

- 1203 -

1 Q Do you specifically remember the weather from the day  
 2 before?  
 3 A I know it was foggy the day before, particularly in the  
 4 low lying areas. It was foggy at the lodge. I mean  
 5 that's where I was so I can't speak for other areas.  
 6 Q So those two days for some reason stick out weather-  
 7 wise?  
 8 A No, but that was the day you're asking about.  
 9 Q Well, I -- do you remember what the weather was -- how  
 10 many -- you were out there for how many days in 2003?  
 11 A Probably around three weeks. Two and a half weeks.  
 12 Q About three weeks?  
 13 A Yeah.  
 14 Q So in those approximately 20 some days do you recall  
 15 what the weather was those days?  
 16 A Yeah. I mean if you ask me about other packs and, you  
 17 know, that kind of thing, you know, I can tell you.  
 18 Q The -- so you remember specifically weather mostly  
 19 associated with the days you packed?  
 20 A Just in all. I mean I don't remember dates. If you ask  
 21 me, you know, what the weather was like on August 28th I  
 22 couldn't tell you, but you know if I went back and was  
 23 reviewing, okay, we had this pack this day and I can  
 24 remember in relation to what day it was.  
 25 Q Now -- but -- again, that's the weather kind of

- 1204 -

1 associated with that day that you're packing?  
 2 A Yeah, or any other activity that stands out.  
 3 Q Not so much the weather the day before, the day after,  
 4 that type of stuff, as you're doing specific activity?  
 5 A Yeah, well, you remember, you know, the day before, day  
 6 after, too. It all goes in one after the other.  
 7 Q Do you keep some type of weather journals?  
 8 A Not especially.  
 9 Q You don't know -- it sounds like you weren't present for  
 10 whatever happened prior to the kill?  
 11 A Right.  
 12 Q You've flown with Mr. Haeg while he's looking for moose?  
 13 A Yeah, on various occasions.  
 14 Q There's -- I assume you did in 2003 with him, some.....  
 15 A I believe I did a couple of times, yeah.....  
 16 Q You have since then as well?  
 17 A Yes.  
 18 Q And is that what we've heard described as his kind of S  
 19 pattern, that you said through valleys or wherever he's  
 20 going?  
 21 A Uh-huh (Affirmative).  
 22 Q That's the method he used -- or method he typically  
 23 uses?  
 24 A Most people I know. I've been with other people as  
 25 well, you know, looking for game for whatever reason,  
 - 1205 -

1 and most people generally follow that pattern.  
 2 Q And then when you find something you kind of circle it  
 3 and -- not always, but a lot of times?  
 4 A If -- I mean if you're flight seeing, yeah. But, you  
 5 know, generally hunting we won't specifically circle, we  
 6 might make a loop around, you know, a turn to get a  
 7 second look.  
 8 Q Don't try and determine whether or not it's a legal bull  
 9 or it's a trophy, that type of thing?  
 10 A If -- with -- if you have enough experience you can tell  
 11 at a glance, as long as it's legal, you know. You might  
 12 not know exact inches.  
 13 Q Yeah, but you can make that 49, 50, 51 inch  
 14 determination in just a glance from 1,000 feet?  
 15 A Roughly. I mean you could be wrong.  
 16 Q So are you saying -- I mean Mr. Jedlicki said it's  
 17 common for Mr. Haeg to circle. Not all the time, but  
 18 commonly?  
 19 A Like I said, you might make a loop, but you wouldn't  
 20 specifically circle (indiscernible).  
 21 MR. LEADERS: No further questions, Judge.  
 22 THE COURT: Anything else, Mr. Robinson?  
 23 DREW HILTEBRAND  
 24 testified as follows on:  
 25 REDIRECT EXAMINATION  
 - 1206 -

1 BY MR. ROBINSON:  
 2 Q In your experience, Mr. Hildebrand, did that moose that  
 3 you packed out been shot until roughly 24 hours before  
 4 say, between 8:30 to 8:00 or 9:30 the day before.....  
 5 A Uh-huh (Affirmative).  
 6 Q .....you packed it out? Would you have seen signs that  
 7 would have indicated a moose was not freshly killed?  
 8 A It would have stiffened up, you know. The blood  
 9 wouldn't have been free flowing. I mean we moved its  
 10 head around to get some, you know, better pictures, that  
 11 sort of thing. Generally, you know, if you kill it the  
 12 night before and you leave it and then come back, you  
 13 split the gut so it doesn't start to bloat, you know.  
 14 But I've seen plenty of dead animals in my life and it  
 15 was definitely a fresh kill.  
 16 MR. ROBINSON: No further questions.  
 17 THE COURT: Okay. Thank you, Mr. Hildebrand.  
 18 MR. ROBINSON: At this time I'd like to call Tom  
 19 Stepnosky.  
 20 THE COURT: Okay. Hang on one minute while I -- just a  
 21 second, I'm going to go ahead and change the tape now, that  
 22 way I don't have to stop in like two minutes and do it, so  
 23 I'll go off.....  
 24 0576  
 25 (Tape change)  
 - 1207 -

1 4MC-05-25/Side B  
 2 0608  
 3 THE COURT: Back on record.  
 4 (Oath administered)  
 5 MR. STEP NOSKY: I do.  
 6 THE COURT: Okay.  
 7 THOMAS J. STEP NOSKY  
 8 called as a witness on behalf of the defendant, testified as  
 9 follows on:  
 10 DIRECT EXAMINATION  
 11 THE COURT: Please be seated, and state your name and  
 12 spell your first and last name for the record, please.  
 13 A My name is Thomas J. Stepnosky, T-h-o-m-a-s, the last  
 14 name S-t-e-p-n-o-s-k-y.  
 15 THE COURT: Thank you. Mr. Robinson?  
 16 MR. ROBINSON: Yes.  
 17 BY MR. ROBINSON:  
 18 Q Yes, Mr. Stepnosky, where do you live?  
 19 A I live in Pennsylvania presently.  
 20 Q And how long have you lived in Pennsylvania?  
 21 A Since April 25th I'm sorry to say.  
 22 Q Of 2005?  
 23 A Yes, sir.  
 24 Q And where in Pennsylvania do you live?  
 25 A Northeast quadrant, Suskwahana County, a little rural  
 - 1208 -

1 area close to Camp Thompson, PA.  
 2 Q Before you moved this April to Pennsylvania, where did  
 3 you live?  
 4 A I lived in Soldotna.  
 5 Q For how long?  
 6 A Ten years.  
 7 Q And what is your occupation?  
 8 A Presently I'm more or less retired. I only worked for  
 9 my friend Dave Haeg during the hunting season.  
 10 Q And what did you do?  
 11 A Managed the camp, which means oversee maintenance around  
 12 the camp, I do all the cooking, paperwork, on the radio,  
 13 ordering supplies, hauling (indiscernible), many, many  
 14 things.  
 15 Q What kind of work did you do before you started working  
 16 with Mr. Haeg?  
 17 A How far back do you want me to go?  
 18 Q Well, the 10 years that you lived in Soldotna.  
 19 A Well, I moved up in '95, didn't do anything for a year.  
 20 Drove school bus for a couple years just for something  
 21 to do. Took another year or two off and then went to  
 22 work for the school district, it was like a 10 month job  
 23 so it was a nice summer job, all the holidays that the  
 24 kids get, you know, (indiscernible) and stuff like that.  
 25 Q What did you do for the school district?

- 1209 -

1 A I was a custodian/storekeeper/driver, whatever they  
 2 wanted me to do.  
 3 Q Did that for the entire time?  
 4 A No, I -- no, I -- prior to that I owned my own  
 5 businesses back in Pennsylvania for approximately 15  
 6 years and prior to that I worked as an electrician  
 7 almost 15 years.  
 8 Q So how many years have you worked with Mr. Haeg in his  
 9 hunting business?  
 10 A I have worked for him for four years.  
 11 Q And has -- has any of that work been involved in what  
 12 we've been calling the Trophy Lake Lodge hunting  
 13 operation?  
 14 A The biggest percentage of it, yes.  
 15 Q And for how many of those four years have you worked at  
 16 Mr. Haeg's lodge at Trophy Lake?  
 17 A Well, we gave up last year hunting, so this year and two  
 18 years prior to 2004. Well, we did '02, '03 and '05  
 19 seasons I've worked out at the lodge.  
 20 Q So in your times working with Mr. Haeg have you been  
 21 doing camp management?  
 22 A Yes.  
 23 Q And do you know whether Mr. Haeg has looked for moose on  
 24 Little Under Hill Creek?  
 25 A Oh, yes.

- 1210 -

1 Q Have you flown with him?  
 2 A Oh, yes, many times.  
 3 Q And when he does it how does that happen? What goes on  
 4 when you're out looking for moose at Little Under Hill  
 5 Creek?  
 6 A The particular area, Under Hill Creek, you know, it's  
 7 very snaky. Creek or river, whatever you want to call  
 8 it. And usually do S -- slow S turns on -- I don't look  
 9 at the altimeter when he's flying but I -- I would  
 10 guesstimate we're anywhere between 700 to 1,000 feet,  
 11 you know. Most of the time it's done in the evenings  
 12 because when the sun's out it's sort of hard to spot the  
 13 moose, okay, they don't stand out as well. And the  
 14 reason we do the S turns is because you know, he's  
 15 looking on one side, I'm looking on the other and then  
 16 you can look back and see the other side of the trees or  
 17 something that you can't see going forward or at a  
 18 certain angle, so that's why we do that, yeah.  
 19 Q In the time that you've worked with Mr. Haeg in his  
 20 hunting business have you ever seen or heard of him  
 21 knowingly help hunters take a moose the same day he was  
 22 airborne?  
 23 A Never.  
 24 Q Or have you ever heard or seen Mr. Haeg chase or disturb  
 25 a moose with his airplane?

- 1211 -

1 A I have never been with him or heard or -- and I do not  
 2 believe he would ever do that.  
 3 Q What is the possibility of chasing moose if you're  
 4 flying say at 1,000 feet?  
 5 A Of chasing a moose at 1,000 feet?  
 6 Q Yeah.  
 7 A Oblivious to what is going on. The area that we hunt  
 8 out there is a MOA, Military Operational Area, F-15  
 9 jets. I mean they fly over sometimes at 200 feet, sonic  
 10 booms all the time, so a little putt putt plane doesn't  
 11 disturb them at all. I could give you a prime example  
 12 this year. We were flying, looking for moose, doing the  
 13 S's, looked down and I don't know if we spotted it just  
 14 about the same time and we looked and the moose was laid  
 15 out on the ground with his chin laying down and a rack  
 16 like this and there was a cow off to the side somewhere  
 17 and Dave did circle, you know. And we went down a  
 18 little lower and the moose never even budged. And I  
 19 would say we got down to 300 feet, you know, and then  
 20 finally the moose just for some reason put his head back  
 21 down. I mean like totally undisturbed. I couldn't  
 22 believe it. We almost thought it was shot by somebody  
 23 and that's why we did go so low. We thought it had been  
 24 killed, but it was alive, and we didn't get it anyway.  
 25 Q Do you know Mr. Powers? Do you know of him?

- 1212 -

1 A I -- I know of him. I have never met the man. I know  
2 that he hunts in the area of what's -- what's called  
3 Triangle Lake, you know. I know -- I know he's out  
4 there, yeah.

5 Q Have you ever seen or heard of Mr. Haeg flying directly  
6 over or near Mr. Powers' main camp when he's hunting?

7 A Oh, yeah, of course. Near. We come over the ridge and,  
8 you know, we're low coming over the ridge and then a big  
9 drop off because of there's the valley down there and  
10 Triangle Lake. So -- like I say, I don't look at the  
11 altimeter but you know I could look down there and I  
12 could see a blue tarp that looks about yoah big, so you  
13 know I know we're up quite a ways. Never -- never, ever  
14 flew low over that lake or anywhere near that vicinity.  
15 The lower down on Under Hill, yes.

16 Q Okay. In the experience that you've had with Mr. Haeg,  
17 flying with him in his plane during hunting season have  
18 you ever heard or seen -- have you ever seen or heard of  
19 Mr. Haeg intentionally flying near any hunters that were  
20 using Mr. Powers' camp?

21 A No. No, -- you know, we -- we have our own little camps  
22 and -- and we do put some tents camp up and stuff like  
23 that. You know, I've seen other -- we call them locals  
24 out there, that will fly in and hunt the territory,  
25 which they're allowed to do and we even avoid them. You

- 1213 -

1 know, I've seen them land in -- in spots around areas  
2 where we hunt, and -- right.

3 Q In addition to that facility that Mr. Haeg had at Trophy  
4 Lake Lodge, what other hunting facilities are -- were  
5 you working with him during the hunting season in this  
6 area?

7 A Well, we have what we call the north camps and the south  
8 camps. North of the lodge, we have upper Babel, lower  
9 Babel, moose knolls and the ridge. They're like  
10 permanent camps, sort of. Out to the south we have  
11 Porcu Pit, Roger's Strip, the Rock, and Rock Creek down  
12 that way.

13 Q And during the hunting season what is the general  
14 practice that you have with Mr. Haeg in servicing these  
15 little spike camps?

16 A Initially we had radios whereas Mr. Haeg would have to  
17 actually get up in the air because -- I believe there's  
18 only one camp, like Moose Meadows. Sometimes if the  
19 guys get -- get up in tree stand on a high tree they  
20 could actually contact us. But the others can't --  
21 could never contact us so he would have to go up in the  
22 air, get some height, or -- yeah, if one of the guys was  
23 to see us coming by they'd call us first, and then  
24 that's how we'd get our supply chain. Hey, what do you  
25 need anything. Your meat, your bread, eggs, blah-blah-

- 1214 -

1 blah, you know. Or even tell us if they had game  
2 because otherwise we wouldn't know.

3 Q So how common is it then for him to fly back and forth  
4 to service these areas?

5 A Oh, very common. You know, very common.

6 Q Okay. With regard to information given to the hunters  
7 that Mr. Haeg has that he services out of the Trophy  
8 Lake area, what kind of information are they given  
9 about, if you know, given about same day airborne  
10 hunting and use of radios, or any communications during  
11 a hunt?

12 A Specifically that's my job. The hunters -- we call it  
13 turn-over day, it depends on the number of days of the  
14 hunts. So the hunters come in, sometimes Dave is not  
15 even at the lodge at that time. He might be out  
16 bringing other hunters in and go back, or whatever. So  
17 I gather them all up. The first thing I do is say hey,  
18 come on up to the lodge, have something to drink,  
19 something to eat. Please bring all your licenses up,  
20 your tags, you know, your reporting cards, all of that  
21 comes up to me, and then I have them fill out hunt  
22 records and then I tell them, okay, what we're going to  
23 do immediately after this is sight in the rifles because  
24 we're going to get you out in the field because if you  
25 don't get out today and we take you out tomorrow you

- 1215 -

1 can't hunt tomorrow because there's no same day airborne  
2 hunting. As specifically as far as radios I really  
3 don't tell the hunters anything because the guides are  
4 in control of the radios and they all know you cannot  
5 spot and use radios for hunting game, they know that.  
6 It goes without saying with our guides, anyway.

7 Q All right. Now I want to turn your attention to  
8 September of 2003.

9 A Uh-huh (Affirmative).

10 Q You were working as camp manager at Trophy Lake Lodge  
11 facility?

12 A Yes, I was.

13 Q And do you recall a hunter in that month that hunted  
14 with Dave's operation by the name of Doug Jayo?

15 A Yes, I do.

16 Q And do you recall whether or not he actually got a  
17 moose?

18 A Yes, he did get a moose.

19 Q Do you remember what day it was?

20 A I wrote it down on the hunt record as September 7th, and  
21 I wrote that down so I know it was September 7th. I  
22 know that it was a Sunday because my son's birthday is  
23 the 5th and that was a Friday, so.

24 Q I'm going to show you what's going to eventually be  
25 marked as Exhibit B. This is going to be B. The

- 1216 -



1 photograph.  
 2 THE COURT: What was that?  
 3 MR. ROBINSON: (Indiscernible) a picture of Jayo, but I  
 4 think I.....  
 5 THE COURT: Well, wait that -- well, we can restart them  
 6 for sentencing I suppose. We'll write that.....  
 7 MR. LEADERS: Do you want a double -- I think maybe like  
 8 whatever, EE or CC.....  
 9 THE COURT: Yeah, why don't we just -- why don't we do  
 10 them way just to make it easier. I'll get a sticker later so  
 11 that.....  
 12 MR. ROBINSON: Oh, okay.  
 13 MR. LEADERS: To keep separate from the trial.

14 THE COURT: I mean to take up later, so that -- yeah.  
 15 MR. ROBINSON: Well, we're going to call this one -- this  
 16 is going to be.....  
 17 THE COURT: B.  
 18 MR. ROBINSON: B. Right.  
 19 THE COURT: Okay. So we'll call it BB and that's CC.  
 20 MR. ROBINSON: CC, all right.  
 21 Q I want to show you what's eventually going to be marked  
 22 as Exhibit CC. And I'm going to ask you to identify  
 23 that.  
 24 A Yeah, this is the hunt record for Doug Jayo from Idaho.  
 25 And specifically right here under species hunted, moose.

- 1217 -

1 I wrote that down, that's my handwriting, 9-7-03. And  
 2 there's the guide use area, 19-07. Estimated meat and  
 3 where the location was, Under Hill River.  
 4 Q Now how was it that you happened to put the date,  
 5 September the 7th there?  
 6 A Well, there's only two people that mark the hunt  
 7 records. That's either Dave or me, okay. Specifically  
 8 when I know myself personally that the hunter got it or  
 9 heard it, however, you know, from Dave, I will write it  
 10 down because, you know, you've got things going on at  
 11 the lodge. Like I said, I do all the cooking and many  
 12 other things so I'm quite busy all the time. So I try,  
 13 you know, to stay on top of things and write things  
 14 down. That -- that particular day after looking at the  
 15 hunt record, I wasn't quite sure what day they got it,  
 16 but I looked at the hunt record and I knew I wrote that  
 17 down and I said, I remember that day because -- you  
 18 might be mad at me, boss, but he's sort of lazy in the  
 19 mornings. Specifically I get up and make coffee and  
 20 cook and stuff like that, and you know, we get the other  
 21 guys going. And he'll roll over and say, what's the  
 22 weather like. So, yeah. A lot of the days I'll flag  
 23 the old radio, whatever, but, you know, when there's a  
 24 nice day or blue skies, you know, hammer down, let's go,  
 25 and so I -- I specifically remember him getting up early

- 1218 -

1 and taking off. I'd say a little after 8:00 some time.  
 2 You know, to the minute or the half hour. I couldn't  
 3 say, but I know it was early. Which is unusual. And I  
 4 have this little routine with him when he flies off, you  
 5 know, as he's going away I give him a couple words of  
 6 encouragement like black eye, or whatever,  
 7 (indiscernible) he'd say. And he gone and I watched go  
 8 over the ridge heading towards the south, and then I  
 9 heard some chatter on the radio, you know. Most of the  
 10 times I could -- I hear his end of the conversation but  
 11 whoever is talking to him, you know, I -- I really don't  
 12 hear it. But I heard the chatter go on for a little bit  
 13 and I'm doing this, doing that and all of a sudden I  
 14 hear on the radio, Tom, you by -- you know, Tom, are you  
 15 by the radio. So I pick up the radio and he says hey,  
 16 Tony and Doug got a moose down there. I'm coming back,  
 17 I'm going to need a packer, blah-blah-blah, and I knew  
 18 he was headed to Rock Creek because we had cut the  
 19 metal, pre-measured and cut all that metal and that's  
 20 where he was going, and that's Sunday. And Monday was  
 21 -- I believe it was turn-over day where the old hunters  
 22 were going out and the new ones are coming in so we were  
 23 trying to get that cabin done with a little down time in  
 24 between there. So he said, well, I'm coming right back,  
 25 I'll need a packer. And I said, I'll okay, I'll -- you

- 1219 -

1 know, I knew Drew was around somewhere and I got off the  
 2 radio with him, you know, there was Drew standing behind  
 3 me, you know, listening -- I don't what he heard. And I  
 4 said, well, Drew, get your stuff, you're going to go  
 5 packing down Under Hill Creek, Dave's coming back. Run  
 6 over to the strip, he's going to unload the metal and  
 7 psst, away he went. And specifically right after that  
 8 is when I wrote that down.  
 9 Q Wrote down September 7th date?  
 10 A Yes, I did.  
 11 Q About how much time was it after he took off with the  
 12 metal to go down to Rock Creek did you hear the chatter  
 13 on the radio and then Dave calling you back and saying,  
 14 hey, I need a moose packer?  
 15 A Yeah. You know, from the time he left, took off from the  
 16 strip and I seen him go over the ridge, you know, that  
 17 whole time span was 10 minutes or so, you know.  
 18 Chattered for a minute or two and then that's when he  
 19 called me. He said I was headed back, I need a packer.  
 20 Q From the time that he told you that he needed a packer  
 21 he was heading back, about how long was it before he  
 22 actually returned to the lodge?  
 23 A Oh, within 10, 15 minutes.  
 24 Q When he got back what did he ask you -- did he ask you  
 25 to do anything after he got back to the lodge?

- 1220 -

1 A Well, he actually called me, like he usually does when  
 2 he's real close, you know, hey, is Drew on his way, or  
 3 who's on his way, and I said, yeah, Drew's on his way  
 4 over, blah-blah-blah, and that was pretty much the  
 5 conversation, we were good to go.  
 6 Q Did -- so who did he -- did he then take off again that  
 7 day?  
 8 A Picked up Drew and took off and, yeah.  
 9 Q And did he come back af -- with Drew, without Drew,  
 10 after that?  
 11 A He came back and -- and got Jake, you know, and took  
 12 Jake there, and -- and I'm really not for sure that Jake  
 13 was at the lodge or he was at one of the close northern  
 14 camps or whatever, but I know he took Jake down there  
 15 eventually. That I know. And I knew the metal was  
 16 dropped off at the strip because I went over and picked  
 17 up some of the meat after it came back. Hauled it back  
 18 -- we haul it back over to the lodge. We had like a  
 19 meat shed where we hang stuff, so.  
 20 Q So you knew that the metal had been taken out of the  
 21 plane?  
 22 A Yeah, it was laying at the -- right next to the shed at  
 23 the strip when I got over there.  
 24 Q On how many occasions do you remember that fall season  
 25 that you actually hauled metal down to Arthur's place?

- 1221 -

1 A That's the only time that he was hauling metal down to  
 2 Rock Creek.  
 3 Q Before the 7th -- the day before the 7th when you filled  
 4 out that hunting record for the moose that Mr. Jayo  
 5 took, do you recall what the weather was like?  
 6 A The only way I can reflect on that would be to say that  
 7 I remember on the 7th, you know, it was such a clear day  
 8 because we're somewhat close to the Revelation Mountains  
 9 right there and the tendency is to have the fog or even  
 10 low weather be backed up against the mountain and it  
 11 can't get pushed over, so, you know, and he wasn't up  
 12 early, he wasn't going nowhere so that's usually like,  
 13 well, he needs good flying weather to do anything, you  
 14 know, for any reason, so -- but specifically I'd say the  
 15 high -- the biggest percentage of the day though, in the  
 16 mornings out there, there's low lying fog or low  
 17 ceilings or whatever, so, yeah, but specifically I -- I  
 18 would say -- I don't remember it being two days of clear  
 19 bright weather in a row. The day of -- the 8th was --  
 20 was decent enough because the hunters were -- the turn-  
 21 over came in, so....  
 22 Q That was a Monday?  
 23 A That was a Monday, yeah, so that was turn-over day, so  
 24 the plane was able to come down from Anchorage, so -- so  
 25 on and so forth.

- 1222 -

1 Q Now do you know a Trooper Gibbens?  
 2 A Yes, I do.  
 3 Q How do you know him?  
 4 A Oh, I met him at the -- Mr. Brent Cole's office when  
 5 Dave was doing a statement. Trooper Gibbens was there,  
 6 Mr. Leaders, Mr. Cole, myself, Dave.  
 7 Q Do you recall ever having any conversations with Trooper  
 8 Gibbens?  
 9 A Yes, I do.  
 10 Q And what was that about?  
 11 A I -- I did testify, you know, at the hearing somewhat.  
 12 He was asking -- I believe he was asking the questions.  
 13 And then after the testimony was over we left the  
 14 conference room and we were standing in the hall and I  
 15 remember me and Dave and Trooper Gibbens standing there  
 16 and talking, you know, about the situation, blah-blah-  
 17 blah, and I was particularly struck by a statement that  
 18 he made.  
 19 Q What was that?  
 20 A The statement was that the only good wolf is a dead  
 21 wolf. You know, Dave more or less was holding a  
 22 conversation with him, you know, he said, well, yeah, I  
 23 agree, too. You know. And then after that I had to go  
 24 relieve myself in the bathroom, Mr. Gibbens came in and  
 25 we chatted a little bit and I remember him specifically

- 1223 -

1 saying, boy, you know, I'd really like to sit down with  
 2 Dave when this is all over. I think highly of him, and  
 3 he's a great pilot, he's a good trapper, hunter, blah-  
 4 blah-blah. And that was more or less -- I totally  
 5 agreed with him.  
 6 Q Okay. In the time that you've known Mr. Haeg....  
 7 A Uh-huh (Affirmative).  
 8 Q ....have you developed any opinion about his character?  
 9 A Oh, yeah. Yeah.  
 10 Q What is that?  
 11 A Well, I -- I -- I don't look -- you know, he is my boss  
 12 when I'm working for him but I look at him as a friend,  
 13 you know, somebody I can call on. Highly ethical, you  
 14 know, and people try to say, you know, what you -- what  
 15 you do wrong all the time, well, that's what he does  
 16 right. We had a hunter in '02, Catch a Dream  
 17 Foundation. It's like Make A Wish for kids. He had the  
 18 hunter fly out from Pennsylvania. You know, I mean he  
 19 had to pay for his flight, but Dave gave him the hunts  
 20 for free. The kid got a caribou, a wolf. I believe he  
 21 had like cancer of the spine or something like that, you  
 22 know, the kid is 18 years old, had a great time, you  
 23 know. Out of the goodness of his heart. I mean he does  
 24 a lot of things. He helps his friends, he's -- he's  
 25 helped me, and I've told him many times. I said I'd be

- 1224 -

1 proud to have him as my son. And I'm probably old  
 2 enough to have made it, just about.  
 3 Q Of course, you're aware of the fact that he's been  
 4 (indiscernible) same day airborne hunting and....  
 5 A I'm well aware of that, yeah.  
 6 Q Does that change your opinion about....  
 7 A Not at all. We all make mistakes in our live. I have.  
 8 Q Anything else you might want to add (indiscernible)?  
 9 A I would just -- you know, life is a bitch and then we  
 10 die, but, you know, I would ask that the court be fair  
 11 and honest and really look at the big picture because,  
 12 you know, doing this guy in is not going to be  
 13 beneficial. It's going to be a big detriment. He's a  
 14 great pilot, a family man and a great person to work  
 15 for, highly ethical. Made a mistake, no doubt about it.  
 16 That's all I have to say.  
 17 MR. ROBINSON: I don't have anything further, thank you.  
 18 THE COURT: Thank you, Mr. Robinson. Mr. Leaders?  
 19 THOMAS J. STEP NOSKY  
 20 testified as follows on:  
 21 CROSS EXAMINATION  
 22 BY MR. LEADERS:  
 23 Q You said as far as kind of running the camp and dealing  
 24 with clients and stuff like that, it's your  
 25 responsibility to kind of -- or you take it on or  
 - 1225 -

1 whatever....  
 2 A Yes.  
 3 Q ....as far as making sure all the clients have  
 4 everything in order or tags, that type of stuff?  
 5 A Correct.  
 6 Q Then you go over kind of the law with them, make sure  
 7 they understand the same day airborne stuff?  
 8 A Yeah, and some are aware of it, you know, and some  
 9 aren't.  
 10 Q Like when you get foreign clients sometimes, they don't  
 11 know?  
 12 A Oh, yeah. They don't know, yes. Yes.  
 13 Q Okay. So you make sure -- you go over the pertinent  
 14 hunting rules and regulations?  
 15 A Right. Like what they need to take out in the field,  
 16 their license, you know, their reports. They've got a  
 17 little report sticker if they're hunting caribou or  
 18 moose, the metal band tags, all of that, and, you know.  
 19 Q Right. And, of course, the big no no's. You can't same  
 20 day airborne.....  
 21 A Right, right.  
 22 Q .....you can't -- there's information provided....  
 23 A And -- and truthfully a lot of them, especially the  
 24 foreigners who have flown many, many hours to get to  
 25 Alaska, you know, they -- they think they want to just  
 - 1226 -

1 come to camp and lay down and eat and drink and we'll go  
 2 hunting tomorrow.  
 3 Q Right.  
 4 A And -- and a lot of them are surprised that we say, hey,  
 5 fill out the hunt record stuff, you know, get all your  
 6 tags in order, sight your guns in, have something to eat  
 7 and drink because you're going bye-bye.  
 8 Q Right. But you said you really don't cover with them  
 9 the whole communications issue and the radio because  
 10 that's the guides have those, right?  
 11 A Yeah. Yeah. That -- they're -- they're not in  
 12 possession of the radios, so -- and the guides know.  
 13 I've heard Dave talk to the guides. I mean --  
 14 especially when, you know, I can say even myself. I  
 15 wasn't totally completely aware of all the rules before  
 16 I started -- first started working for him.  
 17 Q But that's just not something you really talk about with  
 18 the clients?  
 19 A No.  
 20 Q So when Mr. Jedlicki and Mr. Hilterbrand were saying  
 21 that's something, you know, they hear and understand,  
 22 it's covered, it's not coming from you who is the person  
 23 instructing these clients on the law?  
 24 A Who's instructing the clients?  
 25 Q Yeah, I mean, you know, what's applicable and what's  
 - 1227 -

1 not?  
 2 A Probably the guides, who -- whoever the guide is with  
 3 them. Yeah.  
 4 MR. LEADERS: No further questions.  
 5 THE COURT: Anything else?  
 6 MR. ROBINSON: No.  
 7 THE COURT: Okay. Thank you, Mr. Stepnosky.  
 8 A Thank you.  
 9 MR. ROBINSON: My next witness, Your Honor, is Tony  
 10 Zellers.  
 11 THE COURT: Okay. Mr. Zellers, raise your right hand.  
 12 (Oath administered)  
 13 MR. ZELLERS: I do.  
 14 THE COURT: Okay. Please be seated.  
 15 TONY ZELLERS  
 16 called as a witness on behalf of the defendant, testified as  
 17 follows on:  
 18 DIRECT EXAMINATION  
 19 THE COURT: Spell your -- excuse me -- first and last  
 20 name for the record, please.  
 21 A My name is Tony Zellers.  
 22 THE COURT: Spell it.  
 23 A Oh. Tony, T-o-n-y Z-e-l-l-e-r-s.  
 24 THE COURT: Okay. Thank you.  
 25 BY MR. ROBINSON:  
 - 1228 -

1 Q How you doing, Mr. Zellers?  
 2 A Hello.  
 3 Q You were a co-defendant with Mr. Haeg in the same day  
 4 airborne wolf case, right?  
 5 A That's correct.  
 6 Q And you've known Mr. Zellers, for quite some -- Mr.  
 7 Haeg for quite some time, correct?  
 8 A Correct; since '99 -- 1999.  
 9 Q And how many years have you worked with him?  
 10 A It was 1999 when I started working with -- with Dave,  
 11 so.  
 12 Q And you've worked with him out at Trophy Lake Lodge, the  
 13 facilities out there?  
 14 A Yes, I have.  
 15 Q I'd like to take your attention to September of 2003.  
 16 And ask you whether or not you were working with Mr.  
 17 Haeg then in connection with his operation at Trophy  
 18 Lake Lodge?  
 19 A Yes, I was. I was a guide for Mr. Haeg.  
 20 Q And during that time did you happen to guide for a  
 21 person by the name of Doug Jayo?  
 22 A Yes, I did.  
 23 Q And maybe you can tell me how it was that you just --  
 24 you happened to get hooked up with Doug?  
 25 A Dave usually makes the selections. He was on a bear and

1 moose combination hunt, where we started in August for a  
 2 brown bear. And then he (indiscernible) September for a  
 3 moose hunt and then we had two of them. Arthur Schwartz  
 4 was the other hunter, and Doug's an older guy and the  
 5 guy that Arthur had was about the same age as Arthur, so  
 6 I got paired with Doug. And I also met Doug earlier at  
 7 the -- I believe at the SCI convention where he booked  
 8 his hunt the year prior.  
 9 Q All right.  
 10 A (Indiscernible) January. So I already had a rapport  
 11 with Doug a little bit, as far as talking to him at the  
 12 shows.  
 13 Q Okay. Maybe you can tell Judge Murphy how it was that  
 14 you and Mr. -- well, first of all, did you and Mr. Jayo  
 15 hunt the moose in September 2003? Did you guys hunt the  
 16 moose?  
 17 A Yes, we did.  
 18 Q Maybe you can tell Judge Murphy how it was that you  
 19 began your hunt for moose with Mr. Jayo?  
 20 A Well, we began our hunt on a -- on a strip we call Far  
 21 West. We had probably been there for a couple days.  
 22 The moose that we were after -- we saw one sub-legal  
 23 bull or he was very close, 48 inches, something. I'm  
 24 not going to press. The bull we were actually after  
 25 that was camped below camp had vacated the area. We

1 never did see him. From there once the weather broke I  
 2 flew to another camp, what we call the Rock, which is  
 3 still south of Trophy Lake Lodge, to hunt another moose  
 4 in that area. I actually saw that moose from the  
 5 airplane. That day we got on the moose. We were  
 6 approximately 60 yards from him, but there -- Doug did  
 7 not have a shot he was comfortable with, and the moose  
 8 vacated the area. There were trees in the way to where  
 9 he could never get a shot, so basically we chased that  
 10 moose out of there. He was the only moose there. I  
 11 relayed that information to Dave.  
 12 Q How did you do that?  
 13 A I believe he was flying in and out of Rock Creek at the  
 14 time and so I just got a hold of him on the radio, on  
 15 his way by. When he was flying back toward Trophy Lake.  
 16 I said, hey, you know, we chased -- this moose vacated  
 17 the area, chased him out. Just to let him know so that  
 18 he can keep the hunts going. On another trip back he  
 19 stated that he found another moose for us on Little  
 20 Under Hill, and for us to pack up our stuff and we'd be  
 21 moving that evening.  
 22 Q Do you remember about when that -- in September that  
 23 was?  
 24 A That was September 5th.  
 25 Q So what happened on the evening of September 5th?

1 A September 5th, Dave picked me up and roughly half the  
 2 camp gear. We usually have two big tents. One for gear  
 3 and one to sleep in. And he flies me to what we call  
 4 Kenny's Strip on the Little Under Hill River, and I  
 5 start setting up camp. Meanwhile Dave takes off and he  
 6 flies back and picks up Doug and the rest of the camp  
 7 gear, and flies that in on Little Under Hill River in  
 8 the evening. It was fairly late in the evening, getting  
 9 dark.  
 10 Q So did you do any hunting after he dropped you and Doug  
 11 off?  
 12 A No, I got camp to set up and like I said, it was getting  
 13 dark quick, so.  
 14 Q So what happened after he dropped you off and you and --  
 15 dropped you guys off at Kenny's Strip for the evening?  
 16 Well, first, let me ask you this. Well, where did he  
 17 pick you up to take you to....  
 18 A He picked me up south of Little Under Hill, at the camp  
 19 we call the Rock. We flew to Kenny's Strip. The moose  
 20 that he had spotted were two bulls, that he -- him and  
 21 Jake had spotted, weren't far from Kenny's Strip. But  
 22 when I flew in there with Dave we did not see it, and we  
 23 landed and he had to hustle to get back to pick up Doug  
 24 because like I said, it was starting to get dark and it  
 25 was going to be getting dark fairly fast.

1 Q Okay. So after he picks up Doug and you guys set up  
2 camp, then what happened?  
3 A I mean I spent the night.....  
4 Q Dave -- what happened with Dave after he dropped you and  
5 Doug off?  
6 A Dave went back to -- to the main lodge, Trophy Lake  
7 Lodge.  
8 Q All right. So then what did you and Doug do?  
9 A Doug and I we had -- I cooked dinner and then we spent  
10 the night. The next morning we got up. I hiked down  
11 river, approximately a quarter mile, third of a mile to  
12 -- to the one Peninsula. We actually crossed the river  
13 right by camp. Supposedly that's where the bull was  
14 spotted. I called a little bit, we spent probably an  
15 hour, hour and a half there, waiting. Didn't hear  
16 anything, didn't see anything. We crossed the.....  
17 Q You said you called. What do you mean?  
18 A Called. I made grunts. I have a -- or that time I had  
19 the big, what we call moose horn, a white moose  
20 megaphone type call. So I would grunt and I would take  
21 this big white and I'd rake the trees. When you rake  
22 the trees it sounded more like antlers raking the tree,  
23 like a -- like a bull moose would be doing, tearing up  
24 brush. And after I did that for a little while Doug and  
25 I crossed the river again. We hiked down. There was a

- 1233 -

1 big opening away from the river and we wanted to get out  
2 there and take a look in case the moose were out in the  
3 open, so that's about a half mile, hiked over there. We  
4 didn't see anything. We hiked back to camp. We were  
5 back to camp about noon. We ate lunch. That was all  
6 downstream of camp. In the afternoon right there where  
7 we camp on Kenny's Strip there's a little stream that  
8 flows up river. The river, since it snakes it kind of  
9 goes north at that point and then there's a little  
10 stream that will go east. And it -- it goes up river.  
11 I hiked up there. We probably went half, three quarters  
12 of a mile. We were still in heavy brush. Not heavy.  
13 I've got a little bit of an opening, but not a whole  
14 lot, and I start to call again. I'm grunting, raking  
15 trees and -- and stuff like that to see if I can get a  
16 response. We didn't get any response and we were in  
17 there for a couple hours, two, three hours and then we  
18 start hiking back to camp. And we're -- we're back at  
19 camp.  
20 Q Now this was like the 6th of September, the next day  
21 after the 5th?  
22 A That's correct. That was the 6th.  
23 Q What was the weather like in the morning of the 6th?  
24 A The weather that morning was extremely foggy. Low  
25 clouds in -- in the valley. I got rained on again that

- 1234 -

1 day, for a brief shower. It cleared up in the  
2 afternoon. It started to break up around -- I'm going  
3 to roughly say 11:00 o'clock in the morning. It started  
4 to -- to get breaks in the clouds and then it would  
5 clear up toward late afternoon, evening, so.  
6 Q In the morning, say between the time you got up and  
7 11:00, 12:00 in the afternoon it started to clear up  
8 (indiscernible), was Dave flying around?  
9 A No, nobody. I didn't hear anybody flying.  
10 Q You didn't see him flying?  
11 A No, I did not see him flying at all.  
12 Q Now did you see him flying later on that day?  
13 A Yes, he did fly further out to the west of us usually he  
14 would skirt our camp to the west when we were there  
15 hunting, as he's going down to the south camps.  
16 Q Okay. And did he ever land?  
17 A Later that day he did land, toward the evening, late in  
18 the evening.  
19 Q At Kenny's Strip?  
20 A At Kenny's Strip. We had a discussion on he had spotted  
21 a bull and -- and a herd of cows, five or six cows, two  
22 bulls down river. And the major part of the discussion  
23 was, you know, how far down river it was and since we  
24 have another strip down there whether or not I want to  
25 move to the other strip, whether it would be closer to

- 1235 -

1 hunt out of the other strip the next morning or not.  
2 Q What happened when you're done?  
3 A We had that discussion and I said, well, you know, why  
4 don't you just take me up and show me and then I can  
5 make a decision whether or not I want to move because I  
6 don't know exactly how far or what type of -- whole lot  
7 of terrain that I'd have to go through from the other  
8 strip. I know the terrain at Kenny's Strip. We went  
9 down, I see about five or six cows and the bull -- one  
10 bull. I didn't see the other bull. And we flew right  
11 back to the camp and I told Dave that, hey, we're going  
12 to spend the night here. We'll stay right here. It  
13 would be easiest to go from here to get down there since  
14 getting down there I could go on the trail, along the  
15 river, and there was a big bluff, Saney(ph) Bluff. That  
16 was a good marker for me to get up on the ridge across  
17 the river on -- on the -- from the moose. I just had to  
18 go one Peninsula. Once I went above that bluff, the one  
19 Peninsula further down, and that was the Peninsula that  
20 the bull was on.  
21 Q Well, how far away was that from the camp that you and  
22 Mr. Jayo were at?  
23 A That was roughly two and a half, three miles. I didn't  
24 GPS it or -- or anything like that. But roughly two and  
25 a half, three miles downstream of Kenny's Strip, our

- 1236 -

1 camp.  
 2 Q And if -- did you eventually hike from Kenny's Strip  
 3 camp where you were down to that area the next day?  
 4 A Yes. The next morning Doug and I got up early. We left  
 5 before it was light out. We had a quick breakfast that  
 6 morning and consistent when I have my quick breakfasts  
 7 it usually consists of oatmeal because all I've got to  
 8 do is heat water, and I have coffee in the morning  
 9 anyway, so the water is already heated, so. And we --  
 10 we hiked down. I know -- the trail is right by Kenny's  
 11 Strip so it was fairly easy getting down there. Once I  
 12 got about halfway down there was one spot we had to stop  
 13 where I had to work out. The water was a little bit  
 14 deep there but we did finally find a spot to cross to  
 15 get on the north side of the river so I can go up the  
 16 sand knoll with Doug and then we got up on the other  
 17 ridge, and we could see the Peninsula then, and as I  
 18 went down the ridge, towards the top of the ridge I  
 19 stopped and I climbed a tree for an observation point.  
 20 At that time I did not see anything. From there I came  
 21 down, and I said, well, we're going to go down a little  
 22 bit further in case they went down river some more. I  
 23 got across the river from the Peninsula and the river  
 24 made a bend to the left a little bit before it hooked  
 25 back hard to the right. And right at that bend I saw

- 1237 -

1 two cows feeding along the river. So I saw two cows and  
 2 the bulls. The big bull with the cows, that time of  
 3 year they usually won't leave the cows, so --  
 4 necessarily he's going to be there. I set Doug up on a  
 5 big husik(ph), or a rock, to get ready. We're only  
 6 probably 120 yards from across the river. And I started  
 7 calling again. A couple grunts, but it was mainly all I  
 8 did was just rake a tree at that time and two cows  
 9 looked at us, and almost within two to three minutes I  
 10 hear the bull. I hear his rack raking through --  
 11 through the brush as he starts walking towards us.  
 12 Q Then what happened?  
 13 A He pops out right along the river. He turns broadside  
 14 to go a little bit down toward the cows. There's one  
 15 spruce tree that's in the way. He clears the spruce  
 16 tree. I told Doug that he's legal to shoot. Doug pulls  
 17 the trigger and nothing happens. It goes click. He  
 18 does that two more times and I said, take my gun, it was  
 19 laying right next to him, and he shoots the moo -- the  
 20 bull. The bull goes down immediately.  
 21 Q Did he shoot it again?  
 22 A No, not at that time. We've got to go down river  
 23 probably 50, 60 yards there's a set of rapids, we cross  
 24 there, that's right where the cows were. Cross there,  
 25 come back up to the bull. I see the bull that he's

- 1238 -

1 still breathing and I tell Doug to shoot him again  
 2 behind the shoulder, and he uses his rifle, and his  
 3 rifle that time fires.  
 4 Q How long did it take you to get from the camp at Kenny's  
 5 Strip?  
 6 A It took us.....  
 7 Q In terms of where you -- where the bull was actually  
 8 shot?  
 9 A It took us probably roughly two hours to -- two hours,  
 10 15 minutes, roughly right in there. We left about 5:00  
 11 o'clock that morning.  
 12 Q Between the time that you left camp, got to where the  
 13 kill site was, was Mr. Haeg at all in the air?  
 14 A No.  
 15 Q Had you had any radio communication with him?  
 16 A Not that morning no.  
 17 Q Now once Doug took your gun and shot the moose.....  
 18 A Correct.  
 19 Q .....how much time went by between that first shot when  
 20 he shot the moose and the time you said, Doug, go around  
 21 and.....  
 22 A It was roughly 15, 20 minutes. Because we all we had to  
 23 do was just walk -- you know, we were only 15, 20 yards  
 24 off the river. We walked there and we walked down about  
 25 20, 30 yards, crossed the river, and we came back up.

- 1239 -

1 Q So now after Doug shoots the moose again, what was the  
 2 next thing you guys did?  
 3 A At that time we like to set the -- the animals up for  
 4 good pictures so I start clearing what under brushes  
 5 away so -- and positioning the moose before he stiffens  
 6 up or anything, to get him in for -- for pictures.  
 7 Q By this time what was the weather like?  
 8 A That morning it was clear.  
 9 Q Let me ask you -- we'll make this DD I guess.  
 10 THE COURT: Okay.  
 11 MR. ROBINSON: The last one was CC?  
 12 THE COURT: Yep.  
 13 Q I'm going to show you what's going to be marked as  
 14 Exhibit DD, and ask you to tell the court what that  
 15 photograph is?  
 16 A This is a photograph of Doug Jayo and the moose that we  
 17 shot on the Little Under Hill river.  
 18 Q And that moose was taken on what day?  
 19 A That was taken on September 7th.  
 20 Q And about how long after the moose was taken is that  
 21 photograph?  
 22 A That photograph was taken about 8:30, 9:00 o'clock in  
 23 the morning. It was roughly -- we shot the moose at  
 24 approximately 7:15 to 7:30 in the morning.  
 25 Q The day before, which would have been the 6th of

- 1240 -

1 September. was Mr. Haeg flying around the area of  
 2 Little Under Hill Creek or Kenny's Strip or anywhere  
 3 between that area early in the morning?  
 4 A He flew by early in the morning, but like I said, he  
 5 flies further to the west to skirt the camp. And it  
 6 wasn't that early. Well, on the 6th he didn't fly in  
 7 the morning at all.  
 8 Q All right. Was that.....  
 9 A Because of the weather.  
 10 Q Okay.  
 11 A But on the 5th, the other day, he would fly by, out to  
 12 the west. He would skirt our camp.  
 13 Q And about what time was it that the fog cleared up on  
 14 the 6th of September?  
 15 A The 6th of September the fog -- fog lifted -- like I  
 16 said, it started to break up around 11:00 o'clock, and  
 17 then by -- by afternoon it was fairly well broke up.  
 18 Q Have you flown with -- obviously you've flown with Mr.  
 19 Haeg to spot moose?  
 20 A Yes, I have.  
 21 Q And you helped him look for moose then at Little Under  
 22 Hill Creek?  
 23 A Yes, I have.  
 24 Q And how does that happen? I mean what goes on when  
 25 you.....

1 THE COURT: Mr. Robinson, if it's going to be the same  
 2 thing, I've heard it six times. Unless he's got something  
 3 different, I really would.....  
 4 Q You heard the other witness.....  
 5 THE COURT: I -- I.....  
 6 A It's -- it's the same.  
 7 THE COURT: If it's the same, that's fine.  
 8 A It's -- it's S turns.....  
 9 THE COURT: I don't think I need to hear it from each  
 10 person.  
 11 MR. ROBINSON: Okay.  
 12 Q In the time that you've worked with Mr. Haeg as an  
 13 assistant guide have you ever seen, heard or know of him  
 14 to hunt or take a moose the same day it was observed  
 15 from the air?  
 16 A No, I haven't.  
 17 Q Have you heard or seen Mr. Haeg chase or disturb moose  
 18 with his airplane?  
 19 A No, I haven't.  
 20 Q Are you familiar with Mr. Powers' camp site?  
 21 A Yes, I am.  
 22 Q And in the time that you've worked with Mr. Haeg have  
 23 you ever seen or heard of him flying over Mr. Powers'  
 24 hunting camp?  
 25 A No, I haven't.

1 Q Have you ever heard or seen Mr. Haeg intentionally  
 2 flying over Mr. Powers' camp when he's had any hunters  
 3 there?  
 4 A No. In fact, we'll go out of the way to go around the  
 5 camp.  
 6 Q While you were out hunting, you and Mr. Jayo, between  
 7 the 5th and the 7th.....  
 8 1216  
 9 (Tape change)  
 10 4MC-05-26/Side A  
 11 0000  
 12 THE COURT: .....September 29th, Tony -- Mr. Zellers  
 13 testifying on direct exam. Go ahead, Mr. Robinson.  
 14 A I was aware that -- that Powers' camp, I wasn't aware of  
 15 whether or not he actually physically had hunters there,  
 16 but I knew the camp was active that year. Like I said,  
 17 we didn't fly over there to see if there were hunters  
 18 there. And the other place I wasn't aware of, the drop  
 19 off guides or charter services on the lakes that are  
 20 along the -- the hills to the south, I wasn't aware if  
 21 there was any camp set up there, but there's three or  
 22 four charter services that will drop people off in that  
 23 lakes on float planes.  
 24 Q What, did you hear other planes flying in the area?  
 25 A I've heard other -- we hear planes all -- all the time.

1 Q Did you see any airplanes flying around?  
 2 A I didn't observe any planes close by. I've seen them  
 3 further out to the west out in the valley. I did not  
 4 see any of the charter services come into the lake and I  
 5 did not observe Mr. Powers flying to his Triangle Lake.  
 6 Q But you did hear other planes?  
 7 A Right, yes.  
 8 Q Now with regard to radio communications as an assistant  
 9 guide in hunting for moose. What if anything do you  
 10 tell hunters about the use of radio communication, tele  
 11 -- satellite phone communication in relationship to  
 12 their hunt?  
 13 A We tell them we don't use the radios to -- to guide us  
 14 to an animal. We tell them that's.....  
 15 Q And did.....  
 16 A .....against the law.  
 17 Q Did you tell that to Mr. Jayo?  
 18 A Yes, Doug was aware of that.  
 19 Q And during the time that you hunted the moose that Mr.  
 20 Jayo took was there any radio or telephone communication  
 21 between you and Mr. Haeg?  
 22 A There was radio communications when I was at the Rock to  
 23 tell Dave that I pushed that animal out. So that he  
 24 could start thinking ahead on what he wants to do with  
 25 us. Whether he wants to keep us there, continue to

1 hunt, or if he had another place to move us.  
 2 Q What day was that?  
 3 A That was on the 5th of September.  
 4 Q During the time that you and Mr. Jayo actually hunted  
 5 this moose that was taken on the 7th, did you have any  
 6 radio communications at all or while you were -- before  
 7 you shot that moose?  
 8 A Not before we shot the moose, no. We did not have any  
 9 radio communications.  
 10 Q How did Mr. Haeg become aware of the fact that the moose  
 11 was shot?  
 12 A Doug and I were set up for pictures and we're waiting  
 13 for the sun to get up higher because we're in the  
 14 shadows of the trees, and I hear a plane coming and I  
 15 look up over the ridge line and Dave's Bat plane, if you  
 16 want to call it, his PA-12, it's fairly distinctive with  
 17 the drooped trips, and I'll -- I pulled my radio out of  
 18 my pack and I asked Dave, is that you. And he come back  
 19 and said, yeah. And I told him, hey, I've got a moose  
 20 down, I'm going to need packers because it's two and a  
 21 half miles back to my camp, if we're going to go back  
 22 there.  
 23 Q Okay. And then what did he say?  
 24 A He copied it and he said I'll go back and -- and get  
 25 Drew, and he turned around and he flew right back to

- 1245 -

1 Trophy Lake.  
 2 Q And did Drew ever show up at the site?  
 3 A Yes, I heard him fly in, and I heard Dave do one low  
 4 pass. I didn't see it because I was in the trees but I  
 5 -- I heard the power come back and it kind of surprised  
 6 me, just because I wasn't expecting him to land just  
 7 downstream from me. But I heard him do a low pass and  
 8 then he climbed out and then I heard him come back  
 9 around and land.  
 10 Q And then when was the first time you saw Drew?  
 11 A It wasn't for -- for a while. Dave took off again and  
 12 he flew back to Trophy Lake Lodge and then he came back  
 13 again and landed, and then both Drew and Jake showed up  
 14 at the same time.  
 15 Q All right. They showed up at the kill site where you  
 16 and Doug were?  
 17 A Yes.  
 18 Q And what did they do when they showed up?  
 19 A We hadn't started butchering because we hadn't started  
 20 taking pictures yet, so all of us took pictures together  
 21 with Doug, and then we butchered the moose and the three  
 22 of us started packing the moose downstream.  
 23 Q Do you remember when you said that Mr. Haeg picked you  
 24 up and took you down to look at moose the day before the  
 25 moose was killed? Even before the moose was taken.

- 1246 -

1 When you went -- when you and Mr. Jayo went hunting for  
 2 moose the next morning, on the 7th, was the moose in  
 3 substantially the same place as you had seen with Mr.  
 4 Haeg the night before?  
 5 A Yes, he was. He was on the same Peninsula, roughly  
 6 within -- we probably killed him within 50, 60 yards of  
 7 where I saw him laying down.  
 8 Q And about how long did it take you to, you know, take  
 9 care of the moose, get it packed up?  
 10 A It took us probably until about noon, 1:00 o'clock. It  
 11 was right around that time, with three -- with -- with  
 12 Jake and Drew there, with the three of us, and Doug  
 13 helping. It didn't take long for us to quarter up and  
 14 -- and pack the moose. We didn't have to pack it that  
 15 far.  
 16 Q All right. After it was all packed up and taken care of  
 17 where did you and Mr. Jayo go?  
 18 A After I sent Drew off with the last load Doug and I  
 19 headed back toward Kenny's Strip, back to the camp.  
 20 Q And how did you -- did you stay there again overnight?  
 21 A No, we didn't. It took us a couple hours to get back  
 22 and that afternoon, closer to evening, Dave flew in  
 23 after I had most of the camp packed up and moved Doug  
 24 out first and then I finished packing up the rest of the  
 25 camp, and he came back and then flew me out to the main

- 1247 -

1 lodge, Trophy Lake.  
 2 Q All right. After -- you know, remember when you said  
 3 that Drew and Jake came to the kill site to help take  
 4 care of the moose?  
 5 A Correct.  
 6 Q Was there a time that Jake left and Drew stayed down  
 7 there?  
 8 A Yeah, that kind of surprised me. Jake only packed about  
 9 two loads down. We -- we still had roughly half a moose  
 10 -- moose left, and Dave came in and -- and stole Jake  
 11 from me, you know. Left -- left Drew and I to finish  
 12 packing.  
 13 Q All right. Now are you absolutely sure this was taken  
 14 on the 7th?  
 15 A Yes, I am.  
 16 Q And why are you so sure of that, Mr. Zellers?  
 17 A Because I keep a diary of my hunts.  
 18 MR. ROBINSON: I think we've already submitted this one  
 19 as Exhibit A. We'll make it AA.  
 20 (Whispered conversation)  
 21 MR. LEADERS: Yes.  
 22 Q Okay. I'm going to show you what's marked for purposes  
 23 of this case, the sentencing, as what's previously  
 24 marked as Exhibit A. It has -- actually has an Exhibit  
 25 A sticker on it.

- 1248 -



1 THE COURT: Okay.  
 2 Q And ask you if you can identify that?  
 3 THE COURT: Is that something that's already been  
 4 admitted or this is just prepared for this.....  
 5 MR. ROBINSON: No, -- yeah, that's been.....  
 6 THE COURT: Oh, okay.  
 7 A Yeah, this is a copy of my -- my diary for September,  
 8 2003 for Doug Jayo's hunt.  
 9 Q Okay. And what does -- why don't you just tell us what  
 10 that exhibit tells you?  
 11 A Roughly it says that Wednesday, the 3rd, we fly to the  
 12 Rock, the 4th we stalked a mighty moose, no shots. The  
 13 5th we fly to the Under Hill River, Kenny's Strip. I  
 14 have no -- no entry on the 6th. On the 7th Doug shoots  
 15 69 inch moose, four abnormal points, back to main camp.  
 16 Q Do you normally keep a diary of what happens when you're  
 17 guiding someone on a hunt?  
 18 A Yes, I do.  
 19 Q And this was kept in the ordinary course of your  
 20 business and what you usually do when you have somebody  
 21 out hunting with you?  
 22 A Yes, I do. Or yes it was.  
 23 MR. ROBINSON: Can I have just a second?  
 24 THE COURT: Uh-huh.  
 25 (Pause)

- 1249 -

1 (Whispered conversation)  
 2 Q Do you recall, Mr. Zellers, being interviewed about this  
 3 particular moose hunt in 2004?  
 4 A Yes, I was interviewed in June of 2004, I believe it  
 5 was.  
 6 Q And who were you interviewed by?  
 7 A Trooper Doerr, Trooper Gibbens was there and Mr. Leaders  
 8 was there, along with my lawyer, Scot -- or Mr.  
 9 Fitzgerald.  
 10 Q Were you ever told that you would be charged with  
 11 anything in regards to this 2003?  
 12 A No, I wasn't.  
 13 Q At any time had you had any discussions with any of  
 14 those people? Trooper Doerr, Trooper Gibbens, Scot  
 15 Leaders. Did any of them ever indicate that they were  
 16 going to file any charges against Doug Jayo?  
 17 A No.  
 18 Q Or against Mr. Haeg?  
 19 A No.  
 20 Q Now do you remember in an interview you had with Trooper  
 21 Doerr that you told him on the 6th of September that you  
 22 didn't hear any gunshots?  
 23 A That's correct.  
 24 Q Does that mean that there weren't any?  
 25 A No, it doesn't mean anything. That there weren't any

- 1250 -

1 gunshots, it just means I didn't hear it. I was down in  
 2 the river -- river valley. We've got spruce trees. I  
 3 mean brush. If I'm walking I'm making noise as I'm  
 4 going through the brush. I could have been scraping,  
 5 calling, whatever. There could have been gunshots that  
 6 I didn't hear.  
 7 Q But for sure neither you or Mr. Jayo shot any moose on  
 8 September the 6th?  
 9 A No, we did not.  
 10 Q You didn't even hunt any moose on September 6th?  
 11 A On which date?  
 12 Q September 6th?  
 13 A The 6th we did hunt moose, we did not see any moose.  
 14 Q You didn't see a moose to shoot?  
 15 A Correct.  
 16 Q And that was before you were picked up to be taken down  
 17 to Little Under Hill Creek?  
 18 A No, we were at Little Under Hill on September 6th.  
 19 Q I thought that was in the evening?  
 20 A September 5th is when we flew into Little Under Hill.  
 21 Q Oh, okay.  
 22 A September 6th we hunted down river, and then in the  
 23 afternoon we hunted up river.  
 24 Q And you didn't see anything?  
 25 A No, we did not see any moose.

- 1251 -

1 Q And when was it where you -- did -- was it that evening  
 2 that Mr. Haeg came in and took you to another spot and  
 3 then brought you back and you (indiscernible).....  
 4 A It was September 6th, the -- the evening that he landed  
 5 and picked me up and flew down to observe the moose down  
 6 on the Peninsula to see whether I wanted to move camp  
 7 down to the -- what we call Nine Grand camp.  
 8 Q You didn't do any hunting after that did you?  
 9 A No, because it was dark.  
 10 Q Until the next day? Until the next morning?  
 11 A Until the next morning.  
 12 MR. ROBINSON: That's all I have.  
 13 THE COURT: Thank you, Mr. Robinson. Mr. Leaders?  
 14 MR. ROBINSON: Oh, no, wait a minute. I did have a  
 15 question now that I think about it. I just wanted to ask him  
 16 if he (indiscernible).  
 17 Q In the time that you've known Mr. Haeg, what is your  
 18 opinion -- do you have an opinion about his character?  
 19 A He's got an outstanding character. He's highly  
 20 respected in this community. He's a very good family  
 21 man, and he's truly one of -- one of the people I  
 22 respect.  
 23 Q And that's even though both of you guys, you know,  
 24 you're involved in this wolf.....  
 25 A Right.

- 1252 -

1 Q .....thing back in March of 2004?  
 2 A Right, that's correct.  
 3 Q Despite that you still have the same opinion about him?  
 4 A Yes, I do.  
 5 MR. ROBINSON: No further questions.  
 6 THE COURT: Okay. Mr. Leaders?  
 7 MR. LEADERS: Are you finished?  
 8 MR. ROBINSON: Yes.  
 9 MR. LEADERS: I didn't know if you had something else,  
 10 okay.  
 11 MR. ROBINSON: No. (indiscernible).  
 12 TONY ZELLERS  
 13 testified as follows on:  
 14 CROSS EXAMINATION  
 15 BY MR. LEADERS:  
 16 Q So your opinion of Mr. Haeg is unchanged in any way  
 17 despite you and he's conduct regarding the wolves?  
 18 A That's correct.  
 19 Q I guess we -- basically we discussed at trial and we  
 20 discussed in the past -- I mean those were intentional  
 21 acts on five separate days of taking wolves outside of  
 22 the control boundaries from a plane illegally?  
 23 A Correct. Which I was party to.  
 24 Q Right, I understand. You were party to it.  
 25 A Right.

1 A That's correct.  
 2 Q It's that same zeal with which he -- okay, so that same  
 3 zeal does apply both to his activities in taking wolves  
 4 that he applies towards his hunting?  
 5 A He's more passionate about the wolves. The hunting  
 6 part, the guiding part he was very professional about  
 7 that.  
 8 Q But a lot of his passion towards the wolves is spurred  
 9 by his hunting of the moose and the game populations?  
 10 A Not necessarily the hunting of the moose. The fact that  
 11 he's been out here since he's been 18 when he saw the  
 12 days when a lot of our camps that you'd hunt at there  
 13 would be 30, 40, 50 moose. And now you're lucky to see  
 14 one or two.  
 15 Q Right. It's that affect on his hunting, his guiding,  
 16 the lack of moose, in some ways describes his passion in  
 17 your experience, towards the wolves?  
 18 A If you can want to -- want to say that. It's not just  
 19 his. I mean he's got friends who are guides, Jim  
 20 Harrower(ph) down south went out of business basically  
 21 because the moose population just disappeared from him.  
 22 Q Right. Down along the Stony there?  
 23 A Yes.  
 24 Q You -- as you testified at trial and as you have  
 25 admitted in your interviews, you falsified records under

1 Q The -- and that's this person of the highest character,  
 2 that's the type of highest character that you contribute  
 3 to Mr. Haeg?  
 4 A Everybody makes mistakes going through life. If you  
 5 haven't made a mistake then you're lying, you know.  
 6 Q Agreed. Certainly people make mistakes, it's not common  
 7 or attributable to maybe the highest character to  
 8 repeatedly make the same mistake intentionally? There's  
 9 a difference between making a mistake and intentionally  
 10 doing something wrong, right?  
 11 A Yeah. But, you know, he's real passionate about what  
 12 goes on out here. Follows it very close with the game  
 13 board and stuff like that. A little over zealous.  
 14 Yeah, we both got that way. It's hard to fly around  
 15 here and the only moose you see is a dead moose with  
 16 about five wolves on it.  
 17 Q Very zealous about what he does professionally as a  
 18 guide?  
 19 A That and just the fact that he's been out here so long  
 20 that he sees what's happening out here. He knows what's  
 21 happening to the people when they're livelihood, food,  
 22 stuff that goes on out here, you know.  
 23 Q He doesn't employ any of the locals out here, he employs  
 24 people out of the Soldotna area. Yourself, as far  
 25 as.....

1 penalty of criminal charges?  
 2 A That's correct.  
 3 Q To cover criminal activity relating to the wolves?  
 4 A Correct.  
 5 Q The -- there's -- I mean you note on that Exhibit DD the  
 6 days you were hunting. The moose you hunt -- like the  
 7 first day, what was the 4th you hunt the mighty.....  
 8 MR. ROBINSON: Is that DD?  
 9 THE COURT: AA.  
 10 A What I called the mighty moose, yes.  
 11 Q AA -- I'm -- excuse me. AA.  
 12 THE COURT: Double A.  
 13 Q Yeah. A or AA, excuse me.  
 14 MR. ROBINSON: I think that's AA.  
 15 MR. LEADERS: Okay.  
 16 Q That was the 4th and that's something you talked about.  
 17 And then the next moose that you note is the 7th? You  
 18 don't have anything noted on the 6th?  
 19 A That's correct.  
 20 Q You get in a hunt and you pursued a moose until it had  
 21 chased off?  
 22 A On the 6th?  
 23 Q Yeah, isn't that.....  
 24 A I have no idea what happened to that moose.  
 25 Q So when you earlier I think you said.....

1 A I never -- I never saw that moose.  
 2 Q Okay. That's the one you told Mr. Haeg that had been  
 3 chased off or whatever, right?  
 4 THE COURT: That was on the 5th.  
 5 MR. LEADERS: Okay. Apologize, that's the 5th, okay.  
 6 Q But you don't note that anywhere?  
 7 A No.  
 8 Q The -- is it possible you -- the days may have somehow  
 9 gotten mixed up or confused in any way during your hunt?  
 10 A No.  
 11 Q All right. The -- Mr. Jayo's moose was taken fairly  
 12 early in the morning?  
 13 A Yes, as -- as I stated, around 7:30 that morning.  
 14 Q Okay. Shortly after light then?  
 15 A Yes.  
 16 Q You guys had to hike how far?  
 17 A We hiked approximately two and a half miles. We started  
 18 about 5:00 o'clock in the morning. At that time of year  
 19 about 5:30 is when it starts getting twilight out, and  
 20 by 6:00 o'clock you've got enough -- plenty of light to  
 21 -- to hunt. 7:00 o'clock the -- the sun wasn't up over  
 22 the -- the Revelation Mountains yet.  
 23 Q So it took you almost a couple hours to get down to this  
 24 location?  
 25 A Yes.

- 1257 -

1 Q Roughly, I guess, we heard the pace is about a mile an  
 2 hour earlier?  
 3 A Roughly -- roughly, yeah.  
 4 Q That's pretty accurate?  
 5 A Yes. Uh-huh (Affirmative).  
 6 Q The -- were you -- I guess I was a little but unclear on  
 7 some of this. Someone -- you climbed a tree for  
 8 observation once you crossed the river and that's where  
 9 you first see the cows?  
 10 A No.  
 11 Q Oh, okay.  
 12 A We did not see any moose from -- from the tree.  
 13 Q From the tree, I see, okay.  
 14 Q When we came down and I decided to take Doug a little  
 15 further down the ridge so I could see a little further  
 16 down river, that the river bend made a shallow bend to  
 17 the left and then it came back hard to the right, down  
 18 by the sandbar that Dave landed on, later, and that's  
 19 where I saw the -- the two cows along the river.  
 20 Q And that's where you then called -- from that location  
 21 is where you called the bull to?  
 22 A Correct, I went down maybe 20 yards near a big rock or a  
 23 husgik(ph) for Doug to have a laying down steady rest.  
 24 Q Okay. And it was two shots ultimately to kill this  
 25 moose?

- 1258 -

1 A Two shots, yes.  
 2 Q The initial?  
 3 A One from the.....  
 4 Q To take it down?  
 5 A One from -- one from my rifle a .375, and one from Doug  
 6 Jayo's rifle which is I believe he was shooting .330.  
 7 Q Okay. They were spaced approximately 15, 20 minutes  
 8 apart or so?  
 9 A Correct.  
 10 Q And then there was a lot of flying activity after that?  
 11 A Yes.  
 12 Q Mr. Haeg's plane?  
 13 A Correct.  
 14 Q He hadn't -- you hadn't noticed any other planes in that  
 15 area flying during the few days that you -- the couple  
 16 days you were hunting that specific area?  
 17 A No, I did not. I've heard other planes but I did not  
 18 observe them with my eyes. Maybe not fly up into that  
 19 valley.  
 20 Q So you heard them in the distance type thing?  
 21 A Correct.  
 22 Q I mean you can hear planes off for miles away at times  
 23 (indiscernible)?  
 24 A At times, yeah, you can hear them a long ways.  
 25 Q Okay.

- 1259 -

1 A The weather wasn't conducive to -- to seeing a lot of  
 2 them.  
 3 MR. LEADERS: I have no further questions.  
 4 TONY ZELLERS  
 5 testified as follows on:  
 6 REDIRECT EXAMINATION  
 7 BY MR. ROBINSON:  
 8 Q Mr. Zellers, you entered a plea of, I think, no-contest  
 9 to your charges in this wolf case, right?  
 10 A That's correct.  
 11 Q And you were required to come to court and testify  
 12 truthfully were you not?  
 13 A Correct.  
 14 Q And in your opinion when you came to testify at the  
 15 trial did you give truthful testimony?  
 16 A Yes, I did.  
 17 Q And anything you said today, was it truthful testimony?  
 18 A Yes, it was.  
 19 Q Particularly with your diary concerning when you noted  
 20 the day that Mr. Jayo shot this moose, is there anything  
 21 untruthful about that?  
 22 A No, there isn't.  
 23 Q Is there anything untruthful about the fact that before  
 24 Mr. Jayo took that moose on the morning of September 7th  
 25 that Mr. Haeg was not flying around, was not using any

- 1260 -

1 kind of communications from the airplane to direct that  
 2 hunt for Mr. Jayo?  
 3 A No, he wasn't.  
 4 Q And that's truthful?  
 5 A That's truthful.  
 6 Q As truthful as you testified about matters at trial  
 7 here?  
 8 A Yes, it is.  
 9 MR. ROBINSON: I don't have anything further.  
 10 TONY ZELLERS  
 11 testified as follows on:  
 12 RE CROSS EXAMINATION  
 13 BY MR. LEADERS:  
 14 Q The -- let me ask you. In your mind, your perception of  
 15 the wolf charges which you pled to and that now Mr.  
 16 Haeg's -- do you consider those less serious based on  
 17 the nature that they were wolves taken than you do what  
 18 we're discussing here, whether or not a moose, a game  
 19 animal was taken from the -- with the use of an  
 20 airplane?  
 21 A No, it's the same charge. Same day -- same day  
 22 airborne, so.  
 23 Q So you don't see -- okay, you don't perceive any  
 24 difference between the wolves or the moose or anything  
 25 like that? As to the way they should be treated?  
 - 1261 -

1 MR. LEADERS: As long as there's no issue of....  
 2 MR. ROBINSON: Oh, no, no, I don't have any problem....  
 3 THE COURT: Yeah, I'm just telling you that I -- I can  
 4 tell you I'm not going to talk about the case....  
 5 MR. ROBINSON: You've been commandeered.  
 6 THE COURT: He's just going to drive me over there to get  
 7 some diet Coke and we'll be back.  
 8 MR. ROBINSON: All right.  
 9 THE COURT: Why don't we start back up at like 10 after.  
 10 MR. ROBINSON: Okay.  
 11 THE COURT: Okay?  
 12 (Whispered conversation)  
 13 THE COURT: Off record.  
 14 (Off record)  
 15 THE COURT: Okay. We're back on record. Who did you  
 16 want to call, Mr. Leaders? Or Mr. Robinson, I'm sorry.  
 17 MR. ROBINSON: Mr. Wendell Jones.  
 18 THE COURT: Okay.  
 19 (Whispered conversation)  
 20 THE COURT: Mr. Jones, if you'd raise your right hand.  
 21 (Oath administered)  
 22 MR. JONES: I do.  
 23 THE COURT: Okay. Please be seated.  
 24 MR. JONES: Thank you.  
 25 WENDELL L. JONES  
 - 1263 -

1 A No, I've got probably -- I don't like the wolves any  
 2 more than anybody else out in this area.  
 3 Q Right.  
 4 A But -- because I mean if I look at this charge versus  
 5 this charge they're the same charge, so.  
 6 Q Shouldn't be treated any differently in your mind?  
 7 A No.  
 8 MR. LEADERS: Nothing further.  
 9 THE COURT: Anything else?  
 10 MR. ROBINSON: No.  
 11 THE COURT: Okay. Thank you, Mr. Zellers, you can go  
 12 back.  
 13 MR. ROBINSON: Before we get going again I think we're  
 14 going to need about a 10 minute break.  
 15 THE COURT: At least. I have to get to the store because  
 16 I need to get some....  
 17 MR. ROBINSON: So why don't we take long enough to go to  
 18 the store and....  
 19 THE COURT: Get some diet Coke. And I'm going to  
 20 commandeer Trooper Gibbens and his vehicle to take me because  
 21 I don't have any transportation.  
 22 MR. ROBINSON: All right.  
 23 THE COURT: All right, Trooper Gibbens?  
 24 TROOPER GIBBENS: Well, yeah.  
 25 MR. ROBINSON: You've been commandeered.  
 - 1262 -

1 called as a witness on behalf of the defendant, testified as  
 2 follows on:  
 3 DIRECT EXAMINATION  
 4 THE COURT: Spell your first and last name for the  
 5 record, please.  
 6 A Wendell L. Jones, W-e-n-d-e-l-l L. J-o-n-e-s.  
 7 THE COURT: Okay. Thank you, sir.  
 8 BY MR. ROBINSON:  
 9 Q Good evening, Mr. Jones. Where do you live?  
 10 A I live in Cordova, Alaska.  
 11 Q And how long have you lived there?  
 12 A Well, I first moved there in '76 and I moved to Soldotna  
 13 in about '84. Moved back to Cordova about '94.  
 14 Q And what is your occupation?  
 15 A I'm sorry?  
 16 Q What is your occupation?  
 17 A I'm a commercial fisherman.  
 18 Q (Coughing) Excuse me. How long have you been a  
 19 commercial fisherman?  
 20 A Since 1978.  
 21 Q What kind of commercial fisherman? (Indiscernible).  
 22 A I purseine, I gill net and I used to spot herring when  
 23 we had herring.  
 24 Q So when you were a purseiner or gill netter was that in  
 25 the salmon fisheries? Was that for salmon?  
 - 1264 -

1 A Salmon. Salmon. I'm sorry, I don't hear well.  
 2 Q Okay. And that was in the salmon fisheries?  
 3 A Yes.  
 4 Q And where in the state did you do your salmon fishing?  
 5 A In Prince William Sound, and on the Copper River Delta.  
 6 Q Other than being a commercial fisherman have you had any  
 7 other occupations?  
 8 A Yes. I was a fish and wildlife protection officer for  
 9 five years and prior to that I was a commercial pilot,  
 10 prior to that I was an A&P mechanic. And prior to that  
 11 I was a kid.  
 12 Q What years were you a fish and wildlife enforcement  
 13 officer?  
 14 A From '73 to '78.  
 15 Q And where was that at?  
 16 A In Ketchikan and then in Cordova.  
 17 Q Are you still fishing commercially?  
 18 A Yes, I am.  
 19 Q Do you know the defendant in this case, David Haeg?  
 20 A Very well.  
 21 Q And how do you know him?  
 22 A Let's see. He was about 19, maybe 20 when he wanted Dan  
 23 France to build an airplane for him and Dan was busy so  
 24 Dan referred David to -- referred me to David  
 25 (indiscernible) to me. So he came and talked to me

- 1265 -

1 about this airplane that he wanted to build, and wanted  
 2 to know if I'd work with him on it. We made an  
 3 agreement and we went to work in the winter time. He  
 4 was commercial fishing during the summer and so was I,  
 5 so it was -- it took us a couple years to finish --  
 6 couple winters to finish it. And so I got to know him  
 7 very well.  
 8 Q All right. What kind of plane was this?  
 9 A This was the Batcub, the PA-12.  
 10 Q The PA-12, the airplane that we've all come to call in  
 11 this proceeding the Batman plane?  
 12 A Well, it's been redone since he and I did it, but, yes,  
 13 it's the same design, yes.  
 14 Q So how long has he had this plane?  
 15 A Since he was 20 years old, something like that. Well,  
 16 it took two years to build it, so -- let's see, so 22  
 17 and he's 38 now, aren't you, Dave?  
 18 MR. HAEG: (Indiscernible).  
 19 Q All right. So he's had it for quite some time?  
 20 A Oh, yeah.  
 21 Q Tell us the kind of -- other than the contacts you had  
 22 with him in building the plane, what other kind of  
 23 contacts have you had with David over the years?  
 24 A Well, in herring spotting he -- I took him over to the  
 25 Sound. He flew back seat for me for part of a season

- 1266 -

1 and then there was a fatality in the herring fishery and  
 2 David took over that position, and was very successful.  
 3 He's good at whatever he does.  
 4 Q Okay. Over the years, Mr. Jones, have you developed an  
 5 opinion about Mr. -- about David's character since  
 6 you've known him?  
 7 A Without a doubt.  
 8 Q And what is that opinion?  
 9 A I wouldn't be surprised if he couldn't walk on water.  
 10 No. I think he's -- he's -- well, I love him like he's  
 11 my son. He -- I think he's just a wonderful person,  
 12 he's got a beautiful family.  
 13 Q Now you know that he was convicted in this case of  
 14 several fishing -- I mean hunting violations?  
 15 A That's true, I know.....  
 16 Q And several counts of....  
 17 A Concerning the wolves, yes.  
 18 Q Concerning hunting wolves, same day airborne, unlawful  
 19 possession of game, making a false statement regarding  
 20 the taking of game. Also hunting wolverine out of  
 21 season -- trapping out of season. Despite your  
 22 knowledge of these convictions what do you think of Mr.  
 23 Haeg?  
 24 A Well, I wasn't familiar with wolverine, I don't  
 25 understand that charge, but the wolves -- first off, you

- 1267 -

1 have to look at David's life. He was raised in Chinitna  
 2 Bay in the wilderness. His dog -- his folks dog was  
 3 killed by wolves. Then you have to look at what's going  
 4 on. We all know that there's mismanagement by our fish  
 5 and game that we're not -- we aren't doing the charge  
 6 that we have as far as managing our resources on a  
 7 sustained yield basis. And we all sitting here know  
 8 that they -- that the influence of the Sierra Club and  
 9 -- and all the Walt Disney lovers that are influencing  
 10 our state government to where they're not allowing  
 11 management by fish and game of the wolves. We used to  
 12 have poison programs and all kinds of programs to keep  
 13 them in balance with our other game that we used. They  
 14 -- they are a predator and the other ones are -- are  
 15 game that we harvest and we don't harvest the wolves for  
 16 -- as consumption. So -- but we aren't managing them as  
 17 a predator so that we can maintain the moose in a  
 18 balanced situation. And -- so it's -- it's hap -- it's  
 19 gone on for so long that the frustration level is very  
 20 high. I don't -- I admit that what David has done, the  
 21 way he handled the situation is wrong. He'll admit it's  
 22 wrong to me, but -- but the frustration of it -- have  
 23 you read -- well, I shouldn't ask you the questions, I'm  
 24 sorry. But if you've read Harrower's letters to  
 25 Governor Knowles. The -- the frustration level has been

- 1268 -

1 going on that long, and prior to that, before he even  
 2 wrote the letters to Knowles saying why aren't you  
 3 letting fish and game do their job. Why are they -- why  
 4 is this happening, you know. This has been a -- it's a  
 5 bigger problem than we're faced with right here today.  
 6 The problem isn't going to go away no matter how this  
 7 trial comes out. The problem is still there. So it's  
 8 not going to heal anything in that regard.  
 9 Q And when you talk about the frustration, is that  
 10 something that you could understand in Mr. Haeg?  
 11 A Oh, certainly. He's in that element -- if I understand  
 12 you. Do I understand that frustration level in Mr.  
 13 Haeg, is that what you said?  
 14 Q Yes.  
 15 A Certainly. He's -- he's in the wild all the time  
 16 witnessing what's going on. And I've seen his neighbor  
 17 guide have to fold up because he can no longer make a  
 18 living in that manner. And there's going to be --  
 19 they're going to fall one right after the other, there's  
 20 no question about it. It's gotten to the point where no  
 21 longer can the moose be saved. There's too many wolves,  
 22 the moose are too depleted and there's no turning it  
 23 around at this point. I believe if you talk to your  
 24 fish and game management that's what they'll tell you.  
 25 They're frustrated, too.

- 1269 -

1 Q And so how do you perceive David's action in all this  
 2 regarding your view of him as a person in this case?  
 3 A Well, I agree it was the wrong action, and David  
 4 recognizes today that it was the wrong action for him to  
 5 take. But when you're frustrated how do you -- you look  
 6 at every time there's a magnitude of wrong like this and  
 7 suppressing of people, there's -- there's wrongs that  
 8 take place, and there's escape goats because of those  
 9 wrongs. We've seen it all through history. And I -- I  
 10 see a vindictiveness here in this regard that -- well,  
 11 this mini trial we're having here right now concerning  
 12 the moose, I don't believe it belongs here.  
 13 Q So when you think of David as your son, and you think of  
 14 him as a wonderful person and a man of good character,  
 15 how do you put in this mistake that he made regarding  
 16 the taking of the wolves? How do you factor that in?  
 17 A I, myself, can find forgiveness in that because of the  
 18 frustration that I've witnessed for a long time in this  
 19 -- in this situation. I'll bet if you could talk to the  
 20 trooper's father here he would express the same  
 21 frustration over the lack of management because he's  
 22 been exposed to it for so long. I don't know. You  
 23 can't take all these wrongs and come up with any rights.  
 24 Q But nonetheless, you still think that overall in terms  
 25 of David's life, the many years that you've know him,

- 1270 -

1 that his character is still basically good?  
 2 A Oh, there's -- there's too much good here to throw away.  
 3 There's too much good here to suppress to -- what a  
 4 wonderful family he has, what a wonderful person he is  
 5 within the community, you know. It's -- it would be a  
 6 terrible shame to take all that away. And the job that  
 7 he does, he's excellent at it. I think you'll admit he  
 8 did an excellent job at killing wolves. You know, but  
 9 -- but it was wrong, there's no question about that.  
 10 The way -- the manner that he did it was wrong. But  
 11 you've got to factor in that frustration level. I  
 12 believe.  
 13 Q Thank you, Mr. Jones.  
 14 MR. ROBINSON: That's all I have.  
 15 THE COURT: Mr. Leaders?  
 16 MR. LEADERS: Thank you.  
 17 WENDELL L. JONES  
 18 testified as follows on:  
 19 CROSS EXAMINATION  
 20 BY MR. LEADERS:  
 21 Q We've talked about needing to factor in this frustration  
 22 level that relates to the wolves being taken and the way  
 23 they were illegally taken, right?  
 24 A Well, no, the -- the wolves as far as the lack of  
 25 management of the wolves to where they are allowed to

- 1271 -

1 kill so many moose that they are now down to a level  
 2 where it is highly unlikely that it can be turned  
 3 around. And....  
 4 Q But it doesn't make what Mr. Haeg did okay?  
 5 A No, it doesn't.  
 6 Q And he should be punished for doing a wrong?  
 7 A Yes. I agree with that, he would agree with that. The  
 8 level of punishment is what I'm trying to mitigate and  
 9 -- and understanding this whole situation.  
 10 Q And that's based on your contact with him that's been  
 11 very positive experiences?  
 12 A Very positive experience. Since I first met him. And  
 13 I've -- I've been....  
 14 Q The....  
 15 A ....in his camp, I've witnessed him instructing his  
 16 guides and assistant guides, their actions and how they  
 17 are to act, and as you heard here today, he is -- it  
 18 hasn't been violated, any of those laws. He has towed  
 19 the mark and has gone far and above -- well, not far and  
 20 above, he's done his job, teaching his guides not to  
 21 violate those laws, and that's his bread and butter.  
 22 Q Now -- I mean I know you've sat through -- I assume  
 23 you've talked with people and you've heard some of what  
 24 happened about the wolves. From that did you have the  
 25 understanding that the evidence presented at trial

- 1272 -

1 indicated that on five different days Mr. Haeg  
 2 intentionally went to areas outside of the predator  
 3 control zone, intentionally set up to kill wolves  
 4 outside the wolves he was allowed to do, intentionally  
 5 killed wolves from the plane?  
 6 A Exactly. But if you'll look at that last area, today  
 7 it's open for that. So -- so, yes, the wrong was done,  
 8 but what is the job to accomplish. The job was to  
 9 accomplish getting rid of a bunch of wolves, and they're  
 10 shifting the areas around, and they needed to hunt --  
 11 the frustration level, there's a lot more.....  
 12 Q But you're aware that he didn't just mistakenly go to  
 13 the wrong area? He intentionally.....

14 A I'm aware of that, yes.  
 15 Q .....went to the wrong area?  
 16 A I understand that.  
 17 Q Intentionally went to areas not where the program was  
 18 set up.....  
 19 A Was he following them out of that McGrath area?  
 20 Q Intentionally go to areas around where he hunts and  
 21 guides and not up near where the predator control was,  
 22 on some of the wolves that were taken. Were you  
 23 familiar with that?  
 24 A No -- no, I wasn't, but don't that seem reasonable also,  
 25 when he sees the game being depleted so bad that it.....

1 Q Doesn't it seem self-serving?  
 2 A It does, but he just had his neighbor walk away from it,  
 3 a lucrative business because it was no longer lucrative  
 4 because -- I see where you're going with the self-  
 5 serving and I'm sure it had a -- I'm sure it had a merit  
 6 in David's mind. I would -- I would think it probably  
 7 did.  
 8 Q And then you're aware that he then falsified hunt -- or  
 9 not hunt records, but sealing certificates, lied about  
 10 when, where and how wolves were taken to cover his  
 11 actions?  
 12 A No, I'm not because I wasn't at the trial and I.....  
 13 Q Right.  
 14 A .....haven't seen that part of it.  
 15 Q Right. Not quite the person you've known over the years  
 16 to do that type of stuff.....  
 17 A Well, true, but -- but a normal reaction for the actions  
 18 taken. Right? Would you not agree with that?  
 19 Q To cover up his wrongs you're saying?  
 20 A Yeah. That's a normal reaction.  
 21 Q Intentionally do something wrong, then intentionally try  
 22 to cover it up?  
 23 A Well, it's still because of the frustration level of  
 24 what's taking place, right?  
 25 MR. LEADERS: I have no further questions for you.

1 THE COURT: Anything else, Mr. Robinson?  
 2 WENDELL L. JONES  
 3 testified as follows on:  
 4 REDIRECT EXAMINATION  
 5 BY MR. ROBINSON:  
 6 Q Even though you know now that David lied on the  
 7 statement to the fish and game where he took the wolves  
 8 and how he took the wolves, covered that up, trying to  
 9 cover up the fact that it was taken illegally, my  
 10 question is, what does that -- what kind of impact would  
 11 that have on your opinion of him as a person?  
 12 A It don't change my feelings of him because of that very  
 13 frustration that I'm talking about. Who's -- who's  
 14 doing the real wrong here? The fact that these wolves  
 15 are not being managed and is depleting the moose herd is  
 16 the biggest wrong; and that's being done by our federal  
 17 govern -- I mean our government, state government in not  
 18 providing a -- a good management of the wolf predation.  
 19 They're supposed to be managing the moose on a sustained  
 20 yield basis and they are not, and it's the wolves that  
 21 are killing the moose off. And so they're not allowing  
 22 fish and game to do the charge that the state has given  
 23 them, and that's a frustration in itself for those of us  
 24 that have been in the state so long. You know it's --  
 25 it's the bigger wrong that's going on here.

1 Q Did you know that at the time that Mr. Haeg and Mr.  
 2 Zellers -- you knew that Mr. Zellers was -- you knew --  
 3 you know Tony Zellers was involved, too?  
 4 A Yes, I know Tony.  
 5 Q Did you know that at the time that he and Mr. Haeg were  
 6 taking these wolves that there were no hunting clients  
 7 involved?  
 8 A Yes, I know that.  
 9 Q So you don't know of an instance where he has actually  
 10 taken a client out to do guiding and committed.....  
 11 A No, no, no, no. No, no, this -- this was obviously a  
 12 personal vendetta. The -- the state hired him to kill  
 13 wolves, right?  
 14 Q Right.  
 15 A And -- but there was a line in the snow. You have to  
 16 stay within these parameters. But now those parameters  
 17 are over here and in the area of where -- where the  
 18 wolves were killed, so. And they will be shifted again  
 19 to another area and kill wolves. But it's already too  
 20 late.  
 21 MR. ROBINSON: I don't have any further questions.  
 22 THE COURT: Okay. Thank you, Mr. Jones.  
 23 A Thank you. Thank you for the opportunity, ma'am.  
 24 THE COURT: Thank you, sir.  
 25 MR. ROBINSON: Are you ready, David?

1 MR. HAEG: No.  
 2 THE COURT: Well, hang on. I'm going to give you a  
 3 minute because I need to change the tape here because it's  
 4 about over and I don't want to have to stop in just a second,  
 5 so. Off record.  
 6 (Off record)  
 7 0598  
 8 (Tape change)  
 9 4MC-05-26/Side B  
 10 0611  
 11 THE COURT: Come on up.  
 12 MR. ROBINSON: His testimony at this time is just limited  
 13 solely to this issue of the alleged moose hunt in 2003.  
 14 THE COURT: Okay.  
 15 (Oath administered)  
 16 MR. HAEG: I do.  
 17 THE COURT: Okay. Go ahead and be seated, please. Thank  
 18 you. Go ahead, Mr. Robinson.  
 19 DAVID HAEG  
 20 called as a witness on his own behalf, testified as follows  
 21 on:  
 22 DIRECT EXAMINATION  
 23 BY MR. ROBINSON:  
 24 Q Mr. Haeg, you are the defendant in this case, correct?  
 25 A Yes.

- 1277 -

1 Q And you've been here all afternoon and part of the  
 2 evening listening to testimony concerning an alleged  
 3 same day airborne hunting violation in September, 2003?  
 4 A Yes.  
 5 Q First of all, I'd like to ask you. At any time during  
 6 the month of September of 2003 did you engage in same  
 7 day airborne hunting of moose? Or assist in the same  
 8 day airborne hunting of moose?  
 9 A No, I did not.  
 10 Q Now you've heard the testimony of Mr. Rivera and Mr.  
 11 Ellnor?  
 12 A Yes.  
 13 Q Concerning their observations of you between the dates  
 14 of September the 5th and September the 7th, 2003?  
 15 A Yes.  
 16 Q And you've provided us today, have you not, with a map  
 17 of the hunting area where you do your business?  
 18 A Yes.  
 19 Q Maybe you can explain to the court, Mr. Haeg, your  
 20 activities and conduct starting with September 5th  
 21 through September the 6th and 7th of 2003 regarding any  
 22 hunters that were involved in your business or your  
 23 assistant guides and your packers, managers in your  
 24 business?  
 25 A Okay. Can I go up to the map and.....

- 1278 -

1 Q Sure.  
 2 A .....point it out. On September 5th.....  
 3 MR. LEADERS: Why don't you -- where I can see where he  
 4 points.....  
 5 A I guess I should point out kind of where stuff is. This  
 6 is our main lodge, Trophy Lake Lodge. I actually bought  
 7 it from Eberhart Brunner. This is his map that he gave  
 8 me when I bought his guide operation. On September 5th,  
 9 2003 we had a few hunters out in the field. I believe  
 10 most of them were finished up with their hunt. I  
 11 believe a couple of them had flown out. They had got  
 12 their animals, et cetera. We -- Mr. Jayo and Tony were  
 13 still hunting for moose on September 5th. They had been  
 14 hunting out here, what we call kind of far west, out  
 15 here. On the 4th I believe I moved them over to the  
 16 Rock, which is right here. And I believe I was -- we  
 17 were trying to -- the hunter that was at Rock Creek with  
 18 Arthur Schwartz had filled out early and I had -- I  
 19 think I had flown him back to our camp. And I guess if  
 20 I can point out this here's what we call Triangle Lake.  
 21 It is where Mr. Powers guides out of. And if you notice  
 22 where most of our camps are, Rock Creek, Tony's Knob,  
 23 the Rock, Rodger's Strip, these -- Cava(ph) Strip. All  
 24 these are essentially between -- or where Mr. Powers is  
 25 is essentially between where we do most of our flying

- 1279 -

1 and we have a bunch of camps up here, there's strips  
 2 that we use. And even -- but to get to them there's a  
 3 high ridge and -- and it's like 6,000 feet here, and  
 4 it's high here, so I can't just go directly there. It's  
 5 so high that I have to stay out along the edge of the  
 6 mountains until you get to the valley and turn in. So  
 7 Mr. Powers' camp is right here. The -- the farthest I  
 8 can get away from it without climbing radically -- these  
 9 are one mile squares. I can get probably a mile and a  
 10 half away from it if I'm skirting it this way. If I'm  
 11 skirting it this way, you know, I could go out as far as  
 12 I want, but fuel we know is pretty expensive, and it's  
 13 very, very difficult to get out there. So I do -- I  
 14 never fly over his camp but I do skirt it as a matter of  
 15 courtesy. I don't know where their hunters go. I  
 16 assume, you know, when they look they go up and -- on  
 17 the ridge to spot, but when people are in camo and they  
 18 hike out several miles I have no idea when I start  
 19 heading down if they're out here, or if they're over  
 20 here or where they are. And I -- you know, if I ever  
 21 did see anybody, which I rarely ever have. I'll betcha  
 22 it's maybe one trip out of 30 I maybe see someone from  
 23 their camp. They're out there in camouflage, they're  
 24 sitting down, glassing, not moving. But anyway, on  
 25 September 5th, 2003, like I said, I think I had hauled

- 1280 -



1 the hunter that was done out of Rock Creek by. I think  
 2 I had flown by Tony, and he had said that they, you  
 3 know, weren't having any success. So usually if they're  
 4 -- sometimes they'll just tell me that they're not  
 5 happy. If they're not happy that means usually they  
 6 like to be moved. So on my trips between I usually will  
 7 just kind of look, and one of the best areas where moose  
 8 pile up are right along Under Hill River. It's a really  
 9 snaky river here. On one of the trips I know that I  
 10 seen a -- a moose, and the exact location is right here  
 11 in this small Peninsula. And I think on one of the  
 12 trips I told Tony to be ready to -- to be moved in the  
 13 evening. If they're hunting and they don't see -- if  
 14 they're not happy I'll usually tell them just kind of be  
 15 ready in case I decide to move you. I remember going  
 16 down there, landing, telling them, hey, I think I have a  
 17 better opportunity for you up here. I've just seen a  
 18 moose. And to kind of clarify. A lot of times I don't  
 19 tell our clients that I go look for moose for them.  
 20 Some hunters are a little -- oh, there's sometimes a  
 21 perception that that's not ethical or legal. It's  
 22 perfectly legal as long as you -- you know, people do it  
 23 all the time caribou hunting. They go out see caribou,  
 24 land, the next day they hunt. So sometimes I'll find  
 25 something and when I say -- when I fly in and land and I

- 1281 -

1 said, well, I think it's time to move. Everybody with a  
 2 guide usually knows that I have a better opportunity  
 3 somewhere, and that's what I do to -- I do a lot of  
 4 flying, it's legal. I don't do it unless we have to.  
 5 Usually we hunt our better camps where people can just  
 6 hunt on their own with no -- without moving -- moving  
 7 them with the airplane because not only moving them is  
 8 dangerous and expensive, it, you know, kills a day of  
 9 hunting so I only move people, you know, if there's an  
 10 opportunity and they're not, you know, -- not happy  
 11 where they're at. But anyway, on September 5th I landed  
 12 in the evening at the Rock here, told Tony let's go. He  
 13 jumped in, we flew back up to what we call Kenny's Strip  
 14 because it was -- as you can see, it's about a half a  
 15 mile from where the moose was. It was starting to get  
 16 kind of late, so we -- we made one lazy little circle,  
 17 didn't see the moose but I don't have time to look for  
 18 it to show Tony where it's at. I just land him. I  
 19 said, hey, the moose was there, you know, two hours ago,  
 20 whatever it was when I seen it when I decided to move  
 21 them. Immediately fly back down to pick up Doug Jayo,  
 22 fly him down. Land him there and when I took off it  
 23 was, oh dark 30 [sic]. When I got back to the lodge I  
 24 remember it was dark. I had to use landing lights to  
 25 land. You know, if -- I rarely -- most of the time when

- 1282 -

1 I move people I try to move them a little earlier so I  
 2 don't get rushed. Well, that was I think probably the  
 3 latest movement that I ever moved somebody that season.  
 4 So it sticks out in my brain because it was late. Very,  
 5 very late. And it's sometimes because I have a long  
 6 ways to go to ferry people. You know, if I move them a  
 7 short distance I can do it quickly and sometimes, you  
 8 know, if I don't get going when I should. You know, I  
 9 -- I try to let them hunt as long as they possibly can  
 10 that day because once they take off their hunt is over.  
 11 They can't hunt that day, they have to spend the night  
 12 and then start hunting, so I usually just try to do  
 13 everything as late as I can and still get it done  
 14 safely.

15 September 6th I remember it was -- we were going to  
 16 try to put steel down here in Rock Creek, and I think we  
 17 still had some meat or some people to move. I think  
 18 possibly Jake was down here also. I remember, like Tom  
 19 testified, I remember on September 6th not getting up  
 20 early. You know, I usually ask him what the weather is  
 21 or I can get up and go look. It was -- I was fogged in  
 22 tight until I believe it was about noon. It was just --  
 23 when I say fogged in tight I mean you can't see a  
 24 hundred yards. It's fogged in, not able to fly. I know  
 25 that I flew later on in the evening -- or later on in

- 1283 -

1 the afternoon because I remember picking up Jake. Don't  
 2 know really specifically where. I think he was down in  
 3 this area. Can't remember which camp exactly but I do  
 4 remember on the way back we were -- now I was skirting  
 5 Powers' camp and where Tony and Doug now. I was  
 6 skirting it out to the west because not only do I know  
 7 Powers are there, Tony and Doug are there, and I know  
 8 that any plane activity they're going to be watching. I  
 9 mean they're sitting there, they're on the ridge,  
 10 they're looking for game and when a plane comes over  
 11 everybody just, you know, it's just -- it's an instant  
 12 attraction. You don't do anything out there when  
 13 there's people hunting and they don't see you or the  
 14 plane. It's the most obvious thing that there is  
 15 around. I remember coming back with Jake, staying well  
 16 away from everybody, three or four miles, which -- you  
 17 know, I don't know what most other people fly away from  
 18 hunters, but if you see a camp and you skirt it by three  
 19 or four miles that's a pretty good courtesy path around  
 20 a camp with hunters. Most hunters don't get out three  
 21 or four miles. Most hunters get out a mile or two,  
 22 that's it. You know, most -- especially guides, most of  
 23 the hunters are old, so rather than go 20 miles out and  
 24 around I just skirted by. I remember seeing moose down  
 25 here, or -- you know, straight line about three miles

- 1284 -

1 away, two miles -- two and a half miles, three miles.  
 2 And telling -- I don't even think we circled them. I  
 3 think we just flew by because everybody is hunting.  
 4 don't want to have any misrepresentations of what might  
 5 be going on. I say, Jake, look at there, there's some  
 6 moose. You know, I said, hey, you know if it gets to  
 7 evening and Tony still hasn't reported having a moose  
 8 down maybe I'll go move them the same evening, and, you  
 9 know, give them another chance for a moose. Because the  
 10 moose that I had put them on here was a single bull, and  
 11 a single bull will travel until he finds cows that time  
 12 of year. But if he has cows they stay and they don't  
 13 travel. In my experience they -- they're -- they're  
 14 there to make babies and not go look for, you know, a  
 15 wife. So when I seen these moose, and I actually  
 16 remember two bulls and eight cows. Two bulls with eight  
 17 cows, they are there for the duration. They may drift a  
 18 little bit, but unless a pack of wolves or a bear or a  
 19 human really spooks them, they are not going anywhere.  
 20 They are -- set up camp. And I told Jake, I said, well,  
 21 that is a lot fur -- a lot more sure hunt than that  
 22 single bull up there because he's -- he's going to be --  
 23 he might be 20 miles away the next morning looking for  
 24 cows. These two bulls here with eight cows are -- I  
 25 mean they're -- that's the holy grail of what we look

- 1285 -

1 for moose hunting. When you see that, that's -- that's  
 2 -- that's the best we can do for a hunter, when I find a  
 3 situation like that. So I told Jake, you know, -- I  
 4 remember telling Jake, you know, hey, I might do  
 5 something about moving Tony if -- whatever. Anyway, I  
 6 put -- you know, left Jake there. And I remember  
 7 specifically flying down to Tony's camp. It's called  
 8 Kenny's Strip, landing on it, didn't contact them on the  
 9 radio or anything, I just landed. They were there  
 10 eating dinner in their little -- they're in a pup tent,  
 11 actually a bomb shelter. It's what we use at Kenny's  
 12 Strip and what we use at the Rock. It was the same tent  
 13 that they packed up. I said, hey, you know, I was  
 14 flying by earlier with -- first I asked them, I said,  
 15 hey, did you get a moose. No, we're still looking,  
 16 fogged in most of the day. You know, hunted, grunted,  
 17 called. I'm like, well, you know, when I was skirting  
 18 you to the west found two bulls with eight cows. I  
 19 said, you know, we still have enough light, I can move  
 20 you if I need to or, you know, what do you want to do.  
 21 Can you hunt them from here. And I didn't know if Doug  
 22 Jayo -- I hadn't guided or hunted with him and he was in  
 23 his -- I don't know, he's 60 or -- I mean. I didn't  
 24 know if he could make it, so I was -- what I was  
 25 planning on doing is maybe moving him somewhat closer so

- 1286 -

1 that the next morning they could go hunt again. Well,  
 2 Tony said they had been back and forth enough that they  
 3 could make really good time up and down the bear trails,  
 4 and moose trails, caribou trails that are along the  
 5 river. Every river has beaten paths. Tony said they  
 6 could move fairly well in it and that he thought Doug  
 7 would be plenty good to be able to get down, you know,  
 8 two or three miles.

9 You know, I kind of explained where the moose was  
 10 but showing someone and explaining it to them are two  
 11 entirely different things out there. Just little -- you  
 12 -- there's no way you can explain to someone the details  
 13 so -- and I don't really even remember saying this in  
 14 front of Doug. Like I said, we try to sometimes keep --  
 15 not really keep that from them but we just don't really  
 16 don't advertize. Sometimes we just say, hey, maybe it  
 17 would be better here. You ain't seen nothing here, you  
 18 know, so we don't -- you know, come out and advertize  
 19 that as a normal -- normal thing. Sometimes I'll say,  
 20 -- you know, pull Tony aside and say, Tony, you know,  
 21 maybe we should move camp and he's like, well, haven't  
 22 seen anything here, maybe we should. And I'll go, well,  
 23 jump in the plane, let's go, you know, looking. That's  
 24 what happened that night. Put Tony in the plane, we  
 25 flew down here. I don't specifically remember. Tony

- 1287 -

1 says -- remembers only one bull, I don't really remember  
 2 exactly what -- what went on. What I do remember  
 3 specifically is every time we go out the night before we  
 4 make a detailed map in our brain that we burn it in so  
 5 that we know every tree that we need to know, we know  
 6 every bank, we know every -- every nook and cranny. We  
 7 go, hey, they're here. You know, we make a plan because  
 8 there's no road maps there, and I remember telling Tony  
 9 specifically, you know, if you -- if I was the guide I  
 10 would come down -- I would get up in the dark and I  
 11 would haul butt as fast as I could make Doug go. We  
 12 would go down the river. There's a big white sandbank  
 13 right here, and I believe we have some pictures to that  
 14 affect. And -- I don't know if anybody wants to get up  
 15 and see, but there's a ridge here and that's the very  
 16 end of the ridge. It has a white sand bank that the  
 17 river cuts into it. But the significance of that ridge  
 18 is that in this whole valley it's the only high spot and  
 19 what so happened is the moose are just across the river  
 20 from the only high spot in the valley. So you come  
 21 down, you want to get up high because you can see a  
 22 whole lot better rather than calling them and having  
 23 them in close. You can get up high and look and not get  
 24 in close. You can -- you -- the advantages are a lot of  
 25 getting up high. You can -- you're not spreading your

- 1288 -

1 center around, you can see a whole lot more. You're not  
2 as apt to spook them. The advantages are -- are many.  
3 We always look for high ground. And I told Tony, go  
4 down -- that white sand bank is your signal to -- to get  
5 up on it and go down the -- the ridge. The end of the  
6 ridge terminates just right across from where the moose  
7 was, and you know, two bulls, eight cows. And you know,  
8 Tony said, yep, done deal. I'll -- it sounds like a  
9 plan. Tony is -- I consider myself one of the very best  
10 hunters in the world. If I had to pick somebody that's  
11 better it would be Tony. And I don't say that lightly  
12 because I grew up from a kid hunting.

13 I flew back, dropped off Tony. It was getting, you  
14 know, a little late. Flew back to the lodge.

15 Q Stop you right there. Was the decision made at that  
16 point whether or not you were going to move Doug Jayo  
17 and Tony Zellers down to where you saw the moose or they  
18 were going to stay in the same camp back at Kenny's  
19 Strip; what happened there?

20 A Tony, I think, had kind of explained it. Tony had said  
21 that the traveling was so good that it would be no  
22 problem for them to get from their camp to where the  
23 moose was and that would be....

24 Q They're camp at Kenny's Strip?

25 A At Kenny's Strip. It would just be a lot of wasted

- 1289 -

1 time, effort, and fuel to move closer. And also when  
2 you move closer there's the chance that you'll spook the  
3 moose off. They may come toward you in the middle of  
4 the night, smell your camp....

5 Q What was the plan as to when the hunt was going to take  
6 place?

7 A Early morning -- early the next morning. Should I  
8 continue on with....

9 Q Yeah.

10 A As I said, the hunter that was at Rock Creek had filled  
11 out. His name was Paul Perere(ph). He had, I think,  
12 already left, so Arthur was at Rock Creek with no hunter  
13 and we had wanted to do some maint -- well, not really  
14 maintenance, put steel siding on the side of the tent so  
15 the porcupines don't get in there and live there all  
16 winter. It's a major problem. It's our biggest  
17 problem. Porcies are way worse than bears, but the  
18 steel siding also keeps out the bears. It's also a camp  
19 that I pay \$1,000 a year to the state to keep because  
20 it's a permanent camp. I had talked to Arthur about me  
21 flying steel down there. He had the 7th to do it. On  
22 the 8th we had hunters coming in so we had one day to  
23 put steel siding and a steel roof and put steel on the  
24 door and fit everything on this camp. One day isn't a  
25 -- you know, it's enough time, but it's not any too

- 1290 -

1 much. Hunters are coming the day after that in the  
2 morning. So I told Arthur that, you know, when I could  
3 I would get steel down to him. You know, on the 6th I  
4 was busy doing other things. Well, on the 7th we had  
5 all the steel precut, we had measured the camp. You  
6 know, the sides were yea high, the roof runs were so  
7 long, the gable ends we had even the angles cut. We did  
8 measurements. In the morning I think we might have even  
9 loaded up the steel that night when I got in, but in the  
10 morning of the 7th, got up, sunshine, crystal clear day,  
11 not a cloud anywhere. One of the -- up until that point  
12 I think it was the only clear day that we had for the  
13 previous 15 days I believe. I wanted to get the steel  
14 down to Arthur as soon as possible because he only had  
15 one day to do everything. so I go to the strip. Jump in  
16 the plane, -- well, fuel it up, whatever, you know,  
17 preflight it, take off, come down and I think I knew  
18 Tony was hunting or probably down hunting. You know,  
19 the people that Ken Powers' group at -- we call it  
20 Triangle Lake are there. I remember being -- you know,  
21 going out a little further west, maybe not much, but I  
22 just remembered being pretty high. That morning I just  
23 stayed high because I just -- you know, two parties are  
24 hunting down there, and I didn't even start coming over  
25 this ridge here, and Tony's on the radio, said, you

- 1291 -

1 know, whatever, Dave is that you. And I'm like, yep.  
2 Got a moose and to me that's just, you know, a joyous  
3 occasion. I just, you know, -- you know, one of my  
4 hunters, you know, is successful, you know....

5 Q What did you do when you heard that?

6 A I made a 180 degree turn, which means I made a U-ey. I  
7 got on the radio as I was making the turn, called Tom,  
8 said get some packers ready. I knew that it was early  
9 enough in the day that if I got packers there we could  
10 get packers down, get them in there. I didn't know  
11 where I could land, but I knew if I got two packers  
12 there with Tony that no matter what happened we would  
13 get the moose out that day. We'd be all finished up on  
14 the 7th. Our hunter -- new hunters come in on the 8th.  
15 We don't have packers and guides working on somebody  
16 else's moose, so that was the main reason I didn't  
17 continue down to Rock Creek to drop off the steel is --  
18 you know, I knew I could get it down there some time.  
19 The priority changed from that to getting an animal out  
20 of the woods. We pride ourselves on how good we do it.  
21 We leave no meat behind. You know, we....

22 Q What did you do, flew back?

23 A Right. Yeah, we -- I headed back to the lodge. As I  
24 said as I made the turn I called Tom, I said, get some  
25 packers ready, you know. Got in there -- I landed, Drew

- 1292 -

1 comes screaming up with the three-wheeler, whatever. We  
 2 unload the steel. He had his pack, we -- I threw him in  
 3 the plane. I remember putting in a polaski(ph).  
 4 Q What's a polaski(ph)?  
 5 A Polaski(ph) is a tool they use for fire fighting. It  
 6 has an axe on one side and a -- a small hoe on the other  
 7 end. It's made for digging. It works very good for  
 8 leveling out runways or -- or moving -- moving stuff. I  
 9 think we brought a shovel also, because sometimes  
 10 there's sand berms that we need to kind of level off. I  
 11 didn't know where I was going to land. I just threw  
 12 them in and essentially we got -- you know, I had my --  
 13 you know, we're going to try to find somewhere closer  
 14 than their camp because that would be -- we -- there's  
 15 no way we could get the moose out in one day if we had  
 16 to pack it all the way to whatever.....  
 17 Q Back to Kenny's Strip?  
 18 A Yeah, back to Kenny's Strip. So we fly down there. I  
 19 think.....  
 20 Q Did you find a place to land?  
 21 A Yes, I did. I -- I....  
 22 Q Then what happened?  
 23 A I looked, circled around, looked at it once. It was  
 24 actually a pretty decent spot to land. Came in, landed,  
 25 going upstream on the south side of the creek. I knew

- 1293 -

1 where the moose was already, nobody had to tell me  
 2 because it was in the same -- virtually the same exact  
 3 spot as I had seen it the night before, within -- I  
 4 don't know, I would say within 70 yards of where we -- I  
 5 had seen it, you know. And I'm.....  
 6 Q So you landed and then what happened?  
 7 A I landed, dropped off Drew. Told him what needed to  
 8 happen with the runway. I actually could have landed,  
 9 but you know, with a little bit of work, you know, it's  
 10 a little less dangerous, not as apt to hurt the plane.  
 11 Told him what to do. I took off immediately, went back  
 12 to the lodge to pick up Jake. Landed, Jake jumped in,  
 13 zoomed right back down there. Come -- you know, this  
 14 time I'd been in there once, I just -- I actually had --  
 15 I came in from this direction and I was landing this  
 16 direction, so I came in and made a -- about 180 degree  
 17 turn to land, dropped off Jake. You know, they both --  
 18 you know, I pointed out where the moose was, right along  
 19 the edge of the creek. They started up. I took back  
 20 off, went north, got -- loaded up the steel. I -- I  
 21 don't know, maybe Tom came and helped me, I'm not real  
 22 positive on that. Flew the steel down to Rock Creek.  
 23 Drop it off to Arthur. Arthur is not a carpenter, he  
 24 looked at the steel, said, how do I do this. And I  
 25 remember he was fairly panic stricken, you know, never

- 1294 -

1 done steel roofing, and I'm -- I'm like, gosh, you know,  
 2 I've done so much of it I know what to do but here's  
 3 something he doesn't know.  
 4 Q Then what did you do? That is.....  
 5 A He said, man, I could use some help. I'm like, well,  
 6 Jake is the best carpenter, you know, he's packing a  
 7 moose, I'll try to get him back down here.  
 8 Q So what did you do?  
 9 A I left the steel with Arthur, jumped in the plane, flew  
 10 back up. On my way back I landed at -- below the moose.  
 11 About a quarter mile below the moose where I had the  
 12 strip. They had already got down on -- I'm looking -- I  
 13 don't know, a coup -- 150 pounds of meat or so, maybe  
 14 two loads or something. Threw that in. I don't know,  
 15 maybe a little more. I think I ended up making about  
 16 four trips out of there with meat.  
 17 Q What did you do with Jake? You said that Arthur wanted  
 18 help, so you thought Jake was a good carpenter. So you  
 19 got -- you landed, what did you do with Jake?  
 20 A Oh, yeah. I -- I think I either got there -- I think  
 21 what happened is they had some meat and I loaded up meat  
 22 and took it to the lodge and then when I came back Jake  
 23 was there, picked him up, flew him to Rock Creek to help  
 24 Arthur and they still hadn't had the whole moose out,  
 25 but by that time they had enough of it out and the strip

- 1295 -

1 was close enough I knew it was going to happen that day,  
 2 whether Jake was with them or not, it would be just more  
 3 work for Tony and Drew. Dropped off Jake with Arthur,  
 4 flew back up, landed again, got another load of meat,  
 5 flew it up to the lodge. I think I came back got one  
 6 more load of meat, so that would have been three loads  
 7 of meat. Flew it up and I think came back and got Drew  
 8 with the -- you know the antlers and cape. It has --  
 9 the trophy has to come out after all the meat. It has  
 10 to come out last or with the last load of meat, so that  
 11 was why that was the last trip. Flew it up there. They  
 12 told me that Tony and.....  
 13 Q They told you?  
 14 A Or.....  
 15 Q Who told you?  
 16 A Drew told me that before he headed down with the last  
 17 load that Tony and Doug took off back for camp so they  
 18 could get back at a reasonable time, break up camp  
 19 because they wanted to be able to be pulled out that  
 20 night. We wanted everything to happen so that they  
 21 could get back to camp, celebrate, have a shower. Doug  
 22 could get cleaned up because he was flying out on the  
 23 same plane that was bringing in the hunters the next  
 24 day, which was the 8th. So I took Drew back to the  
 25 lodge and I think I just hung out there for a while, you

- 1296 -

1 know, a couple hours, three hours or so. Flew down to  
 2 get Tony and Doug from Kenny's Strip. Which is, you  
 3 know, two or three miles away. I think it was like, oh,  
 4 mid-evening. I would say maybe 5:00 o'clock. I think  
 5 they, you know, -- I think I essentially from the.....  
 6 Q Is that when you picked them up?  
 7 A Yes. And flew them in -- took two trips.....  
 8 Q And then what did you do?  
 9 A You know, maybe got them out at -- by 6:30 or 7:00.  
 10 Q So you flew Tony and Jayo back to the.....  
 11 A Back to the lodge.  
 12 Q .....Trophy Lake Lodge? Then what happened after you  
 13 got everybody back to Trophy Lake?  
 14 A You know.....  
 15 UNIDENTIFIED SPEAKER: Celebrate.  
 16 A Yeah, everybody, you know, beautiful moose. Everybody  
 17 has a nice dinner, drinks. We have a -- a hot tub there  
 18 that we built, hand-built, whatever. I think we did  
 19 something there but I don't remember specifically what  
 20 happened but it was a, you know, it was just a -- you  
 21 know, a nice evening for everybody that was back at the  
 22 lodge.  
 23 Q Okay. Now on the 6th of September, did you ever fly  
 24 anyplace in the morning? Some time between 8:00 or 9:00  
 25 o'clock in the morning, and circle a moose?

1 A Nope.  
 2 Q The -- you -- let's talk about the morning.....  
 3 A I -- I believe they said it was covered up, so it would  
 4 be like looking for tundra in the tundra anyway.  
 5 Q Did you -- the morning Tony -- or the morning Doug gets  
 6 the moose, right?  
 7 A Yeah.  
 8 Q You say you start out that morning fairly early?  
 9 A Earlier than I normally do because I'm not a morning  
 10 person.  
 11 Q Okay. And you're -- start, you're going to go high up  
 12 over, even with a load of steel?  
 13 A A load of steel to do a -- a little eight by 10 camp  
 14 like that is probably only 300 pounds. And that plane  
 15 that Wendell and I built with 180 horse could go to  
 16 15,000 feet in the drop of a hat.  
 17 Q Okay. You just start going up and Tony calls, is that  
 18 you, and the communication is basically, got a moose?  
 19 A Yep. And as you indicate you said didn't even need to  
 20 tell you where, you knew where, right?  
 21 A Yep.  
 22 Q And that's all he told you is you got a moose, right?  
 23 A Yep.  
 24 Q Didn't discuss, hey, it's Dave, it's down here, it's  
 25 over here, or whatever?

1 A No, I did not.  
 2 Q Did you circle a bear that time on the 6th?  
 3 A No, I did not.  
 4 Q Did you have any communications in the morning with  
 5 either Tony or Doug Jayo from the plane to the ground?  
 6 A On the 6th?  
 7 Q Yeah.  
 8 A Absolutely not.  
 9 MR. ROBINSON: That's all. You can take your seat.  
 10 A Okay.  
 11 THE COURT: Okay. You can have a seat. Mr. Leaders?  
 12 (Whispered conversation)  
 13 THE COURT: It's been sitting.....  
 14 MR. ROBINSON: Is that someone's phone?  
 15 MR. LEADERS: Yeah, someone (indiscernible).  
 16 (Whispered conversation)  
 17 DAVID HAEG  
 18 testified as follows on:  
 19 CROSS EXAMINATION  
 20 BY MR. LEADERS:  
 21 Q This -- did you see this gut pile around that Mr.  
 22 Powers' clients had apparently taken caribou or  
 23 something in that area?  
 24 A Nope, never had seen a gut pile.  
 25 Q Hadn't even seen that?

1 A I don't think so. I.....  
 2 Q I mean that's what you told us earlier?  
 3 A Yeah.  
 4 Q All he said was got a moose?  
 5 A Yep. I just -- and I guess -- I guess this is an  
 6 assumption that when two bulls and eight cows are  
 7 somewhere and Tony's out hunting it the next morning, I  
 8 don't need to go look for where it's at.  
 9 Q And despite the fact that you knew they were spending  
 10 the night at the Kenny's Strip camp?  
 11 A Yep.  
 12 Q And they were going to hike the two to three miles down  
 13 to where you had seen those bulls?  
 14 A Yep.  
 15 Q You knew that you had set them in the day before by  
 16 Kenny's.....  
 17 A Yep.  
 18 Q .....Strip and there was a bull closer? You said about  
 19 a half mile, I think you.....  
 20 A Yes, yep.  
 21 Q So you're telling -- you knew -- but you don't even ask  
 22 where -- you don't even get information as to where it's  
 23 taken, you immediately go back to the camp you tell us  
 24 to get tools and someone to help build another strip  
 25 because you know you're going to need another strip?

1 A Yep. Tony said he need packers and to me that means  
 2 long pack. It means we need packers, and I know on that  
 3 river, you know, Trooper Gibbens has been there. If you  
 4 have a good plane you can find -- be creative and find  
 5 quite a few places to land, so the assumption is -- is  
 6 that you probably will be able to land closer but if you  
 7 can't you've got good old brute force, Jake and Drew  
 8 with you.  
 9 Q You assumed a lot of things but you didn't know is what  
 10 you're telling us? As far as needing to do a new  
 11 strip.....  
 12 A The assumptions were pretty firm, but, yes, you could  
 13 look at it that way, yes.  
 14 Q Assuming where -- you know, that they took the moose  
 15 down where you had seen the two before, and that.....  
 16 A Yeah. Yeah.  
 17 Q .....maybe then that they hadn't encountered this other  
 18 moose on the walk down?  
 19 A To me it doesn't matter. I go get packers and I show  
 20 back up and Tony says, hey, you're in the wrong pos --  
 21 you know, it doesn't -- Tony says he needs packers, I go  
 22 get packers.  
 23 Q But you told us because you knew you needed to make  
 24 another strip? That's because you knew where the moose  
 25 was taken because you had been over that moose before

1 like that?  
 2 A Absolutely not.  
 3 Q So it could have been right there near Kenny's Strip,  
 4 that's where he started from?  
 5 A Absolutely. What -- what -- yeah, what.....  
 6 Q Had seen moose in the area?  
 7 A Yeah. What difference does it make to have at -- or  
 8 strip we have a shed and I have a shovel and a  
 9 polaski(ph) total weight of 10 pounds to take them with  
 10 in case. I mean it's just -- most of the time I fly  
 11 around out there with tools to make strips.  
 12 Q And as you testified you knew -- didn't need to be told  
 13 to know exactly where the moose was taken?  
 14 A No. Like I said, I assumed.  
 15 Q You.....  
 16 A I mean I know it's got to be on Little Under Hill Creek.  
 17 I don't think Doug Jayo is going to make it, whatever --  
 18 you know -- he's -- he's pretty spry, but he's got white  
 19 hair.  
 20 Q You've falsified information before about illegal  
 21 activities hunting?  
 22 MR. ROBINSON: Before when? Before 2003 or before.....  
 23 MR. LEADERS: Before today.  
 24 Q Isn't that correct?  
 25 A Yes.

1 that day?  
 2 A I -- yeah. You could -- you could twist it however you  
 3 want, but.....  
 4 MR. ROBINSON: (Indiscernible) you didn't say you had  
 5 been over that moose that day. The day before.  
 6 Q But I'm saying isn't it true that you had actually been  
 7 over it that day already? That's why you knew where it  
 8 was taken? You had been over that moose, in fact, that  
 9 day and that's why you knew where it -- where they took  
 10 the moose?  
 11 A Now rephrase -- start the question from beginning to  
 12 end, please.  
 13 Q When Tony -- Tony didn't have to tell you that he took a  
 14 moose and you assume where it was. You knew where it  
 15 was because you had already been over the moose that  
 16 day, hadn't you?  
 17 A No, I had not. When I came over the ridge and I heard  
 18 Tony on the radio, that was the first indication that  
 19 there was a moose taken, and like you said, it was an  
 20 assumption as to where it was taken. But when Tony says  
 21 he needs packers, I'm this big smile, go back and I get  
 22 packers and if I come back and my assumption is wrong as  
 23 to where the moose is, Tony will clue me in that I'm  
 24 wrong.  
 25 Q Tony didn't tell you, need to make a strip or anything

1 Q Where things were taken, how things were taken?  
 2 A Yep. And I'm not proud of that.  
 3 Q You did that in order to avoid prosecution or being  
 4 detected even for criminal behavior, right?  
 5 A Yep.  
 6 MR. LEADERS: Nothing further.  
 7 THE COURT: Any redirect, Mr. Robinson?  
 8 MR. ROBINSON: Yes.  
 9 DAVID HAEG  
 10 testified as follows on:  
 11 REDIRECT EXAMINATION  
 12 BY MR. ROBINSON:  
 13 Q Mr. Haeg, correct me if I'm wrong, but wasn't your  
 14 testimony that on the evening of the 6th when you and  
 15 Tony flew over the area where you said you saw the two  
 16 bulls and the cows.....  
 17 A Yes.  
 18 Q .....and made a plan about how Tony was going to hunt  
 19 those -- hunt for moose that you had seen the next day?  
 20 A Yes, I expected him to get up at the crack of dark and  
 21 hot foot it down there the morning of the 7th and have  
 22 Doug Jayo harvest one of those moose that we seen and,  
 23 as I said, bull moose -- two bulls with eight cows,  
 24 they're like they have an anchor out.....  
 25 Q Then -- and then you said you offered to take Doug Jayo

1 and Tony down closer to where you saw these two bulls  
 2 and the cows that night. but Tony said, no, he thought  
 3 he could make it down there the next morning with Mr.  
 4 Jayo. Said he would rather go back to Kenny's Strip?  
 5 A That is absolutely correct.  
 6 Q So when you flew from the lodge the next morning with  
 7 the steel that you were going to take down to Arthur's  
 8 camp, and you heard on the radio from Mr. Zellers that  
 9 he had taken a moose, was it reasonable for you to think  
 10 that it was in the area where you had planned to go  
 11 hunting the next day anyway?  
 12 A It was -- to me it was more than reasonable. I didn't  
 13 know where else he would go looking for a moose than in  
 14 that exact spot.  
 15 Q Before the wolf incident in 2004 that you were convicted  
 16 of false information, had you ever falsified anything  
 17 about a client-guide hunt that you had done?  
 18 A Never.  
 19 MR. ROBINSON: No further questions.  
 20 THE COURT: Anything else?  
 21 MR. LEADERS: No.  
 22 THE COURT: Okay. Thank you, Mr. Haeg. You can go  
 23 ahead and have your seat back at the table. Mr. Robinson,  
 24 anything else?  
 25 MR. ROBINSON: I think that's it for witnesses.

1 THE COURT: Mr. Leaders, anything in rebuttal?  
 2 MR. LEADERS: I don't have anything in rebuttal  
 3 regarding the moose.  
 4 THE COURT: Okay.  
 5 MR. LEADERS: Well, actually -- yes, maybe just briefly.  
 6 MR. ROBINSON: Briefly you might want to bring Mr.  
 7 Gibbens back?  
 8 THE COURT: Rebuttal.  
 9 MR. LEADERS: Yeah, Trooper Gibbens briefly on the moose.  
 10 It's just the statements issue we'll go over.  
 11 THE COURT: Okay. Just a second.  
 12 (Oath administered)  
 13 TROOPER GIBBENS: Yes, Your Honor, I do.  
 14 THE COURT: Okay. Be seated.  
 15 (Whispered conversation)  
 16 THE COURT: Go ahead, Mr. Leaders.  
 17 MR. LEADERS: Thank you.  
 18 BRETT SCOTT GIBBENS  
 19 called as a rebuttal witness on behalf of the plaintiff,  
 20 testified as follows on:  
 21 DIRECT EXAMINATION  
 22 BY MR. LEADERS:  
 23 Q Trooper Gibbens, I guess first I want to talk a little  
 24 bit about -- you had a little bit of involvement I guess  
 25 in this moose case, is that correct?

1 MR. HAEG: Where's Doug?  
 2 MR. ROBINSON: Except Doug Jayo, which I might ask the  
 3 court to hold him in contempt.  
 4 (Whispered conversation)  
 5 MR. HAEG: Do you want to do anything with those pictures  
 6 or not? Or can we?  
 7 MR. ROBINSON: I don't think we need to. I think the map  
 8 is pretty clear, don't you?  
 9 MR. HAEG: I don't know. At this point.....  
 10 THE COURT: I understood the description fine from the  
 11 map if -- I don't think I need pictures.....  
 12 MR. HAEG: Well, there's some pictures of the white sand  
 13 bank, pictures of the Peninsula.....  
 14 THE COURT: I mean I understand ridges on maps. I  
 15 actually.....  
 16 MR. HAEG: There's pictures of the kill site, close to  
 17 the river.  
 18 THE COURT: I -- everybody described it extremely well,  
 19 several times, I think I have a mental picture that's good  
 20 enough.  
 21 MR. HAEG: (Indiscernible).  
 22 MR. LEADERS: Feel like you've been there. Do you want  
 23 to testify now, Judge?  
 24 THE COURT: No, I don't think so. I.....  
 25 MR. ROBINSON: And that's it for witnesses.

1 A Yes, sir, I did.  
 2 Q Briefly explain to the court just briefly your  
 3 involvement?  
 4 A At some point in mid-September, I don't remember the  
 5 date, Mitch.....  
 6 Q In 2003?  
 7 A September, 2003, yes, sir. Mitch Doerr called me, gave  
 8 me kind of a vague description of where I needed to go  
 9 look for a kill site on Little Under Hill Creek. I  
 10 responded and found where a landing site had been  
 11 constructed. Landed just around the corner on another  
 12 corner bar so as not to disturb that scene in case  
 13 there's any track evidence. Got there, photographed the  
 14 tracks and stuff. It was late evening, I was losing  
 15 light and I did not find the kill that day. Got back,  
 16 told Mitch Doerr. They went in a helicopter to the  
 17 coordinates that I gave them for the landing site and  
 18 found the kill. And then I was present for -- present  
 19 for the interviews that took place at I believe Mr.  
 20 Cole's office.  
 21 Q And that's Mr. Cole regarding Mr. Haeg, right?  
 22 A And Mr. Zellers was present.  
 23 Q And then the office of Kevin Fitzgerald regarding Mr.  
 24 Zellers?  
 25 A Right.

1 Q Okay. And so during the discussion any discussion about  
 2 the moose case during that?  
 3 A Yes. there was. both cases.  
 4 Q Apparently you had a conversation with Mr. Stepnosky and  
 5 Mr. Haeg at the interview meeting at Mr. Cole's office?  
 6 A Yes. sir, I believe in the restroom or in the hallway,  
 7 and I think it was myself and Mr. Stepnosky talking  
 8 initially and then Mr. Haeg came along. Unless it was  
 9 vice versa, but there was that conversation.  
 10 Q You made comment about wolves? I mean it's been  
 11 attributed -- it's been stated that you made a comment  
 12 about wolves, the only wolf -- good wolf is a dead wolf.  
 13 A We -- we were talking about wolves, and I said that as a  
 14 question while Mr. Haeg and I were talking about wolves.  
 15 A good wolf is a dead wolf, in that manner. I do  
 16 harvest wolves, I do believe in the harvest of wolves,  
 17 and I do believe in predator control. I do not believe  
 18 that all wolves should be dead. Hope they never are.  
 19 Favorite animal. Love to harvest them but at the same  
 20 time.....  
 21 Q They need to be controlled?  
 22 A Yeah.  
 23 Q Okay. The -- you also made a comment about, according  
 24 to Mr. Stepnosky, about Mr. Haeg and wanting to -- I'd  
 25 love the opportunity to talk with him, or something like

1 ever set in a spot but it's evidently effective because  
 2 it kept catching wolves and kept catching wolves. So  
 3 that was -- as to me speaking to the quality of his  
 4 trapping ability, that's -- my vast experience, to his  
 5 trapping operation is that one set of his that I ever  
 6 saw, and so that's all I can speak to. And can't really  
 7 speak to his hunting abilities.  
 8 Q So you commented on his piloting skills that you had  
 9 observed.....  
 10 A Yes.  
 11 Q .....at some of the locations he had flown into  
 12 throughout your investigation?  
 13 A Absolutely, there's no question in my mind that he's a  
 14 good pilot.  
 15 Q Okay. But no real commentary on his skills as a hunter  
 16 and trapper?  
 17 A His efficiency killing wolves, yes. And I may have  
 18 commented to that, but he killed some wolves, you know.  
 19 Too -- too bad it wasn't done right.  
 20 Q Legally?  
 21 A Yeah.  
 22 MR. LEADERS: Nothing further on the wolf/moose issue.  
 23 THE COURT: Mr. Robinson?  
 24 BRETT SCOTT GIBBENS  
 25 testified as follows on:

1 that?  
 2 A I did. I said, you know, at a different time, under a  
 3 different circumstance it would have been neat to talk  
 4 because we did have some parallels in our lives,  
 5 both.....  
 6 1222  
 7 (Tape change)  
 8 4MC-05-27/Side A  
 9 0000  
 10 THE COURT: .....September 29th at 8:20. Trooper Gibbens  
 11 is testifying on direct exam. Go ahead, Mr. Leaders.  
 12 Q Okay. You were saying that you know you had indicated  
 13 you had wanted -- but another time, another place, or at  
 14 some point you'd like to talk with Mr. Haeg?  
 15 A Right. And -- and I may have said after all this is  
 16 over I'd like to talk to you about trapping, or wolfing,  
 17 or something. I acknowledge that that might have been  
 18 said. And I told, I think, Mr. Stepnosky that Mr. Haeg  
 19 was a heck of a good pilot. There is no question in my  
 20 mind about that. I never said he was a good hunter, I  
 21 never said he was a good trapper. He specifically asked  
 22 me questions directly about what I thought of his wolf  
 23 set that I observed, if it looked like a good set. And  
 24 I said obviously it's effective, it's caught a lot of  
 25 wolves. It's more snares than I would ever set or have

1 CROSS EXAMINATION  
 2 BY MR. ROBINSON:  
 3 Q Trooper Gibbens, have you hunted moose?  
 4 A Yes, sir, I have.  
 5 Q Have you ever used your plane to spot moose and then the  
 6 next day hunting?  
 7 A Yes, sir, I have.  
 8 Q Have you ever spotted moose from like 1,000 to 1,200  
 9 feet high?  
 10 A Yes, I've seen moose from 100 feet all the way up to a  
 11 few thousand, so sure.  
 12 Q But at 1,000 to 1,200 feet high, in your experience are  
 13 you able to push moose away.....  
 14 A You could influence the direction of a moose who was  
 15 moving, absolutely. You could influence the direction  
 16 most animals move. Some move better than others,  
 17 obviously. There's guides who have video of themselves  
 18 pushing a bear within bow range of a client at the  
 19 bottom of a mountain. So -- different animals.....  
 20 Q What about at 1,200 feet (indiscernible).....  
 21 A You could influence the direction the moose is traveling  
 22 from that height, you couldn't necessarily move him to a  
 23 specific location where you wanted him necessarily.  
 24 Q Okay.  
 25 A You could sure get him moving one way by offsetting.



1 Q Would you agree that when it comes to bull moose during  
2 rutting season or when they're looking for cows that for  
3 the most part if you're flying at that height you're not  
4 going to necessarily move them away from those cows,  
5 right?  
6 A I would agree that as a -- as a rule that's correct.  
7 Q Now I take it that in the course of your experience as a  
8 trooper you have done police reports?  
9 A Yes, sir, I have.  
10 Q Can you tell me what CI means? State of Alaska,  
11 Department of Public Safety?  
12 A Personally, I don't close many cases out that way. I  
13 believe it's closed by investigation, but I'd have to  
14 pull it up in my computer to see what that acronym  
15 means. We -- we've just got a block on the bottom that  
16 we click on and it gives us about 10 options, we click  
17 on one of them for that block right there. CI is not  
18 one that I personally use much.  
19 Q But you're saying it relates to case closure?  
20 A I believe so. Even cases where the -- where charges are  
21 filed would be a CA, closed by arrest. Even though  
22 there's no arrest.  
23 Q What about CI?  
24 A And I think it's closed investigations. They're all  
25 C's. Everything you can put in that block there would

- 1313 -

1 be a C.  
2 Q Okay, so C would be closure?  
3 A Right.  
4 Q I would be investigation?  
5 A I believe so.  
6 Q And is that usually approved by some officer of higher  
7 rank than you if you wanted to do a closure?  
8 A Yes, sir.  
9 Q And what does the date closed mean?  
10 A More likely that's a date that it's reviewed and  
11 approved by somebody and whatever action is being --  
12 whatever direction you're going with a case, whether  
13 you've filed charges at that time or whether you've not  
14 filed charges. It's being approved by whoever reviews  
15 your reports. In this case I believe it was Sergeant  
16 Waldron, and -- and they're saying that whatever action  
17 you've taken at that time they approve of at that time.  
18 It doesn't mean that even if a case is closed, CI, you  
19 could open it six months later, you could open it four  
20 and a half years later. CI doesn't mean it's forever  
21 done.  
22 Q But it's at least closed at that moment?  
23 A It means no charges are being filed at that moment, yes,  
24 sir.  
25 Q I want to show you the first page of Investigator

- 1314 -

1 Doerr's report, which is the Little Under Hill Creek  
2 game unit 19, Pete Rivera, Kenny Powers concerning this  
3 case.  
4 A Yes, sir.  
5 Q And what's the date? And at the bottom of that it says  
6 CI.  
7 A Yes, sir.  
8 Q So that would be closed investigation?  
9 A I believe so.  
10 Q And it says copies to district attorney's office?  
11 A Yes, sir.  
12 Q Then it has an approval by some officer who is higher in  
13 rank than Investigator Doerr?  
14 A Sergeant Burke Waldron, who is now a Lieutenant, yes,  
15 sir.  
16 Q And then it has a date closed 8-20-04?  
17 A Yes, sir.  
18 Q So as far as that date of 8-20-04 is concerned, the  
19 investigation of that case was closed?  
20 A At that time, yes, sir.  
21 MR. ROBINSON: I'd like to have this admitted.  
22 THE COURT: I think we're up to.....  
23 MR. ROBINSON: We'll make it -- are we down to EE?  
24 THE COURT: I think so.  
25 MR. LEADERS: I believe so.

- 1315 -

1 THE COURT: Yep.  
2 Q Now the only real connection you have with this case  
3 before you had some interviews in 2004, June of 2004  
4 date, was that you went out to try to find where the  
5 plane landed and where the kill site was, right?  
6 A Yes, sir. In September '03.  
7 Q Of '03. And you were able to find where you saw a plane  
8 land at some strip.....  
9 A A sandbar up where there had been tool marks. I  
10 actually took photographs of shovel marks and hoe type  
11 marks.....  
12 Q It looked like somebody had been cutting through the  
13 place.....  
14 A Yes, sir, and there was game bag wrappers and flagging  
15 laying on the sandbar which indicated that an animal had  
16 been butchered and potentially packed nearby.  
17 Q And then you couldn't find the kill site?  
18 A No, sir, I got there pretty late in the evening and ran  
19 out of light while I was on the ground.  
20 Q So then that was turned back over to Trooper Doerr to  
21 see if he could find.....  
22 A Yes, sir.  
23 Q And that was pretty much the interview involving this  
24 until June of 2004?  
25 A Yes, sir, it was.

- 1316 -

1 Q And so even after your interview with Mr. Zellers in  
2 June of 2004 the investigation closed in this case, no  
3 charges are filed as of August, 2004?  
4 A That's what the report indicates, yes, sir. Like I  
5 said, it's not my case.  
6 Q But that's what the report says?  
7 A Yes, sir.  
8 MR. ROBINSON: Thanks. I don't have any further  
9 questions.  
10 BRETT SCOTT GIBBENS  
11 testified as follows on:  
12 REDIRECT EXAMINATION  
13 BY MR. LEADERS:  
14 Q Were you aware of any attempts to continue the  
15 investigation in this case that Investigator Doerr was  
16 making?  
17 A Throughout the investigation I know that he was  
18 attempting to contact both hunters and witnesses and  
19 continue the investigation. I don't think that the  
20 whole thing -- I don't think that he was able to get the  
21 interviews done that he wanted to necessarily in  
22 September, '03. I think there was -- the investigation  
23 was on-going during that whole period. I don't remember  
24 any further attempts.  
25 Q Were you aware that he was attempting -- trying to

1 A Yes, sir. They decided that rather than further stretch  
2 it out and do a UC hunt and all that they were trying to  
3 go ahead and finalize the case at that time.  
4 Particularly since we were in negotiations and  
5 conducting interviews with Mr. Haeg and Mr. Zellers.....  
6 Q And part of that was going to be an agreement not to  
7 cont -- to file any charges against Mr. Haeg based --  
8 that could be -- the wolf case could be resolved, is  
9 that correct?  
10 A Yes, that is correct.  
11 Q And so the -- let me see Exhibit EE.  
12 MR. LEADERS: Is this EE?  
13 THE COURT: Uh-huh.  
14 Q And now this here date closed is August 20 of '04,  
15 right?  
16 A Yes, sir.  
17 Q And that's after those -- that decision had been made  
18 that no further investigation would be done, is that  
19 correct?  
20 A Yes, sir. The -- because my investigation in the wolf  
21 case, for the most part, was completed by the first part  
22 of April, '04, and then we were already -- I don't  
23 remember the exact dates that we conducted the  
24 interviews with Mr. Zellers and Mr. Haeg, but it was mid  
25 -- mid-summer. I want to say June or July, and so this

1 establish an undercover hunt involving Mr. Haeg as well?  
2 A Oh, absolutely, that was kind of before this.....  
3 Q Before the wolf -- this. You mean the wolf stuff that  
4 came out?  
5 A Right. Sorry. Before the wolf stuff came up, I mean  
6 way back in September there had been talk about doing a  
7 UC hunt out of Mr. Haeg's camp.  
8 Q Based on the complaint.....  
9 A Based on the complaint and, you know, the allegations.  
10 We wanted to do a UC hunt and potentially see if -- if  
11 we could get a hunter in there.  
12 Q And that's something that takes some time to develop.  
13 You have to establish a hunt contract.....  
14 A Usually it takes a year, year and a half, two years to  
15 do a UC hunt, get the hunt booked a year out, get the  
16 hunter in there, because as I'm sure Mr. Haeg would  
17 attest, he's probably in the past been booked up for a  
18 year in advance each time. He probably books 2003 hunts  
19 in 2001 and 2002, and by the time '03 rolls around he's  
20 probably about full, so.  
21 Q You also aware that there was a decision made once the  
22 wolf charges -- or wolf charges -- or investigation was  
23 conducted and charges were being considered that the  
24 decision was made to kind of wrap up even the moose in  
25 some type of resolution with the wolf case?

1 closure date of 8-20-04 was after we were already in  
2 negotiations on the wolf thing.  
3 Q According to your report -- the interview with Mr. Haeg  
4 was on June 11th, does that sound correct?  
5 A It does sound correct. I remember.....  
6 Q And Mr. Zellers, June 23rd?  
7 A Yes, I had to leave -- I was down in Bristol Bay, TDY,  
8 and actually flew into King Salmon and flew into  
9 Anchorage to do the interview with Mr. Zellers and I was  
10 TDY during that time so that sounds right.  
11 MR. LEADERS: No further questions.  
12 THE COURT: Mr. Robinson, anything else?  
13 BRETT SCOTT GIBBENS  
14 testified as follows on:  
15 RECROSS EXAMINATION  
16 BY MR. ROBINSON:  
17 Q Now with regard to the decision not to make any -- bring  
18 any charges, that wasn't your decision?  
19 A No, sir. Far from it. Like I said, not my case. The  
20 wolf.....  
21 Q It wasn't your case.....  
22 A The wolf case is my case.  
23 Q So the moose case wasn't even your case, was it?  
24 A No, sir.  
25 Q So.....

1 A Because it would help anyway because -- but it's not my  
 2 prime -- I'm not the primary case.....  
 3 Q So with regards to closing the investigation in this  
 4 case as of August 20, '04, you didn't have anything to  
 5 do with that, did you?  
 6 A No, sir.  
 7 Q And you heard earlier Officer Doerr testify that he  
 8 interviewed Mr. Jayo on August 4th of 2004?  
 9 A I don't remember the date he said he interviewed him,  
 10 but if that's what he testified.  
 11 Q It could have been roughly a couple weeks before August  
 12 20th, 2004?  
 13 A It would, as would the interviews with Mr. Haeg and Mr.  
 14 Zellers. They'd be, you know, within a month or so.  
 15 Q Well, didn't -- wasn't -- didn't those interviews take  
 16 place in June of '04?  
 17 A Yes, one at the -- one the 11th and then the 23rd,  
 18 whatever I said.....  
 19 Q And that's in June. So it would have been almost a  
 20 couple months later that he talked to Mr. Jayo?  
 21 A Right.  
 22 Q And then this business about trying to set up an  
 23 undercover sting operation, so to speak, with regard to  
 24 hunting.  
 25 A Again, I can only speak briefly to that. I've never had

1 THE COURT: Here's what I would like to do, is I would  
 2 like to hear all the evidence and all the argument and then  
 3 we'll take an extended break because I'm going to want some  
 4 time to review everything before I make any decisions.....  
 5 MR. ROBINSON: (Indiscernible).  
 6 MR. LEADERS: Can I just have a few minutes break to go  
 7 to the restroom.....  
 8 MR. ROBINSON: (Indiscernible) go to the bathroom.  
 9 THE COURT: Right, I understand that, but I mean we'll  
 10 take ones between now and then but I -- just so that you can  
 11 plan ahead.  
 12 MR. ROBINSON: I'm just -- I think he just needs a short  
 13 break, five or 10 minutes.....  
 14 THE COURT: We can -- yeah, we'll.....  
 15 MR. LEADERS: Yeah, I don't mean extended, I mean.....  
 16 THE COURT: But -- but I just -- I'm just putting -- I  
 17 want you to know so that you guys can plan ahead as far as  
 18 the rest of the evening.  
 19 MR. ROBINSON: All right.  
 20 MR. LEADERS: Thank you.  
 21 THE COURT: But by extended I mean half an hour or 45  
 22 minutes or we can negotiate that.....  
 23 MR. ROBINSON: Right.  
 24 THE COURT: ....later, but -- that clock looks like it  
 25 says 25 until, so let's come back at quarter until. Let's

1 any first-hand experience with it so I don't want to  
 2 talk out of church about that too much.  
 3 Q All right. But as far as you know that was never set  
 4 up?  
 5 A It was never set up to the best of my knowledge, that's  
 6 true.  
 7 MR. ROBINSON: No further questions.  
 8 THE COURT: Okay.  
 9 MR. LEADERS: Nothing -- not on the moose issue, Judge.  
 10 How do you want to -- did you have anything else on the  
 11 moose issue.....  
 12 MR. ROBINSON: No.....  
 13 MR. LEADERS: I think we're done on the moose related  
 14 evidence and information, Judge. How do you want to proceed  
 15 at this point?  
 16 THE COURT: We're going to finish tonight, gentleman.  
 17 MR. LEADERS: I understand that. I.....  
 18 THE COURT: We're finishing this evening.  
 19 MR. LEADERS: Oh, I appreciate that. I understand that.  
 20 MR. HAEG: (Indiscernible).  
 21 THE COURT: We are going to finish.  
 22 MR. LEADERS: Can we have a brief break? I'd like to use  
 23 the restroom and then I -- I'm going to have -- my only  
 24 witness for the rest of the sentencing portion is Trooper  
 25 Gibbens.....

1 just take 10 minutes.  
 2 MR. LEADERS: Thanks.  
 3 THE COURT: All right.  
 4 (Off record)  
 5 THE COURT: We're back on record. Mr. Leaders?  
 6 MR. LEADERS: Thank you.  
 7 BRETT SCOTT GIBBENS  
 8 testified as follows on:  
 9 REDIRECT EXAMINATION CONTINUED  
 10 BY MR. LEADERS:  
 11 Q Trooper Gibbens, can you -- let's kind of change the  
 12 focus to the issues of the case -- your case, as you put  
 13 it, the case you investigated, the wolf case.  
 14 A Yes, sir.  
 15 Q Can you give a little bit of perspective -- how long  
 16 have you lived here in the McGrath area?  
 17 A I've lived here in the McGrath area going on four years  
 18 now.  
 19 Q Okay. Can you give a perspective as to the importance  
 20 of the wolf predator control program to the local  
 21 community?  
 22 A I would say that the McGrath community probably has had  
 23 the highest level of participation, as far as community  
 24 input and time spent getting a predator control  
 25 implemented of probably anywhere in the state. They had

1 hearings back to -- way back when Tony Knowles was still  
 2 the Governor. He came out for special hearings and  
 3 stuff and they worked really hard to get the predator  
 4 control program implemented. They've -- as -- as a  
 5 local population that relies heavily on the moose for  
 6 subsistence the people see this predator control project  
 7 as so important that -- kind of as a trade-off. If the  
 8 state would implement the predator control program  
 9 within this area right around McGrath, the McGrath  
 10 residents agreed so that this study could be completed,  
 11 to not hunt moose within a specific area inside the  
 12 experimental micro-management area. This has caused  
 13 local folks to have to go a lot farther than they ever  
 14 had to go before to hunt moose. There is no more  
 15 jumping in your boat in a evening in McGrath and going  
 16 hunting that evening and coming home. You've got to go  
 17 so far now that you better have a whole day for it or  
 18 you better have a weekend for it, and fuel here is over  
 19 \$4 a gallon for unlead, and folks are mumbling a little  
 20 about fuel prices, but we have yet to have a local poach  
 21 a moose in this closed area, which is a point of pride  
 22 with me, since here we're talking about folks that need  
 23 the meat, and they're taking this project so seriously  
 24 that they're driving right past bulls all fall long, and  
 25 cows and bulls year around, but almost daily I'd hear

- 1325 -

1 oh, gees, there was two 30 inchers and big boy right up  
 2 here by the shipyard, you know, everybody would see them  
 3 coming and going. And as much as they want the meat,  
 4 they're not giving in to the stress or the temptation of  
 5 needing a full freezer. They're still working hard to  
 6 stay legal and go find a legal moose.  
 7 Q Sort of complying with their part of the bargain  
 8 regarding this joint effort between predator control and  
 9 rejuvenation of the local.....  
 10 A Absolutely, and -- and they take the predator control  
 11 aspect of it very seriously, as well. Just from what  
 12 I've heard around town public sentiment is not in any  
 13 way in support of Mr. Haeg did, contrary to what we've  
 14 kind of heard off and on that it was doing the villagers  
 15 a favor, and things like that. What he.....  
 16 Q Why is that? I mean he killed wolves. I mean that's  
 17 what -- you know, others have said.  
 18 A Right; he did, and -- and I want to say that throughout  
 19 some of the testimony it's -- we've been almost led to  
 20 believe that -- that under any circumstances that's  
 21 okay, and it's not. And the McGrath people, just from  
 22 comments that have come in to me, and -- I mean I think  
 23 the jury kept focused on -- on the issues when they were  
 24 here. They -- they do not condone illegal harvest of  
 25 wolves. They're very supportive of legal harvest of

- 1326 -

1 wolves. Every time somebody comes into McGrath with a  
 2 wolf that's been legally harvested they're almost -- I  
 3 won't say hero worshiped, but -- but it's.....  
 4 Q They celebrate it.....  
 5 A Absolutely, it's celebrated as much or more than a 69  
 6 inch moose coming into a guide camp. It's pretty --  
 7 pretty big deal. The local village council that doesn't  
 8 have much money, we're not one of the big coastal  
 9 villages that has a ton of money. The village council  
 10 takes it so seriously that they have come up a \$100 per  
 11 wolf incentive to help offset gas costs for guys to go  
 12 out there. I mean the local people take this thing very  
 13 seriously and they do not want to see it jeopardized by  
 14 illegal wolf harvests.  
 15 Q Is that what they feel Mr. Haeg's actions do, is  
 16 jeopardize -- potentially jeopardize the program?  
 17 A Absolutely. That's been almost a hun -- out -- I can  
 18 say one person had comments to the contrary. One local  
 19 resident, you know, told me, well, maybe you should have  
 20 looked the other way or something. But out of a  
 21 community of hundreds of people, that's -- that's one  
 22 person, and the vast majority have been in full support  
 23 of -- of the case and -- and not in support of the  
 24 illegal harvest of those wolves.  
 25 Q That's based on their concern for the program itself?

- 1327 -

1 A For the program itself. And another thing that keeps  
 2 getting brought up is the fact that, well, this must not  
 3 have hurt the program because the program stayed active.  
 4 The program was active this last winter and, further, it  
 5 expanded. All of that is true. The program did stay  
 6 active, and the program did expand, and it may expand  
 7 more in the future. All those things are true. But  
 8 guess what? None of that is -- I mean you can't look at  
 9 that and say, well, look at this. Mr. Haeg killing  
 10 these nine wolves outside the control area didn't hurt  
 11 it. You can't say that because had -- there are a lot  
 12 of people watching the case, and had it not been -- if  
 13 it had been swept under the run or something, I  
 14 guarantee you that a lot of money could have been  
 15 lobbied up in a hurry, and -- and the programs would  
 16 have been or could have been jeopardized, as they still  
 17 could be in the future by future acts of this kind. I  
 18 mean this stuff does jeopardize or potentially  
 19 jeopardize these programs.  
 20 Q Let's talk a little bit about Mr. Haeg. Prior to this  
 21 case had you had any contact with Mr. Haeg?  
 22 A Prior to that winter or just prior to me actually  
 23 carrying the investigation forward? I -- I had some  
 24 contact with him earlier in March out here on the  
 25 McGrath ramp. Prior to that I had never met Mr. Haeg.

- 1328 -

1 Q But that was something you testified here at trial  
2 about, right?  
3 A Yes.  
4 Q Okay. And that was kind of part of the investigation to  
5 some extent?  
6 A Yes. Yes.  
7 Q Before that contact with Mr. Haeg in March, did you have  
8 any prior contact with him?  
9 A No, sir.  
10 Q Were you aware of who Mr. Haeg was?  
11 A Yes, sir.  
12 Q Were you aware of a reputation he had as a guide?  
13 A His name had been mentioned to me as somebody that  
14 potentially should be watched, and I should make the  
15 time to get into his camps.  
16 Q So you should be concerned about his activities?  
17 A Yes.  
18 Q What were the specific -- you know, what -- why was that  
19 referenced to you or what was the context of that being  
20 those concerns expressed to you?  
21 A That I was actually showed a spot on the map and --  
22 which is the area of the upper Swift River and the Babel  
23 River, and the person at that time said, hey, this guy  
24 -- you need to spend some time up here on this guy. And  
25 they didn't name specifics, just that, you know, he

- 1329 -

1 might be up to no good and some time needed to be spent  
2 there.  
3 Q Do you know what the basis for that was?  
4 A I don't.  
5 Q Okay. The -- you've heard this report from Ken Powers.  
6 Mr. Powers is a guide in.....  
7 MR. ROBINSON: What report from Ken Powers?  
8 Q This -- the report regarding the moose, involving Ken  
9 Powers' clients, right?  
10 A Yes, sir.  
11 Q And you're familiar -- you had a limited role in that  
12 investigation, you've heard about that?  
13 A Yes, sir.  
14 Q And Mr. Powers operates as a guide in the same general  
15 area as Mr. Haeg?  
16 A Yes, sir. Yeah, he's kind of right in the middle.....  
17 Q I mean (indiscernible).....  
18 A .....really, I'd say.  
19 Q But Mr. Haeg's -- between his camp -- we've heard  
20 yesterday between his.....  
21 A Yes, sir.  
22 Q .....camp and his -- his spike camps, right?  
23 A Yes, sir.  
24 Q And the -- are there any other guides that you're aware  
25 of actively operating out in that area?

- 1330 -

1 A Jim Harrower used to be up on the south of Upper Stony  
2 River. You could say that Tony Lee(ph) and Curly Warren  
3 kind of join up with them on the -- the mid to lower  
4 Stony River country. On the other side, Rob Jones kind  
5 of butts up with him from the Big River side, or the  
6 northeast side.  
7 Q Are these guides actually -- that you're aware of,  
8 guiding in these same areas that Mr. Haeg is?  
9 A Generally, yeah. I mean within say 30, 40 miles of him.  
10 Q So within 30, 40 miles but maybe not the same grounds  
11 that you're aware of?  
12 A Right. Yeah, I don't think they're putting in spike  
13 camps at the same exact spots or anything, but they are  
14 certainly in the same pretty specific region of the  
15 state, and the same game management unit areas right  
16 there. And sub units. And then I think Mike Bowden  
17 guided also right -- right near in there. And of those  
18 camps I don't know of any that -- any of them that have  
19 similar success rates.  
20 Q What do you mean by that?  
21 A My -- my experience with those guides is similar to  
22 other areas in the state where they have more between 40  
23 and 60 percent success rates on bear, moose and caribou,  
24 whereas Mr. Haeg guiding right in the same spot  
25 basically advertizes in his brochures and on his web

- 1331 -

1 page about -- I think in his brochure it says the  
2 previous four years they were 100 percent on moose and  
3 caribou, and on his web site it said that the previous  
4 year they had been 100 percent on spring bears and  
5 sometimes those kind of success rates, when compared  
6 with competent guides in the same area that aren't  
7 having those same type of success rates, do draw some  
8 attention.  
9 Q Has that been some of the concern expressed towards Mr.  
10 Haeg is his extraordinary success rates may be created  
11 by some illegal activities or that may be a cause for  
12 monitoring him?  
13 MR. ROBINSON: Objection.....  
14 A I think so, that was -- that was why they wanted to do a  
15 UC.....  
16 MR. ROBINSON: I've gone a long time here, but this is  
17 just total.....  
18 THE COURT: Wait a minute -- wait.....  
19 MR. ROBINSON: .....speculation.  
20 MR. LEADERS: He can talk about Mr. Haeg's reputation as  
21 a guide and.....  
22 MR. ROBINSON: No, he can't talk about his reputation as  
23 a guide if he's just speculating. He has no -- he's already  
24 said he has no basis. He doesn't have a reason -- you know,  
25 just because somebody else said something -- you know,

- 1332 -

1 (indiscernible) said.  
 2 A As a part of my job I talk to a lot of guides.....  
 3 MR. ROBINSON: I understand that. I'm just -- my  
 4 objection is that this is just getting into speculation.  
 5 THE COURT: Have you received any complaints that you had  
 6 specifics on?  
 7 A Other than the Powers' complaint I have not, no.  
 8 THE COURT: Okay. Let's move on.  
 9 Q The -- so I was wanting to be specific on this issue.  
 10 Had it been expressed to you that maybe -- that the  
 11 extraordinary success rates may be a cause to.....  
 12 MR. ROBINSON: Objection, now this (indiscernible).....  
 13 A Yes, it had.  
 14 THE COURT: He can answer that question. Whether it's --  
 15 that's been.....  
 16 MR. LEADERS: That's not speculation, that's basis for  
 17 (indiscernible).....  
 18 THE COURT: That's not -- yeah, that's -- if he has --  
 19 the answer is either yes or no, whether he's.....  
 20 MR. ROBINSON: Well, how do we cross examine if we don't  
 21 know who these people are?  
 22 THE COURT: You ask him. You can ask him who they are.  
 23 Go ahead, answer the question.  
 24 Q Has that been one of the causes for concern?  
 25 A Yes.

- 1333 -

1 Q And whether the fact that other guides in the same area  
 2 have nowhere near the same success rates?  
 3 A Yes.  
 4 Q The -- since the -- your wolf investigation, what  
 5 guiding activities are you aware of that Mr. Haeg's been  
 6 involved with?  
 7 A At the time of our investigation when we seized November  
 8 4011 Mike, the Batcub, at Brown's Lake, Mr. Haeg was in  
 9 the process of putting out spring bear camps. I think  
 10 within a day or two of that he had spring bear hunters  
 11 going to arrive. As part of initial negotiations with  
 12 Mr. Haeg's lawyer, and yourself, I -- I believe that the  
 13 state agreed not to file the charges until after that  
 14 spring bear guiding season, to go ahead and let him  
 15 finish that out, which we did. We held off so he guided  
 16 spring bears in that spring.  
 17 Q When you're talking about spring bears that's basically  
 18 May of.....  
 19 A Spring.....  
 20 Q .....2004?  
 21 A Right. April -- some -- some in April and then probably  
 22 some in May, too, 2004. Well, -- or was that -- 2003.  
 23 Yeah, it would be spring 2004. Okay. April and May.  
 24 So -- and then to my -- to the best of my knowledge I  
 25 don't have anything that indicates that he guided that

- 1334 -

1 fall, '04. I believe that he was guiding spring, '05,  
 2 just based on some testimony we heard during the trial.  
 3 It sounded like he may have guided a spring bear hunt  
 4 either for himself or someone else, and then we know  
 5 that he was guiding bear hunters in August from a widely  
 6 publicized hunt that's been in the papers and stuff that  
 7 he was in charge of, and then I believe that he was  
 8 operating Trophy Lake Lodge and guiding hunters in  
 9 September, so.....  
 10 Q I think, of course, that's what we've heard from some of  
 11 his assistants here?  
 12 A Yes. So I think there's only one -- the only hunting  
 13 period that he opted not to guide would be that fall,  
 14 '04, for whatever reason it was, but we know that he's  
 15 also been at hunting shows. We've got a brief synopsis  
 16 from Investigator Katrina Maum(ph) that was at a show in  
 17 Harrisburg, Pennsylvania this last February, and.....  
 18 Q February of 2005?  
 19 A February, 2005. She visited a booth where someone she  
 20 believed to be Mr. Haeg, just on photos she had seen,  
 21 was advertizing for spring and fall hunts. She picked  
 22 up all the brochures and photos and asked him about what  
 23 kind of hunts he provided. So he's been -- since the  
 24 investigation he's been guiding and he's been booking  
 25 hunts. These are all activities that only a licensed

- 1335 -

1 registered guide can do.  
 2 Q One of the issues for the judge to consider at  
 3 sentencing here is a suspension or revocation of Mr.  
 4 Haeg's guide license. Provided by statute there's a  
 5 mandatory three years.....  
 6 A Yes.  
 7 Q .....and -- or it can be suspended up to life.  
 8 A Yes.  
 9 Q The -- or revoke it for life. The -- have you had  
 10 experience in cases where a court has suspended or  
 11 revoked a guide's license based on illegal guiding  
 12 activities for a period of time, and whether or not the  
 13 -- that was effective or not or can you -- I guess have  
 14 you had experience in cases.....  
 15 A Yes, I have had -- I've had experience where guides have  
 16 had their license revoked, based on a conviction for a  
 17 game violation.  
 18 Q And what's been your experience as to the effectiveness  
 19 of simply a court order saying a guide license is  
 20 revoked?  
 21 A In the case of an assistant guide getting his license  
 22 revoked, the cases I've been involved in have been  
 23 fairly effective, just leaving a broad revocation. In  
 24 the case of a couple of different registered guides that  
 25 I know of that were -- that did have established camps

- 1336 -

1 and did fly their own clients and things like that.  
 2 where revocations were ordered and it was left broad and  
 3 vague, just like that. Guide license revoked for X  
 4 amount of years. Those were ineffective -- or  
 5 ineffective because of that broad language, and almost  
 6 immediately without even ever missing a beat those  
 7 guides were still operating as various types of camp  
 8 helpers or pilots or packers. They were still out there  
 9 flying their own clients every day, just one of their  
 10 other assistants or someone acting as an assistant for  
 11 them to actually held the registered guide license,  
 12 either an assistant would basically promote and test for  
 13 his guide license or they would have someone in camp  
 14 that was a registered guide that would handle all the  
 15 hunt contracts and would test for that area. And then  
 16 the person who had their license revoked is still right  
 17 there doing the same stuff. Unless they've been  
 18 specifically prohibited from being in the field during  
 19 hunting seasons or specifically prohibited from acting  
 20 as a Part 135 pilot or a transporter, or a guide. Those  
 21 specific things have recently been ordered in cases, and  
 22 that has been effective, as opposed to just a broad  
 23 guide license revocation.  
 24 Q So in your experience in enforcement the only way to  
 25 really effectively make a suspension, revocation -- or

- 1337 -

1 suspension or revocation enforceable is to require  
 2 basically an absolute prohibition from involvement in  
 3 the big game industry?  
 4 A Yes, sir. And I believe that's the intent of a  
 5 revocation anyway. And -- and just by being more  
 6 specific in the order it goes ahead and enacts that  
 7 intent.  
 8 MR. LEADERS: I don't have anything further.  
 9 THE COURT: Mr. Robinson?  
 10 BRETT SCOTT GIBBENS  
 11 testified as follows on:  
 12 RE CROSS EXAMINATION CONTINUED  
 13 BY MR. ROBINSON:  
 14 Q You were at the trial in this case, right?  
 15 A I was there for the whole thing, sir.  
 16 Q And you heard the testimony of Ted Spraker who is a  
 17 Board of Game member?  
 18 A Yes, sir.  
 19 Q And didn't you hear him testify that what Mr. Haeg did  
 20 didn't jeopardize the predator control program at all?  
 21 A Not at all. I heard him testify that the predator  
 22 control programs had not only continued but had expanded  
 23 and there was actually some confusion in the testimony  
 24 as to how questions were asked and things like that on  
 25 that issue, if I remember correctly, sir.

- 1338 -

1 Q But you don't recall him testifying that what Mr. Haeg  
 2 did did not jeopardize the program; in fact, the program  
 3 has been expanded and is going to continue to operate  
 4 and he didn't jeopardize it?  
 5 A No, sir. The second part of what you said is what I  
 6 remember him saying. The program had continued and had  
 7 expanded.....  
 8 Q And you don't know if that's true or not?  
 9 A I don't remember him saying that it hadn't jeopardized  
 10 it because that wouldn't be true, it did.  
 11 Q But if he had testified to that you just didn't hear it?  
 12 A That's possible.  
 13 Q Now do you know what the current number is that can be  
 14 taken -- the number of wolves that can be taken by  
 15 residents and non-residents down here in wolf season?  
 16 A No, sir.  
 17 Q So you're not aware that it's been increased to 10 a  
 18 day?  
 19 A It sounds familiar. I don't know that that's state-  
 20 wide, I'd have to look at a -- I don't answer a game  
 21 regulation question without looking at a regulation  
 22 book. I cover a lot of (indiscernible).  
 23 Q But you do investigate them, right?  
 24 A Yes, sir.  
 25 Q And you should know?

- 1339 -

1 A Yes, sir.  
 2 Q So are you saying you just ignore what the current  
 3 number of possession of wolves is today?  
 4 A Not at all. Before I'd ever even seal the wolf or check  
 5 the wolf.....  
 6 Q Well, didn't.....  
 7 A .....I'd check the regulation book.  
 8 Q What is it? Well, what is it? What is the number of  
 9 wolves that can be taken?  
 10 A Let's go get a regulation book and we'll look. I've got  
 11 one right downstairs.  
 12 Q I've got one right here.  
 13 A Go ahead, look it up.  
 14 Q Do you have one for 2005?  
 15 A Pardon?  
 16 Q Do you have one for 2005?  
 17 A Yes.  
 18 Q Well, maybe we can get it. I don't know if the court  
 19 has the 2005.  
 20 THE COURT: It's his, actually.  
 21 Q I think it's right there.  
 22 THE COURT: Is that the one you want?  
 23 Q So -- do you want to get a hold of it here, Trooper.  
 24 A Sure.  
 25 Q And we're talking about in game unit 19 which covers

- 1340 -

1 McGrath.  
 2 A Okay. Now you're being specific. There we go. I can  
 3 look that up.  
 4 Q Okay. Look for wolves, unit 19. August to May --  
 5 August 1st to May 31st of this unit.  
 6 A (Pause) It will take me just a second, I'm into the  
 7 seasons and guide limits section here.  
 8 (Whispered conversation)  
 9 (Pause)  
 10 A (Muttering to self).  
 11 MR. LEADERS: It's 5 AAC 85.056.....  
 12 A 85.056 -- got it now. Got (indiscernible) there.  
 13 Q You've got it now?  
 14 A Okay, unit 19, August 1st through May 31st, and it's 10  
 15 wolves per day.  
 16 Q That's a lot of wolves, isn't it?  
 17 A That's a lot of wolves.  
 18 THE COURT: That's permitted in possession or permitted  
 19 to take or is it the same thing?  
 20 MR. ROBINSON: Yeah. Furs in possession.....  
 21 A Take. Yeah, there's.....  
 22 MR. ROBINSON: Take or possess 10 wolves per day.....  
 23 THE COURT: Okay. Okay, just.....  
 24 Q In fact, no non-resident tag is even required any more,  
 25 right? Isn't that right?

- 1341 -

1 A In -- in some areas, yes, sir.  
 2 Q Well, we're talking about 19-D.  
 3 A 19-D.  
 4 Q Oh, yeah.  
 5 (Whispered conversation)  
 6 Q Well, right, right, right. All of unit 19.  
 7 A Right.  
 8 Q There's no non-resident tags required any more either?  
 9 A Right.  
 10 Q So even non-residents who come up to Alaska can take 10  
 11 wolves a day during the season?  
 12 A They could. That's not realistic. Never met one yet  
 13 that did.  
 14 Q Well, I understand that but at least the state thinks  
 15 that if you can, take them?  
 16 A Legally. Absolutely.  
 17 Q And then of course the geographic location of the  
 18 experimental program is not as small as it was in March  
 19 of 2004 (indiscernible) it includes a bigger area?  
 20 A The geographic area of the predator control program?  
 21 Q Right.  
 22 A In 19-D east?  
 23 Q Well, not.....  
 24 A It -- it hasn't expanded again since it expanded while  
 25 Mr. Haeg had a permit.

- 1342 -

1 Q Okay. But there's more to 19-D east now, isn't there,  
 2 that can be hunted for the experimental program.....  
 3 A Not in 19-D.  
 4 Q In unit 19.....  
 5 A Okay.  
 6 Q .....there are more areas open than just 19-D east,  
 7 which was opened in March.....  
 8 A There is -- 19-A is open.  
 9 Q So that's a bigger area now -- and if you add that area  
 10 plus 19-D east then you've got more area you can do  
 11 predator control in now?  
 12 A Absolutely. I agree.  
 13 Q And that's because of the state policy about predation  
 14 of -- about wolves on prey animals like moose and  
 15 caribou, correct?  
 16 A I think there's about a million things that come into  
 17 play to go ahead and get it implemented, and hurdles  
 18 that they have to make.....  
 19 Q And it's state policy that, at least in units 19-A and  
 20 19-D east.....  
 21 A Moose are important for human harvest to a certain  
 22 level.....  
 23 Q Right. The moose are more important than the -- for  
 24 present -- for conservation than allowing the predators  
 25 to exist?

- 1343 -

1 A No, they haven't said that at all. They've said that  
 2 having the moose is so important that they don't want  
 3 predators in excess.  
 4 Q Okay. They don't want.....  
 5 A In fact, they have got permits.....  
 6 Q .....excess predators?  
 7 A Wait. In answer to your question, they actually have  
 8 limits. They've got numbers.....  
 9 Q On the number of wolves.....  
 10 A .....of the number of wolves. For example, they've  
 11 been.....  
 12 Q On the number of wolves that can be taken in 19-D east?  
 13 A In 19-D east. Not 19. We're back to 19-D east.....  
 14 Q Well, we're talking about the predator control program  
 15 in 19-D east.  
 16 A Oh, okay. 19-D east.....  
 17 Q What is the number.....  
 18 A Target number was I think 45 in that area.  
 19 Q And then in 19-A?  
 20 A Don't know that target number. The target number was a  
 21 lot higher than -- it was 100 and something in 19-A and  
 22 58 were harvested, or something.  
 23 Q So there's an even bigger number.....  
 24 A In -- both in this year.....  
 25 Q There's even a bigger number that can be taken in 19-A?

- 1344 -



1 A There is, it's a much larger area, but there are also  
 2 areas that.....  
 3 Q So it wasn't.....  
 4 A .....have.....  
 5 Q But if you had 19-A.....  
 6 A .....achieved that.  
 7 Q .....and 19-D east together then we're talking a lot of  
 8 wolves, right?  
 9 A Rough -- roughly 200, or near 200 wolves, yes, sir.  
 10 Q That's a lot of wolves, right?  
 11 A That's a lot of wolves.  
 12 Q Who was it that told you that because Mr. Haeg has a  
 13 better success rate than they do that they think he's

14 doing something illegal? Who is that?  
 15 A I've heard it from the area game biologist, Toby  
 16 Boudreau, I've heard it from our investigations unit,  
 17 Sergeant Burke Waldon, and other guides have made the  
 18 comment.  
 19 Q What other guides? What other guides?  
 20 A I've heard from Mike Bowden, goes by Buck, guides up the  
 21 Babel River.  
 22 Q Is he a full-time guide?  
 23 A As full-time as anybody is, I guess, it's a seasonal  
 24 job.  
 25 Q Well, isn't it true that Mr. Powers just kind of -- he

- 1345 -

1 works on the Slope. He doesn't -- that's not his full  
 2 livelihood, the guiding?  
 3 A Okay. I don't know, I've only spoken bef -- briefly to  
 4 Mr. Powers, but I've heard the same things from him that  
 5 I heard from Mr. Bowden. And not so much success rate  
 6 stuff but surrounding guides have commented towards the  
 7 -- maybe cavaliness or over zealotness of Mr. Haeg.  
 8 That being Curly Warren and Tony Lee(ph). So basically  
 9 every guide that I know of that operates around Mr. Haeg  
 10 has had things other than supportive or the things that  
 11 we've heard earlier today or these things in your  
 12 letters. These are the guys that work and live.....  
 13 Q Well, we don't any letters from them, right? Do you  
 14 have any letters from them expressing the things that  
 15 you said you heard?  
 16 A No. We've got my testimony.  
 17 Q But no letters from them saying, you know, this is what  
 18 we think of Mr. Haeg as a guide and we think he's out  
 19 doing all these illegal things because he's more  
 20 successful than us, and.....  
 21 A No, I -- I think we've established.....  
 22 Q Have you ever asked them to put it in writing?  
 23 A No.  
 24 Q You had an opportunity to, didn't you?  
 25 A Sure, you can ask anything.....

- 1346 -

1 Q Even for purposes of this sentence you had an  
 2 opportunity to, didn't you?  
 3 A I did.  
 4 Q But you didn't ask them for that, did you?  
 5 A Didn't do it.  
 6 Q And as far as bear hunting is concerned, are you saying  
 7 that Mr. Haeg's bear success in unit 19 has  
 8 (indiscernible)?  
 9 A Not at all. Unit 16 I believe is.....  
 10 Q Oh.  
 11 A .....where he touts his 100 percent.....  
 12 Q And so Tony.....  
 13 A .....grizzly success.

14 Q .....Lee(ph), does he hunt in unit 16?  
 15 A I don't think so, but I don't know for sure.  
 16 Q Ken Powers?  
 17 A Don't know.  
 18 Q Mike Bowden?  
 19 A Don't know.  
 20 Q So you don't even know whether these guys are hunting in  
 21 the bear areas that Mr. Haeg hunts in, but yet  
 22 you're.....  
 23 A No.  
 24 Q .....saying that he was always successful in his bear  
 25 hunts based on what he might do in unit 19, that this

- 1347 -

1 kind of leads somebody to believe that he's doing  
 2 illegal bear hunts, too?  
 3 A Yes, that's why we were going to book a UC hunt with  
 4 him. That's one of the contributing factors to booking  
 5 a UC hunt.  
 6 Q But you haven't?  
 7 A No.  
 8 Q So you don't have any evidence that he was bear hunting,  
 9 do you?  
 10 A No, I don't have any evidence.  
 11 Q In fact, you don't have any evidence really that any of  
 12 his other hunts are illegal, do you?  
 13 A I personally don't, no.  
 14 Q Other than the wolves?  
 15 A Got lots of evidence on that.  
 16 Q Now isn't it true that under the law that a person who  
 17 gets their license suspended under -- or revoked under A  
 18 54.720 may not engage in the provision of big game  
 19 hunting services or transportation services during the  
 20 period of license suspension or revocation?  
 21 THE COURT: I'm going to ask you to wait to answer that  
 22 until I change the tape, because it's about to run out.  
 23 A And I'm going to ask that I can read that thing before I  
 24 answer about it. 8 -- 854.720?  
 25 Q Yeah. 854.720(g).

- 1348 -

1 THE COURT: Let's go off record and change the tape....  
 2 0601  
 3 (Tape change)  
 4 4MC-05-27/Side B  
 5 0604  
 6 THE COURT: We're back on record.  
 7 Q 854.710(g). Well, actually if you read (e) and (g)  
 8 together that will kind of focus you in on -- on the  
 9 subject that I want to talk to you about, Trooper.  
 10 A (Pause) I've read it.  
 11 Q It says as a person whose license is suspended or  
 12 revoked under this section may not engage in the  
 13 provision of big game hunting services, correct?  
 14 A That's what it says, yes, sir.  
 15 Q Nor transportation services?  
 16 A Yes, sir.  
 17 Q During the period of license suspension/revocation,  
 18 right?  
 19 A Yes, sir.  
 20 Q So I'm not clear as to what you were talking about  
 21 concerning the court ordered suspension, somehow that  
 22 not being clear enough as to what a person who has their  
 23 license revoked or suspended can do. I'm not  
 24 understanding.....  
 25 A Is that a question?

1 A Uh-huh (Affirmative).  
 2 Q .....and it says may not engage in the provision of big  
 3 game hunting services or transportation services, does  
 4 that include no Part 135?  
 5 A It includes no hauling hunters and transporting.....  
 6 Q I'm just asking. But can you still get a 135 license to  
 7 be a taxi operator?  
 8 A Yes, you can still get a.....  
 9 Q So that's not illegal, is it?  
 10 A True.  
 11 Q All right. So I'm not quite sure why you would want the  
 12 court to order something that's legal, to make it  
 13 illegal under some suspension order?  
 14 A The cur -- we wouldn't be asking the court to order  
 15 complete prohibition from holding a 135 certificate. We  
 16 would be asking the court to prohibit hauling hunters as  
 17 part of holding a 135 certificate because.....  
 18 Q Oh, how is that done?  
 19 A .....that would be right in -- right into the realm  
 20 of.....  
 21 Q Well, what.....  
 22 A .....transporting and guiding, if he's still hauling his  
 23 own hunters into his same spots.  
 24 Q So if you had a 135 from the federal government.....  
 25 A Right.

1 Q Yeah, it is. I -- you.....  
 2 A Okay.  
 3 Q Yeah, I'm not sure I clearly understand what you said.  
 4 You said that in your experience -- first of all, in  
 5 your experience how many big game guides have you known  
 6 that have their license suspended or revoked. The  
 7 masters, not the assistants?  
 8 A Registered guides, not assistants?  
 9 Q Yeah, the registered guide. How many have you known in  
 10 your experience?  
 11 A Due to my case work? One or two.  
 12 Q So you're just talking about one or two?  
 13 A Two or three assistants, but my experience is based  
 14 on.....  
 15 Q Seeing those one or two do something after they had  
 16 their license suspended?  
 17 A No, seeing cases handled by other troopers in the  
 18 investigations unit with registered guides around the  
 19 state where they have managed to act as a Part 135 air  
 20 taxi operator and still fly all their own clients and  
 21 hang out in camp.....  
 22 Q Oh, is that prohibited under the law? In other words if  
 23 a person who's registered -- if a big game -- if a  
 24 registered game guide's license is suspended or revoked  
 25 under A 54.700 through 720, whatever.....

1 Q .....to have -- operate as an air taxi, and he.....  
 2 A Right.  
 3 Q .....air taxied anybody, hunters, non-hunters, whatever  
 4 he wanted to do, that would, in your opinion, be  
 5 illegal?  
 6 A Other than airport to airport established runways kind  
 7 of a deal, yes.  
 8 Q Well, Part 135.....  
 9 A Under the court order that we would request be issued.  
 10 Q Because the Part 135 includes more than, you know,  
 11 Anchorage and the Fairbanks Airport, doesn't it?  
 12 A It does, but Part 135 requires that the hunter or the  
 13 passenger knows where they're going. Not the passenger  
 14 calls and books a hunt and you take them to Rock Creek,  
 15 or they call and book a hunt and you -- Part 135.....  
 16 Q So you think the court has the authority to -- you  
 17 think, in your opinion, you think the court has the  
 18 authority to prohibit Mr. Haeg from getting a 135  
 19 license?  
 20 A No, sir. I think the court has the authority to  
 21 prohibit Mr. Haeg from hauling hunters.....  
 22 Q Well, this already says here -- the authority is already  
 23 in the law the person whose license is suspended or  
 24 revoked under this section may not engage in the  
 25 provision of big game hunting services. Is there

1 something more that you would like the court to do?  
 2 Other than what the law already provides?  
 3 MR. LEADERS: Judge, I guess (indiscernible).....  
 4 A There's -- there's been recent judgments.....  
 5 MR. LEADERS: The question.....  
 6 A .....exactly to that.  
 7 MR. LEADERS: .....is misleading as to law.  
 8 THE COURT: Well.....  
 9 MR. LEADERS: And I guess.....  
 10 MR. ROBINSON: How is it misleading as to the law.  
 11 MR. LEADERS: Because the definition of big game hunting  
 12 services means a service for which a provider of the  
 13 service.....  
 14 MR. ROBINSON: Right.  
 15 MR. LEADERS: .....must obtain a registered guide, class  
 16 A guide license.....  
 17 MR. ROBINSON: Or transportation.  
 18 MR. LEADERS: .....or assistant guide license. So that's  
 19 all that's.....  
 20 MR. ROBINSON: Or transportation services. Or  
 21 transportation services during the period of the license  
 22 suspension or revocation.....  
 23 MR. LEADERS: Correct, and transport is different than  
 24 135 person hauling.....  
 25 MR. ROBINSON: So -- and this -- my question.....

- 1353 -

1 MR. LEADERS: .....hunters and game.....  
 2 MR. ROBINSON: .....is -- and tell me this.  
 3 THE COURT: Well, let me hear what the question is.  
 4 MR. LEADERS: So that's the objection.  
 5 MR. ROBINSON: My -- okay, that's your objection.  
 6 THE COURT: Okay, let me hear what the question is.  
 7 MR. ROBINSON: My question is this.  
 8 Q It's your opinion that the court needs to do more than  
 9 order that a person whose license is suspended or  
 10 revoked under this section not engage in the provision  
 11 of big game hunting services or transportation services  
 12 during the period of suspension or revocation.....  
 13 A It's my opinion that the court should add specific  
 14 detail to that order.  
 15 Q Well, transportation services is already embodied in the  
 16 law, right?  
 17 A Yes, it is.  
 18 Q And so is big game services, too, right?  
 19 A Yes, it is.  
 20 Q So what else does the court have to do if those two  
 21 things are already defined in the law?  
 22 A The court can add clarification as to whether or not the  
 23 person with the revoked guide license can haul hunters,  
 24 period. Not as a transporter, not as a big game guide  
 25 or an assistant guide, but as a Part 135 operator.....

- 1354 -

1 Q But that's not in the law, is it? I mean you have to go  
 2 by whatever transportation services are or big game  
 3 hunting services are because those are the only two  
 4 things that are prohibited, right?  
 5 A Those are prohibited.....  
 6 Q The only two things.....  
 7 A .....as it reads.  
 8 Q Those are the only two things prohibited under the law,  
 9 right?  
 10 A You asked me my opinion, I gave it to you.  
 11 Q But those -- but as far as the law is concerned, you as  
 12 a law enforcement officer, you would agree that those  
 13 are the only two things that are prohibited in the law?  
 14 A Those are clearly prohibited in the law.  
 15 Q And you would agree that transportation services and big  
 16 game hunting services is already defined by law?  
 17 A Those are defined by law.  
 18 Q But what you want -- that is you want the court to do  
 19 more than what's already defined by the law or what's  
 20 already prohibited by law?  
 21 A I want the court to more.....  
 22 Q Do more?  
 23 A .....specifically address that, yes. I didn't think of  
 24 the guy's name if it matters.  
 25 Q Do you know Mark Salin(ph)?

- 1355 -

1 A Not personally, only by name.  
 2 Q Do you know he's a guide?  
 3 A On the Swift River, yes, sir.  
 4 Q In Unit 19, right?  
 5 A Yes, sir.  
 6 Q And do you know Jim Harrower?  
 7 A I've met Jim at meetings.  
 8 Q Do you know of him?  
 9 A Absolutely.  
 10 Q Is he a big game guide?  
 11 A I don't know if he is any more. Practicing.  
 12 Q Used to be?  
 13 A Used to be, absolutely.  
 14 Q In Unit 19?  
 15 A Absolutely.  
 16 Q And Rob Jones?  
 17 A I know Rob Jones.  
 18 Q Yeah.  
 19 A I also read his letter and saw that it was a 100 percent  
 20 non-committal about anything.  
 21 Q But I just asked you, do you know him?  
 22 A Absolutely, I know Rob pretty well.  
 23 Q Is he a big game guide?  
 24 A I know Rob a lot better than Dave knows Rob, actually.  
 25 Q And he's a big game guide in unit 19?

- 1356 -

1 A Yes, he is.  
 2 Q And what about Clark Whitney?  
 3 A I know Clark Whitney.  
 4 Q And he's also a big game guide in unit 19?  
 5 A Yes, he is.  
 6 Q Now these guys didn't tell you the same thing that Ken  
 7 Powers told you? Have you ever talked to these guys?  
 8 Did you actually go and talk to Mark Salin(ph) about  
 9 Mr.....  
 10 A I did not.  
 11 Q Or Jim Harrower?  
 12 A Like -- like I told you, sir, I've never met Mark  
 13 Salin(ph).  
 14 Q Did -- I understand that, but you knew about a letter he  
 15 wrote, right?  
 16 A I did see the letter.  
 17 Q And once you saw the letter did you try to get a hold of  
 18 him and say, Mark, is this really what you believe or do  
 19 you believe more of what people.....  
 20 A I -- I didn't contact any of the people on the letters,  
 21 so you can just save that.  
 22 Q So you didn't contact anybody else, right?  
 23 A No, sir, in fact.....  
 24 Q You didn't contact Jim Harrower or Mr. Whitney and Mr.  
 25 Jones, Mr. (indiscernible)?

- 1357 -

1 A No, but in fact I didn't solicit comments from anybody.  
 2 It's been a point of I think interest to people when I  
 3 bop into spike camps and stuff, guides are hitting me  
 4 with questions about this case immediately, most of  
 5 which I don't answer because the case wasn't done, and  
 6 they'll say, man, that was the dumbest m'fing thing  
 7 I've ever heard of or man, that guy is going to screw it  
 8 up for everybody, or things like that. And so.....  
 9 Q And so.....  
 10 A .....I don't solicit any of those comments, those are  
 11 just thoughts.....  
 12 Q But you didn't bop into Mr. Salin's camp and you didn't  
 13 bop into Mr. Clark Whitney's camp or Mr. Harrower's  
 14 camp.  
 15 MR. LEADERS: Asked and answered. He's talking about  
 16 (indiscernible) contact.....  
 17 THE COURT: Mr.....  
 18 A I told you nobody on the list, we can skip right past  
 19 that.  
 20 THE COURT: Let's move on, please.  
 21 Q Well, those people were willing to put what they said in  
 22 writing, these people on the list that we've just been  
 23 through?  
 24 A To some extent, yes.....  
 25 Q And none of the people that you mentioned or that had

- 1358 -

1 any negative comments have ever put anything in writing.  
 2 have they?  
 3 A Nope.  
 4 Q And you said you didn't even know Mr. Haeg before you  
 5 got involved in your investigation of the wolf case,  
 6 right?  
 7 A Didn't know him.  
 8 Q You hadn't had any contact with him?  
 9 A Still don't know him. What's that?  
 10 Q Hadn't had any contact with him before March of 2004,  
 11 right?  
 12 A That's correct, sir.  
 13 Q And so when did -- and you -- but you had heard of him  
 14 before March of 2004 you said?  
 15 A I had heard of him, that's true.  
 16 Q And, of course, you investigated all these rumors you  
 17 heard, right?  
 18 A I hear a lot of rumors.  
 19 Q Did you investigate any of them?  
 20 A Any of the rumors about Mr. Haeg?  
 21 Q Before March of 2004?  
 22 A Didn't investigate anything about Mr. Haeg except for  
 23 what we've already talked about, September '03, the kill  
 24 sites of the moose.  
 25 Q Other than there.....

- 1359 -

1 A No, sir.  
 2 Q Other than all these rumors.....  
 3 A Hadn't investigated Mr. Haeg at all.  
 4 Q .....that you heard before March of 2004, other than the  
 5 one from Ken Powers, did you investigate any of those?  
 6 A Hadn't investigated Mr. Haeg at all prior to that.  
 7 Q So you had no way to substantiate any of these rumors?  
 8 A I had not.  
 9 Q And just because somebody feels that he's doing better  
 10 than they are so he must be doing something illegal  
 11 doesn't mean that that's the case does it?  
 12 A Doesn't necessarily mean that.  
 13 Q And, of course, you didn't do any investigation as to  
 14 his hunting in unit 16?  
 15 A Not my area, sir.  
 16 Q Or any rumors about unit 16?  
 17 A I believe others were -- not myself.  
 18 Q But you didn't?  
 19 A No, sir. Like I told you, I had never conducted any  
 20 investigation in unit 16, on anybody.  
 21 Q And these people that you heard these negative things  
 22 from are people who didn't hunt or didn't guide in unit  
 23 16 anyway, so they don't really what what Mr. Haeg was  
 24 doing in unit 16?  
 25 A I can't say yes or no to that because I've already told

- 1360 -

1 you, I don't know if they.....

2 Q The rumors that you heard that you thought were of

3 concern, from the people who guided in unit 19, those of

4 concern, things that you heard, did you make some

5 connection that they had something to do with his bear

6 hunts in unit 16?

7 A No, the connection I had with the bear hunts in 16 was

8 from our investigation unit. Like I already told you,

9 Sergeant Burke Waldron and I had spoke to the success

10 rate of the spring bear hunts over there. I had no

11 basis for comparison of those. I was only listening to

12 Sergeant Waldron and.....

13 Q And what did Sergeant Waldron find out in his

14 investigation? Did he investigate the bear hunts in

15 unit 16?

16 A I think that he was keeping that quiet and was going to

17 do that UC hunt, is what I think.

18 Q But as far as you know, you didn't hear back from

19 Sergeant Waldron who says, oh, yeah, I went out and

20 investigated these rumors, and, in fact, you know, there

21 is something to this -- he's doing all these illegal

22 activities in unit 16?

23 A No, if we knew for sure that he was then we'd probably

24 be dealing with that.

25 Q So this is still just rumor and speculation?

- 1361 -

1 A It -- it's -- it's what people have heard.

2 Q And that's rumor and speculation that you heard?

3 A That's fair to say.

4 Q So in your investigation after you got involved in the

5 wolf hunting case in March of 2004 you discovered that

6 Mr. Haeg did not conduct any hunting in the fall of 2000

7 -- didn't do any guiding in the fall of 2004, correct?

8 A I said I'm not aware that he did any.

9 Q Right. (Indiscernible).....

10 A I didn't -- I didn't call prospective clients or

11 anything.....

12 Q You're not aware that he did any, as you were aware that

13 he did do the bear hunts and the hunting in 2005?

14 A Yes, sir. Yes, sir. That's -- that's true.....

15 Q You're just not aware that he did.....

16 A I'm not aware that he did any in the fall. I believe he

17 told us he didn't.

18 Q Because that would have been of interest to you,

19 wouldn't it?

20 A Would have been of interest.

21 Q Whether or not he did do any fall hunting?

22 A Would have been of interest.

23 Q I mean you were still investigating the 2004 wolf

24 incident at that time, weren't you?

25 A No, I wasn't. I -- I -- I told you. My investigation

- 1362 -

1 was wrapped up by about April 2nd, other than interviews

2 with him and Tony Zellers.

3 Q Well, they couldn't have been wrapped up if you were

4 still doing interviews after April, right?

5 A There were some negotiations that put things off for

6 about a year.

7 Q But the point is that you were there to continue an

8 investigation as a police officer, right?

9 MR. LEADERS: Judge, that's what he said, it was wrapped

10 up except for the interviews in June.

11 MR. ROBINSON: Well -- I'm sorry.

12 THE COURT: Let's move on.

13 MR. LEADERS: He's badgering.

14 MR. ROBINSON: It's not badgering.

15 Q But even so.....

16 THE COURT: Well, let's move on.

17 Q So your investigation continued beyond April?

18 A The case remained open, yes, sir.

19 Q And isn't it true that even after the trial started you

20 were still investigating?

21 A You'll have to help me out on that one. See what I

22 investigated.

23 Q Well, didn't you continue to talk to Mr. Boudreau to

24 find out more about where that call came from, to him

25 back on March 9, 2004? From Mr. Haeg to Mr. Boudreau?

- 1363 -

1 A Keep helping me. That's not ringing a bell yet.

2 Q Well, you did hear Mr. Boudreau state that on 3-9-04 he

3 got a call from Mr. Haeg about where moose had been

4 taken?

5 A Where wolves had been taken you mean?

6 Q Wolves. I'm sorry. Where wolves had been taken?

7 A Him or Al Root, somebody got a call on March 9th.....

8 Q During the trial didn't you try to establish where that

9 call had come from?

10 A I believe I already knew that the call came from a SAT

11 phone.

12 Q Where though?

13 A At Mr. Haeg's lodge. I -- I -- I didn't ask Toby.....

14 Q But didn't you try and discover.....

15 A .....Boudreau the questions. I don't know what the heck

16 you're.....

17 Q .....from Mr. Boudreau that the call had come from.....

18 A .....at, sir.

19 Q .....Little Under Hill Creek?

20 A No, I don't know what you're talking about to be honest.

21 Q Okay. I'm just curious as to whether you continued your

22 investigation throughout the trial. So your testimony

23 is that your investigation was over with June of 2004?

24 A My testimony is that my investigation was over with

25 prior to the beginning of the trial, and that the case

- 1364 -

1 -- the majority of my investigation was over with the  
 2 first part of April.  
 3 Q So you were completely non-investigating this case as of  
 4 the end of June of 2004?  
 5 A I don't recall actively doing more investigation. The  
 6 case could have still been built upon and I don't  
 7 remember if more evidence came in after that. As far as  
 8 me doing a bunch of legwork at that point, I don't  
 9 recall more after that. The only thing I recall during  
 10 June -- I think they still had the moose investigation  
 11 going on.  
 12 Q We're talking about the wolf case. So I just want to  
 13 make sure that what you say is that by the end of June,  
 14 2004.....  
 15 MR. LEADERS: Judge, this has been.....  
 16 A My -- my investigation was mostly complete.....  
 17 Q I don't want to know about mostly over, I want to know  
 18 when it was completely over your involvement in  
 19 investigating this case?  
 20 A Today. It's done. My investigation in this.....  
 21 Q Oh. So.....  
 22 A .....case is completely done. I'm positive of it,  
 23 today.  
 24 Q So then that includes the period of the trial?  
 25 THE COURT: Is there -- is there.....

- 1365 -

1 A Sir, I don't know what you're getting at.....  
 2 MR. LEADERS: Judge.....  
 3 THE COURT: I didn't hear -- I -- I.....  
 4 A .....(indiscernible) the trial. I -- I honestly  
 5 don't.....  
 6 MR. LEADERS: (Indiscernible) the date.....  
 7 MR. ROBINSON: (Indiscernible).....  
 8 THE COURT: What -- let's.....  
 9 MR. LEADERS: Trooper, one second. The objection is  
 10 what's the relevance of the date of the investigation?  
 11 MR. ROBINSON: Well, because it goes to his credibility  
 12 as to whether he says that his investigation was over on a  
 13 certain date and it wasn't, as well as his credibility about  
 14 all these negative things that he heard about Mr. Haeg.  
 15 MR. LEADERS: I guess, Judge.....  
 16 THE COURT: It's.....  
 17 A Your Honor, my credibility has been established.  
 18 MR. LEADERS: Trooper.....  
 19 MR. ROBINSON: Well.....  
 20 THE COURT: I'm the one that determines credibility here  
 21 today.  
 22 MR. ROBINSON: I know you can do that.  
 23 THE COURT: Okay. I understand your point. I think it's  
 24 been answered as completely as it's going to be. I think  
 25 it's time to move on.

- 1366 -

1 MR. ROBINSON: I don't have any further questions.  
 2 THE COURT: Mr. Leaders?  
 3 MR. LEADERS: Just a few things for clarification.  
 4 BRETT SCOTT GIBBENS  
 5 testified as follows on:  
 6 REDIRECT EXAMINATION CONTINUED  
 7 BY MR. LEADERS:  
 8 Q You were looking at the 2005 -- the question was the --  
 9 were you aware that the bag limit had increased for  
 10 wolves in 19-D to 10, is that correct?  
 11 A Yes, sir, that was one of the questions.  
 12 Q Let's see -- we were at 8.....  
 13 A I had (indiscernible).....  
 14 Q 5 AAC, I think it was 84.  
 15 A No, it was after 85. It was like 85.065 or something.  
 16 THE COURT: Yeah, that's what you said before.  
 17 Q Yeah, 84.....  
 18 THE COURT: 85.06.  
 19 MR. LEADERS: (Indiscernible).  
 20 A Okay, 85.056?  
 21 Q Here we go. .056. What was -- this is the -- here you  
 22 go. 2003, 2004 edition of the Fish and Game  
 23 regulations, is that correct?  
 24 A Yes, sir.  
 25 Q What was the bag limit for wolves in unit 19-D at that

- 1367 -

1 time?  
 2 A 10 wolves per day.  
 3 Q What was the last effective date of legislation relating  
 4 to that wolf.....  
 5 A July 1st, 2003.  
 6 Q So pre-dating Mr. Haeg's activities it was still -- it  
 7 was 10 wolves and it's now still 10 wolves?  
 8 A Yes, sir.  
 9 Q No change?  
 10 A No change.  
 11 Q Okay. The -- Mr. Spraker's testimony -- is it true Mr.  
 12 Spraker testified that the impact of Mr. Haeg's actions  
 13 have yet to be determined on the predator control  
 14 program?  
 15 A I believe that is correct.  
 16 Q And that there are a lot of people watching the end  
 17 result or the outcome of this case?  
 18 A He absolutely said there were a lot of people watching.  
 19 Q Mr. Spraker never indicated that Mr. Haeg's activities  
 20 had not jeopardized the program in any way?  
 21 A I don't believe so.  
 22 Q The -- the issue of -- your discussion about your  
 23 experiences that a simple suspension/revocation of a  
 24 guide license doesn't effectively result in a person  
 25 being prohibited from engaging in guiding activities,

- 1368 -

1 does it?  
 2 A No, because there's.....  
 3 MR. ROBINSON: Objection. Is this a legal conclusion  
 4 that he's making about what.....  
 5 MR. LEADERS: I asked based on his experience. Does it  
 6 effectively terminate.....  
 7 MR. ROBINSON: I mean do people.....  
 8 A To which the answer would be, based on my experience,  
 9 no, it does not always because of the loophole of a Part  
 10 135 operator or a guide who's all of a sudden a six-pack  
 11 boat driver with armed hunters in the field and at the  
 12 time a game warden stops and checks, he's just giving  
 13 them a ride, and as soon as the game warden leaves  
 14 they're hunting.  
 15 Q This -- the section Mr. Robinson was reading with you,  
 16 854.710 subsection (g) states a person whose license is  
 17 suspended or revoked under this section may not engage  
 18 in the provision of big game hunting services or  
 19 transportation services during the period of license  
 20 suspension or revocation, right?  
 21 A Yes, sir.  
 22 Q Now -- so a person can't act -- can't provide big game  
 23 hunting services. Those are defined by the -- later in  
 24 the same chapter, under 854.790 as services for which  
 25 you're required to have a guide license, class A guide

- 1369 -

1 -- assistant guide license or an assistant guide  
 2 license?  
 3 A That sounds correct.  
 4 Q Is a camp cook required to have either of those  
 5 licenses?  
 6 A No, he's not.  
 7 Q Is a packer required to have any of those licenses?  
 8 A No, he's not.  
 9 Q Is a booking agent required to have any of those  
 10 licenses?  
 11 A A specific booking agent, no.  
 12 Q Okay. A person can book hunts for a guide?  
 13 A Right.  
 14 Q The -- it also prohibits a person from participating in  
 15 transportation services. That statute regarding the  
 16 revocation or suspension, right?  
 17 A Yes, sir, it does.  
 18 Q Which transportation services are specifically set out  
 19 and require a license, right?  
 20 A Yes.  
 21 Q But a transpor -- a person may conduct -- which says --  
 22 and transportation services are those where a person can  
 23 provide transportation services and accommodations to  
 24 big game hunters in the field, at a permanent lodge,  
 25 house or cabin owned by that transporter, or on a boat,

- 1370 -

1 right?  
 2 A Yes, sir.  
 3 Q There's a lot of loopholes that you could be a six-pack  
 4 boat operator and provide all the same services but just  
 5 not at a permanent location, right?  
 6 A Right.  
 7 Q The same thing with a Part 135?  
 8 A Right.  
 9 Q As long as you're not saying it's your permanent lodge  
 10 or location?  
 11 A Charging tac time instead of a hunt transport, right.  
 12 Q So is the -- is your discussion, your observations that  
 13 there's a lot of loopholes in which registered guides  
 14 who had effective -- or had operating businesses,  
 15 operations, have been able to circumvent revocations or  
 16 suspensions by simply not acting as the registered guide  
 17 or transporter?  
 18 A Turning the operation over to someone else, but yet  
 19 still participating under the 135.....  
 20 Q Shadow operating?  
 21 A 135 certificate, still always being in camp, an active  
 22 part of the operation.  
 23 Q So if an officer arrives in camp, they say I'm the camp  
 24 cook?  
 25 A I'm the cook.

- 1371 -

1 Q You don't know what they're doing.....  
 2 A I know nothing, right.  
 3 Q And is that the basis for your request then for a  
 4 broader prescription on no involvement in the big game  
 5 industry?  
 6 A Yes, sir.  
 7 MR. LEADERS: Nothing else.  
 8 THE COURT: Mr. Robinson?  
 9 MR. ROBINSON: Yeah.  
 10 BRETT SCOTT GIBBENS  
 11 testified as follows on:  
 12 RECROSS EXAMINATION CONTINUED  
 13 BY MR. ROBINSON:  
 14 Q Just on that subject about the prohibitions. So you  
 15 consider these loopholes to be something you'd like to  
 16 see closed, right?  
 17 A I consider the intent of a revocation to be that the  
 18 person no longer be an active part of a big game guiding  
 19 operation.  
 20 Q Okay. I understand that. But because you think that  
 21 even though they're not engaged in what's defined by the  
 22 law as transportation services, or they're not doing  
 23 what's defined by the law as big game hunting services,  
 24 you want those other things to be included as illegal  
 25 activities?

- 1372 -

1 A I think they are doing what's defined as those things  
 2 and calling it a horse by a different name, and I'm  
 3 just.....  
 4 Q But you don't.....  
 5 A .....asking that more specifics.....  
 6 Q Are you asking.....  
 7 A .....be given so that that doesn't occur.  
 8 Q So are you asking the court in Mr. Haeg's case to  
 9 sentence him to more than what's defined in the law as  
 10 transportation services?  
 11 A Just adding that -- just asking that specifics.....  
 12 Q I wasn't asking you that question.  
 13 A .....be added to clarify.  
 14 Q I'm just asking that question -- are you asking this  
 15 court to do more than what the law defines  
 16 transportation services to do?  
 17 A Yes.  
 18 Q And you're asking this court to sentence Mr. Haeg to  
 19 more than what the law defines big game hunting services  
 20 to be?  
 21 A Yes.  
 22 Q Well, isn't that really the -- left up to the  
 23 legislative branch of government instead of law  
 24 enforcement branch of government?  
 25 A The Legislature does define things, but law enforcement

- 1373 -

1 and the prosecution can give sentence recommendations,  
 2 and that's exactly what we're doing.  
 3 Q Yeah, but you can't give sentence recommendations that  
 4 exceed what the definition of the law is? I mean.....  
 5 A Not if that's a maximum. If something is a maximum we  
 6 can't give something over it. Nobody's talked about  
 7 maximum. If we're talking about maximums that's a whole  
 8 different thing.....  
 9 Q Well, we're not talking about maximums, we haven't  
 10 gotten into years in prison or fine, we're just.....  
 11 A Right.  
 12 Q .....talking about the definition of transportation  
 13 services and big game services, so you think that the  
 14 court can go beyond what the Legislature has already  
 15 defined those to be?  
 16 A I think that the court can order additional conditions,  
 17 yes.  
 18 Q Even though the law limits it to the definition of two  
 19 items involved?  
 20 A The -- the law doesn't limit it to those two things.  
 21 The law defines.....  
 22 Q It does (indiscernible) by definition.....  
 23 A .....those two things and then the court.....  
 24 THE COURT: You're both entitled to your own opinion, I  
 25 understand what the issue is, and I don't know that we need

- 1374 -

1 to delve into this any more.  
 2 MR. ROBINSON: Well, but I'm just.....  
 3 THE COURT: I know the -- I understand you're asking what  
 4 his basis is. He's answered that, he's expressed what he  
 5 wants the court to do. You're -- whether the court can or  
 6 not is a decision for me to make, not for Mr. Gib -- or  
 7 Trooper Gibbens and what his opinion, and quite frankly on  
 8 that issue it does not matter to me, so.....  
 9 MR. ROBINSON: Okay.  
 10 THE COURT: .....why don't we move on to something else.  
 11 Q And, of course, this is just all based on what you've  
 12 heard has happened with other guides or what you've seen  
 13 has happened with other guides who have had their  
 14 license revoked?  
 15 A What I know that's happened from other law enforcement  
 16 officers.....  
 17 Q Well, that's what you've heard?  
 18 A .....in my -- yes.  
 19 Q What have you seen?  
 20 A I have not personally seen that occur with my own eyes.  
 21 Q So you don't have any personal knowledge?  
 22 A I do have personal knowledge.  
 23 Q No, you don't.....  
 24 A Not first-hand knowledge.  
 25 Q You don't have any personal knowledge that anybody --

- 1375 -

1 any big game guide who's had their license revoked or  
 2 suspended has engaged in these loopholes? You don't  
 3 have any personal knowledge of that.....  
 4 A I -- I disagree. I know that Jim Baum(ph) is flying all  
 5 over unit 19 and other places, hauling hunters.....  
 6 Q Because you've heard it? You heard that from somebody?  
 7 A Yes.  
 8 Q So you don't have any personal knowledge, that was just  
 9 hearsay? You just heard it? Correct?  
 10 A Year after year. Yes, I heard it.  
 11 MR. ROBINSON: I don't have any further questions.  
 12 THE COURT: Okay. Let me have the book back. Thank you.  
 13 Anything else, Mr. Leaders?  
 14 MR. LEADERS: No further witnesses, Judge.  
 15 THE COURT: Mr. Robinson, any witnesses?  
 16 MR. ROBINSON: No, Your Honor.  
 17 THE COURT: Okay.  
 18 MR. ROBINSON: I would like to do -- before we close out  
 19 the evidence I would like to offer a couple of exhibits. One  
 20 I'd like to offer is the transcript of the interview between  
 21 Mitch Doerr and Doug Jayo from August 4 of 2004, along with  
 22 the tape.  
 23 MR. LEADERS: I don't oppose the tape but the transcript,  
 24 I don't.....  
 25 THE COURT: Along with the tape of the interview?

- 1376 -



1 MR. ROBINSON: Yes. And I'll admit the.....  
 2 THE COURT: It's a CD of the tape of the interview.  
 3 MR. ROBINSON: Well, yeah, but it's a tape recording,  
 4 whether it's on a CD or.....  
 5 THE COURT: Okay. Okay, okay. Well, I was just -- I  
 6 just want to make sure I knew what I was getting here, that's  
 7 all.  
 8 MR. ROBINSON: Right. It's a CD recording. I'm sorry.  
 9 MR. LEADERS: Judge, I would object to that. That's what  
 10 Mr. Jayo should have been here to testify about.  
 11 MR. ROBINSON: Well, but we had Mr. -- it's hearsay if  
 12 you want to do that, but I guess you've been getting hearsay  
 13 all along by Mr. Leaders, in this case.....  
 14 THE COURT: Yeah, I'm not going to overrule him on that  
 15 basis.  
 16 MR. ROBINSON: And so the -- here's.....  
 17 THE COURT: Is that the only thing on the CD or is  
 18 there.....  
 19 MR. ROBINSON: No, this is -- the only thing on this CD  
 20 is the interview between Mitch Doerr and Doug Jayo.....  
 21 THE COURT: Okay.  
 22 MR. ROBINSON: .....on 8-4-04.  
 23 MR. LEADERS: I object, because the state's not -- has an  
 24 opportunity to cross examine the witness.  
 25 MR. ROBINSON: Well, I mean -- I think you had an

- 1377 -

1 opportunity to cross examine Mr. Doerr and you examined him.  
 2 And if it's hearsay I don't understand. You've been getting  
 3 all this hearsay in that the defendant hasn't had an  
 4 opportunity to.....  
 5 MR. LEADERS: As has had defense.  
 6 MR. ROBINSON: Okay, well, you said the rule is relaxed  
 7 and this is a relaxation.....  
 8 THE COURT: Yeah, they are.  
 9 MR. LEADERS: That's not the issue. The issue is I have  
 10 no opportunity to cross examine Mr. Jayo.....  
 11 MR. ROBINSON: No, do you have the.....  
 12 THE COURT: Well, I.....  
 13 MR. ROBINSON: Let me make an offer of proof as to how I  
 14 got the CD. The CD was provided to us by the State of Alaska  
 15 as a genuine copy of an interview between Mr. Jayo and Mitch  
 16 Doerr on August the 4th, 2004. Now the state should  
 17 have.....  
 18 MR. LEADERS: That's not my objection.  
 19 MR. ROBINSON: Well, I don't understand.....  
 20 MR. LEADERS: My objection isn't that you -- the tape or  
 21 the CD, it's that I don't get the opportunity to cross  
 22 examine the witness about what he said.....  
 23 THE COURT: I understand. I understand. Overruled.  
 24 MR. ROBINSON: Thanks.  
 25 THE COURT: Is that the only basis? I don't -- I'm not

- 1378 -

1 going to read the transcript and listen to the CD though.  
 2 MR. ROBINSON: Okay. Well, I'll give you the CD.  
 3 THE COURT: I'd much rather just listen to the CD.  
 4 MR. ROBINSON: All right. And.....  
 5 THE COURT: Because I don't know who did the transcript.  
 6 MR. ROBINSON: .....the purpose of introducing it is to  
 7 direct the court's attention to Mr. -- Trooper Doerr's  
 8 testimony that he never would have or could have never.....  
 9 THE COURT: Right, I understand.  
 10 MR. ROBINSON: .....said that this case was about wolves,  
 11 it's clearly about moose.  
 12 THE COURT: Okay.  
 13 MR. LEADERS: And it's on that basis that I'd object as  
 14 to relevance.  
 15 MR. ROBINSON: Well, it has relevance as to something  
 16 else.....  
 17 THE COURT: Well, let's -- I've already admitted it,  
 18 that's -- let's move on.  
 19 MR. ROBINSON: And this becomes FF?  
 20 THE COURT: FF, yes.  
 21 MR. ROBINSON: And the reason you're not doing the  
 22 transcript is because we haven't authenticated it as a.....  
 23 THE COURT: Yes.  
 24 MR. ROBINSON: I promise to pay for that.  
 25 THE COURT: Did he transcribe it?

- 1379 -

1 MR. ROBINSON: He listened to both the tape.....  
 2 THE COURT: Well, I mean I don't -- if I'm going to  
 3 listen to the CD I don't see why I need a transcript.  
 4 MR. ROBINSON: All right, that's fine.  
 5 THE COURT: That's -- I'm going to listen to the CD.  
 6 MR. ROBINSON: Okay.  
 7 THE COURT: I don't see that I need -- I can take my own  
 8 notes.  
 9 MR. ROBINSON: Right. Fine.  
 10 THE COURT: So.....  
 11 MR. ROBINSON: All right.  
 12 THE COURT: Anything else?  
 13 MR. ROBINSON: No, I think that's all we have as far as  
 14 evidence is concerned.  
 15 (Defendant's Exhibit FF admitted)  
 16 THE COURT: Okay. I presume you both want to make  
 17 arguments. Are they going to be lengthy arguments that we  
 18 want to take a break first?  
 19 MR. ROBINSON: Yeah, I'm sure.....  
 20 THE COURT: All right. Let's start back up at 10:00. I  
 21 would encourage you both to be somewhat -- or to remember  
 22 it's not a jury you're arguing to, it's me. Please.  
 23 MR. ROBINSON: Right. I'll keep that in mind, but I'm  
 24 sure that after -- most of the day was.....  
 25 THE COURT: And.....

- 1380 -

1 MR. ROBINSON: .....taken up with the moose case. So  
 2 we're having like a mini trial here from 1:00 o'clock until  
 3 darned near 8:30.  
 4 THE COURT: I understand. I'm just requesting that it be  
 5 as to the point as possible, the arguments.  
 6 MR. LEADERS: This -- these are sentencing comments?  
 7 THE COURT: Right, right. Yeah, sentencing comments.  
 8 MR. LEADERS: It's not argument.....  
 9 THE COURT: All right, let's go off record.  
 10 (Off record)  
 11 THE COURT: All right, we're back on record. Mr.  
 12 Leaders?  
 13 MR. LEADERS: Thank you, Judge. Judge, as to the  
 14 sentencing of Mr. Haeg in this case, I guess the state's --  
 15 would like to first, real briefly, I know you sat through an  
 16 extensive trial and I'm not going to go through in a lot  
 17 detail, but I'd like to briefly recap what we're really  
 18 sentencing here today. And then we'll discuss a little bit  
 19 of Mr. Haeg. I believe the state's sentencing  
 20 recommendations in light of the Chaney criteria in this case.  
 21 The -- as you're well aware, Judge, from sitting  
 22 throughout the trial, Mr. Haeg was convicted of five separate  
 23 counts of same day airborne, unlawful acts by a guide,  
 24 shooting wolves same day airborne. That -- which really  
 25 disclosed what the state's view of in a lot of ways Mr.

- 1381 -

1 Haeg's intent through the taking of the wolves was an intent  
 2 to eliminate wolves from his guiding area, an attempt to  
 3 eliminate wolves that directly competed with the -- or  
 4 directly preyed upon the game populations that he hunted in  
 5 order to better enhance his prospects as a guide and those of  
 6 his clients. I say that for these reasons. As you heard at  
 7 trial, he got his -- on the very day that he flew into  
 8 McGrath to pick up the permit he did take a wolf that day.  
 9 He took -- he first -- as he testified, flew around the area.  
 10 I can't -- we're certainly not going to dispute that that  
 11 occurred. We have no basis to do so. He sees a wolf, as his  
 12 testimony was, at the southern boundary of the area. And  
 13 according to his testimony he knew that he was right at the  
 14 southern boundary, and he even testified that he knew at the  
 15 time that he took this wolf he was likely outside the  
 16 boundary based on where he had thought the boundary was,  
 17 where he first observed the moose leg out on the river bed,  
 18 and then he continued south further out of the predator  
 19 control zone. Shot the wolf. He even testified at trial  
 20 that he believed he was likely outside at that point in time.  
 21 The -- and then the next day he goes back towards the  
 22 hunt area, goes back to the same place where he had taken  
 23 that wolf the first night, and on the way up -- before he  
 24 even gets to the predator control area he takes two more  
 25 wolves, approximately, as he said, and as he knew,

- 1382 -

1 approximately 20 some miles or 20 miles south of the predator  
 2 control zone.  
 3 He then went into the area, flew around some more that  
 4 day, and I'm not saying just for minutes. I -- according to  
 5 his testimony he flew around extensively. We're not  
 6 disputing that. But after that. Judge, the testimony we  
 7 heard was that he didn't fly any more in the predator control  
 8 area when he went out seeking wolves. He did on one other  
 9 occasion, and that was when he flew back into McGrath later  
 10 in the month to have those initial wolves sealed.  
 11 But other than that, even though -- even on that day I  
 12 think is pretty -- the evidence is pretty important because  
 13 on that day even knowing he needs to go into McGrath, into  
 14 the predator control area in order to have those first three  
 15 wolves sealed, he starts -- and he couldn't get a hold of Mr.  
 16 Boudreau or anyone to have them sealed. And he tell -- as  
 17 his testimony is, he had to kill time. Instead of -- he  
 18 loads up -- he and Mr. Zellers load up the firearms to be  
 19 used -- that they're using taking the wolves, and they fly  
 20 the opposite direction, directly south. That's when they end  
 21 up taking the two wolves down on the Stony. A little bit  
 22 even -- or, excuse me, one wolf. I'm sorry, thank you,  
 23 Officer. One wolf down on the Stony River and now an area  
 24 even south of his guide activities. He -- I think his  
 25 testimony was through Mr. Zellers that they usually stop up

- 1383 -

1 around Rock Creek. But what's important is where he went  
 2 with this time to kill.  
 3 He goes through his -- he says he checked his cam --  
 4 some of his spike camps and then continued on south along the  
 5 Alaska range, and this is up on the Stony, kills a wolf  
 6 there. And then that's -- from there over the next couple  
 7 days they take wolves -- the wolves off the Swift River,  
 8 setting areas as was testified, areas where that river, that  
 9 river drainage, a lot of the moose come in from that area  
 10 into his hunting grounds in the fall. Again, controlling the  
 11 wolves down in his area.  
 12 Again, those days he flew not into the permit  
 13 boundaries, but flew specifically over areas that affect his  
 14 guiding area. First observing the moose kill and taking a  
 15 wolf then, and then come -- said then setting up his snares  
 16 and trap set around that wolf kill and coming back the next  
 17 day and taking the majority of the wolves that final day.  
 18 I think what's important there is the recognition of the  
 19 conscious act, the intent to take wolves. I mean and that's  
 20 what we look at when we look at this case. This isn't a case  
 21 of simply making a mistake about where the permit boundaries  
 22 were or being a little bit confused. This is Mr. Haeg, who  
 23 tells us he knew exactly where the permit boundaries were.  
 24 And despite -- and with all but -- with the exception of the  
 25 first wolf that maybe was just a little bit outside, not

- 1384 -

1 being 100 percent sure, he knew each of the other wolves was  
 2 absolutely outside the permit boundaries and yet he made  
 3 conscious acts to set up the plane in a specific manner, to  
 4 approach the wolf with the plane, set it up and fly it in a  
 5 specific manner so that Mr. Zellers could shoot those wolves.  
 6 It's that intent that is of greater concern and shows this is  
 7 a case that's more egregious than simply a permit violation  
 8 or a mistake as to the boundaries.

9 He knew exactly what he was doing. It also -- what we  
 10 see as well is this, that criminal intent portrayed out  
 11 through the sealing certificates, and the conscious actions  
 12 taken by deliberately falsifying the records. First of all  
 13 as to where the original wolves were taken, lying that they  
 14 were inside the boundaries and then still having them sealed.  
 15 Whether it was to look good under the program or what -- I  
 16 think because he was probably aware that people knew some  
 17 wolves were taken south of the boundary or down near the  
 18 bottom of the boundary. But then certainly with the  
 19 remainder of the wolves, the last six of the wolves and  
 20 having the corroboration with -- collaboration with Mr.  
 21 Zellers in order to falsify where they were taken, a whole  
 22 different game management unit, the method they were taken,  
 23 from the ground by snowmachine as opposed to from the air.  
 24 Again, goes to cover his criminal activities, criminal  
 25 intent which was to eradicate wolves in the area surrounding

- 1385 -

1 his hunting grounds. The -- of course, the unlawful  
 2 possession as you're probably quite aware really kind of ties  
 3 in with the fact that the wolves were taken illegal, once he  
 4 possessed he continued to possess them. Once he possessed  
 5 them then that was illegal as well.

6 The trapping closed season as well when you look back,  
 7 Judge, the wolverine set -- the state's perspective on that  
 8 is I think what the evidence really showed is Mr. Haeg didn't  
 9 really have much of an intent to take care of the trap and  
 10 snare sets that he had put out, but rather he wanted to get  
 11 out and away from this area and out -- distance himself from  
 12 the evidence that associated him with criminal activity out  
 13 there.

14 And I think that's what causes concern for the state  
 15 there is -- I mean he indicated he knew when wolverine season  
 16 closed, et cetera. He acknowledged that he was the one  
 17 responsible for the sets out at that time at the close of  
 18 season, and the jury recognized that with the conviction, as  
 19 well, as to the wolverine. I'll -- you know, I think -- I  
 20 respect the jury's verdict as to the other two counts. I  
 21 disagree. I think that they do, however, at least -- the  
 22 state's perspective is again it was Mr. Haeg's interest  
 23 rather in distancing himself from those sets. That evidence  
 24 connecting him to the illegal wolf case is what got him out  
 25 of there. But certainly the jury found that there was at

- 1386 -

1 least reasonable doubt as to whether or not it was apparently  
 2 turned over to Tony Lee(ph) or not.

3 The -- when we look at the offenses it's -- that's the  
 4 perspective -- the state's perspective -- these are very  
 5 serious because they do indicate intentional criminal  
 6 activity, intentional illegal hunting activities by a guide.  
 7 And then using lies and deceit to try and cover up that  
 8 illegal activity.

9 Regarding Mr. Haeg. You've heard the evidence today.  
 10 You're the one that's the trier of fact on that issue. The  
 11 state presented that evidence because it's important for the  
 12 state to know -- or the court to know as much as you can  
 13 about Mr. Haeg. What we have is a report from two other  
 14 guided clients by another guide who indicate that they -- and  
 15 who can specifically Mr. Haeg's plane. They can specifically  
 16 identify the area in which it is later found that, in fact,  
 17 Mr. -- one of Mr. Haeg's guides and clients took a moose,  
 18 and they also knew that it was a moose in that area. They  
 19 testified as to how they viewed Mr. Haeg's activities of  
 20 flying over them as chasing game away from them, as far as  
 21 specifically harassing their hunts with the bear over the gut  
 22 pile, as well as the moose.

23 And we've heard -- so I think that that's important to  
 24 take into context Mr. Haeg's guiding activities as well as  
 25 all of his hunting activities. We've heard the evidence --

- 1387 -

1 what we find is it was -- as I indicated, again, a moose was  
 2 taken in that area by one of Mr. Haeg's clients and guides.  
 3 Whether or not it was the 6th or the 7th, Judge, I guess  
 4 that's a determination you're going to make. Whether or not  
 5 the -- who was mistake -- who is -- I think what we have here  
 6 is not two separate moose taken. One on the 6th and one the  
 7 7th, in that exact same location, considering the fact that  
 8 Mr. Rivera and Mr. Ellnor identified the specific plane  
 9 that's involved as Mr. Haeg's plane. But we have one party  
 10 or the other not using the dif -- a different date. Whether  
 11 it's confusion on the part of Mr. Rivera and Mr. Ellnor or  
 12 whether it's confusion or falsification on the side of -- on  
 13 Mr. Haeg's and his party, I don't know. And -- but I think  
 14 what the evidence tells you is I think it's clearly one  
 15 moose, one hunt that's involved based on the identification.  
 16 Clear identification of Mr. Haeg's plane being involved in  
 17 the -- what we heard was even under Mr. Haeg and his  
 18 employee's representation of what happened, there's a lot of  
 19 inconsistencies. The two shots fired. Some gap in between  
 20 them.

21 Some difference as to it was half an hour or so. Mr.  
 22 Haeg and his client seem to indicate about 15, 20 minutes  
 23 between the initial shot and the kill shot. Again, the moose  
 24 taken from that same general area. The -- everybody  
 25 indicates no other activity, plane activity flying that

- 1388 -

1 specific moose area. Mr. Ellnor and Mr. Rivera talk about  
2 the plane -- Mr. Haeg's plane flying over them again in the  
3 area that the caribou gut pile and the bear. But no one --  
4 they indicated that there was no further airplane activity  
5 down around -- the next day or following down around where  
6 the moose was taken.

7 So that's the state's position on that. I think there's  
8 sufficient evidence to find that, in fact, Mr. Haeg did also  
9 engage in illegal guiding activities at that time by leading  
10 his client. What differs from the accounts other than  
11 whether it's the 6th or the 7th was whether or not Mr. Haeg  
12 had been there that morning before the moose was killed and  
13 guided Mr. Zellers and Mr. Jayo to the moose.

14 I think Mr. Haeg's comments -- I don't know that they  
15 were a slip or a -- really a little bit of the truth in that  
16 he knew exactly where that moose was. And he knew that he  
17 needed -- you -- the tools in order to create or to make a  
18 landing strip there. He knew that because -- when you  
19 consider Mr. Rivera and Mr. Ellnor's comments that he had  
20 been there, guided them to exactly where this moose was, then  
21 certainly he would know.

22 And when you take that -- look at that in light of the  
23 fact that up where he placed Mr. Zellers and Mr. Jayo the  
24 night before on the Kenny's Strip. They knew there was a  
25 moose in that area, they could have certainly taken a moose

- 1389 -

1 closer to the strip. He knew because he knew exactly where  
2 the moose was taken because he had guided them there. Is I  
3 think was what the evidence has sufficiently shown, for you  
4 to consider that.

5 The -- in addition -- the rest of Mr. Haeg -- I mean  
6 certainly you've heard from the trooper. I mean there's no  
7 prior -- I guess I'll represent to the court that there's no  
8 prior convictions of Mr. Haeg for guiding offenses. I'm not  
9 aware -- I don't recall any prior convictions for any  
10 offenses, Judge, but....

11 UNIDENTIFIED SPEAKER: (Indiscernible).

12 MR. LEADERS: But what we have is I think -- I've read  
13 through the letters submitted by defense. I think we've got  
14 a lot of people that probably hit -- that -- there was a  
15 common theme. No one could believe....

16 1208

17 (Tape change)

18 4MC-05-28/Side A

19 0000

20 THE COURT: .....September 29th. Mr. Leaders is making  
21 closing -- or sentencing comments. Go ahead, Mr. Leaders.

22 MR. LEADERS: Thank you, Judge. What I saw echoing  
23 throughout the letters were people who indicated Mr. Haeg is  
24 a strong family man and a person when it came to the issue of  
25 the offenses, the continued echoing of there's no way Mr.

- 1390 -

1 Haeg could have done this. Apparently Mr. Haeg isn't all  
2 that people -- apparently people very close to him perceive  
3 him to be.

4 He's different than that. Because not only has another  
5 one of his close friends indicated that, in fact, he did  
6 shoot -- Mr. Zellers, that close friend, through his  
7 testimony, through his statements to the troopers, that Mr.  
8 Haeg did, in fact, illegally take wolves. Not just on one  
9 occasion or two occasions, but on five separate occasions,  
10 nine wolves. But also admitted or has testified that Mr.  
11 Haeg had also actively involved in a part of the lies and  
12 deceit regarding covering up these things, but Mr. Haeg also  
13 admitted those same things on the stand.

14 In fact, he had done those, that he knew he would -- in  
15 each times that he took the wolves that they were illegal.  
16 With some reservation, not -- some, I guess, suspicion at  
17 least as to the first one. The others he stated were clearly  
18 outside. So I think what -- those letters I think are all  
19 well intended, but they all indicate that -- and even some of  
20 the commentary here, the gentleman is right -- Wendell Jones  
21 indicated he wasn't even aware of the extent of the intent of  
22 Mr. Haeg in the criminal activity. And I think that's part  
23 of the problem. Maybe everybody that wrote these letters,  
24 maybe Mr. Jones included, don't really know Mr. Haeg as well  
25 as now the law knows Mr. Haeg.

- 1391 -

1 That this investigation has found Mr. Haeg to be. The  
2 -- and I know it's -- and this is a case, as well, Judge,  
3 that -- I think what's troubling about that is it's not this  
4 accidental thing, it's not this one time thing. It's five  
5 separate days. There's a gap of approximately two weeks  
6 between the initial illegal taking, and as we heard from the  
7 trial testimony, then goes home to his base in Soldotna.  
8 He's there for a period of time. Part of that was based on  
9 sickness or he was getting ill and those types of things.  
10 The weather. But he goes home and there's a break of  
11 approximately two weeks between the initial illegal taking of  
12 the three wolves initially, and with all that time to think,  
13 and all that time for Mr. Haeg to consider the illegal  
14 activities that he did, what he does is he falsifies business  
15 records, or falsifies sealing certificates about where they  
16 were taken. And then when -- after doing that, after  
17 covering up the initial three he goes back out and even  
18 having -- we've heard how much it -- this has affected him  
19 and everything else. It didn't affect him enough at the time  
20 to deter him from on three more subsequent days after he goes  
21 out there to specifically flying around his guiding area and  
22 again taking six wolves illegally from the air.

23 So it's not just an isolated incident. It's a course of  
24 conduct over a couple week period with plenty of time for  
25 thought intervention, to recognize what I did was wrong, I

- 1392 -

1 shouldn't be doing this. But he wasn't deterred by that time  
 2 frame.  
 3 The -- faced then with that situation, I guess, as well.  
 4 Judge, I want to talk a little bit about this program. The  
 5 state's view -- because that gets into the Chaney criteria.  
 6 In light of the Chaney criteria I think what the court needs  
 7 to focus on is certainly such things as isolation aren't  
 8 necessarily appropriate, as far as deter -- isolating Mr.  
 9 Haeg for an extensive period of time to deter him -- or I  
 10 mean to make it so he's incapable of performing these acts.  
 11 I think some jail time is appropriate in light of the Chaney  
 12 criteria of community condemnation certainly, as well as  
 13 deterrence. Deterrence of both Mr. Haeg, as well as other  
 14 guides in general. Specifically other guides in general as  
 15 well.  
 16 I think these are guide licenses. This is something in  
 17 the state's perception, based on -- I think even based on the  
 18 -- my negotiations with other -- with the other defendants.  
 19 This issue of the guide license is very important to them,  
 20 and all the results of sentences involving guides is highly  
 21 monitored. I think any sentence the court enacts here will  
 22 have a great -- is a great signal to and can create a very  
 23 good deterrent affect to other guides. But as to Mr. Haeg  
 24 specifically, what we know is -- as I've just discussed, just  
 25 the knowledge of his wrong doing wasn't enough. He went back

- 1393 -

1 a couple weeks later and continued that and continued with  
 2 the false information as far as on the sealing certificates.  
 3 Those were filed even afterwards.  
 4 The -- as far as the final six wolves taken. In fact,  
 5 even enhanced and increased their lies, in that sense. So as  
 6 far as the deterrent affect I think there needs to be some  
 7 significant deterrence through a jail sentence to Mr. Haeg,  
 8 as well. Community condemnation as I think a lot of people  
 9 have talked, the community out here, I think -- I think  
 10 that's also important is -- because as a community probably  
 11 the most affected area or one of the most affected area, and  
 12 that's the predator control programs in this area, spoke as  
 13 to their views of Mr. Haeg's actions with unanimous verdicts  
 14 on all the same day air counts. And it was a little over an  
 15 hour of deliberations on the 11 counts. Two of which they  
 16 found not guilty. I think they were pretty clear and  
 17 decisive in their determinations that the community here  
 18 locally won't condemn the illegal taking of wolves, and I  
 19 think as well it's something that in public perception  
 20 outside of this local area which isn't as greatly affected is  
 21 even I'd say more diverse but even more -- in a lot of ways  
 22 there's a lot of other voices, those that are against the  
 23 taking of any wolves, and certainly Mr. -- in the state's  
 24 view and it's as Mr. Spraker testified, Mr. Haeg's actions  
 25 and the impact it will have on these programs is really yet

- 1394 -

1 to be determined, based on, you know, how these cases all --  
 2 this all comes out and other things, but there needs to be a  
 3 strong message, deterrent message in the guide community as  
 4 well as statement of community condemnation that this type of  
 5 activity will not be condoned, will not be taken lightly.  
 6 That it is, as Mr. Zellers says, it's -- it doesn't matter if  
 7 it's same day taking of wolves or same day taking of moose.  
 8 It's illegal guiding activity. It's illegal activity. Mr.  
 9 Haeg was a guide, and therefore the -- and that's the basis  
 10 -- or the theories under which he was charged. The -- and it  
 11 will not be condoned whether it's wolves, whether it's moose,  
 12 whether it's bear or not.  
 13 The -- for -- so in light of deterrence and community  
 14 condemnation the state's requesting the following sentences,  
 15 Judge. And I don't know if the court -- how the court's  
 16 going to....  
 17 MR. ROBINSON: (Indiscernible).  
 18 MR. LEADERS: Sure.  
 19 MR. ROBINSON: (Indiscernible) I don't understand.  
 20 (Whispered conversation)  
 21 MR. LEADERS: As to each of the five same day airborne  
 22 counts, and again I'd note -- I don't know how the court's  
 23 going to address these. I think the five separate counts  
 24 should not be consolidated in any form. The state's already  
 25 consolidated them. We didn't charge nine individual wolves.

- 1395 -

1 We looked at nine distinct days in which Mr. Haeg made the  
 2 determination to illegally take wolves. Five days. Nine  
 3 wolves total, five days. We've consolidated already that  
 4 conduct. They're specific and separate acts each day that he  
 5 continues. And certainly at least the two different time  
 6 frames. The first three wolves and the last six are separate  
 7 and distinct. So the state's requesting that there be no  
 8 consolidation as to charges based on the distinct separate  
 9 days and acts.  
 10 But sentences of 60 days with 55 days suspended, five  
 11 days to serve as to each of those five counts. Of course, if  
 12 the court were to consolidate it we'd be asking for the  
 13 enhanced -- the aggregate 300 with 275 days. I think 25 days  
 14 to serve as a whole for the five day -- or five separate  
 15 counts of same day airborne is a very reasonable and  
 16 appropriate sentence. Based on, again, the repeated  
 17 violations. As well regarding a fine. The state's request  
 18 as to each count is \$2,500 with \$1,000 suspended. That would  
 19 be \$1,500 to pay on each count.  
 20 I think that's an extremely appropriate fine, sanction,  
 21 if you look at it as approximately \$7,500 fine in total for  
 22 those five counts. What I'd note is that's -- as you -- you  
 23 heard the testimony regarding the prices involved in a single  
 24 hunt, approximately \$11,000. It's -- in aggregate there  
 25 \$7,500 is a little over half but much less than even one

- 1396 -

1 single hunt on track. And part of the state's theory in this  
 2 case. Judge, is that this is done and primarily done for Mr.  
 3 Haeg's own economic benefit, to assist in aiding his guiding  
 4 activities by eliminating the wolves in those areas. In that  
 5 sense, that \$7,500 is an extremely reasonable fine for the  
 6 court to impose.

7 Regarding the unlawful possession. Again, we'd ask for  
 8 the same sentence of 60 days with 55 suspended on each of the  
 9 two counts. Again, if the court were to consolidate those  
 10 for any reason, we'd be asking for the aggregated 120 with  
 11 110 days. As to the fines, we're not -- we'd suggest \$2,000  
 12 with all \$2,000 suspended. Won't ask for any additional  
 13 fine, active fine to be paid under those charges.

14 MR. ROBINSON: Which charge are we at now?  
 15 MR. LEADERS: Those are the two unlawful possession.  
 16 MR. ROBINSON: Right.  
 17 MR. LEADERS: As to the unsworn falsification, Judge,  
 18 this is a case -- this is a charge that, in the state's view,  
 19 requires some agge -- some greater penalty. We're asking for  
 20 180 days with 170 days suspended, 10 days to serve. Again,  
 21 \$2,000 fine and 2,000 suspended as to the fine. The basis  
 22 there is we look at -- you know, when you look at that it's  
 23 an intentional act, and it's an intentional act to cover up  
 24 other unlawful acts, other wrong doing. And, again, it's an  
 25 act that was actively engaged in, two separate times.

1 agreement that was in that case. Mr. Zellers received --  
 2 there were four counts that he ended up pleading to. 60 days  
 3 with 57, and 1,000 with 750 suspended as far as the fine on  
 4 each of those counts all consecutive. The state believes  
 5 that Mr. Haeg's case should be enhanced.

6 Mr. Haeg is the registered guide. Mr. Haeg is the  
 7 employer of Mr. Zellers. They were not in a strict  
 8 employee/employer relationship at the time of this activity.  
 9 But certainly Mr. Haeg is the one that most directly  
 10 benefits. It's his guiding area, it's his guiding operation  
 11 that's most directly benefitting. And it's Mr. Haeg that, as  
 12 Mr. Zellers says, is calling the shots on where they go.  
 13 It's Mr. Zellers who acknowledged his responsibility, that he  
 14 willing pulled the trigger. He willing put the gun to his  
 15 shoulder. But it's Mr. Haeg who is determining where they  
 16 hunt these wolves. Mr. Haeg's the one that's driving that  
 17 issue, and as well as I think that -- in the state's view I  
 18 think there's some argument to be made for the relationship  
 19 as well influencing that process. And therefore, I think any  
 20 comparative analysis of the sentences is -- there's a clear  
 21 bases factually for the state's requested sentence, even  
 22 though it is greater than what was reached under a Rule 11  
 23 agreement with Mr. Zellers.

24 The -- regarding probation the state is requesting a 10  
 25 year term of probation. We're requesting the following

1 Although we've only charged him with one count. Both when he  
 2 signed the initial hunt record and then when he collaborated  
 3 with Mr. Zellers and agree -- in discussing that the second  
 4 one Mr. Zellers' sealing certificate. I keep saying hunt  
 5 record, sealing certificate. I'm talking about both these  
 6 cases. Should be falsified in order to hide their illegal  
 7 activities.

8 Finally, as to trapping closed season, Judge, the  
 9 state's request there is 60 days with 55 suspend, again. And  
 10 \$1,000 all suspended on that charge as far as the fine. In  
 11 aggregate the state's sentence that we've requested is 660  
 12 days with 610 days suspended, a total of 50 days to serve.  
 13 That's under two months.

14 MR. ROBINSON: 610?  
 15 MR. LEADERS: 660 with 610 suspended, 50 days to serve.  
 16 And less than two months total in light of all of the  
 17 charges, and the course of conduct Mr. Haeg engaged in. As  
 18 far as the aggregate fine it comes out to \$19,500 with 12,000  
 19 suspended, again 7,500 which is in the state's view extremely  
 20 reasonable in light of the economic benefit that was obtained  
 21 in the state's view, and was I think intended through Mr.  
 22 Haeg's activities.

23 As to probation. The state requests -- I guess I'll  
 24 make one comment here. I know the court's well aware, you've  
 25 sentenced Mr. Zellers, you're aware of the sentencing

1 conditions. As a general requirement that he -- condition of  
 2 probation that he have no hunting, trapping or big game  
 3 guiding violations for that 10 years. That he forfeit the  
 4 following items. We're not going to ask for all, he can have  
 5 back certain items, but one the plane. And we'll be asking  
 6 as well for his forfeiture of the plane, for a specific order  
 7 of forfeiture that Mr. Haeg turn over all log books and  
 8 maintenance records for the airframe and engine to that  
 9 plane, as well. The -- and I -- I'll pull that out, get the  
 10 identifying number. If it -- well, if the court does we will  
 11 ask -- I'll identify -- if the court orders forfeiture of  
 12 that plane I'll get the N number in just a minute. Will you  
 13 grab that for me, Trooper. And it's a Piper PA-12 with N  
 14 number N4011M.

15 The -- again, also the state requests forfeiture of the  
 16 hides that have been seized because they were all illegally  
 17 taken. By statute I think it's mandatory that those now be  
 18 forfeited. Of course, the plane is discretionary. As is the  
 19 guns and the ammo, we'd be asking that that be forfeited as  
 20 well. As well as the traps and snares.

21 I think the court's well aware there was an issue of  
 22 some pre-trial briefing regarding forfeiture issues. The  
 23 state pointed the court to the forfeiture statutes in 16.05  
 24 regarding certainly the -- the hides are mandatory forfeiture  
 25 under 16.05 -- 16.05.190 addresses seizure and disposition of

1 equipment, and I recognize that that is discretionary to the  
2 court. The state's asking, however, for forfeiture of the  
3 plane, the guns and the snares, as they were all directly  
4 related and integral to the offenses committed. Without the  
5 plane he could not have committed same day airborne. Without  
6 the guns the wolves couldn't have been shot, without the  
7 traps and snares the illegal sets and the illegal taking of  
8 wolverine could not have occurred.

9 So based on that we believe that the equipment is  
10 appropriate to be forfeited. I guess I'd mention as far as  
11 -- that it was the subject of some pre-trial motion and  
12 that's the issue of the request to have the plane -- or a  
13 bond submitted in lieu of the plane. It's as well the  
14 state's position that under forfeiture of equipment under  
15 16.05.195 it's clear that it's the Department that has  
16 discretion as to disposition of seized items, and it -- in  
17 light of that if there -- if the court makes a determination  
18 of forfeiture and if there was a further request by defense  
19 about substituting bond in lieu, the state is opposed to  
20 that. It's the Department that determines -- is entitled to  
21 determination and disposition of forfeited items.

22 The -- I think the -- I think what's of interest, as  
23 well, that Mr. -- when we look at -- certainly the case law  
24 is clear that forfeiture is not a penalty, so the court  
25 considers those independently. We're asking for forfeiture

1 But after that five year active revocation is lifted, if he  
2 returns to guiding the court would have, for the remaining  
3 five years of probation another five years of guide license  
4 that could be suspended if there are further guide violations  
5 -- or further illegal hunting or guiding actions.

6 I think that is something that when we look at what  
7 we've heard from -- when you look at all the letters saying  
8 there's no way Mr. Haeg could do this. We've heard the  
9 testimony today that he's always been ethical and -- in all  
10 of his hunting practices. That shouldn't be a concern for  
11 Mr. Haeg. I mean it should -- as far as this additional  
12 suspension if, in fact, that's the case. It gives Mr. Haeg  
13 the ability to prove to the court that although this wasn't  
14 certainly a one time thing, it was a one-month thing, if you  
15 will, and that he -- that whatever sentence the court impose  
16 was signif -- a sufficient deterrent to correct any -- you  
17 know, such behavior.

18 We're asking that that 10 year revocation with the five  
19 years suspended include the -- be more than simply the  
20 revocation of his guide license. We are, as Troop -- going  
21 back to Trooper Gibbens' testimony, we believe that there are  
22 a lot of ways, and in my experience as far as a prosecutor  
23 I've seen cases referred -- and cases that I've discussed  
24 cases with investigations and other law enforcement troopers  
25 of how -- although a court has revoked or suspended a guide's

1 of the plane and we're also asking for the fine of \$7,500.  
2 And under the established case law it's clear that  
3 forfeitures are not additional penalties in the sense of a  
4 fine. But I'd note that Mr. Haeg valued -- submitted a  
5 valuation of the plane at \$11,290 in its current condition.  
6 So I'm sure that there's going to be argument -- a lot of  
7 argument from the defense that there is significant and  
8 substantial financial impact from -- to Mr. Haeg from these  
9 activities and therefore it's excessive to forfeit the plane,  
10 or it's excessive -- and it's also I think going to relate to  
11 his revocation of his guiding license. But I mean that's the  
12 evaluation they put on the plane when they submitted that to  
13 the court. I think -- and we've already discussed the fine  
14 there.

15 As far as the guide license, Judge, the state's asking  
16 for the following. We're asking for 10 year guide license  
17 revocation with five years of that guide license revocation  
18 suspended. That is a five year active guide license  
19 revocation, and the other five years suspended in case -- as  
20 a condition of probation that could be further -- I guess  
21 that suspension could be activated if Mr. Haeg commits any  
22 further -- or violates probation in any form. As, you know,  
23 the request of 10 years probation, the first five of which he  
24 wouldn't be able to guide anyway, is if he did some illegal  
25 guiding in that time frame then we'd kick in the extra five.

1 license, that guide when -- is circumventing the court's  
2 revocation or suspension by still actively participating in  
3 the big game guiding industry and any time they're contacted  
4 they simply indicate that they're not the guide. They simply  
5 shadow guide by having someone else operate their same  
6 business, their same activities, out of the same camps. And  
7 they're still in the field, still giving all the advice they  
8 have, but when they're contacted they're nothing but a camp  
9 cook. They're nothing but a packer. Because then they're  
10 not violating the conditions of the court's order.

11 And all that is, is a facade. And I -- the -- that's  
12 why the state believes that -- the court needs to require a  
13 specific order indicating that Mr. Haeg may not participate  
14 in any manner in the big game guiding industry, to include  
15 what specifically is stated by statute that he can't act as a  
16 guide, class A assistant guide, or assistant guide. Or a  
17 transporter, as well as to include the booking of hunts, the  
18 advertizing of hunts, the flying of -- the transporting of  
19 hunters, equipment or game from -- to or from the field under  
20 a Part 135 license. Acting as a packer, a camp cook, et  
21 cetera.

22 And that a specific order that he may not be in any  
23 hunting camps during the period of that revocation time  
24 frame. We would -- the state's position is, Judge, the  
25 statutes set out what the revocation is. But the statutes

1 give you the authority to establish conditions of probation  
2 necessary -- or with whatever is necessary to enforce and  
3 where appropriate a condition of probation. And I think this  
4 is an appropriate condition of probation to set in order to  
5 give affect and force to the license revocation.

6 One thing I'd note about the license revocation is that  
7 there's a mandatory three year time frame by statute based on  
8 the offense for which Mr. Haeg was convicted. And that's  
9 based on A.S. 854.720, subsection (f)(3), indicates the court  
10 shall order the Department to suspend the guide license or  
11 transporter license for a period specif.....

12 THE COURT: I've read it.

13 MR. LEADERS: Okay. Thank you. Based on the offense  
14 he's convicted of, it's mandatory for three years. The state  
15 could ask for life. We're not asking for that, Judge. We  
16 believe 10 years is appropriate. The -- I'll also inform the  
17 -- notify the court that Occupational Licensing requires a  
18 specific order to them indicating that the court has ordered  
19 Occupational Licensing to restrict the guide's license once  
20 the court's made an order regarding revocation. I'll provide  
21 that to the court if the court wishes, as far as the language  
22 required to make that effective.

23 One thing I'll note regarding the sentence, Judge, as  
24 well is under -- I don't know if the court's aware, but under  
25 854.605, eligibility for a guide. It indicates that if an

- 1405 -

1 individual has been sentenced to five days or more of jail  
2 time or greater than \$1,000 for a fish and game -- a  
3 violation of state hunting regulation, then they are  
4 ineligible to renew their guide license for a period of five  
5 years. I'm not trying to hide anything from the court or  
6 counsel or anyone else. We're specifically requesting as --  
7 based on our jail and fine request a sentence that would make  
8 him ineligible by statute for that five year period.

9 The -- Judge, as far as a further condition in order to  
10 enforce the -- well, I mean I guess do this. We're asking as  
11 well the court restrict Mr. Haeg's personal hunting and  
12 trapping privileges for a period of three to five years. We  
13 think that would be appropriate as well, based on the conduct  
14 in this case. The testimony was he wasn't guiding at the  
15 time. He was, under the law.....

16 MR. ROBINSON: You said hunting and fishing?

17 MR. LEADERS: Hunting and trapping. Under the law he was  
18 hunting. He was also trapping relating to the wolverines,  
19 and I think a personal restriction as well is appropriate.  
20 In order to give further affect -- and that goes into this,  
21 as well, this condition. In order to give further affect to  
22 the guide license revocation we're asking for a condition  
23 that Mr. Haeg not be at Trophy Lake Lodge or any spike camp  
24 associated with Trophy Lake Lodge or David Haeg's Alaskan  
25 Hunts during open big game hunting seasons. We recog -- you

- 1406 -

1 know, we're not requesting a year around prescription -- not  
2 during -- at any time when his guide license is revoked. So  
3 during -- we're asking for that five years or five suspended,  
4 during that initial five years if that's what the court's  
5 order is for suspension of the license; during that time  
6 frame he not be allowed at the Lodge during hunting seasons,  
7 in order to, again, give affect to the revocation or  
8 suspension.

9 Again, we're not asking that he be prohibited during  
10 non-hunting seasons.....

11 MR. ROBINSON: (Indiscernible).

12 MR. LEADERS: The -- we're asking as well the court order  
13 him not to participate.....

14 (Whispered conversation)

15 THE COURT: Do you want to keep it -- gentlemen, you have  
16 to keep it down a little bit so I can listen.

17 MR. LEADERS: We're asking that he not be allowed to  
18 participate in any predator control program for the period of  
19 probation, and we're asking, as well, that the court order  
20 restitution in the amount of \$4,500, that's the statutory  
21 \$500 per -- amount per wolf, for the nine wolves that were  
22 illegally taken. And we'd ask that that restitution order be  
23 joint and several with Tony Zellers.

24 That's the state's sentencing request as based on the  
25 comments provided, the evidence provided at trial, as well as

- 1407 -

1 today, Judge.

2 THE COURT: Thank you, Mr. Leaders. Just a moment,  
3 please, let me finish my notes. Mr. Robinson?

4 MR. ROBINSON: Well, let's address what we're here for  
5 most of the day, from 1:00 o'clock until about 8:00 o'clock.  
6 In other words this alleged accusat -- this accusation that  
7 Mr. Haeg engaged in same day airborne hunting of a moose in  
8 September of 2003, specifically the complaint by Mr. Pete  
9 Rivera, September the 6th of 2003.

10 I've already told you earlier before we even started  
11 going down this road of a mini trial that the only purpose  
12 the state wanted to bring this up was to convince you that  
13 Mr. Haeg has committed another crime. Without giving him the  
14 benefit of his due process rights which would mean we would  
15 have to have a jury decide whether or not he violated a  
16 current -- he violated the game statute concerning big game  
17 hunt, same day airborne for moose in September of 2003.

18 On a case that was closed in August of 2004  
19 (indiscernible) trooper (indiscernible) the case was closed.  
20 So they want to reopen a case that he was never charged on.  
21 And try to convince you under some different standard of  
22 proof that he committed another crime, but they don't have  
23 any prior convictions of Mr. Haeg after 21 years being  
24 involved in guiding and/or hunting, he's been hunting longer  
25 than that, since he was a child. He has no prior convictions

- 1408 -



1 of anything. None. No prior hunting, fishing violations, no  
 2 prior criminal violations. I mean I don't think the state  
 3 can find a traffic ticket for Mr. Haeg.  
 4 Be that as it may. I don't think that they've proved  
 5 their case. Proved that a crime was committed. You have the  
 6 testimony of other people who were directly involved in Mr.  
 7 Jayo's moose hunt in September of 2003. That pretty much  
 8 shows that this moose was taken that day without the  
 9 assistance of Mr. Haeg in terms of guiding on that day.  
 10 You know, I mean we're not even talking about the same  
 11 moose. Mr. Rivera and Mr. Ellnor who never even saw the  
 12 moose (indiscernible) four or five miles -- at least the  
 13 troopers, when they did their investigation found that the  
 14 actual moose kill was four or five miles from the area that  
 15 Mr. Rivera said that he thought he saw Mr. Haeg circling the  
 16 area and then when he left heard a shot. We didn't even get  
 17 any testimony as to what direction the shot came from. The  
 18 shots that Mr. Rivera and Mr. Ellnor apparently heard. It  
 19 seems to me that fundamentally they would say, well, did it  
 20 come from this direction, from the south, the east, the  
 21 north, the west. Oh, yeah, there was a gunshot. We don't  
 22 have even a direction for it.  
 23 We have, you know, pretty good testimony here that on  
 24 the 6th of September it was too foggy to hunt between 7:30 in  
 25 the morning and 9:00 in the morning because it was just too

- 1409 -

1 foggy. And that Mr. Haeg didn't even fly until the afternoon  
 2 of the 6th of September.  
 3 The next day was pretty clear, he left early to go  
 4 deliver the sheet metal or the steel siding down to Arthur's  
 5 place. Called back by the fact that Mr. Zellers said that he  
 6 had taken a moose that morning, so went back unloaded the  
 7 steel (indiscernible) the packers. Mr. Stepnosky indicated  
 8 the moose was taken on the 7th. Mr. Zellers said it was  
 9 taken on the 7th. On the one hand Mr. Leaders wants you to  
 10 believe Mr. Zellers would have any of a dozen reasons  
 11 (indiscernible). Mr. Zellers would have no reason to lie  
 12 about the day and time that this moose was taken. And he has  
 13 no reason to lie (indiscernible) not taken with the  
 14 assistance of Mr. Haeg or his airplane. Using his airplane  
 15 to spot moose or (indiscernible) moose or anything else.  
 16 You remember Mr. Rivera and Mr. Ellnor never even saw  
 17 any hunters or the bear. They had no idea where Mr. Jayo and  
 18 Mr. Zellers were. And Mr. Zellers had to hike two and a  
 19 half, three miles to get to the kill site, that's going to  
 20 take more than 30 minutes for that to occur. Remember Mr.  
 21 Leaders (indiscernible) that at one hour per mile, that would  
 22 be like a couple of hours, so this idea that they saw an  
 23 airplane circle and 30 minutes later they heard a shot  
 24 doesn't even comport with the fact that Mr. Zellers and Mr.  
 25 Jayo had to hike two and a half, three miles to get to the

- 1410 -

1 moose.  
 2 I mean there's just so many incon -- there's just so --  
 3 the thing that worries me so much about Mr. Rivera and Mr.  
 4 Ellnor is that they have this motive to make up a story. On  
 5 the 5th of September they say they saw Mr. Haeg fly over  
 6 some gut pile or bear or buzz) Mr. Ellnor and Corky  
 7 Hendricks. And Pete Rivera says that they saw him fly over  
 8 this area where they spotted the moose. They were upset  
 9 about something that was totally legal. They had this grudge  
 10 already established by the time they go back to camp on the  
 11 night of the 5th against Mr. Haeg for something that was  
 12 legal. There wasn't anything illegal about Mr. Haeg flying  
 13 around on September the 5th, no matter what he was doing.  
 14 (Indiscernible) or anything else. So I would imagine what  
 15 happened is (indiscernible) they got upset, they went back to  
 16 camp, talked about how terrible it was that they didn't get  
 17 their bear, you know, thought the moose was pushed away, or  
 18 whatever. And at that point, you know, they began to put a  
 19 story together about the next day. (Indiscernible) complaint  
 20 on the 17th by Mr. Pete Rivera.  
 21 So I just think that it was a motive for them not to  
 22 tell what really happened, because they were pissed, and  
 23 upset, very mad, and they continued to be very mad until the  
 24 day they left because they didn't get a bear, they didn't get  
 25 a moose, which, you know, neither one of them (indiscernible)

- 1411 -

1 to begin with.  
 2 With regard to the sentence for Mr. -- I mean I just  
 3 don't think that the state proved even under a preponderance  
 4 of evidence that Mr. Haeg, Mr. Zellers, Mr. Jayo were  
 5 involved in a same day hunting moose on September of 2003.  
 6 With regard to the sentencing, the state is now basically  
 7 asking you to sentence Mr. Haeg to 660 days in jail with 610  
 8 days suspended, \$19,000 fine with 1,200 [sic] suspended.  
 9 We're talking about 10 years of probation and the conditions  
 10 is there would be no hunting, trapping of big game or no  
 11 hunting, trapping or big game violations and that he forfeit  
 12 his airplane, forfeit all the guns, ammo, snares and traps.  
 13 Even the snares and traps that apparently they introduced as  
 14 evidence to show that he had unlawfully trapped wolves and  
 15 the jury found him not guilty of, they want him to even  
 16 forfeit those traps and snares.  
 17 And then take his guide license for 10 years and suspend  
 18 that revocation for five. But in addition they want you to  
 19 do more than what the law says occurs to people who have  
 20 their license suspended like Mr. Haeg. And that is they want  
 21 you to say he can't participate in any manner at all in big  
 22 game industry, can't book, advertize, transport hunters under  
 23 a federal license, cook. He can't do anything. Basically he  
 24 wants -- the state wants you to say he can't go to his own  
 25 property during big game hunting season even if there are no

- 1412 -

1 hunters there.  
 2 And he wants -- they want restitution for five -- \$4,500  
 3 and then also take his regular personal hunting and trapping  
 4 license from him for four or five years for one wolverine  
 5 trapping violation. We believe that this is extremely  
 6 excessive for the situation involved. If we really look at  
 7 what the situation involved here is that we have a state  
 8 policy that has pretty much said that wolves are so much of a  
 9 predator that they're interfering with the sustained yield of  
 10 moose, not only in the McGrath area, but now it's extended  
 11 beyond McGrath. Increased the number of wolves that can be  
 12 taken.  
 13 And that this is not a conservation question for wolves.  
 14 It's a conservation question for moose and caribou, but it  
 15 isn't a conservation question for wolves. No, really this is  
 16 an ethical question for the wolves, because there's this  
 17 policy of the state, these are predators. They're looked at  
 18 differently than prey animals. Prey animals are the ones  
 19 that we want to conserve for the consumption of moose by the  
 20 people and that sort of thing. But predators fall in a  
 21 different category. And once labeled a predator they have a  
 22 different stigma attached to them than moose or caribou or  
 23 bear. They're looked at as something that it needs to be  
 24 controlled a little differently. And in this case killed.  
 25 Now nobody is saying that he had a right to kill them

- 1413 -

1 outside of the area, and he and Mr. Zellers both intended to  
 2 kill these wolves outside the area. This wasn't just some  
 3 scheme that occurs to Mr. Haeg alone. It took two. It took  
 4 somebody flying an airplane and also it took somebody to  
 5 actually do the shooting. In that case it was Mr. Zellers  
 6 who actually killed the wolves. Mr. -- if you look at who  
 7 actually did the shooting or whoever did the killing versus  
 8 who did the assisting, it's a little bit different.  
 9 But the point is that it was a joint adventure on the  
 10 part of Mr. Haeg and Mr. Zellers. This was not just Mr. Haeg  
 11 running off on his own and doing something alone. So then  
 12 you ask yourself, well, if Mr. Zellers was engaged in this  
 13 conduct of actually shooting these nine wolves outside the  
 14 permitted area, is his conduct less grave than Mr. Haeg's, so  
 15 therefore he gets less of a sentence than Mr. Haeg. I think  
 16 not. Then if justice is going to really (indiscernible) then  
 17 the court has to look at disparity problems that could arise  
 18 because you have what you do to Mr. Haeg versus what you did  
 19 to Mr. Zellers.  
 20 And Mr. Zellers didn't get anywhere near what the state  
 21 is asking Mr. Haeg get. They're not even close to it. 12  
 22 days in jail, total. A fine of \$1,000. His license suspended  
 23 for three years with two suspended and then retroactively  
 24 suspended back to July of 2004, so really we only have a one  
 25 year revocation. No prohibition about his guiding activity,

- 1414 -

1 other than what would be required under the law that during  
 2 the time that his license was suspended he couldn't....  
 3 MR. LEADERS: That's inaccurate. The judgment is no  
 4 involvement in big game guiding industry.  
 5 THE COURT: I know what the judgement says, I did it.  
 6 MR. ROBINSON: We have that right here. Forfeit any  
 7 interest in all items seized during the investigation, pay  
 8 restitution amount of \$4,500. Mr. Zellers' hunting and  
 9 trapping and guiding privileges and license suspended for one  
 10 year from July to -- July 1 of 2004 through June of 2005, and  
 11 two years of suspension (indiscernible) by the court if Mr.  
 12 Zellers violates probation. I don't see anything in there  
 13 that says he was prohibited from doing anything in the  
 14 guiding industry, at least as far as the Rule 11 agreement  
 15 is concerned.  
 16 THE COURT: I know, I have the judgment, I know what it  
 17 says. I did it, so.  
 18 MR. ROBINSON: Well, anyway, Mr. -- this is Mr. -- we can  
 19 all agree, however, that what he did on the month of March of  
 20 2004 was not a guiding activity. He wasn't engaged in  
 21 guiding at that time. He was engaged in hunting and trapping  
 22 or predator control, the jury found it was hunting and so  
 23 they convicted of it, but there's no question that he was not  
 24 guiding a client to hunt an animal on those five days.  
 25 But Mr. Leaders would like you to punish him as if he

- 1415 -

1 did do that, because if in fact he was engaged in guiding  
 2 activity in March of 2004 instead of non-guiding. There was  
 3 no guiding. So we think it's harsh for the court to take his  
 4 guide license for 10 years, other than the minimum of three  
 5 years that the law requires.  
 6 We think that it would also be harsh to take his  
 7 airplane because as we have put evidence before the court, he  
 8 uses the his plane not only for guiding, but he also uses it  
 9 for part of his economic livelihood of flight seeing, and if  
 10 you take his plane from him he won't even be able to do that,  
 11 which is not even related at all to his guiding business.  
 12 And maybe over the next few years what he's going to have to  
 13 do is, you know, try to beef up more work for his flight  
 14 seeing business, but at least he'd have the means to do it.  
 15 But if you take his plane he won't even have the means to do  
 16 that so he'd be out of the guiding business, he'd be out of  
 17 the flight seeing business, he'll just be out of business.  
 18 Period. After 21 years of an occupation, just it's gone. Up  
 19 in smoke. Because the state wants to impose these severe  
 20 penalties to Mr. Haeg for nine wolves.  
 21 I don't believe the court should do any more as far as  
 22 the guide license is concerned than what the law allows. I  
 23 don't think the court needs to put any conditions of  
 24 probation on him beyond the maximum of what the law allows.  
 25 Because then we get back in the Apprendi situation. Because

- 1416 -

1 after all, the state did bring about the moose  
 2 (indiscernible) to enhance penalties and if we put penalties  
 3 in the form of probation then it's penalties. It's still  
 4 restrictions on his liberties, and he's entitled to under due  
 5 process clause, both the federal and state constitutions.  
 6 And as the trooper says, he would like to put a few more  
 7 than what the law allows simply because he doesn't think the  
 8 law is strong enough when it comes to revocation or  
 9 suspension of a guiding license. That's a legislative  
 10 question, it's not really up to the court to decide  
 11 (indiscernible) I think that (indiscernible) already. The  
 12 limitations the law puts on the penalties to be imposed when  
 13 you have a license suspension.  
 14 So I don't think that Mr. Haeg -- him being involved in  
 15 this joint venture with Mr. Zellers.....

16 0603

17 (Tape change)

18 4MC-05-28/Side B

19 0604

20 MR. ROBINSON: .....should receive a sentence any greater  
 21 than what Mr. Zellers got for those same day airborne wolf  
 22 kills. They were both involved to equal degrees, it wasn't  
 23 as if somebody was calling the shots and Mr. Zellers  
 24 (indiscernible) got another airplane and he was going to go  
 25 out and catch those wolves, too, just like Mr. Haeg did. In

- 1417 -

1 fact, if he didn't want to kill the wolves he could have not  
 2 pulled the trigger. No matter how much flying Mr. Haeg had  
 3 done.  
 4 So I think it would be unfair to sentence Mr. Haeg to  
 5 something greater than what Mr. Zellers got, which was 60  
 6 days in jail with 57 suspended, three days to serve for each  
 7 of the wolf counts, and the falsification count. After all,  
 8 Mr. Zellers also falsified the record or statement as to  
 9 where the wolves were taken. It wasn't just something Mr.  
 10 Haeg did alone. Mr. Haeg falsified one and so did Mr.  
 11 Zellers. So they both did wrong, as they've admitted to, in  
 12 covering up their wrong doing.

13 But, you know, Mr. -- it's as if Mr. Leaders would like  
 14 Mr. Haeg to get 10 days in jail for that, but overall  
 15 sentence of 180 days, 170 suspended. So it would be 180 --  
 16 it would be actually like 170 days hanging over Mr. Haeg's  
 17 head but that isn't the case for Mr. Zellers for the same  
 18 conduct. And (indiscernible) falsification statement.  
 19 And I'm not sure what the court's going to do and how  
 20 serious the court thinks but I did listen to the comments the  
 21 court made at the time that it sentenced Mr. Zellers, and at  
 22 that time the court said that they could understand the  
 23 overzealousness that was involved in this case. It was an  
 24 overzealous issue not an intentional just wanting to go out  
 25 and enhance Mr. Haeg's business. It was not that at all. It

- 1418 -

1 was as Mr. Jones describe, it was frustration with first, you  
 2 know, the state not doing anything until, you know, just  
 3 about the last minute here to take care of the wolf  
 4 predation problem and then flying around in the tiny area  
 5 that the state had set up initially in 19-D east to look for  
 6 wolves, and there really weren't that many in there to hunt  
 7 and take. And Mr. -- you know, Mr. Haeg had been involved  
 8 for a long time with fish -- or the Board of Game and the  
 9 Department of Fish and Game trying to get some sort of  
 10 program going which would finally help take care of the  
 11 wolves.

12 The letters that you got about Mr. Haeg are probably  
 13 from people that for the most part know him better than you  
 14 and me and Mr. Zellers -- or Mr. Leaders do. And they  
 15 weren't all this theme of, you know, well, we don't know what  
 16 he did, we just think he's a nice guy. It was several  
 17 letters, lots of letters that people did acknowledge that  
 18 they knew that he made a mistake, that they knew he had  
 19 violated the law, but despite that they still said this is  
 20 the David Haeg that we know, we don't even know if he  
 21 committed this violation. But he's still, you know, a pretty  
 22 good character. And even from the hunters that we got  
 23 letters from, there was not a single hunter who said that he  
 24 did anything illegal while he was guiding. In fact, most of  
 25 the letters that you got from people who had actually

- 1419 -

1 experienced hunting experiences with Mr. Haeg says that when  
 2 he's guiding them as clients he's hunting. He's not out  
 3 breaking the law. Even though you've heard these rumors and  
 4 innuendos from Trooper Gibbens about what he heard from other  
 5 people, they're just -- that's all they are, is rumors and  
 6 innuendoes. Weren't even investigated, weren't even looked  
 7 into, just oh well, if Ken Powers says so I guess that's the  
 8 case. If so and so said so, I guess that's the case, without  
 9 ever, you know, being an objective law enforcement officer to  
 10 get to the bottom of these accusations and concerns, he  
 11 didn't do anything. As a matter of fact he never even asked  
 12 these people to put it in writing. If they feel so strongly  
 13 about it, then put it down in writing about your concerns of  
 14 illegal activities on the part of Mr. Haeg.

15 But on the other hand we have numerous letters from  
 16 people who know him, know his business, how he operates his  
 17 guiding service that is completely opposite from these so  
 18 called rumors and innuendoes and speculations of Trooper  
 19 Gibbens. Now maybe my memory of the trial was a little  
 20 different than his or your's or maybe Mr. Leaders, but I  
 21 specifically remember Mr. Spraker saying that what Mr.  
 22 Leaders -- what Mr. Haeg did did not jeopardize the program  
 23 of predator control. And the evidence of that is that that  
 24 particular program continued and not only that, the Board of  
 25 Game expanded the program. So if he had, in fact,

- 1420 -

1 jeopardized it, it seems to me that the board would have  
2 said, well, gee, you know, we're not going to have this  
3 program any more because this violated it, going out and  
4 violating it, and we certainly don't want to expand the  
5 program in light of the fact that (indiscernible) in  
6 jeopardy. That just didn't happen. Out of 200 and some  
7 wolves that, you know, the number of wolves that are  
8 available to be taken in 2004, nine of those -- taking nine  
9 wolves compared to, you know, what could have been taken,  
10 it's just not that grave. Not that many.

11 And I just think that if the court looks at this as  
12 taking nine moose the same day airborne that it's not really  
13 looking at the big picture of what the gravity of the  
14 situation is in this case. And it wasn't that grave,  
15 certainly not that grave to warrant the conditions of  
16 sentencing that the state -- they're not even close. You  
17 know, there's a certain vindictiveness (indiscernible) in this  
18 case, particularly with the presentation of seven hours of a  
19 mini trial on moose hunting, same day airborne. This is a  
20 little vindictive of the state to use that to influence you  
21 to enhance Mr. Haeg's sentence in a case that was closed over  
22 a year ago by the Department of Public Safety, the troopers  
23 office. There was no case, that's why they closed it. So to  
24 bring it up now by the prosecution to -- in this way where he  
25 doesn't -- where Mr. Haeg doesn't really have the full

- 1421 -

1 benefits of all his due process rights, to influence you to  
2 enhance his sentence beyond what Mr. Zellers got is just --  
3 it smacks of vindictiveness.  
4 It smacks of vindictiveness to hear this trooper get on  
5 the stand and say, well, I want you to do more to Mr. Haeg  
6 than what the law allows you to do. I mean, for what? Mr.  
7 Haeg doesn't have any prior convictions, 21 years of being in  
8 the business, never been in any trouble before. And they  
9 want to make an example out of him. They're not looking for  
10 justice, they're not looking for what's right and what's  
11 wrong about this case in terms of what a proper sentence  
12 should be. They just want to string this man up and make an  
13 example of him. Take his livelihood away from him, so his  
14 wife and kids (indiscernible), period. Not even three years  
15 from now would he be able to do any guiding because if you do  
16 what the state wants you to do. And he won't be able to  
17 guide for the next five years and there's also a law that  
18 says once you have not guided for four consecutive years then  
19 you've got to go all the way back to the bottom of the rung  
20 again to qualify to get a license even after that. You have  
21 to go back and become an assistant guide again and go through  
22 that whole (indiscernible) opportunity in order to be a  
23 guide.

24 So the state is really asking you to destroy this man's  
25 life. It's not asking you to be fair and just, but it's

- 1422 -

1 really asking you to take his life and destroy it, basically.  
2 For nine wolves. I mean this can't be about one wolverine  
3 that was taken in a snare, or a leg iron. This has got to be  
4 just about those wolves, and that's it. He can't ask you to  
5 sentence him for the trapping of wolves when the season was  
6 closed because the jury didn't find him guilty of that. So  
7 it's all about the wolves and making a false statement about  
8 where the wolves were taken, it's not about one wolf. That  
9 (indiscernible) just mentioned would destroy his guiding.  
10 Ending it pretty much as far as his livelihood is concerned  
11 if you (indiscernible) because if you do what they ask you to  
12 do that's exactly what's going to happen. Take his plane,  
13 put him in jail for 50 days, take his license for five years.  
14 All that's going to result in one big ending. And that is  
15 the ending of David Haeg who is a man who has no prior  
16 criminal record at all. This is not like murder in the first  
17 degree, even though we have dead wolves. Because those  
18 wolves are not in the same category as a person. They're not  
19 even in the same category of prey animals. But the state  
20 wants you to destroy him because of those wolves, and we ask  
21 you not to do that. And you can -- no question, if you take  
22 his license for three years he's going to (indiscernible).  
23 The fact that he spent all this money defending himself for  
24 getting into trouble, that's enough to deter him from doing  
25 any more illegal activities trying to -- if you think for one

- 1423 -

1 minute that Mr. Haeg is going to now go out and try to do  
2 something else illegal after all the frustration,  
3 depression that you read about in the letters that you got,  
4 the agony that he's gone through over these nine wolves,  
5 you're mistaken. He has suffered quite a bit already without  
6 being sentenced. And he gave up the whole hunting season,  
7 which is a lucrative forfeiture itself, since the fall of  
8 2004.

9 So I would think that if you sentence him more along the  
10 lines of what his co-defendant, a very similar  
11 (indiscernible), the same basically (indiscernible) wolves,  
12 that would serve the purposes of Chaney, and that would be,  
13 in this case, since the state has admitted that isolation is  
14 not apparently involved here. But for purposes of deterrence  
15 and rehabilitation, and the condemnation of society, --  
16 condemnation for society, that that kind of sentence would be  
17 more in line for the gravity of what happened than taking Mr.  
18 Haeg's livelihood, and his ability to even make a livelihood  
19 by taking his airplane instead of a \$11,000 -- or 10,000  
20 (indiscernible) has offered in lieu of forfeiture, you can  
21 do that in lieu of forfeiture. You don't have to take the  
22 airplane as Mr. Leaders tries to get (indiscernible) about.  
23 That's not mandatory.

24 And still give this man an opportunity to care for  
25 himself and take care of his family, something. He's 39

- 1424 -

1 years old, it's not going to be very easy to go out and find  
2 another occupation or livelihood at 39 years old in rural  
3 Alaska. Because where he lives at Brown's Lake in Soldotna,  
4 it's pretty rural. Even more rural than Homer. So I beg you  
5 not to follow the recommendations of the state in terms of  
6 sentencing in this case. That you give Mr. Haeg the minimum  
7 license revocation, that you impose on him in terms of jail  
8 time and fines and restitution the same that Mr. Zellers got.  
9 That you not forfeit his airplane, and that you not put him  
10 on probation for 10 years. He doesn't need to have a noose  
11 around his neck for 10 years for nine wolves. That's all I  
12 have.

13 THE COURT: Thank you, Mr. Robinson. Mr. Haeg, you have  
14 the opportunity to say anything you'd like to to the court  
15 before I make a decision if you'd care to do that.

16 MR. HAEG: I don't know if I can say anything. The  
17 gravity of what I've done is beyond me.

18 THE COURT: I don't know if that means you don't have  
19 anything else you want to say or if you want to wait a moment  
20 and say something else. I'm willing to wait as long as you  
21 want.

22 MR. HAEG: Yeah, I'm -- I've wrote enough to fill a book  
23 to tell you. Do you want to hear it?

24 THE COURT: If you want to tell me, I'll listen.

25 MR. HAEG: No, do you want to hear it?

1 THE COURT: Sure.

2 MR. HAEG: Well, do you think I should go on or not?

3 MR. ROBINSON: Well, if you think you want to say  
4 something you go ahead and say it....

5 MR. HAEG: I don't know. We've been here a long time.  
6 I've got a wife and kids waiting for me, and I don't think I  
7 can do this anyway, other than saying that it's my whole  
8 life, it's all I have, and I think there's a big mistake in  
9 what has been mismanagement and we tried to help and it got  
10 away from us. And I talked to other people, guides, friends  
11 of mine that said that they didn't do the same thing because  
12 they knew they would end up doing the same thing we did. And  
13 the main one was Jim Harrower. He had the gumption to let  
14 his whole business he built go away and he moved to  
15 California because he said he couldn't stand it any more.  
16 But his kids are grown and gone. Mine are this high,  
17 and that's all I have left is what I built, my business. I  
18 could -- I'm a great pilot, I guess I can start over and do  
19 something else, but if you talk to Brett Gibbens and you've  
20 seen what I built with my own hands, depending on the state  
21 to have a resource that I could depend upon. I mean it was  
22 my life's dream and I built it. And I built it so that my  
23 kids would have it when I was dead. I built a legacy.  
24 And it's going to go down the tubes. I mean do you know  
25 how hard that is to watch. I mean I don't know if you have a

1 legacy that you're building to hopefully pass on, but that's  
2 what I did. I'm extremely smart, I could have went to  
3 Harvard or Yale on full scholarships from being a  
4 correspondence student. I said screw that, I love flying, I  
5 love hunting, I love guiding, I love trapping and I do that  
6 to the best of my ability, and I'm one of the best there is  
7 in the world at doing it. And I do it legally and ethically,  
8 and all that, but when it comes to wolves I've tried my whole  
9 life to try to help manage them as other people have, Brett  
10 Gibbens, and it's so difficult to do that it -- it can't be  
11 done without unethical means.

12 And we got caught up in that. And, you know, like I  
13 said, I've been from yea high I've been commercial fishing,  
14 trapping, guiding. Never have done anything illegal ever.  
15 We hunt hard. If it's legal to do and it has to be done so I  
16 can put food on the table for my family, I do it. I look at  
17 the law and I do it. I -- some of the things that I do I  
18 don't like. I don't like flying around looking for moose.  
19 Ten years ago our camps, you went in -- I've been in one  
20 of our camps, Judge Murphy, and I know you were promoted to  
21 judge, just like I was promoted to master guide. I'm  
22 probably the youngest master guide in Alaska at this moment.  
23 But my license is going away, but anyway, -- I don't know, I  
24 got off track here, but you know, that's all going down the  
25 tubes. And it was just -- I prided myself on how good we run

1 an operation. I pride myself on the guys that work for me,  
2 that are the best in the business.  
3 I thought it was my duty to come out here, my obligation  
4 to come out and help kill wolves. When the program went on  
5 for so long and they took so few wolves and I heard at the  
6 Board of Game meeting that the program was possibly going to  
7 be shut down because they hadn't killed enough wolves and  
8 there was a big push by whoever that it wasn't effective, and  
9 I thought it was my duty as a guide or as a resident of  
10 Alaska and probably one of the better pilots up here to come  
11 out and do something.

12 And we got overzealous, and I guess the only thing I can  
13 say to prove that to you is look at my record up to this  
14 point. I've done nothing other than hunt, fish and trap for  
15 a living my whole life. And that airplane that they've had  
16 for two years, that's my heart and soul, that's what I built  
17 with Mr. Jones. All the other kids were out partying and  
18 carrying on and chasing women, I was nose to the grindstone  
19 building that airplane.

20 And I look at it, I deserve to lose it. I deserve to  
21 lose everything, like they say, and it hurts me to say that  
22 but I can't -- I would like to just give everything up  
23 because that's what needs to be done, but I have a wife and  
24 two kids and I don't have anything else. You hear the  
25 statement, between a rock and a hard place, you look at the

1 guides. Like I think Mr. Runkle(ph) was a guide that was a  
 2 prospective juror and I don't know if you heard the emotion  
 3 in his voice, over what happened to his business; that's  
 4 what's happening to mine, that's what happened to Jim  
 5 Harrower, that's what has happened to so many. Our  
 6 businesses have to -- it depends on a stable resource, and if  
 7 the resource isn't going to be managed so it's stable we lose  
 8 everything we put -- you know. I'm -- everybody says that you  
 9 make a ton of money in guiding. You talk to the guides and  
 10 they don't. Our overhead is so enormous it's unbelievable.  
 11 We have -- you know, I gave up one year -- and I wanted my  
 12 wife here to testify, it almost bankrupted us. You know, we  
 13 went from a somewhat successful business, going downhill  
 14 because of predation but we're doing -- we did more bear  
 15 hunts and stuff. One year we gave up and it -- all of our  
 16 savings is gone, everything is gone. We've went through  
 17 everything.

18 And I am so sorry for what I did I can't express it. I  
 19 mean I'm getting gray haired. You know, I don't know if it  
 20 pleases anybody to know the pain and agony I've been through,  
 21 but in the past whatever, since it happened, I haven't slept  
 22 a whole night. I don't think I've slept much at all. My  
 23 wife hasn't, she's losing weight. It may not matter to  
 24 anybody else, but Jesus Christ, it matters to me when I see  
 25 my wife wasting away. And I am guilty, and you heard from

- 1429 -

1 them -- from everybody that I went in and gave a complete  
 2 statement of everything that happened. I wanted it over.  
 3 And that was denied me what -- what I did. I held up my  
 4 end of the bargain and the state did not hold up their's.  
 5 And if you doubt that one bit -- I don't know, you know, it  
 6 -- I think I have been tried to be made an example of and  
 7 maybe that is necessary. But it's everything I have that  
 8 you're going to make an example of. I will have nothing  
 9 left.

10 I'm so desperate now over what I did it's just -- it's  
 11 -- the consequences are mind boggling of what has happened.  
 12 And we just came out to try to help, you know. Came out to  
 13 try to help and the consequences are just mind numbing. And,  
 14 you know, like I said, I've got page, after page, after page,  
 15 after page. I guess one thing I would ask you, if you would,  
 16 is read Jim Harrower's letters to Governor Knowles, if you  
 17 would before you make your decision. And know that his  
 18 letter is in my bin of support or letters of recommendation  
 19 or character, or whatever. And just know that Jim Harrower,  
 20 everything he did -- he was my direct neighbor to the south,  
 21 and look at what happened to him, but look at him. He's  
 22 almost 70 years old, had a very fine guide career, probably  
 23 the best guide in -- ever in Alaska, as far as ethics,  
 24 whatever. Great operation. I actually worked for him for a  
 25 while, and when you read his letters, you just keep in mind

- 1430 -

1 that here's a guide like myself just coming up through the  
 2 ranks. bought out a -- bought out Jim Harrower's neighbor,  
 3 established myself. Had some conflicts because when I bought  
 4 out -- his name was Eberhart Brunner, other guides came in  
 5 and legally they could come in, but anyway that's probably  
 6 how some of the conflict started. Is I -- I didn't move into  
 7 someone else's area, I bought somebody out. Took all our  
 8 savings, everything I had made from herring spotting, dumped  
 9 it into guiding because that's what I love to do and that's  
 10 what I'm damned good at and that's what I wanted for my  
 11 family.

12 Dumped it in there, worked my tail off. My wife worked  
 13 her tail off, and it was going to be our livelihood, our  
 14 retirement, everything. And then, you know, everything goes  
 15 away because of predation and whatever else, and like I said,  
 16 when you read Jim Harrower's letters -- and can I request  
 17 that you do at least that for me.

18 THE COURT: If you have them. I don't -- they're not in  
 19 any of the packets I have.

20 MR. HAEG: Okay. I have them here. And you just -- when  
 21 you read them you think of him as a 70 year old guide who was  
 22 a practicing dentist, moved to California, and you think of  
 23 me and my family. Just achieving my dream and then seeing it  
 24 all -- the flood gates open. And it's kind of like the tide  
 25 coming in, and everybody out here that's a good pilot and

- 1431 -

1 wanting to take care of the wolf problem, and it's now too  
 2 late. I mean it will come back, but it won't be in time to  
 3 save my business, you know, at least here. You know, if I  
 4 had a guide license we could shift over into bear or  
 5 whatever, but you read Jim Harrower's letters and you just  
 6 think about me and my family just getting into the business,  
 7 and everything we have is on the line.  
 8 And if you'd do that I guess that's all I would ask.  
 9 Like I said, I've wrote books. I'm a pretty good writer.  
 10 I've had stuff published across the world. Well, I don't  
 11 know, do you think it would be bad to just let her read this  
 12 whole thing, or not? Is that bad....

13 MR. ROBINSON: Well, that's okay.

14 MR. HAEG: She doesn't have the time I know.

15 MR. ROBINSON: (Indiscernible).

16 THE COURT: Time is not a problem for me. I've -- this  
 17 is the time I usually work at night anyhow....

18 MR. HAEG: I know.

19 THE COURT: .....so I don't care how much time it takes.  
 20 It's up to you.

21 MR. HAEG: Well, I don't know if you'd need to -- you  
 22 know, Harrower's letters are in here, but I wrote a lot of --  
 23 I don't know, and a lot of it has to do with the case, you  
 24 know. A lot of what I went through, the Constitution of  
 25 Alaska where it says that -- you know, the first line in the

- 1432 -

1 Constitution of Alaska says that this constitution dedicated  
2 to blah-blah-blah. but that each individual is -- will --  
3 this constitution dedicated that each individual will enjoy  
4 the -- the rewards of their own industry. My industry is  
5 guiding. And you -- if you read Harrower's statement and  
6 remember -- I think it's John Runkle(ph), are the guides  
7 being able to enjoy the rewards of their own industry. I  
8 mean when you put everything you have into something because  
9 it's your -- it's your life. It's like you became a lawyer.  
10 I assume. and then a judge, it's your life. And for your  
11 effort into that you should be able to enjoy, like the first  
12 sentence of the Constitution of the state of Alaska says,  
13 enjoy the rewards of your own industry.  
14 And then it says further on in the constitution that  
15 game will be managed on a sustained yield basis. I don't  
16 know if they think that zero is a sustained yield, maybe they  
17 do because that's essentially where moose are going and  
18 caribou are going. Zero sustained yield. I don't think  
19 that, you know, we got into the intent of everything with the  
20 law and stuff. I think when you read sustained yield for the  
21 management of game and fish in Alaska that they did not mean  
22 a zero sustained yield, and that's where we're at.  
23 And I -- to try to help reverse that, you know, we did a  
24 terrible thing, there's no doubt about it. I mean terrible,  
25 terrible, terrible thing. And like I said, it just -- on one

- 1433 -

1 hand I'm an ethical guide and I know that you have to punish  
2 guides hard because who -- you know, who is looking over  
3 their shoulders, whatever. But then look at the position  
4 that I was put in and virtually every other guide. And no --  
5 of course, every other guide didn't do what I did, and I  
6 understand that, but most of the other ones I think have  
7 other jobs. I don't. I put everything I had into guiding  
8 and, you know, and....  
9 MR. ROBINSON: (Indiscernible).  
10 MR. HAEG: Yeah. I'm sorry. Anyway, if you could....  
11 MR. ROBINSON: No, I was going to take those letters out  
12 of there and....  
13 MR. HAEG: Mr. Harrower's -- huh? Okay.  
14 THE COURT: Yeah, if you'll take those....  
15 MR. HAEG: But it's....  
16 MR. ROBINSON: Here's....  
17 MR. HAEG: Oh, I guess we can just pull these out here.  
18 I don't know.  
19 THE COURT: Anything else?  
20 MR. HAEG: No, Your Honor, and I -- I don't know, I was  
21 raised a polite person. I apologize for the pain and agony I  
22 caused you and the State of Alaska, and poor McGrath, you  
23 know. I think -- I guess he has one more letter, but these  
24 are pretty much I think....  
25 THE COURT: Okay.

- 1434 -

1 MR. HAEG: ....sum it up.  
2 THE COURT: Okay.  
3 MR. HAEG: And I guess when you read them just think of  
4 me and my family.  
5 THE COURT: Okay. Thank you. All right, as I had said  
6 before, I would like some time by myself, which means I'm  
7 going to ask everybody to leave the building so that I don't  
8 have to sit up in that very hot office. If that's all right.  
9 And I want to look over everything. I don't want to make  
10 this any later than it has to be tonight, but I also am not a  
11 morning person, so for me to get up in the morning would be  
12 extremely difficult to be coherent, and I don't think any of  
13 us wants another sleepless night.  
14 Why don't we say a quarter after midnight. That will  
15 give me a little more than half an hour. I think it will  
16 take me at least that long to go over everything and to make  
17 a decision, so if we say a quarter after -- if I'm not done  
18 by then I should be at least close enough that it should only  
19 be a few minutes after that. If it ends up being before that  
20 I guess I'll try and call everybody but I don't -- I think  
21 it's going to take me at least that long, so.  
22 MR. ROBINSON: Oh, we won't be gone -- we won't be going  
23 too far away from the building.  
24 MR. LEADERS: Yeah. And, Judge, can I remain in the  
25 trooper office downstairs?

- 1435 -

1 THE COURT: Yes, I didn't mean outside, I mean off this  
2 floor.  
3 MR. LEADERS: (Indiscernible) I understand.  
4 MR. ROBINSON: Can we leave all this here....  
5 THE COURT: You can leave everything you want. I'm not  
6 not going to depart this floor, but I would just like  
7 everybody off the floor, if that's okay.  
8 (Whispered conversation)  
9 (Off record)  
10 THE COURT: All right. Back on record. I'm going to try  
11 and keep my sentencing comments short and it's not because I  
12 don't believe this is a serious case or that it doesn't  
13 deserve some serious reflection, and I have done a lot of  
14 that since the trial. I've reviewed my notes from the  
15 evidence at the trial. My notes would say -- I did not  
16 listen to the CD because I decided that my understanding of  
17 the standard is clear and convincing. The state failed to  
18 reached that. I don't even believe the state reached a  
19 preponderance of the evidence as far as the moose hunting  
20 allegation, so I did not consider any of that evidence in  
21 deciding what an appropriate sentence is today.  
22 Even given the lesser standard the state failed to meet  
23 that, so I did not take into consideration any of that  
24 evidence and that's why I did not listen to the CD. Because  
25 it wouldn't have made any difference. It was the defense's

- 1436 -

1 evidence and the state had not met the burden so I decided  
 2 rather than take the time to listen to that and put this off  
 3 even longer that I would make that finding first.  
 4 But the issue that brings us here today, there are  
 5 several things in this case that are extremely disturbing to  
 6 the court, and the actions that were taken. The predator  
 7 control program was a program established by the Board of  
 8 Game, decisions are made by the Board of Game with input from  
 9 others. I understand that it is somewhat political in  
 10 nature, but the bottom line of it is it is a program that is  
 11 established with rules that are made to be followed. And  
 12 that to decide that -- and the evidence indica -- the  
 13 evidence showed that just prior to the first wolf being taken  
 14 Mr. Haeg learned that his recommendation that the wolf  
 15 predator control program be expanded to 19-C was not accepted  
 16 by the Board of Game.

17 That may have had some bearing, and it -- the actions  
 18 indicate that it did, since the majority, if not all the  
 19 wolves were taken in 19-C. That it appears that you decided  
 20 that you alone knew better than the Board of Game, than the  
 21 biologists in the area and everybody else. And that you  
 22 decided to take those actions. And of the gravest concern is  
 23 that they were actions taken knowingly. He knew what the  
 24 rules were and you decided that it was okay to violate them.  
 25 There are some indications from some of the letters and

1 or trapping, in his personal plane, that he had seen you  
 2 flying outside of the area and questioned whether or not you  
 3 knew exact -- that where you were, if you had any questions  
 4 about where it was. And think of that as somewhat of  
 5 somebody going past a police officer, realizing their  
 6 speeding and when they don't go get pulled over decide that  
 7 gives them license to go faster. Most people, I think, would  
 8 have taken that as a sign that maybe they've gotten away with  
 9 it and it was time to stop and follow the rules. And think  
 10 carefully.

11 Instead two weeks later your careful thought led you to  
 12 kill six more wolves out of the area. This could have been  
 13 charged as nine separate counts. The state did not do that  
 14 on either the same day airborne or the unlawful possession.  
 15 But the seriousness of the case still exists. That there  
 16 were nine separate wolves taken illegally in violation of the  
 17 law, same day airborne. You clearly knew what you were  
 18 doing, and when comparing your conduct to Mr. Zellers, you  
 19 both participated, but had you not flown the plane into the  
 20 ar -- out of the area, he could not have killed the wolves  
 21 out of the area. Granted, he had the choice and he made it  
 22 and has accepted responsibility for his portion of the  
 23 conduct as for pulling the trigger and actually killing the  
 24 wolves.

25 But when evaluating who has somewhat more responsibility

1 from some of the testimony that perhaps you expected or  
 2 believed or hoped perhaps that the court or others would  
 3 either turn a blind eye to that, or congratulate you for the  
 4 actions because you believed the mismanagement warranted your  
 5 actions.

6 When taking that argument to the extreme, which  
 7 obviously is one of the things we look at, that means if I  
 8 decide that -- or your neighbor decides you're mismanaging  
 9 your property it's okay to take it away from you because  
 10 you've decided -- they've decided that it's wrongfully  
 11 handled. If they decide your children are being raised wrong  
 12 is it okay to come in and take your children away because  
 13 your neighbor thinks you're raising them wrong. Obviously  
 14 not.

15 But that's the type of conduct that we're talking about  
 16 here. This goes past simply killing wolves, and their value  
 17 versus the value of other things. It has to do with being a  
 18 member of a society that says these rules are in place and we  
 19 follow them. And probably one of the things that causes the  
 20 most concern is that after the first three wolves were taken  
 21 you were stopped and talked to -- not stopped in a bad way  
 22 but stopped, approached by Trooper Gibbens, talked to by him  
 23 and the evidence that was presented at trial was that Trooper  
 24 Gibbens asked you specifically -- commented on the fact that  
 25 he had seen you while he was out on his personal hunting --

1 -- I'm not saying a large amount, but somewhat more it has to  
 2 be the person flying the plane. The boss. And both of those  
 3 were you.

4 And in evaluating all of those things the -- I agree  
 5 with Mr. Leaders and Mr. Robinson, isolation is not a primary  
 6 purpose. Deterrence and community condemnation clearly have  
 7 to be at the top. I'm not so sure that rehabilitation is a  
 8 primary goal in the sense that you cannot rehabilitate  
 9 somebody that doesn't really believe they've done anything  
 10 wrong.

11 And -- today, and I -- and at the trial also you  
 12 admitted that it was wrong to do what you did, but I'm -- and  
 13 you've said some of those things but at the same time you  
 14 say, well, the mismanagement justified my actions. And those  
 15 two things cannot exist together. Either it was wrong  
 16 conduct or it wasn't. So rehabilitation is a goal, but it  
 17 may not be as primary as deterrence of you and others  
 18 similarly situated, and community condemnation for the  
 19 action, for violating this -- the law and not following the  
 20 rules of the program. And deciding that you should take the  
 21 actions because you've decided this was the best way to  
 22 resolve your frustration with the program or the  
 23 mismanagement rather than going through the channels of  
 24 changing -- through either changing who was in charge or  
 25 changing something else. There are other ways to do it.



1 You did -- it sounded like from the evidence you were  
 2 doing some of them so far as testifying at Board of Game,  
 3 going to the meetings, being actively involved, and then at  
 4 some point you decided that wasn't enough and therefore since  
 5 they're not doing what I think is right, I'm going to do what  
 6 I think is right. And that's -- based on your actions in  
 7 this case that's what it looks like you decided to do, and it  
 8 was a primary importance apparently, again, based on the  
 9 evidence presented both at trial and today, that it being the  
 10 area you felt it was your entitlement, for lack of a better  
 11 word, to kill the wolves in the area where you were hunting.  
 12 Even though others had decided that area should not be open  
 13 to a predator control program.  
 14 Others that take into consideration things that you may  
 15 not think of, such as the politics involved. Such as the  
 16 affects of the wolf kill program. And the way outsiders view  
 17 that, the way some people in this state view that. There are  
 18 other things that are taken into consideration when decisions  
 19 are made at a level higher than the individual. And an  
 20 individual doesn't have the right to decide that if I don't  
 21 agree with the law I can just ignore it and it's okay.  
 22 And the evidence in this case indicates that's what you  
 23 decided at the time. And I think -- and then later on the  
 24 consequences started sinking in as to what they really were.  
 25 And I don't believe at the time that you committed these acts

- 1441 -

1 that you understood how serious it was or how grave the  
 2 consequences could be. But that doesn't mean that then  
 3 that's an excuse for the conduct or that somehow the  
 4 consequences shouldn't be as severe as the law allows or as  
 5 severe as required by a fair and equitable sentence in this  
 6 case because you didn't think that was that serious.  
 7 Having said that, I'm going to change the tape -- I'm  
 8 not trying to delay this but I don't want to have to stop  
 9 halfway through the judgments and tell you what the sentences  
 10 are, so let me change the tape and then I'll give you the  
 11 sentence. Go off record here.  
 12 1097  
 13 (Tape change)  
 14 4MC-05-29/Side A  
 15 0000  
 16 THE COURT: .....September -- I guess it's the 30th  
 17 actually by now. Mr. Haeg's case, the court is prepared to  
 18 announce sentence at this time, just completed the sentencing  
 19 comments. All right, I -- the sentences for Counts I  
 20 through V, which are the same -- the unlawful acts by a  
 21 guide, same day airborne hunting are going to be the same for  
 22 each count.  
 23 The sentence imposed on Counts I through V are as  
 24 follows. There will be a \$50 surcharge on each count. A  
 25 fine of \$2,500 with \$1,500 suspended, that gives \$1,000 to

- 1442 -

1 pay. We'll discuss a due date and remand dates in a moment  
 2 on all of them, after the conclusion of all the  
 3 announcements. You're ordered to serve 60 days in jail with  
 4 55 days suspended and to forfeit the wolf hides that were  
 5 taken. You're also to forfeit the Piper PA-12 plane and the  
 6 guns and ammunition used in the aid of this violation.  
 7 Your guiding license is revoked for five years. You're  
 8 ordered to pay restitution as stated in the restitution  
 9 judgment, that's a total of \$4,500 which is jointly and  
 10 severally liable with Mr. Zellers.  
 11 You'll be placed on probation for seven years.  
 12 Conditions and length of probation are the same for all  
 13 counts. Your conditions of probation will be that you comply  
 14 with the direct orders of the court by the deadline stated.  
 15 You commit no hunting, trapping or big game violations during  
 16 the probationary period and you not participate in any way  
 17 with any predator control program.  
 18 On the unlawful possession counts, which I believe are  
 19 VI and VII, the sentences will be the same for both of those  
 20 counts also. On that count, again there's a \$50 surcharge on  
 21 each count. You're ordered to pay a \$2,000 fine with \$1,500  
 22 suspended. That will be \$500 to pay on each count. You're  
 23 ordered to serve 60 days in jail with all 60 days suspended.  
 24 Again, the length and terms of probation will be the same.  
 25 Count VIII is the unsworn falsification count. On that

- 1443 -

1 count you're ordered, again, to pay a \$50 surcharge. Fine  
 2 \$2,000 with all \$2,000 suspended. You're ordered to serve 90  
 3 days in jail with 80 days suspended, and again, probation.  
 4 On Count IX, which is the trapping in a closed season,  
 5 you're ordered to pay a \$50 surcharge, \$1,000 fine with  
 6 \$1,000 suspended, 60 days in jail with all 60 days suspended.  
 7 I didn't recall for sure whether I ordered the wolverine hide  
 8 to be forfeited. I can't recall if one was taken or not, if  
 9 one was that will be taken. And, again, the probationary  
 10 period.  
 11 By my calculation I believe there's a total of 35 days  
 12 in jail to serve, and \$6,000 in fines to pay, and I didn't  
 13 add up the coun -- the surcharges. I should have, but I  
 14 didn't add those, but it's 50 for each count, which should be  
 15 \$450 in surcharges, if my math is correct.  
 16 The restitution judgment, what happens with that  
 17 restitution is that gets sent off to the -- that's to be paid  
 18 through the department of law, unit -- collections unit. It  
 19 will say on the judgment that it's due immediately. It  
 20 doesn't mean that it's actually due right away. That's so  
 21 that they can negotiate or set up a payment plan with you for  
 22 that, and then work it out with Mr. Zellers and your case  
 23 together, because it's jointly and severally liable.  
 24 The fines we can do one of two ways. One is to either  
 25 set them due immediately, which would turn them all over to

- 1444 -

1 collections at the sa -- and then they could work out a  
 2 payment plan for the total fines due with you. Or I can put  
 3 them due at a later date. I'm assuming you don't have --  
 4 don't want to pay them all immediately. I can put them due  
 5 at a later date. Whichever -- I don't know if the state has  
 6 a position. It's -- if they're due immediately or within the  
 7 next 30 or 60 days if they're not paid then they get turned  
 8 over to collections, which would mean that then all the  
 9 monies due would go to collections and they could work out a  
 10 payment plan with you. It might make it easier, I don't  
 11 know. I mean I think it's your choice.  
 12 MR. HAEG: I don't know, my wife handles what goes on  
 13 there, so. I guess if we could put it off, we would.  
 14 THE COURT: Okay. What I'll do is I'll put the fines due  
 15 then -- we'll put the fines due December 31st, 2007. That's  
 16 about two years. You can make payments over time. You don't  
 17 have to wait until then. If by that time they're not paid  
 18 then it will be turned over to collections. If you want it  
 19 turned over before that you can always contact the court and  
 20 ask them to turn it over to collections sooner than that.  
 21 It's -- it -- collections isn't -- from the state isn't  
 22 -- you know, it's not like big fines or a collection agency  
 23 where they harass you or anything. It's just the state's  
 24 department of law that does the collections of fines.  
 25 MR. HAEG: Okay.

1 MR. HAEG: Uh-huh (Affirmative).  
 2 MR. ROBINSON: So do you think 30 days from now? Which  
 3 is.....  
 4 MR. HAEG: Yeah, I imagine, I don't know.  
 5 MR. LEADERS: Judge, my suggestion is if you want to set  
 6 a remand hearing for the Kenai court or through Homer, or  
 7 however you want to do it.  
 8 MR. ROBINSON: We're not coming to McGrath.....  
 9 THE COURT: Yeah, we're not coming -- no.  
 10 MR. LEADERS: Kenai remands are typically 2:30 in the  
 11 afternoon, I believe.  
 12 THE COURT: Yeah, I don't remember.....  
 13 MR. LEADERS: Pretty much any day of the week.  
 14 MR. ROBINSON: And, of course, the remand (indiscernible)  
 15 just for the record we'd request that that be done now. You  
 16 guys don't have -- (indiscernible) even have a facility out  
 17 here in McGrath (indiscernible) so that would be done.....  
 18 THE COURT: No, I.....  
 19 UNIDENTIFIED SPEAKER: Temporary only out here.  
 20 MR. LEADERS: Yeah, that's why I figured it was.....  
 21 THE COURT: Remand.....  
 22 MR. LEADERS: (Indiscernible) I mean he lives in there.  
 23 I don't know if it's Kenai.  
 24 MR. ROBINSON: So remand would be in the Kenai area?  
 25 THE COURT: Wildwood. Yeah.....

1 THE COURT: It's not -- they don't add interest in or  
 2 anything else. It doesn't change anything, it's just who it  
 3 gets paid to is the only difference.  
 4 MR. HAEG: Okay.  
 5 THE COURT: What about a remand date? You have by my  
 6 calculation 35 days to serve. You'll get a third of that  
 7 time off for good behavior. Which should be a little over 20  
 8 -- 22 days to serve, or something, I think. I don't do that  
 9 calculation.....  
 10 MR. LEADERS: Judge, 45 days would be 30 to serve. I  
 11 think the third off would be 15 days off.  
 12 THE COURT: It's 35 to serve.  
 13 MR. LEADERS: Oh, 35. Okay. Approximately 20.....  
 14 THE COURT: 20 some.....  
 15 MR. ROBINSON: It would be 10 days off.  
 16 MR. LEADERS: Right.  
 17 THE COURT: Right.  
 18 MR. ROBINSON: Ten or 12 days off.  
 19 MR. LEADERS: 12 -- almost 12 days off, so.....  
 20 THE COURT: The department of corrections does that  
 21 calculation, I don't, so I don't know how exactly they  
 22 calculate it, but -- do you have -- Mr. Robinson, did you  
 23 discuss a remand date at all with Mr. Haeg?  
 24 MR. ROBINSON: No, but he will need time to get his  
 25 affairs in order, won't you?

1 MR. ROBINSON: (Indiscernible).  
 2 THE COURT: Having done this and I don't -- didn't think  
 3 to bring my notes. They do have remand hearings at Kenai  
 4 court. What you do is go to the Kenai court and turn  
 5 yourself in. Is it 2:30 on.....  
 6 MR. LEADERS: That's -- my recollection is it's 2:30 in  
 7 the afternoon most weekdays.  
 8 THE COURT: Okay.  
 9 MR. LEADERS: I think every weekday but Thursday, I  
 10 think.  
 11 (Whispered conversation)  
 12 THE COURT: I don't have a calendar handy.  
 13 UNIDENTIFIED SPEAKER: What do you want?  
 14 THE COURT: No, I have one in my wallet, I just didn't --  
 15 have to get it out to get it. November 1st is a Tuesday, I  
 16 think. If I'm reading that right. Yes. Is a Tuesday.  
 17 That's just over 30 days. We'll put it on for November 1st  
 18 and that for -- at 2:30 at the Kenai court, and we'll send  
 19 them the paperwork so they know. If something comes up and  
 20 you can't make it that day or want to do it either before or  
 21 after, contact Mr. Robinson and he can file a request with  
 22 the court. I don't expect there would be any issue with  
 23 either way except if it continues for too long. Okay. I  
 24 think those are all I had. I need time to finish doing all  
 25 -- filling out all the judgments. So what I'll do is I'll

1 complete them all and I'll put copies in the mail to  
 2 everybody.  
 3 MR. ROBINSON: Your Honor, well now that you've imposed  
 4 the sentence I would ask that it be stayed pending appeal,  
 5 under Alaska Appellate Rule 205, I believe is the rule --  
 6 maybe it's 206, but I think it's 205. Do you happen to have  
 7 a rule book handy so that we can -- (pause). It's actually  
 8 206. And that is -- that rule says that imprisonment, fine,  
 9 probation shall be stayed if an appeal is taken, and as far  
 10 as other sentences are concerned, other terms and conditions  
 11 of the sentence including but not limited to regular  
 12 revocations or suspensions of a license may be stayed by the  
 13 court pending appeal, but subject to such terms as the court  
 14 deems proper.  
 15 Now Mr. Haeg made all his court appearances, and he's  
 16 (indiscernible). He was released back in November while his  
 17 trial was pending, and the sentence was pending.  
 18 Now technically speaking he doesn't have to file an  
 19 appeal notice until there's a written judgment a conviction  
 20 which (indiscernible) looking into that, but he has 15 days  
 21 from that time to file an appeal in the Court of Appeals, 30  
 22 days to appeal to the Superior Court. I've handed the court  
 23 earlier today an intent on the part of Mr. Haeg to appeal to  
 24 the Court of Appeals his judgment, sentence, entered today.  
 25 Well, actually on the 30th as opposed to the 29th. Because

- 1449 -

1 (Indiscernible). So I would ask that the court give Mr. Haeg  
 2 the benefit of that rule and suspend his judgment and  
 3 sentence pending appeal.  
 4 MR. LEADERS: Judge, the state's opposed to suspend -- or  
 5 -- to the request. Specifically I think when we look at --  
 6 even the notice of appeal, the appeal addresses primarily  
 7 Counts I through V but not the rest of the sentence. I think  
 8 that one aspect of it is (indiscernible) error in failing to  
 9 dismiss the information, hunting equipment, the rest of the  
 10 others. As far as failing to state a crime, that was based  
 11 on Counts I through V, as was the amendment to the  
 12 information, the remaining counts for which he's been  
 13 convicted. Other than for purposes of points on appeal  
 14 doesn't address and that's the issue of jurisdiction, and I  
 15 think the lack of merit to that appellate point, there's no  
 16 cause to stay the entirety of the sentence, based on the  
 17 probationary aspects of -- that apply to the other counts.  
 18 I'd ask that the sentence not be stayed pending appeal.  
 19 MR. ROBINSON: Well, Your Honor, the statement of points  
 20 on appeal covers the entire case. It covers -- the first  
 21 point on appeal covers the whole case, so I don't understand  
 22 what Mr. Leaders point is (indiscernible), along with the  
 23 fourth point of appeal which is the amended complaint over  
 24 the defendant's objection and (indiscernible) which was the  
 25 second amended complaint which (indiscernible) the case

- 1450 -

1 (indiscernible) I can't understand why Mr. Leaders thinks  
 2 (indiscernible) doesn't cover the whole case, it does cover  
 3 the whole case. The -- as far as the imprisonment, fine, and  
 4 probation are concerned, those seem to be mandatory  
 5 (indiscernible).  
 6 (Pause)  
 7 THE COURT: By the language the imprisonment says it  
 8 shall be stayed if the appeal is taken. Under the -- the  
 9 fine says it may be stayed upon such terms as the court deems  
 10 proper. I'll take that issue under advisement as to whether  
 11 the fine should be stayed or not. The other sentences.....  
 12 MR. ROBINSON: Well, it says probation, too.  
 13 THE COURT: Probation shall be stayed, but the other  
 14 terms and conditions may be stayed. I'm not going to stay  
 15 the -- (coughing) -- excuse me. I will not stay the guiding  
 16 license revocation portion. That's going to go into effect  
 17 immediately. The other portions I will take under  
 18 advisement, the fine, and see if there's -- make a decision  
 19 on that. I just don't want to make that at this time.  
 20 MR. ROBINSON: All right. So as I understand it, you  
 21 will -- the imprisonment part will be stayed.  
 22 THE COURT: The imprisonment part will be stayed and the  
 23 notice of appeal is here, we'll stamp that as today. I'm  
 24 going to try and finish the se -- the judgment so that I  
 25 could actually give them to you before we leave McGrath, but

- 1451 -

1 if not they'll be put in the mail, but the imprisonment,  
 2 under the rule, says it shall be stayed so that's mandatory  
 3 as well as I read it, and the probation, also. But the  
 4 guiding license revocation is not, it's up to the discretion  
 5 of the court, and the court's.....  
 6 MR. ROBINSON: And you're taking the other.....  
 7 THE COURT: And I'm going to take the fine as to whether  
 8 it should be or under which terms will be -- I will.....  
 9 MR. ROBINSON: Under advisement.  
 10 THE COURT: The terms that they seem to contemplate are  
 11 either an examination of assets -- an order restraining Mr.  
 12 Haeg from dissipating any assets, which I will impose at this  
 13 time.  
 14 MR. ROBINSON: Sure.  
 15 THE COURT: Obviously. But whether as to whether a part  
 16 or a whole of the fine should be deposited or any costs or  
 17 things like that I'll take that under advisement.  
 18 MR. LEADERS: Judge, I'll just say I don't oppose the  
 19 fine -- if you're staying the jail sentence, the fine's not  
 20 due for two years anyway, so.....  
 21 THE COURT: Well, that's why -- yeah.  
 22 MR. LEADERS: I mean I guess I'm not opposing that. Our  
 23 primary issue is the license revocation, I think it's been a  
 24 long time. I think that that -- you've already made your  
 25 ruling there.

- 1452 -

1 THE COURT: That's -- yeah.  
 2 MR. LEADERS: You also -- you -- what about other -- I  
 3 believe you indicated there's a restriction on hunting and  
 4 trapping, personal. Is that all.....  
 5 THE COURT: I didn't order any.  
 6 MR. LEADERS: Okay. I guess I miss -- I had that wrong,  
 7 sorry.  
 8 MR. ROBINSON: Okay, so maybe we'll get the judgment --  
 9 well, even if we got the judgment early next week that would  
 10 -- I mean you don't have to rush out and give it to us in the  
 11 morning.....  
 12 THE COURT: Okay. Well, then if there's no objection to  
 13 the fines being stayed I will do that, but the order is in  
 14 effect that you're not allowed to dissipate any assets which  
 15 Mr. Robinson can explain to you.....  
 16 MR. ROBINSON: Can we just go on the record for the  
 17 purpose of this notice of appeal so I can amend what I've  
 18 already written and just make it entered by District Court  
 19 Judge Murphy on September 30, since it was past midnight.  
 20 THE COURT: Sure, I'll change that. I'm going to file  
 21 stamp it -- yeah, file stamp it for today anyway, for the  
 22 30th. so I'm going to do that. Okay, anything else we need  
 23 to.....  
 24 MR. LEADERS: I guess I had one other question with  
 25 regard to the sentence, Judge.

- 1453 -

1 THE COURT: Uh-huh.  
 2 MR. LEADERS: The -- so it's -- there's no further  
 3 clarification or restrictions as far as guide license  
 4 revocation, not -- no.....  
 5 THE COURT: If the Legislature wants to make those  
 6 changes, I'm not going to.  
 7 MR. LEADERS: So there's no requirement that he not  
 8 participate in any big game guiding industry as -- the same  
 9 as the co-defendant?  
 10 THE COURT: He doesn't have.....  
 11 MR. LEADERS: What's that?  
 12 MR. ROBINSON: Whatever the law says is what.....  
 13 THE COURT: The guiding license is revoked for five  
 14 years. That's.....  
 15 MR. LEADERS: Okay.  
 16 THE COURT: ....what I said.  
 17 MR. ROBINSON: Okay. See you later this morning.  
 18 THE COURT: All right, we are.....  
 19 (Off record)  
 20 no log numbers indicated

\*\*\* END OF REQUESTED PORTION \*\*\*

21  
 22  
 23  
 24  
 25

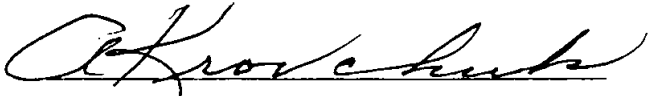
- 1454 -

TRANSCRIBER'S CERTIFICATE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I, Audrey Krovchuk, hereby certify that the foregoing pages numbered 02 through 1454 are a true, accurate, and complete transcript of selected excerpts in Case No. 4MC-04-24 CR, State of Alaska versus David Haeg; that due to the quality of the recording there are indiscernibles in the transcript which cannot be resolved; that it was transcribed by me to the best of my knowledge and ability; and that no other certification is expressed or implied.

*11-5-07*



Date

Audrey Krovchuk, Transcriber  
Aurora Court Reporting