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THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

DAVID HAEG,)
)
 Applicant,)
)
 v.)
)
 STATE of ALASKA,)
)
 Defendant.)
 _____)
 Case No. 3KN-10-01295CI

VOLUME I
TRANSCRIPT OF PROCEEDINGS
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STATUS HEARING
BEFORE THE HONORABLE WILLIAM MORSE
Superior Court Judge

Anchorage, Alaska
December 18, 2017
12:32 p.m.

APPEARANCES:

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P R O C E E D I N G S

8:40:35 A.M.

THE CLERK: (Inaudible) now in session,
Judge Morse presiding.

THE COURT: Be seated please.

All right. We're on the record in
3KN-10-01295, Haeg v. State.

Mr. Haeg is present. Mr. Peterson is
present.

I'm going to give each of you a copy of an
order that I'm issuing that is basically just some
extracts of the court of appeals decision that
lays out the five areas that Mr. Haeg is able to
go forward on here. And we'll --

Yeah, if you could give those -- one to
each.

-- and then I'll go over those with you.
And ultimately, we will set out some pleading
dates to figure out when Mr. Haeg's pleadings are
due. And, ultimately, when a further hearing can
take place.

So if you would go to, you see at page,
starting at page 2, I've got five numbered
sections. And each of those sections is verbatim
extracts from the court of appeals decisions. And

1 then the bold portion is where the court of
2 appeals says: Here's what Mr. Haeg has to do
3 next.

4 Okay?

5 So if you go to page 3, it's the first
6 bold portion. And it says -- and I'm summarizing,
7 but the language is there for you to look at:
8 Mr. Haeg's entitled to litigate his claims of
9 judicial bias and the appearance of judicial bias.

10 And then it says: Providing he's able to
11 show. And there's two things; one, that he was
12 diligent in raising his concerns; and, two that
13 his attorney was ineffective, for failing to file
14 a motion to disqualify the trial judge.

15 To prove ineffectiveness, in this context,
16 Mr. Haeg must show not only that his attorney had
17 valid reason for his inaction, but also that the
18 motion would result in either a new trial or a new
19 sentencing hearing in front of a different judge.

20 So, the first part is that you're going to
21 have to show that you were diligent. Okay? So my
22 assumption is that you're going to have to file an
23 affidavit that lays out your -- the facts that
24 show that you were diligent in raising your
25 concerns.

1 And secondly, you're going to have to lay
2 out some articulation of a theory as to why the
3 attorney -- and I can't remember who it was at
4 this particular stage -- was ineffective.

5 (Audio interference)

6 THE COURT: Mr. Haeg, are you listening?

7 MR. HAEG: Yes.

8 THE COURT: Good.

9 Typically -- (audio interference) -- when
10 you have to show that a lawyer was ineffective,
11 you're going to have to show what a normal
12 standard of conduct or behavior would be in a
13 particular context and show that the lawyer
14 deviated from that. And that, I won't say always,
15 but usually and often, requires some sort of
16 expert testimony as to what a reasonable standard
17 of care would be in that particular context.

18 So I'm not telling you that you absolutely
19 have to have an attorney who will opine on that,
20 but you will -- as a layperson, I should caution
21 you that it will be more difficult for you to
22 prove that if you don't have some testimony
23 regarding what a lawyer should or shouldn't do in
24 a particular -- in this particular situation.

25 Do you have any questions about that?

1 MR. HAEG: No. But I have -- most -- all
2 of these questions have already been answered that
3 are -- you know, there are affidavits in there
4 that I looked through that answered these.

5 THE COURT: Then you could point them to
6 me expressly, in a subsequent writing that will
7 say for, you know, topic one, which is -- and by
8 that I refer to my numberings -- affidavit by Joe
9 Blow, affidavit by someone else. Whatever other
10 pleadings that you say already exist, you need to
11 identify them for me. Okay? That way I will know
12 precisely what you think answers the court of
13 appeals' requirements for that particular topic.
14 And if there are additional information that you
15 want to include, then now's -- not now, but we'll
16 set a deadline for that to happen.

17 All right. The next -- the next topic is
18 the bold language on page 5. It says: If Haeg
19 presents a prima facie case -- and that means sort
20 of an opening case -- that he has been diligent at
21 timely raising these claims, and that the claims
22 that we're referring to are in the language of --
23 precedes this -- and that his attorney was
24 ineffective for failing to raise them in the trial
25 court proceedings, then he's entitled to an

1 evidentiary hearing.

2 So there is a condition, precedent,
3 something you have to -- there's a hurdle you have
4 to jump over before you're entitled to an
5 evidentiary hearing. And that language spells out
6 what that is.

7 If you're entitled to the evidentiary
8 hearing, then Haeg can present his witnesses and
9 any other evidence that he has to support his
10 claim that Judge Murphy engaged in ex parte
11 contact with Trooper Gibbens, to such extent that
12 the judge's participation would lead reasonable
13 people to question the fairness of the proceeding.

14 So there's a condition that you're going
15 to have to meet before you get an evidentiary
16 hearing on that particular topic.

17 Do you have any questions about that one?

18 MR. HAEG: No.

19 THE COURT: Okay.

20 The third bold paragraph begins on page 6
21 and continues on to the next page. It says: On
22 remand, Haeg should be given the opportunity to
23 file a pleading stating with particularity the
24 terms of the final enforceable plea agreement that
25 he claims existed. Haeg should also be required

1 to specify with particularity the legal advice he
2 received from Robinson -- that's one of your
3 former lawyers -- about whether to accept any of
4 the state's plea offers. And whether, but for
5 Robinson's advice, he would have accepted any of
6 those offers.

7 So you have to file a particular pleading
8 laying that out. And then once you do that, the
9 state is required to file a formal answer to those
10 claims.

11 If, and only if, there were material facts
12 in dispute regarding the existence of an
13 enforceable plea agreement or Haeg's willingness
14 to renew plea negotiations and accept the state's
15 plea offer, the court should hold an evidentiary
16 hearing.

17 So, again, there's a condition that's set
18 by the court of appeals on having an evidentiary
19 hearing. So do you understand what the court of
20 appeals is asking you to do on that one?

21 MR. HAEG: Yes. But there's stuff that
22 occurred that very likely would not come out if I
23 just relied specifically on what they say.

24 THE COURT: You -- all I am entitled to do
25 and all that you're entitled to -- all that I'm

1 authorized to do and all that you're entitled to
2 have done is to comply with those remand
3 instructions. So those are --

4 MR. HAEG: What if --

5 THE COURT: -- those are the remand
6 instructions.

7 MR. HAEG: What if -- it says here my
8 willingness to renew plea negotiations. And it's
9 basically based on what Chuck Robinson told me.
10 Well, Scot Leaders, the prosecutor --

11 THE COURT: What you're going to do --

12 MR. HAEG: -- has --

13 THE COURT: Listen to me, Mr. Haeg. What
14 you are going to do is lay out your answers to
15 those questions however you think appropriate.

16 MR. HAEG: Okay.

17 THE COURT: And I will -- the state will
18 respond to those. And then if there is some
19 dispute about the facts, then we'll have an
20 evidentiary hearing where those assertions that
21 you're making in these pleadings will -- you'll
22 have to come forward with evidence that will
23 probably result in you testifying, Mr. Robinson
24 testifying, perhaps somebody from the state
25 testifying. I'm not quite sure.

1 MR. HAEG: What about Mr. Cole, who all
2 these plea negotiations started with?

3 THE COURT: If you think you need Mr. Cole
4 in some fashion, then lay out why in the
5 pleadings, and what Cole would or wouldn't be
6 saying. And you may well need to get an affidavit
7 from -- if you think that you need information
8 from Cole, then get him to write an affidavit. If
9 he won't, then you need to depose him.

10 MR. HAEG: Mr. Cole's already been
11 deposed. And I can prove that he lied under oath
12 about most of it. And there never was a
13 hearing -- see, that's my problem with this whole
14 process right here is the court of appeals is
15 laying out these little minutiae areas that
16 they're going to allow me to go forward on, when
17 the things like these maps, that were falsified by
18 the state before trial --

19 THE COURT: Listen to me carefully, MR.
20 Haeg --

21 MR. HAEG: -- and there's a recording --

22 THE COURT: Listen to me carefully.
23 Listen to me carefully.

24 MR. HAEG: Okay.

25 THE COURT: I'm intentionally doing this

1 because there are five areas you're going to go
2 into. And I know that you think there are other
3 things that you want to talk about. I'm not going
4 to let you talk about those other things. I'm
5 going to let you talk about the five thing that
6 the court of appeals told the trial court to let
7 you present. So that's what you will be able to
8 present. And I'll give you leeway, given the fact
9 you're not a lawyer, you're a pro se individual, a
10 very skilled one, I might add.

11 But you will be required to meet the, you
12 know, the requirements that the court of appeals
13 spelled out before you get hearings on particular
14 topics. And on some other areas, the topics will
15 be more easily granted because you already, sort
16 of, complied with qualifying allegations, if you
17 will. Okay?

18 So I don't know precisely what you're
19 talking about. If you think Mr. Cole needs to
20 give information beyond what he's already done,
21 you can either get him to file an affidavit or you
22 can depose him. If --

23 MR. HAEG: He's already been deposed.

24 THE COURT: All I'm trying to explain to
25 you is that you're not limited to that particular

1 deposition. But if you think that he's not
2 telling you the truth, then you have the burden of
3 proving that he's not telling you the truth. I
4 don't know how you're going to do that, because I
5 don't know precisely what you're referring to when
6 Cole says X, Y, and Z, and you think X, Y, and Z
7 is not true.

8 If you think it's not true, there must be
9 some reason why you think it's not true. I don't
10 know whether this is something, for example, Cole
11 said, you know, I was at, you know, I was in Kenai
12 on May 5th, and you can show that he was in
13 Anchorage on May 5th because, you know, I don't
14 know, you checked --

15 MR. HAEG: Well, what I have -- and I'm
16 sorry, you know, that I'm not an attorney. And
17 after 13 years I'm pretty, to say that I'm
18 frustrated is the understatement of the century.

19 THE COURT: And I'll try to help you not
20 be frustrated by --

21 MR. HAEG: Mr. Cole --

22 THE COURT: -- by explaining to you the
23 process --

24 MR. HAEG: -- in the deposition said that
25 I'm the one that broke the plea agreement. And

1 yet we have recordings of a private investigator,
2 his name was Joe Malatesta --

3 THE COURT: Then you need --

4 MR. HAEG: -- tape recorded Mr. Cole, and
5 Mr. Cole admitting that the state broke the plea
6 agreement in order to also get the airplane. And
7 now Mr. Cole is saying --

8 THE COURT: And, Mr. Haeg --

9 MR. HAEG: -- all this other stuff.

10 THE COURT: Mr. Haeg, then you need to
11 bring in the person who recorded those other
12 conversations to show that Mr. Cole made a prior
13 inconsistent statement to try and convince me that
14 statement X by Mr. Cole was true; statement Y was
15 not true. Okay?

16 So if you -- if you have evidence that he
17 gave inconsistent or contradictory statements,
18 then you need to bring that forward. So that
19 would be an affidavit of whoever the person who
20 recorded Cole and if there's an existing tape, a
21 transcript or copy of that recording.

22 Any other questions about that?

23 MR. HAEG: No.

24 THE COURT: The last one is -- I'm sorry.
25 The fourth one is on page 8. Says: On remand we

1 direct the district court to have Robinson provide
2 an explanation for why he did not challenge the
3 apparent factual inaccuracies presented at
4 sentencing. Especially once it became clear the
5 judge was relying on those inaccuracies in
6 imposing Haeg's sentence. After Robinson has
7 provided an explanation for his inaction, the
8 court shall determine whether Haeg has established
9 a prima facie case of ineffective assistance, et
10 cetera, et cetera.

11 So you're going to have to get an
12 affidavit from Robinson that lays out -- where he
13 answers that question.

14 MR. HAEG: And why can't we just have an
15 evidentiary hearing where he answers it under oath
16 so I can cross-examine him? Because --

17 THE COURT: Because that's what the court
18 of appeals --

19 MR. HAEG: -- what happens with all these
20 people is they say: Oh, I don't remember. It was
21 a long time ago and I did what I thought was best.
22 And there it is.

23 THE COURT: Because that's what the court
24 of appeals told me to do.

25 MR. HAEG: I don't see where it said -- I

1 don't see where it said he --

2 THE COURT: Just a minute.

3 MR. HAEG: -- was supposed to provide an
4 affidavit.

5 THE COURT: Mr. Haeg, would you -- it says
6 the district court shall have Robinson provide an
7 explanation.

8 MR. HAEG: I want him under oath so that
9 the public can see his face when he's caught lying
10 about charging my family --

11 THE COURT: Explain to me --

12 MR. HAEG: -- \$60,000 and lying to me --

13 THE COURT: Explain to me --

14 MR. HAEG: -- to me to let the state frame
15 me.

16 THE COURT: -- Mr. Haeg, how you would
17 like to proceed in that fashion. Let's talk about
18 that. What would you like to do?

19 MR. HAEG: I'd like an evidentiary hearing
20 where he's subpoenaed in.

21 THE COURT: Okay.

22 (Whispered conversation)

23 THE COURT: Who is talking? I realize you
24 folks have a lot of interest in this. But for me
25 to be able to hear Mr. Haeg and to hear other

1 people, I would appreciate if you give me the
2 courtesy of not speaking. If you can't -- if you
3 can't control yourself, I'm going to ask you to
4 leave. But I assume that you'll be able to do
5 that.

6 MR. HAEG: Um, during a hearing --

7 THE COURT: So you want a hearing where
8 Mr. Rob --

9 MR. HAEG: During a hearing in Kenai the
10 same thing came up. And I believe Mr. Peterson --
11 and he can correct me if I'm wrong -- said, well,
12 we just want Mr. Robinson to submit an affidavit.
13 And I said no. After all the lies that have been
14 told, I want him under oath. And the judge down
15 there said after this long a time, Mr. -- there
16 will be an evidentiary hearing.

17 Do you remember, Mr. Peterson?

18 THE COURT: Fair enough. You don't -- I
19 don't care what Mr. Peterson or some other judge
20 said. I'll let you call Mr. Robinson to the stand
21 at an evidentiary hearing. Okay?

22 MR. HAEG: Okay.

23 THE COURT: But I caution you that it
24 might be easier for you to prepare if you get an
25 affidavit from Mr. Robinson so that you have some

1 idea what he's going to say. Because if you
2 question him for the first time on the stand, you
3 will be dealing with his answers for the first
4 time. And that may be difficult for you to
5 respond to.

6 Now, if you get an affidavit from him,
7 I'll still require him to testify on the stand.
8 All right?

9 MR. HAEG: Okay.

10 THE COURT: But you may find it easier to
11 prepare your case and your response to what he
12 might say if you know in advance what he's going
13 to say. But that's your option.

14 MR. HAEG: Well, see, the reason why I'm
15 sitting here shaking in anger and frustration is
16 I've never had an evidentiary hearing in 13 years.
17 There was one supposed to be held in front of
18 Judge Joannides. And she scheduled two full days
19 for it, she let me subpoena Chuck Robinson, Brent
20 Cole, Andrew Peterson, the prosecutor, Judge
21 Murphy, Trooper Gibbens, all the rest of my
22 attorneys, Mark Osterman, all -- a whole pile of
23 witnesses to the chauffeuring that occurred, Tony
24 Zellers, Tom Stepnosky, Drew Hildebrand, Wendell
25 Jones, former trooper.

1 And we come up and, lo and behold the
2 evidentiary hearing never happened because Judge
3 Joannides said, well, you win, Mr. Haeg, because
4 I'm disqualifying Judge Murphy. And she says the
5 main reason she did is she says this hearing with
6 everybody is going to happen during your
7 post-conviction relief, where all these people
8 will be subpoenaed in and have to answer the
9 questions like, who falsified the map? Who
10 committed perjury at trial? Who took my evidence
11 out of the court record? Who lied about the
12 chauffeuring of Judge Murphy and Trooper Gibbens?
13 Because Judge Murphy and Trooper Gibbens both
14 swore out affidavits it never happened. Yet a
15 whole pile of witnesses swore they did.

16 And now I'm down to where I'm going to
17 maybe have one witness, maybe two, and yet Judge
18 Joannides allowed, I believe, 13 witnesses on one
19 issue alone. And that had nothing to do -- back
20 then, that was just about Judge Murphy and Trooper
21 Gibbens running around together. My whole
22 post-conviction relief proceeding has been gutted
23 from one end to the other. All issues of
24 substance are gone.

25 And this order from the court of appeals,

1 I can prove it falsifies easily proved facts that
2 are in the court record to justify gutting my
3 post-conviction relief of all substance that would
4 prove widespread corruption in Alaska's judicial
5 system.

6 And I know that's a fantastic claim. But
7 do you know why I believe everybody here is here?
8 Is because they've seen it on their own and they
9 are concerned. And this is how it's being covered
10 up, is I gathered all this stuff for 13 years,
11 with all of these people --

12 THE COURT: Mr. Haeg.

13 MR. HAEG: -- helping me.

14 THE COURT: Mr. Haeg.

15 MR. HAEG: -- and now, when it finally
16 comes time --

17 THE COURT: Mr. Haeg.

18 MR. HAEG: -- to litigate it, they say I
19 don't get to litigate it. And I'm -- to say that
20 I'm angry, oh, because I lost my career --

21 THE COURT: Mr. Haeg.

22 MR. HAEG: Yes.

23 THE COURT: I'm going to let you litigate
24 the five things that the court of appeals told me
25 to let you litigate.

1 MR. HAEG: Well, I'm sorry to say, but
2 that ain't enough.

3 THE COURT: Then you need to go to the
4 Alaska Superior Court and try to get that court of
5 appeals' decision expanded. I have no --

6 MR. HAEG: I tried that. They denied
7 review. They didn't actually look at the merits
8 of it. But I can prove that this order from the
9 court of appeals isn't worth the paper that it's
10 printed on. I can show -- they made such
11 bald-faced claims like, oh, it was okay --

12 THE COURT: Mr. Haeg.

13 MR. HAEG: -- that -- that judge --
14 that --

15 THE COURT: I don't have the authority to
16 overturn the court of appeals' opinion.

17 MR. HAEG: Yes, you do.

18 THE COURT: No, I don't.

19 MR. HAEG: Yes, you do.

20 Have you sworn an oath to protect and
21 defend our constitution?

22 THE COURT: Yes.

23 MR. HAEG: Their order violates our
24 constitution over, and over, and over. And I have
25 the material here to prove it. And so before I

1 leave here --

2 THE COURT: Mr. Haeg.

3 MR. HAEG: -- today I'm going to go over
4 the court of appeals' order, and I'm going to
5 compare it to the court record, so everyone
6 here --

7 THE COURT: Mr. Haeg.

8 MR. HAEG: -- can look at the cover-up
9 that is occurring right here --

10 THE COURT: Mr. Haeg.

11 MR. HAEG: -- and right now.

12 THE COURT: Mr. Haeg.

13 MR. HAEG: Yes.

14 THE COURT: It would be helpful to me, and
15 certainly helpful to your case if you can try and
16 control the level of your speech.

17 MR. HAEG: Okay.

18 (Whispered conversation)

19 THE COURT: Who spoke? Who had the --
20 does someone have the courage --

21 UNIDENTIFIED SPEAKER: I spoke.

22 MR. HAEG: Your Honor, it's somebody
23 that's --

24 THE COURT: Stop. Just stop.

25 MR. HAEG: -- concerned about --

1 THE COURT: Stop.

2 MR. HAEG: -- our judicial system.

3 THE COURT: Stop.

4 Do you know who spoke?

5 MR. HAEG: I just spoke.

6 THE COURT: Who spoke in the courtroom.

7 Does someone have the courage of standing up and
8 identifying themselves?

9 UNIDENTIFIED SPEAKER: I already did, and
10 you looked right at me.

11 THE COURT: Okay. I would appreciate it,
12 sir, if you would not speak. Okay? You're not
13 helping Mr. Haeg. I'm glad you're here, it's an
14 open courtroom. But there are rules that apply to
15 people's behavior in a courtroom. If you're
16 unfamiliar with those rules, I'll explain them to
17 you.

18 UNIDENTIFIED SPEAKER: You just didn't
19 clarify that, whether he should raise it or lower
20 it, so I thought maybe you meant raise it.

21 THE COURT: Mr. Haeg's a very smart man.
22 He's not a shy man. My sense is if Mr. Haeg has
23 any question about what I'm saying, he'll ask.

24 The fifth topic is concerning the location
25 of the -- where the wolves were killed, in what

1 particular game management unit. So the court of
2 appeals said: Because the location of the kill
3 sites may have affected the court's sentencing
4 decision, or because Haeg's attorney did not
5 object to the misstatements regarding where the
6 wolves were killed or seek a new sentencing, Haeg
7 is entitled to litigate this claim in the context
8 of his attorney's alleged ineffective assistance,
9 as we've already explained.

10 So, Mr. Haeg, what do you think -- given
11 the five topics that you're allowed to litigate
12 and the fact that some of them require some
13 pre-conditioned filings, what -- you told me
14 previously when we were here in whatever it was,
15 June or July, that you were working most of the
16 summer and you were available -- you only became
17 available to work on this case again in December,
18 and that's why I delayed this until now. And that
19 you were more available throughout the winter
20 until spring comes again.

21 So what's a reasonable amount of time it
22 will take you to submit the -- the various filings
23 on those five topics?

24 MR. HAEG: Well, before I do that, I'm
25 going to go over this order from the court of

1 appeals.

2 THE COURT: Well, no. My question to you
3 is when it will be reasonable for you to do that?
4 I'm seeking your input. If you don't want to give
5 me your input, I'll set a date.

6 MR. HAEG: See, I'm basically being
7 blackmailed into giving up the proof I had that
8 had proved my case, because I -- what I'd suspect,
9 and correct me if I'm wrong, is if I say -- if I
10 say I want to go over the proof that this order
11 isn't worth the paper it's written on, you'll say,
12 well, you have forfeited your right to go forward
13 on these five issues. Well, these five issues are
14 so watered down, that anyone could justify not
15 overturning my conviction.

16 You guys -- they've already overturned my
17 sentence once. And then when I said, wow, I'm
18 going to get a sentencing hearing and prove that
19 they falsified physical trial evidence, and
20 knowing it's false, presented it -- they said, oh,
21 we're going to overturn your resentencing, that
22 your sentence was overturned.

23 Well, now if I cave in to these five
24 little issues, I've done a massive disservice to
25 myself, to Your Honor, to the troopers that are

1 here protecting our state. And more than
2 anything, to all these people that are here,
3 because I have evidence of corruption --

4 THE COURT: So my question is --

5 MR. HAEG: -- from -- and so what -- what
6 I'm telling you is that I'm not going to say, oh,
7 on these five issues, I could do this in two
8 weeks. I'm going to say I can prove that I'm
9 entitled to far more than five issues. Issues
10 that --

11 THE COURT: When -- when do you --
12 (indiscernible) --

13 MR. HAEG: -- that include a recording of
14 the prosecutor --

15 THE COURT: Regardless of what you --

16 MR. HAEG: -- and trooper talking about
17 falsifying physical evidence before trial. Why is
18 there not a hearing on that?

19 THE COURT: Are you done?

20 MR. HAEG: No, I'm not done.

21 THE COURT: You're about to be done.

22 MR. HAEG: Huh?

23 THE COURT: You're about to be done.

24 MR. HAEG: No.

25 THE COURT: Answer my question about when

1 you will be able to file your pleadings on the
2 five topics. Give me an estimate of how much time
3 you think you'll need.

4 MR. HAEG: I can probably do it right now.

5 THE COURT: Now's not the time.

6 MR. HAEG: All's I'm saying is before we
7 talk about that, I'm going to start going over --

8 THE COURT: No, you're not.

9 MR. HAEG: -- the issues.

10 Yes, I am.

11 THE COURT: You want to make a bet?

12 MR. HAEG: Yeah.

13 THE COURT: Okay. I will set the deadline
14 unless you give me some input.

15 MR. HAEG: Okay. I wish to thank the
16 public for attending.

17 THE COURT: This is not the time for that.

18 MR. HAEG: And thank you, everybody that's
19 here.

20 THE COURT: Mr. Peterson do you have --

21 MR. HAEG: Do you guys understand --

22 THE COURT: Mr. Haeg, sit down.

23 MR. HAEG: Do you guys understand that it
24 is only your participation here that will allow
25 what's going on to come out. You guys realize

1 that?

2 (Indiscernible)

3 THE COURT: Mr. Haeg, please sit down.

4 MR. HAEG: It's you people that are going
5 to allow this.

6 THE COURT: Mr. Haeg, sit down.

7 MR. HAEG: (Reading) My name is David
8 Haeg, and I swear under penalty of perjury to tell
9 the truth, the whole truth, and nothing but the
10 truth during this proceeding.

11 THE COURT: Sit down, Mr. Haeg, before I
12 hold you in contempt.

13 MR. HAEG: We are all here today because
14 of an order from the Alaska Court of Appeals.

15 THE COURT: Mr. Haeg.

16 MR. HAEG: This order dictates the issues
17 and evidence that I will be allowed to present
18 during an evidentiary hearing. By falsifying both
19 facts and law --

20 THE COURT: Mr. Haeg --

21 MR. HAEG: -- the order seeks to eliminate
22 all issues --

23 THE COURT: -- I'm going to turn off the
24 recording and clear the courtroom.

25 MR. HAEG: -- and evidence proving

1 widespread corruption within Alaska's judicial
2 system. Including the systematic violation of our
3 constitution. Before following the restrictions
4 set out by this order, I have a right and Your
5 Honor has a duty to examine the order in detail to
6 see if it, in truth, falsifies facts in law to
7 justify the restrictions. And thus,
8 unconstitutionally restricts both issues and
9 evidence allowed to be presented during my
10 evidentiary hearing.

11 Just four things are needed to prove the
12 court of appeals' order is corrupt to the core.
13 My July 24, 2003 opening brief to the court of
14 appeals. My January 15, 2014, reply brief to the
15 court of appeals. The YouTube video of oral
16 argument to the court of appeals. And, fourth,
17 the court of appeals' December 21st, 2016,
18 memorandum opinion. All of these items are
19 located on the website
20 alaskastateofcorruption.com, or they are on
21 YouTube.

22 If we follow an unconstitutional order,
23 we, ourselves, violate our constitution. And I
24 believe Your Honor has sworn an oath to protect
25 and defend our constitution. First I'm going to

1 read a sworn document given to the court of
2 appeals before their order, a document that
3 predicts the court of appeals will be forced to do
4 exactly what they did, falsify both facts and law
5 to cover up widespread judicial corruption.

6 (Stops reading)

7 THE COURT: Mr. Haeg, how long do you
8 think it will take you to read the rest of your
9 statement?

10 MR. HAEG: I am not certain.

11 THE COURT: Give me an estimate, please.
12 Mr. Haeg, can you give me an estimate?

13 MR. HAEG: I don't really have an
14 estimate.

15 THE COURT: How long do you expect me to
16 sit here?

17 MR. HAEG: I don't know.

18 THE COURT: Help me out, Mr. Haeg.

19 MR. HAEG: This -- this is --

20 THE COURT: Mr. Haeg, have at least the
21 decency, just the human kindness to give me an
22 idea of how long you think --

23 MR. HAEG: I've got nine issues, and I
24 would say it's probably going to take about five
25 hours.

1 THE COURT: We don't have five hours.

2 MR. HAEG: Okay. Well, I'll get through
3 as many as I can.

4 THE COURT: No. We're not going to do
5 that either.

6 MR. HAEG: This is sworn testimony from
7 attorney Dale Dolifka.

8 THE COURT: Mr. Haeg. Mr. Haeg.

9 MR. HAEG: I believe some of you know
10 Mr. Dolifka.

11 THE COURT: I'm going to set a time for
12 your filing.

13 MR. HAEG: This --

14 THE COURT: If you want to listen to me --

15 MR. HAEG: -- Mr. Dolifka testified the
16 reason why --

17 THE COURT: -- otherwise I'm going to
18 close this --

19 MR. HAEG: -- you have still not resolved
20 your legal problems is corruption. This is from a
21 25-year attorney in this state.

22 If they, the appeals court -- this is the
23 order we're talking about, do right by you --

24 THE COURT: I will require you to file
25 your pleadings by February 5, 2018.

1 MR. HAEG: -- you have the judges going
2 down, you have the state troopers going down --

3 THE COURT: The state's response will be
4 due in two weeks --

5 MR. HAEG: -- you have the assigned
6 lawyers going down --

7 THE COURT: -- the 19th of February.

8 MR. HAEG: -- your case has shades of
9 Selma in the '60s --

10 THE COURT: Mr. Haeg, I'm going to end
11 this hearing.

12 MR. HAEG: -- where judges, sheriffs and
13 even assigned lawyers were all in cahoots
14 together.

15 THE COURT: Go off record.

16 MR. HAEG: It's absolute unadulterated --
17 (Off record)

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EVIDENTIARY HEARING
BEFORE THE HONORABLE WILLIAM MORSE
Superior Court Judge

Anchorage, Alaska
January 28, 2019
8:49 a.m.

APPEARANCES:

For the Applicant:

DAVID HAEG, Pro-se
PO Box 123
Soldotna, Alaska 99669

For the Respondent:

OFFICE OF THE ATTORNEY GENERAL
AARON PETERSON
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Anchorage, Alaska 99501

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P-R-O-C-E-E-D-I-N-G-S

Courtroom B-2

8:49:25

THE CLERK: Superior Court for the State of Alaska is now in session, the Honorable William Morse presiding.

THE COURT: Be seated, please.

All right. Good morning. We're on the record in State versus Haeg, 3KN-10-01295. Counsel for the state and Mr. Haeg are present.

We are here on an evidentiary hearing on a remand from the court of appeals on five topics. I'm only going to be ruling on the five topics. But I understand, Mr. Haeg, that you want to expand the subject matter of the hearing. I'm not going to rule on those things, but I am going to give you an opportunity to present that additional information.

So you can present the information on the other topics that you want to present, and that will preserve your record so that the court of appeals can review it and decide whether or not that is something that either the Superior Court or the court of appeals should address. So I'll give you the ability, during the next few days, to

1 put on whatever testimony you want regarding
2 whatever you think is pertinent to your appeal.

3 MR. HAEG: Okay.

4 THE COURT: Okay? So are you ready to
5 proceed?

6 MR. HAEG: Yes.

7 THE COURT: Call your first witness.

8 MR. PETERSON: And, Your Honor, I will be
9 invoking Rule 615, exclusionary rule, his
10 witnesses.

11 THE COURT: Do you have witnesses in the
12 courtroom, that you intend to call?

13 MR. HAEG: There -- I believe there are --
14 there's Mr. Cole there. And Mr. Zellers, I don't
15 know where he's at. The first witness that I'd
16 like to call, though, is Mr. Robinson. And I
17 don't know if he's here yet.

18 Has Mr. Robinson put in an appearance?

19 THE COURT: I don't see him.

20 MR. HAEG: And I have a valid --

21 THE COURT: Did you subpoena him?

22 MR. HAEG: -- subpoena for him.

23 Yep, for --

24 THE COURT: Did you serve him?

25 MR. HAEG: -- 8:30 this morning.

1 THE COURT: All right. Well, we'll --
2 hopefully, he will be here. If he's not here now,
3 then call an additional witness. We'll look
4 into -- you know, I'll give him time to be here.
5 It's snowing out there. Maybe he's delayed in
6 coming up from Kenai or Soldotna, but --

7 MR. HAEG: Okay. And there's just a
8 couple things that I would like to --

9 THE COURT: So you said that there's two
10 witnesses, Mr. Cole and someone else?

11 MR. HAEG: Yeah. Mr. Cole needs to be --
12 just outside and --

13 THE COURT: Who are you going to call
14 first?

15 MR. HAEG: -- Mr. Zellers.

16 I'll probably call Mr. Cole first, if
17 Chuck Robinson isn't here.

18 THE COURT: Okay.

19 MR. HAEG: But before I do, I would just
20 like to go over, just for a few minutes, what I've
21 kind of -- I basically --

22 THE COURT: Just let's do one --

23 MR. HAEG: -- to keep me from being
24 confused --

25 THE COURT: Mr. Haeg?

1 MR. HAEG: -- I've laid out a --

2 THE COURT: One -- Mr. Haeg, one thing at
3 a --

4 MR. HAEG: -- sequence of events.

5 THE COURT: One thing at a time.

6 So if you're going to call Mr. Cole first,
7 then have Mr. Zellers step out. He can wait
8 outside in the hallway.

9 MR. HAEG: Okay. And --

10 THE COURT: If there are other witnesses
11 you intend to call --

12 MR. HAEG: My wife, Jackie.

13 So can you step out also?

14 THE COURT: Then have her step outside,
15 too.

16 MR. HAEG: Okay.

17 UNIDENTIFIED VOICE: Mr. Robinson is not
18 out front, Your Honor.

19 THE COURT: Okay. Is not?

20 UNIDENTIFIED VOICE: Is not. Well,
21 there's nobody out there.

22 THE COURT: Okay.

23 MR. HAEG: But the subpoena said
24 Courtroom 601. So it's possible he's at 601.

25 THE COURT: Well, we'll see if he's up

1 there. He's --

2 MR. HAEG: Okay. And I apologize, I'm not
3 an --

4 UNIDENTIFIED VOICE: They've sent --
5 everybody that's shown up at 601 has been sent
6 down here, but they're checking right now --

7 THE COURT: Okay.

8 UNIDENTIFIED VOICE: -- for Mr. Robinson.

9 UNIDENTIFIED VOICE: And the clerk said no
10 one is outside Courtroom 601.

11 THE COURT: Okay. So go ahead, Mr. Haeg.

12 MR. HAEG: Okay. And because I'm kind of
13 confused about this, whatever, I was wondering,
14 I -- I'm going to call me myself as a witness, but
15 I assume I can be here, because --

16 THE COURT: You can be here.

17 MR. HAEG: Okay. And can I be sworn in
18 now? So that kind of as I go along, it's kind
19 of testi- --

20 THE COURT: Well, when you testify, you'll
21 be up in the witness stand, like everybody else.
22 And you'll testify from the witness stand.

23 MR. HAEG: Okay. Well, I'd just like to
24 stay right here. I swear to tell the truth right
25 now. The first thing is, I've got a 300 more

1 pages -- or 154 -- 155 additional pages of a
2 petition -- of petition signatures for a grand
3 jury investigation. And I don't know who to give
4 them to, because I gave the last bunch to Your
5 Honor, and you gave them to the Deputy Attorney
6 General Robert Henderson. And he stated he isn't
7 going to give it to a grand jury. And so I would
8 like to give these to you so that we have
9 additional ones.

10 Can I --

11 THE COURT: You can bring them up. You
12 can just give them to the clerk. We'll stamp the
13 package as Exhibit 1.

14 (Exhibit 1 marked/admitted)

15 MR. HAEG: And, again, it's 145 pages of
16 signatures for -- calling for a grand jury
17 investigation.

18 This hearing will prove why a grand jury
19 investigation is so important to the petitioners
20 and why, immediately after this hearing is
21 concluded, I'm asking everyone to join me in
22 walking over to the governor's office to hand him
23 a copy of the petition and ask he support Senate
24 Bill 15, which Senator Peter Micciche has
25 introduced, and would require public petitions for

1 a grand jury investigation to actually be given to
2 a grand jury.

3 I quote Your Honor's final statement in
4 your October 8th, 2018, calendaring order: The
5 Court again emphasizes that Haeg may only present
6 testimony on the five topics identified by the
7 court of appeals. Should he attempt to present
8 evidence on the other topics, he will be cutting
9 into the time allotted to the five permissible
10 topics.

11 I now quote Amidon versus State, 604 P.2d
12 575, Alaska 1979: Failure to object to an error
13 during the proceedings is deemed to be a waiver of
14 the error.

15 If I conduct this proceeding without
16 objecting, I waive my right to object that the
17 court of appeals lied and committed fraud to limit
18 this hearing to only five topics. And if followed
19 blindly, will strip me of my ability to prove the
20 true extent of the corruption and cover-up in this
21 case.

22 So I'm now going to object to the errors
23 in these proceedings.

24 On page 46 of its order, the Court of
25 Appeal states that because I never provided them

1 any briefing, specifics, or support, I cannot
2 present evidence that the Alaska Commission on
3 Judicial Conduct is corrupt, that Prosecutor Scot
4 Leaders is corrupt, or that the attorneys in my
5 case are corrupt.

6 On page 4 of the court of appeals' order,
7 they ordered that I can present evidence that
8 Attorney Robinson was in ineffective for not
9 protesting, quote, the apparent factual
10 inaccuracies presented at the sentencing, unquote.

11 I carefully went over my briefing and
12 found I had given the Court of Appeals 54 pages of
13 briefing that detailed the specific how, why and
14 when and where of the corruption of the Commission
15 on Judicial Conduct and its sole investigator for
16 the past 30 years, Attorney Marla Greenstein.

17 This 54 pages did not include the physical
18 evidence I also provided the Court of Appeals:

19 One, copies of Greenstein's written
20 certification confirming that she contacted and
21 took testimony from specific witnesses during her
22 official ACJC investigation of Judge Margaret
23 Murphy, who was my trial judge;

24 Two, affidavits from the same exact
25 witnesses that Greenstein certified to have

1 contacted, all swearing under oath that Greenstein
2 never contacted them and had, in fact, falsified
3 the testimony they would have given had they been
4 contacted;

5 Three, an affidavit Judge Murphy falsified
6 to cover up her corruption during my trial;

7 Four, 77 pages of recordings and
8 transcriptions, put together and certified as true
9 by Superior Court Judge Stephanie Joannides,
10 independently proving that Greenstein falsified an
11 official ACJC investigation to cover up that Judge
12 Murphy was chauffeured full-time during my trial
13 by the main witness against me, Trooper Brett
14 Gibbens; and that Judge Murphy removed the
15 evidence that would have exonerated me out of the
16 official court record before my jury could see it.

17 Twenty-five pages of my briefing to the
18 Court of Appeals detailed the specific how, why,
19 where, and when of Prosecutor Scot Leaders'
20 corruption.

21 This 25 pages did not include the physical
22 evidence I also provided the Court of Appeals:

23 One, a copy of the map Prosecutor Leaders
24 and Trooper Gibbens used to convict me at jury
25 trial;

1 Two, tape recordings and transcriptions of
2 Prosecutor Leaders and Trooper Gibbens discussing,
3 before trial, how they had falsified the map to
4 support their case against me;

5 Three, a copy of a sworn affidavit that
6 Prosecutor Leaders falsified to cover up his
7 corruption;

8 And, four, copies of official discovery
9 requests that Prosecutor Leaders violated to keep
10 his corruption covered up.

11 Additional proof that I gave the Court of
12 Appeals, details and evidence of Prosecutor
13 Leaders' corruption, is my videotaped oral
14 arguments to the Court of Appeals that records me
15 showing them the actual map used against me at
16 trial, showing them how the map had been falsified
17 to support Prosecutor Leaders' case against me;
18 and explaining to them how Prosecutor Leaders and
19 Trooper Gibbens tape-recorded themselves
20 discussing how they had falsified the map so it
21 supported their case against me; and explaining to
22 them that Prosecutor Leaders never gave me a copy
23 of the map or a copy of the tape recording prior
24 to trial, as required by pretrial discovery
25 requests to Leaders.

1 Thirty-eight pages of my briefing to the
2 Court of Appeals detail the how, why, where, and
3 when of my own attorney's corruption. This
4 38 pages didn't include the physical evidence I
5 provided the Court of Appeals, tape recordings and
6 transcriptions of my own attorney's sworn
7 testimony that government officials, and that
8 includes Mr. Cole here, would harm them if they
9 tried to protect me from Prosecutor Leaders'
10 corruption.

11 On the allowed issue of Robinson not
12 protesting, quote, the apparent factual
13 inaccuracies presented at sentencing, unquote, I
14 could not find a single word of briefing, detail,
15 or evidence given to the Court of Appeals.

16 So the Court of Appeals has ruled that
17 issues of national of importance, which received
18 hundreds of pages of briefing in evidence, were
19 not briefed well enough for an evidentiary
20 hearing, while an issue of near zero importance,
21 which received not a single word of briefing or
22 evidence, was briefed well enough for an
23 evidentiary hearing.

24 On pages 42 and 43, the Court of Appeals
25 states that because Cole and I, Mr. Cole right

1 here, were immense -- immersed in a contentious
2 fee arbitration at the time of my sentencing, I
3 cannot present evidence that Robinson should have
4 enforced Cole's subpoena to appear at my
5 sentencing and testify that Prosecutor Leaders
6 broke my plea agreement after I had given up a
7 year of guiding, in reliance on it.

8 Yet my date-stamped fee arbitration
9 application proves I filed for fee arbitration
10 against Cole five months after I was sentenced.
11 The significance of this is that had Cole
12 testified at sentencing that I had given up a year
13 of guiding for a plea agreement with minor
14 charges, it would have proved my prosecution and
15 end conviction on far more serious charges was
16 invalid.

17 Here are the date-stamped copies of my fee
18 arbitration application and sentencing judgment,
19 proving beyond doubt the Court of Appeals lied
20 when they ruled I was engaged -- or immersed in a
21 contentious fee arbitration with Cole at the time
22 of my sentencing.

23 And I'd like to hand Your Honor the
24 date-stamped copies of my application to the
25 bar -- bar association for a fee arbitration and

1 the date-stamped copy of when I was sentenced.

2 Can I hand these in? And I got a copy for
3 the state also, if they would like one.

4 THE COURT: Give the state a copy.

5 What I'd like you to do is -- how many
6 pages are there?

7 MR. HAEG: Two.

8 THE COURT: All right. So we'll make that
9 exhibit next in line, but I'd like them stapled so
10 that they don't get misplaced.

11 So that, what -- is that Exhibit 2? Okay.

12 (Exhibit 2 marked/admitted)

13 MR. HAEG: And the -- your copy may
14 have more -- it had also, I think, the court of
15 appeals' ruling statement on it.

16 THE COURT: So the exhibit you've just
17 given me is the two filing pages, as well as some
18 excerpts from the court of appeals?

19 MR. HAEG: Correct.

20 THE COURT: All right. Just make sure
21 those are stapled all together.

22 MR. HAEG: On page 42, the Court of Appeal
23 states that because there is no evidence in the
24 record, I cannot present any evidence I was given
25 transactional immunity. Yet on February 7, 2012,

1 my attorney, Brent Cole, who was deposed in this
2 case, testified under oath on the record that I
3 was given transactional immunity.

4 Attorney Kevin Fitzgerald, who worked with
5 Cole during my prosecution, also testified that
6 Prosecutor Leaders gave me transactional immunity.
7 Fitzgerald then testified that after I gave the
8 statement required by the immunity, Prosecutor
9 Leaders flat stated he would not be honoring my
10 immunity.

11 This testimony is also part of the record
12 of this case. Judge Carl Bauman wrote in the
13 record of this case, page 12, on 7/23/12, quote:
14 A rogue or unauthorized offer of immunity is
15 possible.

16 The significance of this is that
17 transactional immunity prevents prosecution for
18 anything talked about during their prior
19 statement. And I was prosecuted for everything I
20 talked about during my statement. Even more
21 unbelievable is that part of my statement was used
22 as evidence against me at trial. It is clear the
23 court of appeals lied when they claimed there was
24 no evidence in the record that I was given
25 transactional immunity.

1 On page 49, the court of appeals states I
2 cannot present evidence of Judge Bauman's
3 corruption, because I didn't point to anything,
4 other than Judge Bauman's adverse rulings, to show
5 he was corrupt.

6 I quote my opening brief to the Court of
7 Appeals. Quote: Bauman, in violation of
8 A.S. 22.10.190, which required him to file
9 affidavits -- nothing presented to him was
10 undecided for more than six months -- failed to
11 decide many of Haeg's motions within six months,
12 such as Haeg's 1/10/11 motion for hearing and
13 rulings, before deciding state's motion to
14 dismiss, decided by Bauman on 1/17/12, or over a
15 year later.

16 Haeg filed criminal and ACJC complaint
17 against Bauman for perjury and asked Bauman be
18 disqualified for corruption. Record 02179-2203.
19 Troopers dismissed criminal complaint, Greenstein
20 dismissed ACJC complaint, and Kenai Judge Anna
21 Moran refused to disqualify Bauman.

22 In another part to my -- the Court of
23 Appeals, I wrote this: Bauman is corrupt,
24 including, but not limited to, A, falsifying
25 six-month affidavits to starve Haeg out; B,

1 delaying PCR decision for three years, to starve
2 Haeg out; C, pre-dating decisions to corruptly
3 make it appear they had been made within the
4 six-month time limit; D, corruptly dismissing
5 Haeg's claim, supported by Judge Joannides'
6 certified evidence, of Greenstein/Murphy's
7 corruption.

8 There's some other stuff; I go on there.

9 But here are the copies of Judge Bauman's
10 orders and Judge Bauman's pay affidavits, proving
11 he committed perjury when he filed them. And it
12 includes my complaints against him, which are all
13 part of the record. And I'd like to hand these in
14 also.

15 THE COURT: Just to be clear, are these
16 documents already part of the record?

17 MR. HAEG: I believe so. I believe they
18 are. But I don't know.

19 THE COURT: I'll let you --

20 MR. HAEG: Because --

21 THE COURT: I will let you resubmit them.

22 MR. HAEG: Okay.

23 THE COURT: But, again, staple them all
24 together so that we have the packet that you want
25 us to look at.

1 MR. HAEG: And I appreciate you letting me
2 do this, because it's been tearing my life apart.
3 So, again, thank you, Your Honor.

4 THE COURT: I have a question. Why didn't
5 you appeal all of the multitude of errors you
6 believe the Court of Appeals made to the Supreme
7 Court?

8 MR. HAEG: I did. I appealed to the
9 Alaska Supreme Court. One -- one -- one word.
10 They said: Denied; we're not even going to look
11 at it. And, again, that makes me very angry.
12 Because I had absolute proof the Court of Appeals
13 lied.

14 THE COURT: Go ahead. Keep going with
15 your --

16 MR. HAEG: Okay. And I understand.

17 It is clear the Court of Appeals lied when
18 they ruled I did nothing more than point to Judge
19 Bauman's adverse orders, to show he was corrupt.

20 Now that I've shown why I believe the
21 Court of Appeals' order limiting this hearing to
22 five issues is a product of provable lies and
23 fraud and, I believe, intended to protect the
24 judges, prosecutors, troopers, and attorneys in
25 this case, I will proceed to prove the issues they

1 have allowed me.

2 And I have here, I was going to call Chuck
3 Robinson as my first witness. But Mr. Cole, I
4 guess, is first one.

5 And can he be sworn in?

6 THE COURT: Come on up to the witness
7 stand, please.

8 (Oath administered)

9 MR. COLE: I do.

10 THE CLERK: Thank you. You may be seated.
11 And for the record, please state your name,
12 spelling both first and last name.

13 THE WITNESS: My name is Brent, B-R-E-N-T;
14 Cole, C-O-L-E.

15 THE CLERK: Thank you.

16 THE COURT: You may proceed, Mr. Haeg. Go
17 ahead.

18 BRENT COLE,
19 called as a witness on behalf of the applicant,
20 testified as follows on:

21 DIRECT EXAMINATION

22 BY MR. HAEG:

23 Q. Is it true you represented me from April
24 of 2004 to December of 2004?

25 A. That's vaguely the amount of time that I

1 represented you, yes.

2 Q. Okay. And I'm going to -- I'm not an
3 attorney, so please give me some leeway. There's
4 some testimony in another proceeding that I would
5 just like to go over.

6 MR. HAEG: And what I'd like to do, I
7 guess, is give Mr. Cole a copy of it. And I'll
8 read another copy and have him basically affirm or
9 deny that this was a correct --

10 THE COURT: That's fine.

11 MR. HAEG: Okay. And can I walk up and
12 give this to him?

13 THE COURT: Yeah.

14 BY MR. HAEG:

15 Q. Okay. Mr. Cole --

16 A. Can I just read this real quick?

17 Q. Sure.

18 A. It will speed things up. (Pause) Go
19 ahead.

20 Q. Okay. I'm just going to start reading,
21 and if anything --

22 THE COURT: Mr. Haeg, just for my --
23 provide a context, what is it that you're reading
24 from?

25 MR. HAEG: It is a transcription of the

1 testimony Mr. Cole gave during a fee arbitration
2 test- -- that I filed.

3 THE COURT: Okay. So there was a fee
4 arbitration hearing in front of the bar
5 association, he gave testimony, and that's what
6 you're reading from?

7 MR. HAEG: Sworn testimony, yes.

8 THE COURT: Sure. Go ahead.

9 MR. HAEG: Okay. And it was on 7/12/06.
10 The person chairing it was Nancy Shaw, Attorney
11 Nancy Shaw. I don't know if you know her, but she
12 was the person running it.

13 (Whereupon a portion of the transcript
14 dated July 12, 2006, was read as follows:)

15 MR. HAEG: But anyway, Mrs. Shaw states:
16 Mr. Cole is the only one who needs to be sworn in
17 right now, and he has been. You're still under
18 oath, Mr. Cole.

19 I say, and I'll just say Haeg: I'd asked
20 you yesterday about why I didn't want the motion
21 to enforce the agreement moved forward. And I
22 believe you said it was because I did not want to
23 risk a five-year suspension of my guide license;
24 is that correct?

25 Mr. Cole states: We talked about this on

1 several occasions. I explained to you that it
2 was -- it would be against my advice to have you
3 file that motion. Because, again, I could not
4 understand how it would benefit you. All it did
5 is get us back in front of the judge open
6 sentencing, which I did not understand. I put it
7 to you several times. I went back and reviewed
8 the tapes that you made, without telling me, of
9 conversations we had on the 10th and on the 22nd,
10 which they now have transcripts of it.
11 Specifically I asked you in one of those, do you
12 want me to file this?

13 Mr. Haeg responds: And what did I
14 respond?

15 Mr. Cole: You didn't say -- you didn't
16 say anything about it.

17 Mr. Haeg: That --

18 Mr. Cole: You did not tell me, Brent, I
19 want you to file this. I don't care about
20 anything else. We specifically talked about this.
21 I specifically told you this. So every time we
22 talked, you ultimately said, you're right, I don't
23 think I want to lose my license for five years.
24 And we talked about the fact that we had it down
25 to one year.

1 Mr. Haeg responds: I'd like you to look
2 at the spot where it says, that is what I wanted
3 at the time, that is what I still want, because I
4 feel they maliciously took that away from me.

5 Mr. Cole replies: This is what I said. I
6 mean, you know, I've got to deal with these
7 people. But if you tell me, that's the deal I
8 want, I'm -- and I'm not stopping until I get it,
9 I'm going to send you a letter saying that is
10 absolute- -- that saying this is absolutely, in my
11 own mind, crazy. But I will do it if you tell me.
12 That's what you -- that's what I told you. You
13 said, well, I'm not happy they took away my
14 opportunity that I thought we had set away for me.
15 Okay.

16 And he's got this in quote. He --
17 Mr. Cole is quoting me from the recordings.

18 Okay. Tell me right now, is that what you
19 want me to do?

20 Actually, he's quoting himself.

21 Do you want me to go back and take the
22 risk, when you've got things in place? You said,
23 you mean go back to the original agreement,
24 which -- yes, a minimum one year, minimum one
25 year. The plane is up for the judge to decide.

1 Is that what the time -- because I feel they
2 maliciously -- I say okay. You don't say
3 anything. That's what I want to do, Brent. I
4 want you to file a motion.

5 And I reply; Mr. Haeg replies; this is
6 what I said at the time with the bar: Does
7 anybody read where I say that is what I wanted at
8 the time and that's what I still want?

9 I then say: So what you're saying is that
10 I could have laid out -- I cooperated with the
11 state from the beginning, gave them a five-hour
12 interview, which led to over double the amount of
13 charges filed against me, gave up guiding for an
14 entire year. The money was already gone. The
15 season was already over, which dang near bankrupt
16 Jackie and I, because we still had to pay all the
17 leases and all the insurance and all the bonding,
18 and we didn't get any income. Now that, that
19 hurt -- hurts. You're saying that a judge would
20 have heard that and said, Mr. Leaders, and --
21 that's Prosecutor Leaders -- you can just do
22 whatever you want; you can promise this man the
23 moon and when he takes action, and sacrifices his
24 life, you can just go --

25 And in this place is where my wife jumps

1 in, because I was pretty upset over losing my
2 career and having my attorney saying that I never
3 asked for something for my career being over.

4 Ms. Shaw jumps in.

5 I then say: Okay. I'm sorry. You know,
6 is that what you're saying, Mr. Cole? Is that
7 we've already had all the witnesses flown in from
8 Illinois, Silver Salmon Creek, took my kids out of
9 school, took people from work, came up here so
10 they could all testify, and the judge would have
11 listened to all that with what's called
12 detrimental reliance, and she would have not
13 required specific performance of that agreement?

14 Mr. Cole response to the bar association:
15 I will tell you again, David. I told you before
16 the hearing, they were not going to allow you to
17 plead open sentences to the first charges and go
18 and be able to get your plane back.

19 I respond to the bar association: You
20 still -- could you answer my question that the
21 judge would have listened and that would have been
22 the end of it?

23 Mr. Cole replies: I really don't think
24 the judge would have done anything, David. That
25 is your version. Scot Leaders would have stood up

1 and said, I don't know what he's talking about. I
2 represent the state of Alaska. We make the
3 charging decisions. We don't have any deal like
4 that. And then the judge would have said to me,
5 okay, then we're going to have briefing on that.
6 And then at your direction, I would have filed my
7 affidavit, and he would have filed his. And all
8 of a sudden, where would that have gotten us?

9 And I reply to Mr. Cole: And while you're
10 under oath and on record here before the Alaska
11 Bar Association, going to tell me that when I tell
12 you that is what I wanted at the time and that is
13 still what I want, that I said no?

14 Mr. Cole replies to the bar association:
15 I'm going to tell you that if you read this whole
16 thing, it doesn't say I want you to reject every
17 offer and go in and do whatever you've got to do
18 to get this original deal. David, that's what I'm
19 going to tell you. If you read this from front
20 cover to back, you will not get that sense.

21 I reply to the bar association: So when I
22 tell you, quote, well, to me, they weren't viable
23 options, unquote -- and this is a recording of me
24 and Brent Cole talking while he was still my
25 attorney. I told him they weren't vi- -- there

1 were no other viable options to me. That was my
2 statement to him while he was my attorney. Then I
3 say, that means there were options that were
4 viable? Is that what you're telling me?

5 Mr. Cole responds to the bar association:
6 I can't speak for what you're thinking, David.
7 You were not half the time rational, in my mind.

8 I respond: So you can look at these --

9 And Ms. Shaw jumps in here, and she says:
10 Mr. Haeg, I think you've covered this one enough.

11 And I say: I've hit that one enough?

12 Ms. Shaw says: I think you have.

13 And I say: Okay.

14 (Whereupon the reading of a portion of the
15 transcript dated July 12, 2006, was concluded)

16 MR. HAEG: So that is the --

17 THE COURT: Mr. Haeg, let me ask you a
18 couple questions, because I want to make sure that
19 I understand the context. Okay?

20 If I'm understanding, what you're saying
21 is that you believe that you had -- and this is a
22 question -- that you had what? Either a deal
23 worked out with the state, and did that deal, in
24 your mind, include transactional immunity?

25 MR. HAEG: I believe so. At the time, I

1 didn't know what transactional immunity meant. I
2 hired attorneys. And so now it --

3 THE COURT: Well, why would the --

4 MR. HAEG: -- gets difficult for me --

5 THE COURT: Just tell me what you think
6 happened. You think you got transactional
7 immunity?

8 MR. HAEG: My attorney -- no, I never got
9 it.

10 THE COURT: Do you think --

11 MR. HAEG: But I believe -- I believe I --
12 I had it, because that man and a person who worked
13 for him testified under oath that Scot Leaders
14 gave me transactional immunity.

15 THE COURT: Do you think that your lawyers
16 told you that the state gave you transactional
17 immunity?

18 MR. HAEG: They did testify that that is
19 exactly what happened.

20 THE COURT: And so what were you getting
21 in exchange for this trans- -- what was the state
22 getting in exchange for the transactional
23 immunity? Usually, transactional immunity means
24 the person receiving it is going to -- will not be
25 prosecuted in exchange for giving some sort of

1 testimony. The testimony that you will be giving
2 can't be used against you. So what --

3 MR. HAEG: I have no idea. That why I --

4 THE COURT: Okay.

5 MR. HAEG: Because I was a pilot in a
6 master big game --

7 THE COURT: Did -- just the --

8 MR. HAEG: -- and I didn't know any of
9 this. Now when I look at --

10 THE COURT: Listen to my question.

11 MR. HAEG: Okay.

12 THE COURT: You can't answer my question
13 until you hear it. Was there an agreement in
14 writing? Was there an offer in writing?

15 MR. HAEG: Nope. Mr. Cole says we were --

16 THE COURT: Who --

17 MR. HAEG: -- he was working on his own
18 and he didn't need anything in writing.

19 THE COURT: Who do you believe represented
20 the state and made the offer?

21 MR. HAEG: Scot Leaders.

22 THE COURT: And roughly, when was that?

23 MR. HAEG: It would have been sometime in
24 either June, July, August, somewhere in there, of
25 2004.

1 THE COURT: Okay. And when is it that you
2 believe that your attorney or someone working with
3 your attorney told you that there was this offer?

4 MR. HAEG: Of immunity?

5 THE COURT: Yeah.

6 MR. HAEG: It was when I filed fee
7 arbitration against him and --

8 THE COURT: So after the case --

9 MR. HAEG: Exactly.

10 THE COURT: -- criminal case is over?
11 Okay.

12 MR. HAEG: Yeah.

13 THE COURT: So --

14 MR. HAEG: At the time, they said --

15 THE COURT: Just wait.

16 MR. HAEG: Okay. Okay.

17 THE COURT: I'm trying to understand the
18 sequence. You've been living with this, and I
19 haven't.

20 MR. HAEG: Okay.

21 THE COURT: So I want to make sure that I
22 have the sequence right.

23 MR. HAEG: Well, thank you.

24 THE COURT: You did not enter any kind of
25 a plea agreement. You went to trial. And later

1 you learned what you think had been an offer that
2 had been communicated or worked out between the
3 lawyers, between the two lawyers, the state and
4 Mr. Cole?

5 MR. HAEG: On -- no. Everything was
6 worked out. But what happened is Mr. Cole told me
7 I was required to go give a statement to the
8 prosecution before trial. So I did. And --

9 THE COURT: Wait. Wait. Just wait.
10 Before trial --

11 MR. HAEG: Yep.

12 THE COURT: -- you gave a statement to the
13 prosecution?

14 MR. HAEG: Yes.

15 THE COURT: And what were you told was the
16 purpose of giving this statement?

17 MR. HAEG: Mr. Cole said, you're required
18 to go in. And I said okay. I don't know what the
19 ramifications were.

20 THE COURT: This is before the trial?

21 MR. HAEG: Yes. And that's why when that
22 was --

23 THE COURT: Okay.

24 MR. HAEG: -- put to the bar
25 association --

1 THE COURT: Okay.

2 MR. HAEG: -- Mr. Cole said the reason why
3 I had you do this is you were given transactional
4 immunity.

5 THE COURT: Now, there -- in the testimony
6 or the questioning in the bar thing, there's talk
7 about a filing of a motion. What motion?

8 MR. HAEG: I don't know.

9 THE COURT: Well, then why are you handing
10 this to me? You seem to think this means
11 something, so help me out.

12 MR. HAEG: With the bar association, what
13 it means is that at the time, I wanted a plea
14 agreement enforced. This --

15 THE COURT: What --

16 MR. HAEG: -- stuff with Mr. Cole --

17 THE COURT: What plea agreement?

18 MR. HAEG: The one that Mr. Cole made for
19 me, that said --

20 THE COURT: Okay. And what were the --

21 MR. HAEG: -- open sentencing.

22 THE COURT: What were the terms of the
23 plea agreement?

24 MR. HAEG: Open sentencing on A.S.,
25 whatever they were, were to allow one-year guide

1 license suspension. And we were going to present
2 evidence that it should be a one-year guide
3 license suspension.

4 THE COURT: Oh, hang on. You were going
5 to -- what were you going to plead to?

6 MR. HAEG: I don't know.

7 Mr. Cole, can you help me out?

8 THE COURT: Well, you were the one who --

9 MR. HAEG: It was like A.S. 15 --

10 THE COURT: You're the one who wanted
11 to --

12 MR. HAEG: -- 720 --

13 THE COURT: You're the one who wanted
14 the --

15 MR. HAEG: -- (a) (8) (A).

16 THE COURT: You're the one who wanted the
17 deal. What is it that you thought the deal was?
18 What was the proposal? You plead to something,
19 and you get something. So what were you going to
20 plead to?

21 MR. HAEG: I was going to plead to A.S.,
22 whatever, 17.720 --

23 THE COURT: Or I don't need to know. If
24 you can't remember --

25 MR. HAEG: It would allow a one-year --

1 THE COURT: If you can't remember -- I
2 don't need you to remember the precise statute.

3 MR. HAEG: I have the -- I have the
4 charging information, so I could get the exact
5 citation.

6 THE COURT: Okay. Tell me. Go ahead
7 and -- you've got it. Tell me what it is that
8 you --

9 (Whispered conversation)

10 MR. PETERSON: Your Honor, I know that the
11 petitioner is a pro per litigant and will be given
12 wide discretion and wide latitude on the form of
13 his questioning. But there is a witness on the
14 stand that should be answering questions posed to
15 him. The petitioner will have an opportunity to
16 take the stand and testify. But Mr. -- I'm sorry,
17 Mr. Cole's time is valuable, and so while he's on
18 the stand, I think the questions should be
19 directed to him. The state objects to the form of
20 the question.

21 MR. HAEG: And --

22 THE COURT: Give me the statute.

23 MR. HAEG: All right.

24 Be A.S. 8.54.720(a)(8)(A).

25 THE COURT: A.S. 08.54.720(a)(8)(A)?

1 MR. HAEG: Correct.

2 THE COURT: Okay. So what class of a
3 crime is that?

4 MR. HAEG: It's like --

5 A. It's a Class A.

6 THE COURT: A Misdemeanor?

7 A. Yes.

8 THE COURT: Okay. And so you -- I want to
9 be clear. You think that somebody from the state
10 said to you, you plead to that misdemeanor, open
11 sentencing?

12 MR. HAEG: Correct.

13 THE COURT: Okay. How was that
14 communicated to you?

15 MR. HAEG: Mr. Cole told me he ran it by
16 Mr. Leaders, and Mr. Leaders agreed to it.

17 THE COURT: Okay. So did you go in and
18 enter a plea?

19 MR. HAEG: Nope.

20 THE COURT: And why not?

21 MR. HAEG: Because after the -- those
22 charges were filed and we flew everybody in from
23 around the country, when we drove to Anchorage, to
24 Mr. Cole's office, he said, I got bad news for
25 you. Scot Leaders just changed the charges.

1 The day be- -- we were supposed to plea
2 out on November 9th. On November 8th, Scot
3 Leaders filed an amended information changing the
4 charges that would require me to be sentenced to
5 at least a three-year suspension of my guide
6 license, when the original charges were down to
7 whatever. They would allow a one year or even
8 less, I believe.

9 A. It was --

10 MR. HAEG: I'm not sure on that.

11 A. It was --

12 MR. HAEG: All I know is they were far
13 less severe than what Scot Leaders changed at the
14 last minute. And Mr. Cole said he could do
15 nothing to enforce.

16 THE COURT: Okay. So --

17 MR. HAEG: And -- and --

18 THE COURT: Just wait. Just --

19 MR. HAEG: Okay.

20 THE COURT: Was the original proposal ever
21 reduced to writing?

22 MR. HAEG: No.

23 THE COURT: Okay. And so there was a
24 change of plea hearing scheduled?

25 MR. HAEG: Yeah.

1 THE COURT: And the day before the change
2 of plea schedule, Mr. Cole tells you that things
3 have changed?

4 MR. HAEG: Yeah.

5 THE COURT: And Leaders is not going to
6 honor what you believe had been the terms of the
7 agreement?

8 MR. HAEG: Mr. Cole said that he could not
9 believe that it happened, that he -- it had a
10 binding plea agreement, and then -- well, he said,
11 binding agreement. And then he says, I can't do
12 anything to enforce it because, quote/unquote, I
13 can't do anything to piss Leaders off, because I
14 still have to be able to make deals with him after
15 your case is finished.

16 THE COURT: Okay. So did you guys go into
17 court the next day?

18 MR. HAEG: Nope. Mr. Cole said, we can't
19 go in. We -- telephonically we entered a plea of
20 not guilty.

21 THE COURT: Okay. And you -- the terms of
22 the agreement, as far -- what you're telling me is
23 that particular charge, misdemeanor, open
24 sentencing, so the judge would have had discretion
25 between zero and one year in prison; right?

1 MR. HAEG: Yeah.

2 THE COURT: And whatever the range in the
3 fine is?

4 MR. HAEG: Yeah.

5 THE COURT: And whatever sort of --

6 MR. HAEG: And --

7 THE COURT: Just wait.

8 MR. HAEG: Okay.

9 THE COURT: And whatever sort of
10 forfeiture of licensing or planes that the statute
11 allows?

12 MR. HAEG: Correct.

13 THE COURT: Okay. And was -- I'm not
14 familiar with the statute, off the top of my head.
15 Was there a -- does the statute include something
16 that says there can be a license forfeiture for up
17 to one year or up to five years or up to 10 years?
18 Is there anything like that?

19 MR. HAEG: I'm sure there is.

20 VOIR DIRE BY THE COURT:

21 Q. Do you know?

22 A. It was between one and three years.

23 Q. That's what the statute says?

24 A. Yeah. That was what the agreement was
25 going to be.

1 Q. Okay.

2 THE COURT: So let me hear from Mr. Cole
3 about what he currently can tell us about what the
4 agreement had been.

5 THE WITNESS: Okay. So it's been a long
6 time.

7 VOIR DIRE BY THE COURT:

8 Q. I understand.

9 A. We're talking 15 years. But what David
10 has left out a little bit here is the condition
11 that he was in when he was originally -- the
12 search warrants were originally served on him.
13 That happened in April of 2004. He was a big game
14 guide. He had six to eight brown bear hunters
15 that were scheduled -- that he was scheduled to
16 take out that spring. And to him, it's my
17 recollection those were 15 to \$20,000 hunts.

18 And he had just been searched. His wife
19 was in town. They had gone to his house. They
20 had searched his lodge. And they'd found evidence
21 supporting the claims that Mr. Haeg had killed
22 some wolves. And that was an investigation that
23 Trooper Gibbens was engaged in.

24 At that time, the state had just started
25 wolf hunting again. And the governor had gone

1 out, I thought, on a limb to allow aerial wolf
2 hunting, which was a very unpopular thing in some
3 parts of the country and in the state.

4 And when David came in with his wife, he
5 was shocked, maybe? Couldn't understand how they
6 could do this and what could happen --

7 Q. When you say "came in," you mean came into
8 your office to talk to you about what happened?

9 A. He came into my office. Actually, he went
10 to Kevin first. And Kevin couldn't handle him.
11 So Kevin called me, asked me to handle David, and
12 he took Mr. Zellers. And I set up --

13 MR. HAEG: Can I ask who Kevin is?

14 A. Kevin Fitzgerald.

15 MR. HAEG: Okay.

16 A. So just looking at the case, Judge, it was
17 a bad case.

18 VOIR DIRE BY THE COURT:

19 Q. "Bad case," meaning bad for the defendant
20 or bad for the state?

21 A. Is bad for the defendant. And -- and
22 the --

23 Q. Okay. All right. That's --

24 A. And you have to understand at the time,
25 it's not the case now, but the real motivator

1 behind all this is under A.S. 08.54.605. At that
2 time, if a guide got a sentence on any kind of a
3 hunting or a federal/state hunting charge and
4 received a fine of more than \$1,000, then they
5 automatically lost their right to reapply to be a
6 guide for five years.

7 And I had just -- no, I don't know whether
8 I had or not. But I had dealt with this issue
9 many times, and I -- and I had a sentencing, but I
10 think it was later I had a sentencing.

11 But anyway, so, I mean, Fish and Game
12 cases get a thousand-dollar fine for nothing. You
13 know, Bristol Bay, they give \$2500 fines, without
14 a blink, for strict liability. And this case was
15 going to go over a thousand-dollar fine. There
16 was no doubt, if he went in open sentencing.

17 But -- but the critical thing is, when
18 David came in, he had these hunters coming in.
19 And so he wanted me to make sure that he could get
20 and service all these hunters that he had in the
21 spring of 2004.

22 Well, the state -- I had to go to the
23 state to do that, because they could have charged
24 him immediately. And if they had charged him,
25 they could have gotten a bail condition that he

1 not provide these services, I thought. I could be
2 wrong. But I was --

3 MR. HAEG: They cannot put you out of
4 business until you're convicted.

5 THE COURT: Just wait. Wait.

6 MR. HAEG: Okay.

7 THE COURT: Let him finish his answer.

8 A. I don't --

9 THE COURT: I'll give you a chance to
10 talk, but I want to hear from him.

11 A. So I was concerned about that.

12 The other thing is -- and I can't remember
13 the -- whether they took the plane at that time or
14 not. And David would know that, because the plane
15 is very special to him. I can't remember what the
16 deal was with that.

17 But in order for us, in my own mind --
18 because I looked at the evidence. I talked to
19 David. He admitted killing the wolves. There
20 were six. He admitted taking them. He had
21 falsified documents as a guide. That was the
22 worst thing you could do. He had gotten a -- he'd
23 reported that they were taken while he was
24 trapping. That was a lie.

25 I knew from my experience, and I've done

1 this with more guides than anybody, that lies by
2 guides can be career-ending. Because, you know,
3 we hold our guides to such high standards. So I
4 knew that there were big issues in his mind, and
5 he wanted to save his guide business.

6 So I went to Leaders. And we struck a
7 deal that he wouldn't file, that David would be
8 able to do this, but he wanted to know where the
9 location -- he wanted a statement. And he wanted
10 to know the location of where the wolves were
11 shot.

12 We kind of got through that period. That
13 was in April and May. And David was allowed --
14 VOIR DIRE BY THE COURT:

15 Q. So he gave -- this is the statement that
16 he's talking about? He went and gave some sort of
17 statement to the state?

18 A. Yes.

19 Q. And part of the purpose of that was to
20 delay the charging and certainly the resolution of
21 the -- of any sentence until after the upcoming
22 hunt season?

23 A. Because, in my opinion, I've been doing
24 this for a long time --

25 Q. Right.

1 A. -- there's -- there's a couple ways you
2 handle these cases. One of them you say, screw
3 you; knock yourself out, state; bring your
4 charges; we'll be in trial. But then you have a
5 more difficult time getting a deal later on.

6 On the other hand, if you come forward,
7 you give them a good-faith proffer, you work with
8 them, you show contrition, you take some time off,
9 you have the ability to work a better deal at the
10 end. And that was always what my goal was. My
11 goal was to get him back to guiding as soon as I
12 could. That's what he wanted.

13 Q. But the -- but at least the interim
14 arrangement was give the statement and delay
15 charging and certainly delay resolution and, thus,
16 complete the -- whatever it was, six, seven,
17 eight, 10 -- the planned hunts, the scheduled
18 hunts?

19 A. Yes.

20 Q. Okay. Was there anything in writing that
21 said, you know, in exchange for this statement,
22 you get X, Y and Z?

23 A. There wasn't at the time. And that --

24 Q. There was not?

25 A. It was not at the time. And that -- you

1 know, and -- and it -- I should have done a better
2 job on that. There's no doubt about that.
3 However, I did -- when David fired me, Chuck
4 Robinson called me. And he said, hey, what about
5 that statement? And I said, well, you know, he
6 had king for a day. Now, that's not -- my
7 understanding is --

8 MR. HAEG: Okay. What's that mean? Can
9 you tell me what that means, please.

10 A. That's use immunity.

11 THE COURT: Hey, hey, just let me --
12 taking notes here, so hang on.

13 A. That's not transactional immunity. I
14 don't remember ever saying "transactional
15 immunity." You're going to have to show me that,
16 David. In fact, I -- I wrote just exactly the
17 opposite.

18 I'm -- and so I wrote a letter to Scot
19 Leaders after David fired me, and I confirmed that
20 David had use immun- -- what we call "king for a
21 day" use immunity for the interview that he gave
22 back in April. And I never heard anything other
23 than that. I -- I wasn't part of the --

24 MR. HAEG: The problem is, is --

25 THE COURT: Just wait. Just wait.

1 VOIR DIRE BY THE COURT:

2 Q. You thought that the state agreed not to
3 utilize whatever Haeg said in this statement,
4 against him?

5 A. Yeah.

6 Q. Okay. And -- but that was, again, not in
7 writing?

8 A. Not in writing.

9 Q. All right. So then when Haeg fires you,
10 Mr. Robinson takes over. Robinson contacts you to
11 talk about what -- you know, what the status of
12 the situation is?

13 A. He contacts me about the same thing
14 David's talking about: Should we file this motion
15 to enforce? What about this interview? Was he --
16 you know, there was something there. And I was
17 like, well, yeah, of course it was. It was king
18 for a day. And that's what I wrote in the letter.

19 MR. HAEG: Can I say something, please.

20 THE COURT: Just a minute.

21 So that's the -- in the testimony from the
22 bar association, when you were talking, Mr. Haeg,
23 about whether you ever instructed somebody to file
24 a motion, it's the motion to enforce what you
25 thought was whatever kind of agreement the state

1 had given you that prompted you to give the
2 statement; right?

3 MR. HAEG: We also gave up a year of
4 guiding after that. We did --

5 A. No, no.

6 MR. HAEG: -- the spring bear hunts.

7 THE COURT: Just hang -- slow --

8 MR. HAEG: And then Mr. Cole says, we got
9 this deal; cancel all your fall bear hunts and
10 moose hunts. And we did. And so we gave up a
11 whole year. And those hunts would have occurred
12 in September and October. Mr. Cole's billing
13 statement shows --

14 THE COURT: Just --

15 MR. HAEG: -- that he billed me for
16 open sent- --

17 THE COURT: Hang on.

18 MR. HAEG: -- talking to the prosecutor
19 for open sentencing in -- in August. We did
20 not --

21 THE COURT: Hang on, just a sec.

22 MR. HAEG: -- guide for September and
23 October.

24 THE COURT: Did you guide in --

25 MR. HAEG: And then in November, they

1 changed the deal.

2 THE COURT: In April is when the search
3 occurred?

4 MR. HAEG: Yes.

5 THE COURT: And did you have bear hunts
6 scheduled for, you know, May, June, July, August?

7 A. Just --

8 THE COURT: I just asked --

9 A. -- just Aug- -- April.

10 THE COURT: Is that --

11 MR. HAEG: April, yeah.

12 THE COURT: I'm sorry, in April?

13 MR. HAEG: Yes.

14 THE COURT: And did you do those hunts?

15 MR. HAEG: Yes.

16 THE COURT: And so there -- he said
17 something, there were -- I don't know what he
18 said -- six, eight hunts that had been scheduled
19 at the time of the search warrant? Was that
20 roughly right?

21 MR. HAEG: Yeah.

22 THE COURT: And did you do those hunts?

23 MR. HAEG: Yes.

24 THE COURT: Okay.

25 And then there were some fall hunts --

1 MR. HAEG: Then we made a plea agreement
2 in August. And we canceled our September and
3 October guiding season, in reliance on that plea
4 agreement. And then it was broken, and nobody
5 enforced it. And I know that is now wrong on so
6 many levels, it's unbelievable.

7 And something else I want to state --

8 THE COURT: Just slow down. Slow down.

9 MR. HAEG: -- is that --

10 A. Judge?

11 MR. HAEG: Okay.

12 THE COURT: David, wait.

13 MR. HAEG: The --

14 THE COURT: Wait. I'm trying to help you
15 here. You've been living this for whatever it is,
16 15 years. You're -- know this inside and out.
17 Okay? You have to slow down and let me understand
18 the context of what you're talking about. If you
19 don't do that, you're going to lose me and I'm not
20 going to understand. So I need you to help me
21 understand what's going on.

22 So let me --

23 MR. HAEG: Can --

24 THE COURT: -- explain to you where I'm a
25 little bit confused so you can clarify my

1 confusion.

2 All right?

3 A. Judge, can I just --

4 THE COURT: Just wait. Just wait.

5 When did you think you got this deal about
6 delaying, you know, the one year of no hunting?

7 MR. HAEG: In -- it would have been July,
8 August.

9 THE COURT: So -- and you think that
10 sometime in July and August of '04, you got --

11 MR. HAEG: This -- in -- in August, he
12 billed me for talk- -- for --

13 THE COURT: Listen to --

14 MR. HAEG: -- talking with the prosecutor,
15 an open sentencing plea agreement.

16 THE COURT: When did you think you made
17 some agreement that meant that you had to give up
18 guiding for a year? Sometime in July and August?

19 MR. HAEG: Yes. Yeah.

20 THE COURT: And when would the year -- the
21 year would have started in July or August?

22 MR. HAEG: Yes.

23 I'd like to say something --

24 THE COURT: And when did you --

25 MR. HAEG: -- if I can.

1 THE COURT: -- get -- when did you have
2 Mr. Cole no -- stop representing you?

3 MR. HAEG: Think it would have been about
4 maybe December of -- November's when the shit hit
5 the fan. Scot changed the charges probably
6 December. I -- I could dig that up.

7 THE COURT: Okay. You said that the --

8 MR. HAEG: I would like to --

9 THE COURT: You had said that the --

10 MR. HAEG: Can I just get one thing out
11 before I lose my --

12 THE COURT: I don't want you to lose --

13 MR. HAEG: -- composure?

14 THE COURT: -- your mind.

15 MR. HAEG: Okay. Can I get something out?

16 THE COURT: Sure.

17 MR. HAEG: Okay. The statement that I
18 went in and gave, that everybody, even Scot
19 Leaders, agree it was given -- you know, the state
20 obviously doesn't agree that I had transactional
21 immunity, even though people have testified.

22 But Scot Leaders agrees I had immunity
23 according to Evidence Rule 410 --

24 THE COURT: You --

25 MR. HAEG: -- which means any statement,

1 anything given for -- in the course of plea
2 negotiations shall not be used in any civil,
3 administrative, or legal proceeding, period. The
4 charges that I went to jury trial on quoted my
5 statement and forced me into trial. Chuck
6 Robinson protested it. The state never did
7 shit -- never did anything about it. And I was
8 going to say "shit," and I'll retract that.

9 THE COURT: I've heard that before.

10 MR. HAEG: And, and the map that I made
11 during my statement was the -- the primary exhibit
12 against me at trial. And so you understand how
13 egregious that was. The map I made for a
14 statement for a minor plea agreement was used
15 against me at trial, and they took my guide
16 license for life. And that's why I'm so angry,
17 is --

18 A. Judge?

19 MR. HAEG: -- it's 15 years down the road,
20 and I don't --

21 THE COURT: Haeg, stop.

22 MR. HAEG: -- have another life.

23 THE COURT: Stop.

24 MR. HAEG: I can't rewind the clock back
25 and have another life. Mine's gone.

1 THE COURT: I'm sorry you think that. I
2 mean, I understand why you're upset. But if you
3 think that your life is over, you're wrong.

4 MR. HAEG: Okay.

5 A. I just want to correct --

6 VOIR DIRE BY THE COURT:

7 Q. Go ahead.

8 A. -- one thing. You're talking about the
9 motion that David wanted to have filed?

10 Q. Right.

11 A. That -- that all has to do with the
12 enforcement of the plea agreement that he thought
13 we had prior to the sentencing. The transactional
14 stuff never came up while I was there, number one.

15 And, number two, I told Mr. Robinson --
16 his investigator called me, tape-recorded me. I
17 talked to Chuck Robinson. I told him, look, if
18 you guys want to file the motion, go ahead. I
19 said, you -- they had the opportunity to file.

20 Q. And the motion that you're talking about,
21 that you said go ahead, was to --

22 A. So --

23 Q. -- govern the use of the statement Haeg
24 had given -- no?

25 A. No. It has nothing to do with that.

1 Q. Okay.

2 A. It only has to do with the plea, what
3 agreement was in place in September of 2004. We
4 had been negotiating a deal. Because, in my own
5 mind, the state was very clear. They were going
6 to suspend David's license for a significant
7 period of time. And I was working on getting that
8 down as much as possible. I thought -- they
9 initially said five years, three years? I don't
10 know. I can't remember.

11 I just remember that when we originally
12 talked, we finally got it to a period where I got
13 to argue not more than one year -- or -- or no,
14 that the judge should impose one year. And he was
15 going to argue that the judge should impose a
16 three-year. And that had some small jail
17 component that he was going to -- is my -- my
18 recollection.

19 Q. So it -- you think that somewhere in
20 September-ish, fall of '04 --

21 A. August, September.

22 Q. Okay. Late summer --

23 A. We -- we always talked, you know --

24 Q. Right. I understand.

25 A. -- on the phone.

1 Q. But --

2 A. Yeah.

3 Q. -- just somewhere around that time period,
4 you had an agreement with Leaders that would have
5 him plead to something?

6 A. Yes.

7 Q. And you got to argue for no more than a
8 year --

9 A. Yes.

10 Q. -- of license suspenditure [sic], and the
11 state got to argue for three to five -- more than
12 one year?

13 A. And the whole thing was couched, because
14 in those days, you had to sent- -- your -- your
15 composite sentence, your -- your jail time
16 couldn't be more than five days. Because if it
17 was, then you would lose your license for five
18 years on any count. And it couldn't be for more
19 than a thousand dollars on any count. This is the
20 old A.S. 08.54 --

21 Q. So the component that would allow this
22 argument by you that he get no more than one year
23 necessitated that he receive no more than five
24 days and no more than a thousand-dollar fine?

25 A. On every count. Yep.

1 But again, the whole focus the whole time
2 for six months leading up to this was, I don't
3 want to lose my guide license. And I understood
4 that. That's what I do. I represent guides, and
5 I help them keep their licenses.

6 So we knew early on, I -- and -- and
7 I'm talking (indiscernible) --

8 Q. Okay. I understand what you're trying to
9 get at.

10 But what I don't understand is you think
11 you had an arrangement with Leaders --

12 A. Okay. I'll explain.

13 Q. -- to allow this open sentencing --

14 A. No.

15 Q. -- with that --

16 A. Oh, just a partial open sentence?

17 Q. Right.

18 A. Okay. So then what happens? As part of
19 that deal --

20 Q. So did you have -- I mean, did you have
21 something in writing?

22 A. No. We never had anything in writing.

23 Q. But you think you had an oral agreement
24 with Leaders?

25 A. Yeah. It --

1 Q. Tell me what the component of the
2 agreement was.

3 A. It was suspended time, small amounts of
4 jail time, fines --

5 Q. Below five days? Below --

6 A. Below that.

7 Q. -- a thousand dollars?

8 A. The critical thing was we were pleading to
9 a crime, a big game violation, that allowed us to
10 argue one year loss of license. And they got to
11 do three.

12 But the -- the other kicker in this thing
13 is David had this favorite plane of his, that the
14 troopers had seized. Because that was the plane
15 that was used to kill the wolves. And he'd put a
16 lot of money into it and a lot of time. And they
17 wanted to forfeit that, which in my experience,
18 they were going to win.

19 I've represented guides and outfitters
20 who've lost and given up airplanes, boats, rifles,
21 whatever. When they commit illegal acts, the
22 state forfeits their stuff.

23 So that was a problem for David. He did
24 not want to lose that airplane, and he -- he told
25 me that. And I kept telling him, David, you can

1 get another plane, but you are not going to win on
2 this forfeiture. And he said, well, I want you to
3 run it by Leaders and see if he will allow me to
4 argue open sentencing. Just go in and plead
5 guilty to this charge and -- and plead open
6 sentencing.

7 Now, I have a problem with prosecutors
8 that won't do that. I've always had a problem
9 with that, Judge. I was a prosecutor. I kind of
10 figure if your deal isn't going to stand up to a
11 judge open sentencing, then as a prosecutor, you
12 know, you -- you've got a problem.

13 But -- but Leaders -- so initially,
14 Scot says --

15 Q. Did he -- he refused that?

16 A. No. Initially, he said yes, over the
17 phone.

18 And then David's right, when we got --
19 when we were getting ready to go out and do this
20 sentencing, he called up and said, I'm not going
21 to do that. The troopers have vetoed this. They
22 don't want to give him -- they don't want to have
23 the option of getting the plane back.

24 MR. HAEG: The problem is --

25 THE COURT: Just wait.

1 MR. HAEG: -- is that I --

2 THE COURT: Just --

3 (Indiscernible - simultaneous speech)

4 MR. HAEG: -- gave up my --

5 THE COURT: Just wait.

6 MR. HAEG: -- guide year in the interim --

7 THE COURT: Mr. Haeg.

8 THE WITNESS: Wait.

9 MR. HAEG: -- and they can't do that after
10 I have placed --

11 THE COURT: Mr. Haeg.

12 MR. HAEG: -- detrimental reliance on it.

13 THE COURT: Stop.

14 A. So the -- but this happened in like
15 August. I mean, I -- I don't know what he's
16 talking about, this detrimental reliance. All
17 this happened in like August, and we went into
18 sentencing.

19 But anyway, so I was --

20 MR. HAEG: The sentencing was --

21 A. -- unhappy. I was unhappy with this,
22 Judge. Okay? And I told David that. And he had
23 all his people there.

24 I got on the phone that night, and we
25 worked out a different deal. And that deal got

1 David -- would have given David his guide license
2 back 16 months from the date of the events. He
3 would have been guiding in the -- he was getting
4 his license back in July of 2005. He was only
5 going to miss one season under my deal, which
6 he -- David agreed to. We agreed to the jail
7 time. We agreed --

8 MR. HAEG: I never agreed to that.

9 THE COURT: Just wait.

10 A. We sat in the room that night in my office
11 with your friends, and we made a deal with Scot
12 Leaders.

13 That's what I thought. Maybe David
14 doesn't think that. I apologize for that. But we
15 had an understanding.

16 VOIR DIRE BY THE COURT:

17 Q. Was Leaders in the room, or was he on the
18 phone?

19 A. No, he's on the phone.

20 Q. So, I mean, is this one -- I mean, is it
21 active negotiation where Leaders was on the phone
22 and him there? Or is it you're on the phone and
23 you talk to him?

24 A. David's in one of my other conference
25 rooms. I'm in my office. We're talking. And

1 then I'm going back and forth.

2 Q. Okay. And what do you think was the
3 ultimate result of that negotiation?

4 A. I thought we had a deal whereby David --
5 we were going to be able to argue one to three --
6 no. No. Excuse me. That was what it was going
7 to be. And that's why we're -- we were calling
8 the witnesses. What it was going to be was that
9 he would be -- he would get his license back in
10 16 months. It was going to be like July 1st,
11 2005.

12 Q. Sixteen months after the wolf kill?

13 A. Yep.

14 And that's why I had encouraged -- we knew
15 David wasn't going to guide -- that the -- that if
16 they -- the other part of this prob- --

17 Q. But what -- anything about the plane?

18 A. The plane was going to be forfeited.
19 Yeah.

20 Q. Did you guys -- you thought you had an
21 agreement between Mr. Haeg and the state. Did you
22 guys, you know, set a change of plea? Start to
23 effectuate that deal?

24 A. I have a hard time remembering exactly
25 what happened after that. Mr. Leaders changed the

1 plea -- the -- amended the charges so that David
2 couldn't come in and plead guilty at the hearing
3 the next day or two days later or whatever it --
4 the next day I think it was going to be. Or he
5 filed that maybe a day or two before. But we had
6 an agreement that was going to allow David to get
7 his guide license in 16 months.

8 Q. So what happened to that deal?

9 A. And what happened to that deal? He -- if
10 he had just listened to me, we would -- he would
11 have been done. But what happened was --

12 MR. HAEG: What happened is --

13 A. -- that --

14 MR. HAEG: -- I didn't agree to it.

15 THE COURT: Let him speak. Then you can
16 speak.

17 MR. HAEG: Okay.

18 A. Then --

19 THE COURT: You're not going to be rude
20 and obnoxious during this thing.

21 All right?

22 MR. HAEG: I'm sorry. It just --

23 THE COURT: But just --

24 MR. HAEG: -- you know -- okay.

25 THE COURT: -- hold your tongue for a

1 while. That's all I'm asking you.

2 MR. HAEG: Okay.

3 THE COURT: I'm going to let --

4 MR. HAEG: I thought I'd been doing pretty
5 well --

6 THE COURT: I'm going to let you --

7 MR. HAEG: -- at that, but --

8 THE COURT: You're doing pretty well.

9 MR. HAEG: Okay.

10 THE COURT: I just want you to continue
11 doing well.

12 MR. HAEG: Okay.

13 A. Then this issue with the plane came up.
14 And David came to me and said, well, look, I want
15 that plane back. And he said, how about -- I have
16 a Super Cub; let's switch the Super Cub for the
17 PA-12.

18 And I said, well, actually, that makes a
19 lot of sense. This PA-12, the troopers can't use
20 that. It's not worth anything to them. They'd
21 get a Super Cub; they use Super Cubs all the time.
22 That makes sense. That was a good idea, I
23 thought.

24 And so I floated that by Scot Leaders, and
25 he said -- he came back and said no. And I'm

1 like, really? We could get this thing all done.
2 And he said no.

3 So I told that to David. And that turned
4 into, in my opinion, the reason why David fired
5 me. He lost confidence in me. He wanted to file
6 this motion. He was never happy that -- and --
7 and from my perspective, Judge, just so that you
8 know, I never wanted David to go into an open
9 sentencing situation. And I repeatedly told
10 David, don't do anything where you're going to go
11 in open sentencing. You're a guide. All the
12 judge has to do is one of two things --

13 VOIR DIRE BY THE COURT:

14 Q. Right. Six days, \$1,001.

15 A. -- over a thousand or suspend your --
16 revoke your license, your hunting license. I
17 mean, just revoke your license for five years, and
18 you're not going to guide. That you -- you had so
19 many downsides to an open sentence. And I told
20 him that. And we'd have these conversations.
21 David's right. He'd come in. He'd bring his
22 friend. They'd argue, oh, we want to file this.
23 And then we'd talk. And he'd say no; no, I --
24 I -- I get it; I --

25 Q. So the bottom line, though, is that the --

1 Leaders was willing to do the 16-month license
2 suspension?

3 A. Yep.

4 Q. Insisted on forfeiture of the particular
5 plane used for the wolf kills. And as a result,
6 Mr. Haeg said, I'm not pleading to that?

7 A. He ultimately said that. He hired Chuck
8 Robinson.

9 Q. Okay. I mean --

10 A. They got to --

11 Q. -- he got rid of you?

12 A. Yeah. Yeah, he fired me. And -- and --
13 and he could have filed all those motions, and he
14 could have done all that.

15 Q. Okay.

16 THE COURT: So, Mr. Haeg, I get it. I see
17 your hand. You're being very polite. Do you
18 disagree with that recitation of the progression
19 of the negotiations?

20 MR. HAEG: Yeah, I do.

21 THE COURT: Okay. So you tell me how you
22 differ.

23 MR. HAEG: A, on November 9th, nobody
24 agreed that there was do -- deal, including
25 Mr. Cole. Fact, all the witnesses that there --

1 were there, we were all incredibly angry that Scot
2 Leaders had pulled the rug out from under us at
3 the last minute after we'd given up our fall guide
4 season, after I'd flown everybody in.

5 A. He said --

6 THE COURT: Okay. Just --

7 A. -- he said November --

8 THE COURT: No, no, wait.

9 A. -- but he means September 9th.

10 THE COURT: So, well, just what -- on
11 the eve --

12 MR. HAEG: And so there was --

13 THE COURT: Mr. Haeg.

14 MR. HAEG: -- there never was a deal --

15 THE COURT: Mr. Haeg.

16 MR. HAEG: -- after that.

17 THE COURT: Before that --

18 MR. HAEG: And --

19 THE COURT: Mr. Haeg, listen to me. This
20 is critical. When you walked in the day before
21 and you'd gather all your witnesses to come in
22 here to do what you think was going to be an
23 opening sentencing -- and that's why you had the
24 witnesses, because you were going to convince the
25 judge that you were a hell of a great guy and you

1 should not lose your livelihood. Okay? That was
2 the whole goal; right?

3 So what did you think, on the eve of that
4 hearing, was the deal?

5 MR. HAEG: We'd go in, be open sentencing,
6 and it would be between one and three years on my
7 guide license, and the plane would be up in the
8 air.

9 THE COURT: Okay.

10 MR. HAEG: Okay. And --

11 THE COURT: Okay. Just stop. Just let me
12 write that down.

13 So it was --

14 MR. HAEG: And --

15 THE COURT: Just wait.

16 It was possible that you would have had
17 your license suspended for more than a year, up to
18 three?

19 MR. HAEG: Correct.

20 THE COURT: And also that you might have
21 lost the plane that you used for the wolf kills?

22 MR. HAEG: Correct.

23 THE COURT: Okay. So --

24 MR. HAEG: Can I say something?

25 THE COURT: No. Just wait.

1 So I'm trying to understand your comment
2 of a detrimental reliance. Because you said that
3 you stopped hunting for a year, but you possibly
4 could have lost your sentence -- you lost your
5 license for up to three years.

6 MR. HAEG: But we had already given that
7 year up, and it was gone. And I never even got
8 credit for it. The U.S. Supreme Court says if a
9 defendant prior to being sentenced or -- or in
10 reliance on a -- on a -- on a -- on a
11 prosecution's deal, an offer that you agree to, so
12 it's a plea agreement, it's a Rule 11 plea
13 agreement, if you put detrimental reliance on it,
14 you get that deal, not some other deal that they
15 cook up later --

16 A. Judge?

17 MR. HAEG: -- the 16-month. You don't get
18 that deal.

19 THE COURT: I understand that.

20 MR. HAEG: You get the deal you agreed to
21 at the time, and that's --

22 THE COURT: If --

23 MR. HAEG: -- why I have a problem --

24 THE COURT: If you agreed to it.

25 MR. HAEG: -- is I gave up the guiding for

1 this deal, not some other deal that --

2 THE COURT: If you agreed to it.

3 MR. HAEG: -- supposedly happened after
4 November 9th. I gave it up for this deal.

5 THE COURT: If you agreed to it.

6 MR. HAEG: I agreed to it.

7 THE COURT: Okay. And you could have
8 lost --

9 MR. HAEG: He told me that Scot Leaders
10 agreed to it. I gave up guiding. And then come
11 the date that we're supposed to go get sentence,
12 and they said no, there's no deal; he changed the
13 charges; he wants you to throw in the plane. And
14 this is why --

15 THE COURT: Okay. Now, let -- now --

16 MR. HAEG: -- I'm really upset.

17 THE COURT: Now, listen to this question.

18 MR. HAEG: Can I say one thing, please.

19 THE COURT: Yes, you can answer my
20 question.

21 MR. HAEG: Please, Your Honor.

22 THE COURT: No.

23 So the -- he reneged on the eve of the
24 deal?

25 MR. HAEG: Correct.

1 THE COURT: Mr. Cole said that there was
2 then additional negotiations. Were there
3 negotiations?

4 MR. HAEG: He started doing all kinds of
5 stuff. I said, I want this deal. And he's like,
6 well, I got this; I got that. I'm like, I don't
7 want those deals. I want this one that I agreed
8 to prior.

9 THE COURT: Okay. I know that --

10 MR. HAEG: And -- and --

11 THE COURT: -- I know you wanted --

12 MR. HAEG: Let me get --

13 THE COURT: -- the old deal.

14 Were --

15 MR. HAEG: Can I get --

16 THE COURT: No. Just listen --

17 MR. HAEG: -- one thing out?

18 THE COURT: -- to my question.

19 Did he say to you, I've got a revised
20 deal, this 16 months from the wolf-kill date?

21 MR. HAEG: Yeah. He said, I've talked to
22 Scot, and we got all this revised stuff. Then I
23 asked him, I'm like, can Scot Leaders change the
24 deal again a second time after I agree to give him
25 the airplane? And he says, he says, well, I don't

1 think he'll do that.

2 In other words, he led me to believe that
3 Scot, after he got the -- Scot already got a year
4 of guiding out of me, changed the deal after the
5 year's gone. Now Mr. Cole wants me to give him an
6 airplane and tells me that after he has the
7 airplane, he can change the deal and ask for my
8 house or my kids. And I'm like, I'm not doing it.

9 THE COURT: I'm glad you didn't give up
10 your kids.

11 MR. HAEG: Well, how can you --

12 THE COURT: Mr. Haeg.

13 MR. HAEG: -- give a prosecutor --

14 THE COURT: Calm down.

15 MR. HAEG: -- something --

16 THE COURT: Calm down.

17 MR. HAEG: -- and --

18 THE COURT: Calm down.

19 MR. HAEG: -- and have him --

20 THE COURT: Calm down.

21 MR. HAEG: -- break the deal, and then ask
22 for something else, and your attorney says that --

23 THE COURT: Calm down.

24 MR. HAEG: -- he can do that?

25 THE COURT: Did you --

1 MR. HAEG: Tell me how that's possible.

2 THE COURT: -- agree to the 16-month
3 post-wolf-kill suspension?

4 MR. HAEG: No, I did not.

5 THE COURT: Okay. You agreed to nothing
6 after the open sentence one-to-three-year
7 proposal?

8 MR. HAEG: That's exactly right.

9 THE COURT: Okay. Was there a discussion
10 about exchanging the plane used for the wolf kill
11 with a Super Cub?

12 MR. HAEG: There was. I -- I talked about
13 that.

14 THE COURT: Did you make that proposal?

15 MR. HAEG: I did.

16 THE COURT: So you were proposing
17 additional terms that you had not originally
18 agreed to?

19 MR. HAEG: We talked about that. But then
20 when Mr. Cole said that if we did anything new,
21 Mr. Leaders could still break another deal, then I
22 was -- then I was not talking about any more
23 deals.

24 THE COURT: My point is that you had come
25 to what you thought was an agreement. And then

1 you wanted to change at least the plane
2 forfeiture, where you would exchange not the one
3 that you -- you would forfeit not the one you used
4 on the wolf kill, but instead --

5 MR. HAEG: I did not --

6 THE COURT: -- forfeit this --

7 MR. HAEG: -- agree to a deal. I said,
8 would they be willing at some -- for --

9 THE COURT: You made a proposal. That's
10 what I --

11 MR. HAEG: Yeah.

12 THE COURT: -- simply I'm asking. You
13 made a proposal, and you wanted Cole to explore
14 that, because you wanted to keep the one plane.

15 MR. HAEG: Correct.

16 THE COURT: And there --

17 MR. HAEG: But then when Cole said --

18 THE COURT: -- was never an agreement to
19 forfeit the Super Cub?

20 MR. HAEG: Correct.

21 THE COURT: All right.

22 MR. HAEG: And -- and the -- the key of
23 this, Your Honor, is that at the time, I knew
24 nothing, but I knew that when Mr. Cole said
25 Mr. Leaders could break the deal and ask for the

1 plane after he'd already got the guide year, when
2 we asked him if Mr. Cole could continue -- or
3 Mr. Leaders, excuse me -- basically, we asked him
4 if Mr. Leaders could continue breaking plea
5 agreements after we'd pay for them. Mr. Cole
6 says, well, I wouldn't worry about it.

7 Well, he -- he's not the one giving up the
8 airplane and the guide year and everything else.
9 Upon that, I knew that there -- no plea agreement.

10 THE COURT: Okay.

11 MR. HAEG: Mr. Leaders could say, we'll
12 give you no jail time --

13 THE COURT: Let's be clear.

14 MR. HAEG: -- no guides, you know --

15 THE COURT: I want to be clear about one
16 thing, and I need you to make sure that I
17 understand this correctly.

18 At the time when you thought you had a
19 deal, when you brought all your witnesses and
20 friends and your supporters in to testify, you
21 thought the deal was open sentencing with a
22 possibility of a suspension of your hunting
23 license between one to three years?

24 MR. HAEG: Correct.

25 THE COURT: And whether or not the plane

1 would be forfeited would be up to the judge;
2 correct?

3 MR. HAEG: Correct.

4 THE COURT: And the monetary fine, if any,
5 and the jail sentence, if any, were open terms for
6 the judge to decide?

7 MR. HAEG: Absolutely.

8 THE COURT: Okay. And that was the deal
9 that you think should have been enforced?

10 MR. HAEG: Absolutely.

11 THE COURT: And should be enforced now?

12 MR. HAEG: No.

13 THE COURT: Okay. What would -- then what
14 are we --

15 MR. HAEG: I've lost -- how do you, okay,
16 Mr. Haeg --

17 THE COURT: Well, what do you want --

18 MR. HAEG: -- you get a year on your guide
19 license. My guide license has been gone --

20 THE COURT: Mr. Haeg.

21 MR. HAEG: -- for 15 years now.

22 THE COURT: Mr. Haeg, let's assume, just
23 for purposes of discussion so I understand what
24 we're doing here, I come to the conclusion that
25 you had that deal and they reneged. Okay?

1 What -- do you want just a statement from
2 me saying the state reneged?

3 MR. HAEG: I want an --

4 THE COURT: Or do you want something else?

5 MR. HAEG: -- I want an order from Your
6 Honor declaring my conviction overturned and the
7 state is free to charge me again and we can start
8 plea negotiating again or we can go to trial --

9 THE COURT: Well, what the U.S. Supreme
10 Court says, if you had a deal that the state
11 reneges on, is you get the deal.

12 MR. HAEG: Not after you're convicted.

13 THE COURT: Well, you're wrong about that.

14 MR. HAEG: I don't think so.

15 THE COURT: I beg to differ.

16 MR. HAEG: Because my --

17 THE COURT: Well, you --

18 MR. HAEG: -- my deal was with --

19 THE COURT: Well, listen to me. You
20 want --

21 MR. HAEG: -- charges far less severe --

22 THE COURT: You want to start --

23 MR. HAEG: -- than I have now, so what --
24 you --

25 THE COURT: You want to start at ground

1 zero, where the suspension can be longer than
2 three years? Why would you want to do that?

3 MR. HAEG: I want to go back, be
4 unconvicted, and me and the state start fresh.
5 Because that's exactly what --

6 THE COURT: And what are you exposed to?
7 What's the maximum suspension you're -- that
8 you're exposed to, in your mind, if you go back to
9 ground zero and lose?

10 MR. HAEG: I don't know. What if I win?

11 THE COURT: Well, then you get nothing.

12 But if you lose, what do you think is the
13 maximum exposure? Has that -- have you thought
14 that through?

15 MR. HAEG: I don't know. I'm quite
16 certain the state could charge me with
17 first-degree murder, and I could go to jail for
18 the rest of my life so that the exposure's pretty
19 severe.

20 THE COURT: Let's try to be serious. I'm
21 taking this seriously. I want you to take it
22 seriously, too.

23 On the charges that they have brought
24 against you on the various hunting violations,
25 what do you think your exposure would be to a

1 license suspension? Do you know? You don't know?

2 MR. HAEG: I don't know.

3 THE COURT: All right.

4 But you don't -- you want to take that
5 unknown risk rather than going back to the deal
6 you thought you had?

7 MR. HAEG: Absolutely.

8 THE COURT: Okay. That's an interesting
9 calculation.

10 MR. HAEG: I want -- what I want, Your
11 Honor, and I'd think why everybody here, is we
12 want to have a fresh clean slate from the
13 beginning without an attorney that lies to me that
14 deals can't be enforced. And, you know, he's
15 saying that the plane was seized and all this
16 stuff happened. Every single warrant that was
17 used to seize my plane falsified where the
18 evidence was found to my guide area.

19 And the whole reason, the whole reason,
20 Your Honor, it was a guide crime is they said it
21 was all found in my guide area. And all of that
22 is a lie. They falsified this map. And there's a
23 recording of the state --

24 THE COURT: Let --

25 MR. HAEG: -- talking about before trial

1 falsifying the map. And they recorded
2 themselves --

3 THE COURT: Mr. Haeg.

4 MR. HAEG: -- talking about that.

5 THE COURT: Help me with one thing.

6 MR. HAEG: So it should never have been a
7 guide crime. There --

8 THE COURT: Help me one --

9 MR. HAEG: -- we shouldn't be talking
10 about a guide license suspension, because --

11 THE COURT: Help me with something here.

12 Did you not testify at trial that you
13 acknowledged killing the wolves outside of the
14 proper area?

15 MR. HAEG: Correct, I did.

16 THE COURT: And --

17 MR. HAEG: The evidence that the state
18 told me --

19 THE COURT: So --

20 MR. HAEG: -- to shoot them there was
21 removed out of the court record, and I do have a
22 problem with that. Because I work for the -- I
23 work --

24 THE COURT: Stop.

25 MR. HAEG: -- for a construction company

1 now --

2 THE COURT: Do you have additional
3 questions --

4 MR. HAEG: -- and when the state inspector
5 says to me to go dig --

6 THE COURT: Mr. Haeg.

7 MR. HAEG: -- in this salmon stream --

8 THE COURT: Mr. Haeg, do you have --

9 MR. HAEG: -- I go do it.

10 THE COURT: Do you have addition- --

11 MR. HAEG: And so when the state told
12 me --

13 THE COURT: Mr. Haeg.

14 MR. HAEG: -- to kill the wolves where I
15 did, I did do -- kill them there.

16 THE COURT: Mr. Haeg, you have --

17 MR. HAEG: It wasn't inside the open area,
18 but the state official told me to kill them there.

19 Then, to make it worse, they claim they're
20 all in my guide area so they can charge me as a
21 guide, because they should -- that's the reason
22 they made it a guide crime. Otherwise, it would
23 have been a violation of the wolf control program,
24 which, to my career, my license, would have been
25 like a traffic ticket, nothing.

1 They falsified everything to make it a
2 guide crime. And that's why, you know, we're
3 talking about this and that and a plea deal. I
4 know that Mr. Cole lied to me when he said we
5 couldn't attack the warrants that were all
6 falsified.

7 So I realize now the state, from the very
8 beginning, manufactured a guide case. And we
9 should never be talking about guide charges at
10 all, because they gave -- they gave me a permit to
11 shoot wolves from the air. They told me where to
12 shoot them. I went and shot them there. Then it
13 was realized that that isn't an open area and that
14 they weren't supposed to tell me there.

15 Well, is that my fault that they tell me
16 to go there, or is it their fault? And if that
17 isn't in my guide area, it obviously ain't a guide
18 crime.

19 I don't have a client with me. But what
20 they did is they said, rather than Mr. Haeg
21 killing the wolves here -- and this is where the
22 wolf control program was happening in half of
23 it -- he killed them over here; and since he's
24 allowed to guide here, but he isn't allowed to
25 guide here, we're going to charge him with

1 career-destroying guide charges.

2 And all that was a lie, and we can prove
3 it.

4 THE COURT: Okay. You have any --

5 MR. HAEG: That's why I'm upset, is it
6 should never have been a guide problem to begin
7 with.

8 THE COURT: Are you done?

9 MR. HAEG: Yes.

10 THE COURT: Do you have any questions --
11 you have additional questions for Mr. Cole?

12 MR. HAEG: I do, if I may.

13 THE COURT: Go ahead.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. HAEG:

16 Q. Is it true you believe Governor Murkowski
17 had called both my prosecutor and judge and told
18 them to make an example of me?

19 A. I said that might be a possibility.

20 Q. Okay. Is it true my plea agreement was
21 never placed in writing, because we were working
22 alone?

23 A. What do you mean, "working alone"?

24 Q. You stated exactly this in your
25 deposition, page 141. You said, the plea

1 agreement was never placed in writing, because we
2 were working alone.

3 A. I don't remember making that statement.

4 But --

5 Q. Okay.

6 A. -- sometimes I --

7 MR. HAEG: I'd like to point the Court to
8 page 141, Cole -- Brent Cole's deposition.

9 THE COURT: Do you have that?

10 MR. HAEG: I do.

11 THE COURT: Show it to him.

12 MR. HAEG: Well -- do you want it? Or --

13 THE COURT: Yes. If you're going to ask
14 him about it, you need to show it to him.

15 MR. HAEG: Well, it's -- this is all
16 record in the -- this case.

17 THE COURT: But he doesn't remember it.
18 And he gets to look at that.

19 MR. HAEG: Okay. Oh, do you want --

20 THE COURT: I want you show it to him.

21 THE WITNESS: Thank you.

22 Can I -- do you have the next page?

23 MR. HAEG: I don't.

24 THE COURT: Do you have the full
25 deposition?

1 MR. HAEG: I believe so.

2 THE COURT: Why don't you see if you can
3 find it.

4 This is a deposition? So it's not the
5 bar hear- --

6 MR. HAEG: No, this is a deposition in
7 this case.

8 THE COURT: And it's page 141?

9 MR. HAEG: Yep. Here's the whole thing.

10 A. Okay. Thanks.

11 I said that. I don't know why -- I can't
12 remember why I said that in the context.

13 BY MR. HAEG:

14 Q. Okay. And my next question is, what does
15 that mean, working alone?

16 THE COURT: Try to answer it.

17 A. I -- I -- I just -- it -- it doesn't make
18 sense to me, so I don't know. The best I can say
19 is, I was trying to resolve the case for you. I
20 was working with Leaders. That's -- you know,
21 that was the best I can do. I was trying to do
22 what -- what you asked me to.

23 Q. Is it true, because you didn't get it in
24 writing, my family and I paid a very terrible
25 price?

1 A. No. You could have done that -- you could
2 have enforced that through Mr. Robinson. I told
3 you that. You had the whole --

4 Q. The problem is Mr. Robinson --

5 A. Excuse me.

6 Q. -- said it's all water --

7 THE COURT: Mr. Haeg.

8 BY MR. HAEG:

9 Q. -- under the bridge with Mr. Cole --

10 THE COURT: Mr. Haeg.

11 Q. -- and I can't do anything.

12 THE COURT: Mr. Haeg, be polite. When
13 he's speaking, don't interrupt him.

14 MR. HAEG: Okay.

15 THE COURT: I won't let him interrupt you.
16 I know you're upset about this, but you have to
17 let him answer the question.

18 So continue your answer.

19 A. No. You fired me. I had a deal worked
20 out for you. You could have gotten it. You would
21 have been back in business in less than 16 months.
22 And you chose to go a different direction, which
23 was fine. You had the opportunity to -- before
24 the trial, to file all the motions and do whatever
25 you wanted. And you hired an -- an attorney to do

1 that.

2 THE COURT: Your next question.

3 BY MR. HAEG:

4 Q. Is it true Leaders, quote, changed the
5 rules, unquote, to be sure he got the airplane?

6 A. He would not allow you to go open
7 sentencing on the airplane; that's true.

8 Q. He changed the rules, in other words?

9 A. No. He just -- that -- that was a
10 statement that he made to me, and he came back and
11 said that that wasn't going to happen. We took
12 that in stride. We made another deal. You would
13 have been back in business shortly.

14 Q. So you would have never stated that
15 Leaders changed the rules?

16 A. I -- whether you say he changed this --
17 the rules, he changed the deal, he told me
18 originally that he would go open sentencing, which
19 I told you not to do. And I -- even to this day,
20 I would tell you not to do it. You would have
21 been convicted, and the same thing would have
22 happened to you if you had gone open sentencing.
23 But you wanted it. I tried to get it. He said he
24 would, originally, and then he said no.

25 Q. Okay. So you would have never stated that

1 Leaders changed the rules?

2 A. No, I -- I might have said that.

3 Q. Okay. So Scot Leaders changed the rules
4 to be sure he got the airplane?

5 A. You have to ask him.

6 Q. I want to know whether you stated --

7 A. I already told you I said that.

8 Q. Okay. Is it true that with nothing in
9 writing, Leaders could keep changing the plea
10 agreement over and over, however he wished to?

11 A. No. I don't believe that's true.

12 Q. So if you were asked that and you said you
13 didn't think that that was a concern --

14 A. I didn't think it was a concern.

15 Q. Is it true you told me to give up guiding
16 for the plea agreement?

17 A. I did, because it was always known from
18 the beginning you were going to lose your license
19 for at least a year. And why not start it early
20 and get it done? And it made it easier to
21 negotiate with him.

22 Q. Is it true Leaders agreed to give me
23 credit for this guide year if I gave it up before
24 I was sentenced?

25 A. If you took the deal, yeah. What happened

1 was, David, you didn't take the deal. Then you
2 went and you got convicted. You got into an open
3 sentence, which was what I told you not to do.
4 And then the judge out in McGrath didn't give you
5 credit for that time. That's not me. That's
6 because you chose not to take the deal.

7 Q. If the state testified at my sentencing
8 that they had no idea why I gave up guiding for a
9 year, would that be a true statement from the
10 state?

11 A. I -- I -- I was under the understanding
12 that they were going to be good with a six -- with
13 a year -- not more than a year; you were going to
14 lose your license for a year and that you were
15 going to get credit for that, yes. We were going
16 to make that argument, and I felt that they were
17 going to agree to it.

18 Q. In other words, Scot Leaders knew I was
19 giving up the guide year for a plea agreement?

20 A. I don't know what Scot Leaders knew.

21 Q. Did you ever tell Scot Leaders that I was
22 giving up a guide year?

23 A. I told him that you weren't guiding in
24 the -- in the fall of 2004, yes.

25 Q. Did you tell him why?

1 A. Yeah, I think so.

2 Q. Okay. So if he and Trooper Gibbens
3 testify at my sentencing they have no idea why I
4 gave up guiding for a year, that that means that
5 they testified falsely?

6 A. I can't tell you what they testified to or
7 whether they were false --

8 Q. Well, the court record --

9 A. -- or not. I just was --

10 Q. -- proves what happened. I'm just saying,
11 when they did so, they knew they were lying to the
12 court.

13 A. I don't know.

14 Q. Is it true Leaders would only change the
15 charges back if I also agreed to forfeit the
16 airplane?

17 A. That -- that's my recollection, yeah. And
18 you agreed to it, originally.

19 Q. Is it true you told me you could not
20 enforce the plea agreement, because you could not
21 do anything to piss Leaders off, as you still had
22 to be able to make deals with him after my case
23 was finished?

24 A. I said that. But what I meant was, what I
25 do is I deal with prosecutors day in, day out. If

1 they can't trust me and my word, then I can't get
2 good deals going forward.

3 I could always have enforced that. But as
4 I always told you, David, why would you do that?
5 Because then you are going to be in an open
6 sentence situation and you're going to lose your
7 guide license for five years. And that's what you
8 told me specifically you did not want to happen.
9 So I was trying to make a deal, and I did, that
10 got you your license in 16 months.

11 Q. So when you said that you couldn't do
12 anything to piss Leaders off, as you still had to
13 make deals with him after my case was finished, is
14 it true that you -- it was in your best interest,
15 and not mine, to not enforce the plea agreement?

16 A. I thought it was in your best interest,
17 David. Again, going into an open sentencing with
18 the statute under A.S. 08.54.605 was just suicide
19 for a guide.

20 MR. HAEG: I'd like to point out to the
21 Court that Cole deposition, page 137, Cole admits
22 that it was in his best interest not to enforce
23 the plea agreement.

24 Q. Is it true that because of what Leaders
25 did concerning my plea agreement, you are going to

1 be more careful in the future when dealing with
2 him?

3 A. Absolutely. That's true. I didn't --

4 Q. Is it true Robinson should have argued at
5 sentencing that my guide license suspension should
6 be ordered retroactive to reflect the time prior
7 to sentencing I was not acting as a guide?

8 A. I don't know the answer to that. I don't
9 know what his strategy was at your sentencing.

10 Q. Would you have ever stated this?

11 A. I don't know. I don't remember it.

12 Q. Would you have? Is that something that
13 you would now say, that Robinson should have tried
14 to get credit for that year?

15 A. Well, it kind of makes sense to me, yeah.

16 Q. Okay. Well, we have a record-- you
17 wrote a letter stating that Robinson should have
18 argued at my sentencing that I should get credit
19 to reflect the time that I was not acting as a
20 guide.

21 THE COURT: Do you have that letter?

22 MR. HAEG: Yes. Do you want it?

23 THE COURT: You want to show it to him?

24 Seems to me it's important to you, and you should
25 probably put it into evidence.

1 Do you want to ask him questions, or you
2 just want to put the letter in?

3 MR. HAEG: Well, you said, show him the
4 letter.

5 THE COURT: Well, if you're going to ask
6 him questions about it, then show it to him. If
7 you want to just put it in the record, go ahead
8 and put it in the record.

9 MR. HAEG: I don't know where it is in
10 here. Anyways, I don't need it in there. It's
11 got it right here.

12 THE COURT: Well, take your time.

13 MR. HAEG: I can, if you want.

14 THE COURT: Take your time. Because if
15 you just make a bold statement and you don't
16 support it, that's going to hurt your case. If
17 you've got --

18 MR. HAEG: Well, I thought he testified
19 that it would make sense that Robinson try to
20 get -- so --

21 THE COURT: You just made a representation
22 that he said something in writing.

23 MR. HAEG: Okay. Well, here, then.

24 THE COURT: So if you want to --

25 MR. HAEG: So --

1 THE COURT: -- show it to him, that's
2 fine.

3 MR. HAEG: Okay.

4 BY MR. HAEG:

5 Q. And look at the front. This is from --

6 A. You know, you --

7 Q. -- Marston & Cole. And right here.

8 THE COURT: Could you -- Mr. Cole, could
9 you --

10 Q. And I guess, can you read that into the
11 record?

12 THE COURT: Can you just give a -- the
13 date of the letter and --

14 A. Yeah.

15 THE COURT: -- to who it was addressed?

16 A. So this is the grievance that David Haeg
17 filed against me with the bar association, and I
18 had to write a letter of response to them.

19 THE COURT: Okay. So can you give me the
20 date of your response?

21 A. My response is March 30th, 2007.

22 THE COURT: Okay.

23 And so, Mr. Haeg, what's the section that
24 you want him to read?

25 A. He's -- he's highlighted it, Judge.

1 THE COURT: All right.

2 BY MR. HAEG:

3 Q. Okay. So you agree you --

4 A. Now, wait a minute. You asked me about
5 filing to -- to get credit for your guiding.
6 Right?

7 Q. Yep.

8 A. Well, that -- this has to do with: I'm
9 surprised Mr. Haeg did not file a motion to
10 suppress the evidence at trial.

11 Q. No. That's another part to it. Right
12 here.

13 THE COURT: Show him the part that you
14 think is pertinent.

15 MR. HAEG: I had it, and then he flipped
16 by it.

17 THE COURT: Take your time and look for
18 it. How -- let me just ask you a question. How
19 much longer do you think your questioning of
20 Mr. Cole's going to be?

21 MR. HAEG: Well, I need to get going here,
22 so --

23 THE COURT: Well, my question to you is,
24 how long do you think it will be? I'm trying to
25 get people to -- time -- chance to go to the

1 bathroom. Are you going to be --

2 MR. HAEG: Just a couple minutes.

3 THE COURT: Five more minutes? Okay.

4 Then we'll complete your questioning of him, and
5 then we'll take a break.

6 Mr. Haeg, well, let me suggest this. Why
7 don't we take the break now. You look in the
8 documents, to see --

9 MR. HAEG: No.

10 THE COURT: -- if you can find --

11 MR. HAEG: We'll just -- I'd like to get
12 him to --

13 A. He can always bring it later.

14 MR. HAEG: -- finish here, so --

15 THE COURT: Do you want time to look for
16 the document?

17 MR. HAEG: 3/30/07.

18 BY MR. HAEG:

19 Q. Right here. Just that part there.

20 THE COURT: So --

21 A. Okay.

22 Q. And can you just read it? Or --

23 THE COURT: -- let -- just wait. Let him
24 look at it.

25 MR. HAEG: Okay.

1 THE COURT: And then when he's ready, I
2 want him to identify the letter, the date of the
3 letter, and to whom it is addressed.

4 A. This is the same letter, section 3,
5 whether the suspension of Mr. Haeg's guide license
6 would be ordered retroactive to reflect the time
7 prior to sentencing that Mr. Haeg was not acting
8 as a guide.

9 And I wrote this is simply a matter that
10 is left to the discretion of the sentencing judge.
11 Certainly Mr. Haeg could have and should have made
12 this argument at sentencing.

13 MR. HAEG: And my attorney never did, even
14 though I asked him to. And --

15 THE COURT: Go on.

16 MR. HAEG: -- anyway --

17 THE COURT: Ask your next question.

18 MR. HAEG: Okay.

19 BY MR. HAEG:

20 Q. Is it true you could not file a motion to
21 suppress my statement, because the state had
22 released it to the newspapers?

23 A. No.

24 MR. HAEG: I'd like to point out that
25 Cole's deposition, page 26, he states --

1 THE COURT: Show it to him.

2 MR. HAEG: -- that he could not --

3 THE COURT: Show --

4 MR. HAEG: -- file a motion to suppress my
5 statement, because --

6 THE COURT: Show it to him.

7 MR. HAEG: Okay.

8 BY MR. HAEG:

9 Q. And I'd like you to read it out loud,
10 right here.

11 A. I -- I don't remember making that
12 statement. That's what it says. What I said was
13 right; a motion to suppress is for trial, what
14 evidence gets presented at trial. I could have
15 filed the motion to suppress your statement at
16 trial, but you fired me, number one.

17 Q. I'd like you to read this sentence right
18 here.

19 A. I could not file a motion to suppress your
20 statement, because they distributed it to the
21 newspaper.

22 That doesn't make sense to me.

23 Q. Yeah, they took --

24 A. Who -- who typed this?

25 Q. -- statement that I gave up --

1 THE COURT: Just --

2 BY MR. HAEG:

3 Q. -- and they issued it to the papers --

4 THE COURT: -- ask your next question.

5 MR. HAEG: Okay.

6 BY MR. HAEG:

7 Q. Well, who typed this up?

8 A. Just curious.

9 Q. It's by Transcription Support Services,
10 4782 Mills Drive, Anchorage, Alaska.

11 A. Okay.

12 Q. Is it true you have testified under oath
13 you are not my attorney when my statement was
14 published in the Anchorage Daily News?

15 A. I don't remember testifying to that.

16 Q. Okay. Well, it's in your -- it's in the
17 deposition.

18 MR. HAEG: And in fact, Mr. Cole was my
19 attorney when it was released to the Anchorage
20 Daily News. And I have that.

21 Can I submit it as evidence?

22 THE COURT: You have a document that you
23 want to put into evidence? Sure.

24 MR. HAEG: Yes. And it's because Mr. Cole
25 said he was not my attorney --

1 THE COURT: So give me a context.

2 MR. HAEG: -- when it was published, when,
3 in fact, it was. So I believe that means --

4 THE COURT: Hang on.

5 MR. HAEG: -- he committed perjury in his
6 deposition.

7 THE COURT: Help me out here. The Daily
8 News published an article?

9 MR. HAEG: Huh?

10 THE COURT: The Daily News published an
11 article about your --

12 MR. HAEG: And they quoted --

13 THE COURT: -- prosecution?

14 MR. HAEG: They quoted the state. They
15 said the state charging document said Mr. Haeg
16 came in and said shoot -- he admitted shooting
17 wolves outside the area. And dah, dah, dah, dah,
18 dah, dah, dah.

19 And so what happened is, I made a
20 statement for a plea agreement, that then was
21 released to the --

22 THE COURT: Just slow down.

23 MR. HAEG: -- papers, and it was
24 published. And Mr. Cole said he --

25 THE COURT: Just wait.

1 MR. HAEG: -- was not my attorney at the
2 time, when, in fact, he was.

3 THE COURT: Is that what it -- is that
4 what the article says?

5 MR. HAEG: Yes.

6 THE COURT: The article says that Cole was
7 not the lawyer?

8 MR. HAEG: It doesn't say Cole. It says
9 charging documents state Mr. Haeg admitted
10 shooting wolves outside the area.

11 THE COURT: All right. So --

12 MR. HAEG: Doesn't say anything about
13 Cole.

14 THE COURT: So where's the statement that
15 you think Cole made about him not being your
16 lawyer?

17 MR. HAEG: In his deposition, page 20 --

18 THE COURT: And what was the time period
19 that he was referring to in the deposition?

20 MR. HAEG: He stated that he was not my
21 attorney when that was published in the Anchorage
22 Daily News. It was --

23 THE COURT: Okay. When --

24 MR. HAEG: -- published in the Anchorage
25 Daily News, November 10th, 2004. And I didn't

1 fire Cole until December of 2004.

2 So anyway --

3 THE COURT: So that -- well, just hang on.

4 MR. HAEG: Okay.

5 THE COURT: You -- let me just make sure I
6 understand the context. The article comes out in,
7 what did you say?

8 MR. HAEG: November 9th -- November 10th.

9 THE COURT: November 10th.

10 And sometime in the article -- I'm sorry,
11 sometime later he makes the statement, at the time
12 of the article coming out, he was not your lawyer?

13 MR. HAEG: Correct.

14 THE COURT: And you think that was a false
15 statement, because you fired him after the article
16 came out?

17 MR. HAEG: Correct.

18 THE COURT: Okay.

19 When did you fire him?

20 MR. HAEG: It was in -- I believe it was
21 like December of 2- -- it was well after the 9th.
22 Because that's when the plea agreement fell
23 through, was November 9th. The article came out
24 in the paper the next day. Because they had filed
25 the new charges. And then it was like --

1 THE COURT: How did you fire him?

2 MR. HAEG: -- another month.

3 THE COURT: Did you write him a letter? I
4 mean, is there some document that says, you
5 know --

6 MR. HAEG: I have --

7 THE COURT: -- you're fired?

8 MR. HAEG: -- billing statements that
9 I think prove when he was still representing me.

10 THE COURT: Did he move to withdraw?

11 MR. HAEG: I think I -- I talked to my
12 business attorney, Dale Dolifka, and he said I
13 should fire him and find a new attorney.

14 THE COURT: Right. But there's a process
15 for that. And that wouldn't make this -- that
16 would know for sure when he did it. So did he --

17 MR. HAEG: Yeah. Well, I have --

18 BY MR. HAEG:

19 Q. I guess, Mr. Cole, were you still my
20 attorney on November 10th, 2004, the day after we
21 were supposed to plea out in McGrath?

22 A. You keep saying that as November 10th. My
23 recollection is it was in September, and that we
24 had meetings for the next two months. Ultimately,
25 I think you fired me in December.

1 Q. Correct.

2 So you would have still been my attorney
3 in November, November 9th?

4 A. I would think so, yeah.

5 Q. Okay.

6 MR. HAEG: So that's why I believe -- and
7 I have the billing statements and a copy of the
8 Anchorage Daily News article here.

9 THE COURT: Do you want those to go in the
10 record?

11 MR. HAEG: Sure.

12 THE COURT: Okay. Mark them as the next
13 exhibits, whatever they are.

14 (Exhibit 3 marked/admitted)

15 THE COURT: And staple each package,
16 please. So give her a moment to do that.

17 And then, Madam Clerk, let us know --

18 MR. HAEG: And I'm basically, I think --

19 THE COURT: Just wait.

20 MR. HAEG: -- about done.

21 THE COURT: Okay. Just hang on.

22 So the article is one exhibit?

23 THE CLERK: Yes. For -- and that's No. 4.

24 THE COURT: So the article is No. 4.

25 (Exhibit 4 marked/admitted)

1 THE COURT: And the --

2 THE CLERK: (Indiscernible) statements.

3 THE COURT: The -- some sort of statement
4 from a deposition?

5 THE CLERK: Number 5.

6 THE COURT: Is No. 5.

7 (Exhibit 5 marked/admitted)

8 THE COURT: All right.

9 The article's No. 4; statement, No. 5.

10 You have another question?

11 BY MR. HAEG:

12 Q. Is it true that you have testified that my
13 killing the wolves where the state told me to was
14 not a legal defense?

15 A. We discussed that. And I do not think it
16 was a legal defense.

17 Q. Okay.

18 A. I think I probably told you that.

19 Q. Okay. Well, your deposition, page 45 --

20 MR. HAEG: Mr. Cole testified that my
21 killing the wolves where the state told me to was
22 no defense -- or was not a legal defense to the
23 state charging me with killing them where I killed
24 them.

25 BY MR. HAEG:

1 Q. Is it true your tactic for defending me
2 was to have me, quote, fall on my sword, unquote?

3 A. Yeah, that's right, because you were a
4 mess. You -- you used to call me up, crying from
5 your house. And your mother-in-law called me,
6 crying, and said you were a wreck; and that if we
7 didn't do something, you were going to go crazy.
8 And so, yes, I went out of my way and I had you
9 fall on your sword so that you could have your
10 bear hunting season and you could get through that
11 and we could work out a resolution after
12 everything had died down.

13 Q. Is it true that, quote, fall on your
14 sword, unquote, means you commit suicide?

15 A. It's a term of art. It's -- doesn't mean
16 that. No.

17 MR. HAEG: That's all I have for Mr. Cole.

18 THE COURT: Do you -- will you have
19 questions?

20 MR. PETERSON: Yes.

21 THE COURT: Do you -- how long will your
22 questions --

23 MR. PETERSON: Long enough that we should
24 take a break.

25 THE COURT: All right. So we'll take a

1 break until, let's say, quarter till.

2 THE CLERK: Please rise. Court stands in
3 recess.

4 (Court recessed)

5 THE CLERK: Please rise. Superior court
6 is in session, with the Honorable Judge Morse
7 presiding.

8 THE COURT: Be seated.

9 All right. We're back on record. You may
10 proceed with your ques- -- with cross.

11 MR. PETERSON: Your Honor, may I approach?
12 I brought up the same part of the deposition that
13 Mr. Cole previously read, too, and I want to read
14 the -- I want him to read the rest of it into the
15 record.

16 BRENT COLE,
17 testified as follows on:

18 CROSS-EXAMINATION

19 BY MR. PETERSON:

20 Q. This is page 26 of the deposition from
21 February 7, 2012. Could you read the highlighted
22 part there?

23 A. Sure.

24 Q. Go ahead and read that.

25 (Whereupon a portion of the Brent Cole

1 deposition dated February 7, 2012, was read as
2 follows:)

3 A. A motion to suppress is for trial, what
4 evidence gets presented at trial. I could have
5 filed a motion to suppress your statement at
6 trial, but you fired me, number one. So I didn't.
7 And you had the opportunity with Mr. Robinson.
8 He, if anybody, was going to file it, because you
9 wanted a trial. It was Mr. Robinson.

10 (Whereupon the reading of a portion of the
11 Brent Cole deposition was concluded)

12 Q. And does that appear to be a correct
13 statement of practice even today?

14 A. Yes, sir.

15 Q. Okay. So I want to make sure that it's
16 clear for the record. The deal that you worked
17 out for Mr. Haeg back in 2004, it was for the
18 final deal. Because there was a lot of talk about
19 a deal from one- to three-year suspension and the
20 plane being forfeit.

21 But then it sounded like the final deal
22 was a one-year -- just a 16-month suspension and
23 the plane being forfeit; is that right?

24 A. Yes.

25 Q. And when I say "the plane," I mean the

1 plane that was used in the commission of the
2 offenses.

3 A. PA-12, yes.

4 Q. PA-12.

5 And was there an agreement that the fines
6 and jail time, as part of that deal, would not be
7 more than the amount that would trigger an
8 automatic revocation of five years?

9 A. Yes.

10 Q. Okay. So that was a very favorable deal
11 for those offenses, wasn't it?

12 A. In my opinion, I thought it was a miracle,
13 quite frankly.

14 Q. And I should clarify. When I say
15 "favorable," I mean, favorable to Mr. Haeg?

16 A. Yes. I -- I saw his position as a guide.
17 I saw the crimes. I saw what I thought was a
18 significantly negative impact on predator control.
19 I -- I foresaw a lot of bad things. And I
20 really -- I wanted to help Mr. Haeg.

21 I mean, I know he hates me to this day.
22 But my intention always was, all along, to help
23 him and to put him in the best position to be back
24 and be a guide. And so I worked out what I
25 thought was a very good deal that would put him

1 guiding. He would miss, essentially, one fall
2 season and one spring season and would have been
3 back guiding the following fall.

4 THE COURT: Just let me ask one question.

5 I know that it -- that this deal you just
6 discussed would have been a fine and a jail
7 sentence below the triggering. But just to be
8 clear, if it had been above the triggering
9 numbers, what was triggered? How --

10 A. The trigger is A.S. -- in the -- in those
11 days, it was A.S. 08.54.605. And what it said
12 was, if you received a sentence of more than five
13 days on any one count, then you lost your
14 privilege to apply for a guide license for five
15 years. And if you received a sentence an -- more
16 than an unsuspended sentence of a thousand
17 dollars, then you lost your privilege to apply for
18 five years.

19 So they didn't actually take away your
20 guide license. But what they did is they
21 prevented you from being -- for applying and
22 getting your guide license. Because you have to
23 apply.

24 THE COURT: Right. But bottom line, you
25 lose your ability to guide for five years. That

1 would be the negative consequence if the
2 thresholds were to be --

3 A. It was -- it was a terrible --

4 THE COURT: Right. Okay.

5 A. -- statute. And it was very onerous in
6 the stat- -- and it was hard to negotiate.

7 BY MR. PETERSON:

8 Q. And you can't -- so this is -- we're
9 delving into a little deeper. Your guide license
10 is what -- the guide license is what allows
11 guides, obviously, to guide.

12 But it's -- also, it allows guides to
13 advertise to guide; right?

14 A. Well, yes. You can't -- you can't
15 guide --

16 Q. You can't do anything without it?

17 A. You can't do anything without it. And
18 that's why we negotiated even before the hunting
19 season. I negotiated it so David was going to be
20 able to begin advertising and taking contracts on
21 July 1st, which was two months before the guide
22 season was supposed to start.

23 That way -- because when I talked to him,
24 it was like, well, if you run it through
25 September, he won't able to get any clients; it

1 will be another wasted year. So we -- we
2 negotiated it so that his guide license would
3 commence -- he would be able to get his guide
4 license and use it beginning July 1st, 2005, is my
5 recollection.

6 Q. Okay. And the five-year revocation
7 period, the five-year period that he couldn't
8 renew his guide license, he also wouldn't able to
9 advertise during that time.

10 A. Wouldn't be able to --

11 Q. So any business that he built up is
12 basically done at that point.

13 A. Right.

14 Q. Right?

15 A. Right.

16 Q. And the deal that you worked out for him
17 had him back to advertising within a few months of
18 the time that the deal would have been accepted,
19 from September until July of the following year?

20 A. Yep.

21 Q. Okay.

22 A. And I will say it, it had one other
23 advantage. And that is, if you negotiate a
24 suspension with the criminal case, in other words,
25 no matter what it is, if you negotiate it with the

1 state, then the Big Game Commercial Services Board
2 can't come back in an administrative action and
3 take away your guide license.

4 Q. Well, that's another part to this that
5 hasn't really been brought up. So even if by
6 some -- you know -- well, let me ask you, was
7 there any possibility, given the types of
8 sentences that are meted out in these kinds of
9 offenses, in a same-day airborne type of predator
10 control case, that he was getting less than a
11 thousand-dollar fine or five days in jail?

12 A. I -- I had a case, and the reason I say --
13 I hesitated earlier, but it was an assistant guide
14 who was maybe the nicest guy you'd ever meet. I
15 had 50 letters. And what he did is, he was out
16 with a client. And his wife was back at camp.
17 And the guy shot a very small bear.

18 And the -- the assistant guide made a
19 mistake, and he -- they tagged -- they tagged it
20 as a -- as being shot by the wife. And then they
21 went out, and the troopers came in and ended up
22 finding that that was false, so -- but he -- he
23 had 30 years of a stellar --

24 And we went in open sentencing. And Judge
25 Torrisi just looked at us and said, your guy's a

1 great guy, but I give \$2500 fines routinely every
2 day on DUIs, on, you know, everything; your guy's
3 getting \$2500 fine. And he lost his guide license
4 for five years, even though, you know, we -- we
5 had a very good sympathetic person who was, you
6 know, an -- a good person. And I'm not saying
7 David wasn't, either.

8 But the fact is, a thousand-dollar fine in
9 those days was nothing on Fish and Game things.
10 And -- and I had represented people, many people,
11 guides that had lost their licenses for worse
12 things. And some, not so worse. So I -- I knew
13 what the risk was, going into this.

14 Q. So having established that, even if by
15 some happenstance, he didn't get a fine in excess
16 of a thousand dollars or jail time in excess of
17 five days, the Big Game Commercial Services Board
18 still could have looked at what he did and revoked
19 his guide license; right?

20 A. Absolutely.

21 Q. But what you just said was, and I believe
22 the statute, it still says this to this day, that
23 if the court imposes any suspension, the guide
24 board is bound by that suspension?

25 A. That's correct.

1 Q. They can't impose a separate suspension,
2 so --

3 A. That's why we negotiate all these -- and
4 we always have, negotiate them at the same time.

5 THE COURT: What's the name of this
6 ent- -- Big Game Guide Board?

7 MR. PETERSON: The Big Game Commercial
8 Services Board.

9 BY MR. PETERSON:

10 Q. And so did that, knowing that even
11 regardless of what the sentence was, that then the
12 guide board would almost certainly take action, is
13 that your view?

14 A. Well, I -- I will tell you, it was in the
15 back of my mind. But frankly, he was going to
16 lose -- he was going to get more than a
17 thousand-dollar fine for killing six wolves out of
18 the area. He was going to lose his guide license
19 for five years. If he had walked in there, pled
20 guilty, they would have imposed more than a
21 thousand-dollar fine.

22 Q. It --

23 A. They just -- it -- I -- I mean, yeah,
24 hypothetically, you're right. But it was going to
25 happen if we didn't do something.

1 Q. Right. Okay.

2 So there was talk about the credit
3 received for the amount of time that he'd
4 voluntarily given up his guide license.

5 Is that something standard that you work
6 out in guiding -- defending guiding cases?

7 A. So I've been thinking about that. But --
8 but yes, it -- it -- it is, but -- so it was
9 always understood that he was going to lose his
10 guide license for at least a year. And so, to me,
11 it made sense to start early so -- and that's why
12 even if we had done the original sentencing, one
13 to three, he was -- I -- I had -- I was
14 comfortable in arguing, hey, he's already taken
15 off this year, and you should impose it. And I
16 didn't believe Scot Leaders was going to have any
17 problem with that at the time.

18 When we actually did the deal, we -- we
19 said it's going to be 16 months; he's going to be
20 able to come back July 1st. So yes --

21 Q. So that -- actually, that amount of time
22 that he'd already given up was part of the deal
23 that you worked out, that Mr. Haeg rejected; is
24 that right?

25 A. Ultimately, yes.

1 Q. All right. And your February 7, 2012,
2 deposition has come up a couple times. You were
3 asked that question why he didn't get credit for
4 that year -- or, well, that -- I guess several
5 months at that point.

6 And do you remember what your answer was?

7 A. I -- I -- no, I don't. I just -- I can
8 only say, I don't know why -- I don't know whether
9 he -- they argued it or anything. I was out of
10 the picture at that point.

11 Q. Right. No, I'm -- okay.

12 MR. PETERSON: May I approach?

13 THE COURT: Yes.

14 BY MR. PETERSON:

15 Q. This is page 11 of that same deposition.
16 And the question that Mr. Haeg posed was, how come
17 I never got credit for that, though?

18 Refresh your recollection?

19 A. Because you didn't take the deal, David.
20 It's not if -- as if you'd -- it's not -- if you'd
21 taken the deal, you would have gotten credit. You
22 decided not to take the deal, yeah.

23 Q. So --

24 A. But even there, he still had the
25 opportunity to argue that in front of the judge.

1 I mean, he could have argued that. The judge had
2 the authority to make it -- give him credit for
3 that. But -- but really, again, he had -- he was
4 going to get five years.

5 Q. Because of the fine?

6 A. Because he got convicted and the fines and
7 everything else.

8 Q. Yeah.

9 And it really would have been largely
10 irrelevant at that point, because the fines were
11 such that it triggered the five-year period in
12 which he couldn't reapply for a guide license?

13 A. Right.

14 Q. Right.

15 And that would -- when I say "the fines,"
16 I mean the fines that were imposed at sentencing
17 post-trial.

18 A. Right.

19 Q. Okay. So --

20 THE COURT: Well, is there something in
21 the statute that precludes him from -- yes, he
22 gets a five-year suspension, but is there anything
23 that precludes the judge --

24 MR. PETERSON: Yes.

25 THE COURT: -- from starting it prior to

1 the conviction date?

2 MR. PETERSON: Yeah, I believe the
3 stat- -- well --

4 BY MR. PETERSON:

5 Q. Mr. Cole, does the statute read that you
6 can't apply for a guide license for five years?

7 A. Yes.

8 Q. Okay.

9 THE COURT: And so that --

10 BY MR. PETERSON:

11 Q. So you said because you rejected the --

12 A. Wait.

13 THE COURT: -- the -- what I'm
14 understanding is the practice, at least in the
15 Fish and Game community, legal community, the
16 interpretation of that statute is that it is a
17 prospective prohibition?

18 A. No. We could negotiate it, because we
19 were not going to be under A.S. 08.50- --

20 THE COURT: No. But if there was a -- if
21 you go to trial, you get the sentence, you roll
22 the dice, it's open sentencing, you get the --

23 A. I think you got to follow the statute.

24 THE COURT: Right. And you -- but you --
25 the -- you think that everybody agrees that the

1 statute triggers the five years at conviction or
2 at sentencing? You can't get the -- you can't go
3 backwards like you were --

4 A. Right.

5 THE COURT: -- like you could have done in
6 a negotiation?

7 A. I think that's right.

8 THE COURT: Okay.

9 BY MR. PETERSON:

10 Q. Yeah, and the current statute's a little
11 different. It changed in the, I would say,
12 mid/late 2000s; is that right?

13 A. Yeah.

14 Q. To a graduated system where the amount of
15 the fine determines the number of months in which
16 you can't reapply for a guide license?

17 A. Right. \$2500 fine, five days is
18 24 months. Then 3500 is 36. And 5,000, it goes
19 to five years. Something like that.

20 Q. Now, when you said at the deposition --
21 because you didn't take the deal, specifically
22 what actions did Mr. Haeg undertake that, you
23 know, manifested that decision wherein you
24 understood that to be his decision?

25 A. He fired me and said he wanted a trial.

1 Q. Now, there was some talk about
2 Mr. Leaders' charging document. Was -- when the
3 evidence first came out, I think you said it was
4 in April that the troopers served the search
5 warrants and had the evidence that Mr. Haeg
6 committed these offenses?

7 A. Yeah.

8 Q. Or it was in the spring of --

9 A. It was --

10 Q. -- 2004.

11 A. -- in the spring. It was in April of
12 2004.

13 Q. And they didn't file charges immediately,
14 the Attorney General's Office?

15 A. No.

16 Q. Okay. Were you involved in any
17 discussions trying to persuade them to not file
18 charges immediately?

19 A. That was the whole idea. That's why we
20 reached that agreement. He got to do his bear
21 hunts. He agreed to come in and give a statement.
22 And then we were going to exchange discovery
23 without filing of a document. We were going to
24 negotiate it.

25 And I really wanted time to go by before

1 we -- we sat down, because it -- because it was
2 kind of an emotional thing. I -- I will say that
3 I wish Scot Leaders had been a little bit more
4 timely. Because David wanted to get it taken care
5 of, I wanted to get it taken care of, and you
6 know, we went for a number of months where we
7 didn't hear anything. But ultimately, it started
8 up again in August, and I thought we -- we had it
9 worked out.

10 Q. And the fact that Mr. Leaders didn't file
11 the charges right away meant that, you know, he
12 wouldn't able to argue for bail conditions that
13 Mr. Haeg not be in the field, though; is that
14 right?

15 A. Right. That was all part of it.

16 Q. And so was there ever a deal that would
17 have allowed Mr. Haeg to plead open with a one- to
18 three-year guide license suspension and the plane
19 not be forfeit?

20 A. No. I don't believe so. Because that's
21 why David came to me and said, I want the
22 opportunity to get that plane back. The only way
23 that could happen was through an open sentence
24 deal, which I repeatedly told him not to do.

25 Q. Okay. When did he come to you with that

1 counteroffer term in relation to when the
2 sentencing was scheduled to take place?

3 A. I -- I -- look, it's -- it's been
4 17 years. But I believe it was in two to three
5 weeks of September when the arraignment ended up
6 happening. I think most of this happened within
7 two to three weeks to four weeks, middle to late
8 August, September.

9 Q. And Mr. -- was it after that counteroffer
10 was made to exchange the other plane, the Super
11 Cub, I think you said, that Mr. Leaders filed the
12 amended charging document?

13 A. No.

14 Q. Okay. How -- what was --

15 A. No. That --

16 Q. -- the time line?

17 A. -- happened in -- in November. That
18 happened after we were -- okay. So the first deal
19 that we worked out was one to three years and
20 forfeiture of the plane. And I think that
21 happened in like August.

22 The next thing was David was not happy
23 with losing the plane. And he wanted the
24 opportunity. And I kept telling him, David, the
25 judge is going to forfeit this plane. You shot

1 wolves illegally out of it. You -- that's the
2 instrument that you used to engage in illegal
3 conduct. They're going to forfeit it.

4 And he was insistent. And he asked me
5 about that -- or I suggested, the only way you're
6 going to get that is if it's in an open sentence.
7 And he asked me about that. And that's what I
8 asked Scot Leaders. Originally, he said yes.

9 And then shortly -- but -- but I don't
10 remember things quite the way David does on this.
11 I thought I told David before the sentencing -- or
12 before the change of plea, that they weren't going
13 to agree to an open sentencing. And all the
14 witnesses were there because we were going to
15 argue the one to three years.

16 Then Leaders called me up and said, we're
17 not going to do that. I thought I told that to
18 David. David was not happy. He was still not
19 happy when we were meeting in September. The
20 arraignment was the next day. And then I called
21 up Leaders, and we made a new deal.

22 Q. A deal that was even more favorable to
23 Mr. Haeg?

24 A. It was even more favorable. That was the
25 deal that we've talked about, which was 16 months,

1 but he had to forfeit his plane. But we worked
2 out all the terms.

3 Mr. Leaders filed the amended charge. And
4 if you look at it, what it does is it just cites a
5 different big game guide violation. But the
6 amended charge made it a minimum three-year
7 suspension.

8 Q. Was that for same-day airborne?

9 A. Yeah.

10 Q. That's the -- okay.

11 A. And so that's just my recollection. And
12 then we did the change -- we did the hearing. We
13 were going to set it on for a change of plea. We
14 just pled not guilty. We were going to set it on
15 for a change of plea. And then David wasn't happy
16 with the situation. I kept trying to work on it.

17 Then later in October or November --

18 VOIR DIRE BY THE COURT:

19 Q. Just wait. Just stop there. Because I'm
20 a little bit confused about that.

21 The second deal, which was the 16-month
22 suspension retroactive to -- I mean, that would
23 begin with the date of the killing --

24 A. Right.

25 Q. -- and forfeit the plane?

1 And then you said he filed this amended
2 charge that referred to a statute to require the
3 three-year suspension.

4 So had -- do you believe that Leaders
5 reneged on the deal, or had Haeg rejected the
6 deal?

7 A. Okay.

8 Q. I mean, was that deal to --

9 A. "That deal" being?

10 Q. The 16-month.

11 A. Okay.

12 Q. With the plane forfeit.

13 A. He never -- he -- he did not withdraw that
14 deal, the 16-month.

15 Q. Right.

16 A. What he withdraw was open sentence.

17 Q. Right.

18 But he filed this charge, you said, that
19 referred to a three-year suspension?

20 A. He filed that, I think, so that we
21 couldn't come in and plead guilty right there and
22 then be subject to between one and -- or -- or
23 just plead open sentence. Because he -- he told
24 me he didn't want to get into a dispute over the
25 airplane.

1 Q. So he was blocking the defendant just
2 walking in and saying, guilty, boom?

3 A. Right.

4 Q. And --

5 A. And now we got to go open sentence on
6 everything.

7 Q. Right.

8 And so -- but is it your understanding
9 that despite his filing that, the 16-month offer
10 was still valid?

11 A. Oh, yeah. We were just going to amend the
12 charge. Because I think David even asked me about
13 that, why aren't we amending the charge? It -- it
14 might be on the tape. I can't remember. It was
15 right at the end. And I just said, we'll work it
16 out; it's going to get done.

17 Because I -- I understood we had a deal.
18 That night everybody was happy. We didn't go to
19 McGrath, because we -- we had worked it out. He
20 was going to get his -- he was going to get his
21 guide license back in 16 months. He was very
22 happy with that. He was going to be back in
23 business. It took away a lot of a uncertainty
24 about --

25 Q. Sure.

1 A. -- going in front of a judge.

2 Q. Then, and then just -- I'm sorry I'm being
3 so obtuse. What changed after you thought
4 you'd -- you know, you'd cut the deal? I mean,
5 what --

6 A. It -- it really had to do with the
7 airplane.

8 Q. That's when he said, I want to substitute
9 the airplane?

10 A. He -- he didn't want to forfeit the
11 plane --

12 Q. At all?

13 A. -- at --

14 MR. PETERSON: He didn't want to
15 forfeit --

16 A. He really didn't. He was will- -- he
17 was --

18 MR. PETERSON: -- the PA-12.

19 A. The PA-12.

20 He was willing -- he was very happy. You
21 know, it's like everybody, right? I -- I got him
22 the license suspension down to 16 months. And he
23 was, you know, ecstatic, in my recollection. But
24 what was bothering him is he couldn't get his
25 plane back. And originally, we agreed to it,

1 but -- or that -- that's my recollection. We had
2 a deal.

3 And then once he got the license
4 revocation, he turned to, well, I want to get my
5 plane back. And that's what started it. And then
6 there was the doubt about, you know, filing the
7 motions, the deal we had, why can't we do that?

8 And, in my mind, I was like, David, we got a
9 deal. Why, why do you want to do all these
10 things? If -- if I file the motions to get this
11 deal back and you lose, you're getting no deals
12 then. Now we're going to be stuck in open
13 sentencing if you wanted -- if you want to plead.
14 We -- we'll -- we'll get nothing. Why do you want
15 to do that?

16 THE COURT: You're next.

17 CROSS-EXAMINATION CONTINUED

18 BY MR. PETERSON:

19 Q. So the original charges that were filed,
20 were they a result of a precharge negotiation?

21 Because he wasn't originally charged with
22 guiding -- being a guide and committing a same-day
23 airborne. He was charged with being a guide
24 and --

25 A. If --

1 Q. -- committing a wildlife offense, which
2 has a lower minimum sentence.

3 A. If you look at it, I'm pretty sure that
4 the -- the penalties at that time for that charge,
5 the original one, was one to three.

6 Q. But --

7 A. And we were going to argue one to three.
8 I said -- you know, I was trying to get him to
9 come down on the three, but he was going to argue
10 three, and I was going to argue one. And -- and I
11 was like, well, we've already got through the fall
12 of 2004; we'll get through just the spring now,
13 and you know, if I -- if I'm right -- I was a
14 little worried he'd get two. You know how it is.

15 Q. Yeah.

16 A. You -- you argue one, and he -- you -- the
17 state argues three, and the judge cuts it in the
18 middle. And -- and I was a little worried about
19 that. But it was worth the risk, because we had
20 mitigated. I was worried he was going to get
21 five years from the beginning. So now we're down
22 to a good chance of cutting that in at least in
23 half.

24 Q. And then you ultimately did get that
25 deal --

1 A. 16 months.

2 Q. -- for 16 months.

3 After that, Mr. Haeg came back with the
4 counteroffer to swap the other plane and forfeit
5 the cub?

6 A. I don't know how you characterize it, but
7 he wanted me to inquire about swapping --

8 Q. Oh.

9 A. -- the cub.

10 Q. That's a different term for a Rule 11,
11 isn't it?

12 A. It -- I don't -- it -- there was a deal on
13 the table. Nobody changed their plea.

14 Q. Right.

15 A. I thought David agreed to it. I thought
16 we were good. But it didn't get closed. I mean,
17 I never set it on for a change of plea, because we
18 kept working. He kept going on about the plane
19 and what about the plane and I want to go open
20 sentence on the plane. And so we were --

21 Q. And the state wouldn't agree to that;
22 right?

23 A. The state wasn't agreeing to that, so --

24 Q. So there was no meeting of the minds on
25 that question?

1 A. No.

2 Q. And there was --

3 A. And so then he asked --

4 Q. -- I call it a counterproposal; you can
5 call it something else.

6 A. Right.

7 Q. But he came back with a different term and
8 said, I want to sub- -- I want to forfeit this
9 other plane.

10 Right?

11 A. Yep.

12 Q. Okay. And Mr. Leaders didn't agree to
13 that and then you were fired and it went on from
14 there; is that right?

15 A. That's correct.

16 Q. Okay. Now, a guide that commits a
17 wildlife offense fulfills the elements of a guide
18 committing a wildlife offense under Title 8 for
19 08.54.720; right?

20 A. I think so.

21 Q. I mean, the statute says, if a guide
22 commits a wildlife offense, here's the penalty.

23 A. Yep.

24 Q. And it's any wildlife offense, state or
25 federal, even if it's just an ordinance; is that

1 right?

2 A. That's what I was always afraid of, yep.

3 Q. And killing wolves, however, isn't a
4 violation. I mean, it could be. But killing
5 wolves from an airplane is same-day airborne
6 killing big game; right?

7 A. Yes.

8 Q. And that's the same classification as the
9 guide crime that he was ultimately convicted of, a
10 Class A misdemeanor?

11 A. Yep.

12 Q. If it's done negligently?

13 A. Uh-huh (affirmative).

14 Q. Is that right?

15 A. Yep.

16 Q. Okay. At -- did you ever tell Mr. Haeg
17 that if he talked to the trooper and the
18 prosecutor, that he could never be prosecuted for
19 anything that he talked to them about?

20 A. No.

21 Q. And I think you already said this, but my
22 last question is -- I just want to make sure it's
23 clear -- you believe that Mr. Leaders filed the
24 guide same-day airborne charges so Mr. Haeg didn't
25 just come in and plead as charged and leave it

1 completely up to the court in an effort to get his
2 plane back; is that right?

3 A. Yes.

4 Q. So that charge is available to the state,
5 but because of your precharging negotiations, it
6 wasn't initially charged?

7 A. Right.

8 Q. Okay.

9 MR. PETERSON: Nothing further.

10 VOIR DIRE BY THE COURT:

11 Q. Just one other thing. You just answered
12 that you never told Mr. Haeg that he had trans- --
13 that he could never be prosecuted -- it -- let me
14 back up.

15 You never told him that if you give the
16 statement to the state very early on, you could
17 never be prosecuted for anything? You never told
18 him that?

19 A. I don't -- No. I -- I wouldn't have said
20 that.

21 Q. And did you tell him something about, if
22 you give the statement, the statement itself can't
23 be used?

24 A. You know, it didn't really come up, Judge.
25 I will tell you, at the time, we were in damage

1 control. And the only way that I could see David
2 getting out of this is if he cooperated and we
3 made a deal. And so I don't recall ever talking
4 to him or it coming up. I do know that I wrote a
5 letter saying he had king for a day.

6 Q. Your hope was that -- I mean, there wasn't
7 any sort of official use immunity agreement, but
8 you thought that cooperation would further your
9 subsequent negotiations?

10 A. It would further keeping him in business.
11 It would further charges not being filed at the
12 time. It would further a resolution favorable and
13 a negotiation, which, ultimately, we achieved.

14 Q. And the -- not merely guide,
15 theoretically, but to fulfill his commitments to
16 the six, seven, eight clients who were already
17 scheduled?

18 A. Which was a big deal at the time. It was
19 huge.

20 Q. To him?

21 A. To him and his wife. They had taken in
22 20 -- approximately \$20,000 for each person. And
23 as a guide, you go and you spend that money,
24 getting everything ready. Or you spend a lot of
25 it. So giving it back, I mean, this is -- I

1 didn't know this for sure, but I knew, this is
2 what it was. It was a big deal.

3 Q. Okay.

4 THE COURT: Mr. Haeg, do you have any
5 additional questions for --

6 MR. HAEG: Nope.

7 THE COURT: Nope? All right. He may be
8 excused?

9 MR. HAEG: Yep.

10 THE COURT: All right.

11 Thank you, Mr. Cole. Make sure you bring
12 whatever you -- you've got a document. Is that --
13 that's just your notes? Okay. That's fine.

14 MR. COLE: This is what he gave me. I
15 think that's what he gave me.

16 THE COURT: We'll give it back to him,
17 then.

18 MR. COLE: Yeah. Okay. (Indiscernible).

19 THE COURT: Mr. Haeg, your next witness.

20 MR. HAEG: Chuck Robinson.

21 (Indiscernible) I don't know where he's at.

22 THE COURT: I don't know where he is, so
23 we'll have to --

24 Is he outside?

25 UNIDENTIFIED SPEAKER: (Indiscernible).

1 THE COURT: Can you see if Mr. Robinson's
2 outside?

3 Mr. Robinson, if you'd come on up to the
4 witness stand, please.

5 (Whispered conversation)

6 THE CLERK: And, sir, if you'd remain
7 standing and raise your right hand.

8 (Oath administered)

9 THE WITNESS: I affirm.

10 THE CLERK: Thank you. You may be seated.
11 And for the record, please state your name,
12 spelling both first and last name.

13 THE WITNESS: Arthur, A-R-T-H-U-R;
14 Robinson, R-O-B-I-N-S-O-N.

15 THE CLERK: Thank you.

16 THE COURT: Mr. Haeg, let me make a
17 disclosure. In, I think, '81 and '82, I lived in
18 Kenai as -- and worked as a public defender.
19 Mr. Robinson was an attorney back then there. And
20 I don't know if I ever worked on a case with him
21 with a codefendant or anything like that.

22 But, you know, he was a criminal defense
23 lawyer. I was a criminal defense lawyer. We knew
24 each other. I never -- I don't think I ever went
25 to his home. I didn't socialize with him other

1 than maybe, I don't know, a beer after work maybe
2 occasionally, but -- you know. We were
3 acquaintances.

4 And then in 19- --

5 THE WITNESS: '90.

6 THE COURT: -- -90, I believe,
7 then-governor Cowper appointed Mr. Robinson to the
8 state reapportionment board. At the time, the
9 governor appointed the five members of the
10 reapportionment board, then there was an
11 executive -- and Mr. Robinson was one of the five.
12 Then there was an executive director, a gentleman
13 by the name of Mike Bradner.

14 And then I was hired by the Department of
15 Law. I, at the time, was a public defender. I
16 was hired by the Department of Law as an assistant
17 attorney general to give legal advice to the
18 reapportionment board. That probably lasted a
19 little under a year.

20 Before the reapportionment census work
21 could actually be done -- we were doing
22 preparation for it -- could actually be done,
23 Governor Hickel was voted in. And Governor Hickel
24 replaced all the members of the reapportionment
25 board, took me off of that assignment. I was

1 uninterested in doing what they offered me in the
2 Department of Law. I left the Department of Law.

3 So for that year, I would -- okay. Let me
4 add one thing. The board went on trips. They
5 would have hearing in Anchorage, had a hearing in
6 Fairbanks. We had a hearing in Barrow, Nome, god,
7 I mean, a whole bunch of places. And I would
8 travel with the board.

9 And usually, at the beginning of a
10 hearing, I would give some summary of the Voting
11 Rights Act, the general law of reapportionment to
12 the members of the public. And Mr. Robinson
13 attended, I don't know, if not all of them, most
14 of those hearings. And I would interact with him,
15 so -- and that --

16 MR. HAEG: Can I disqualify you --

17 THE COURT: -- ended in --

18 MR. HAEG: -- for that, then?

19 THE COURT: Can you what?

20 MR. HAEG: Can I disqualify you for that,
21 then?

22 THE COURT: You can make that motion, if
23 you wish.

24 MR. HAEG: I'd like to.

25 THE COURT: Okay. The motion's denied.

1 MR. HAEG: Okay.

2 THE COURT: So -- and then let me just
3 for -- I think -- I left Kenai in -- I was only
4 there for a little less -- like 11 months. So
5 I've been living in Anchorage since '82, '83, and
6 never -- I don't think I worked on another case
7 with Mr. Robinson (indiscernible) with the
8 exception of my work on the reapportionment board.

9 MR. HAEG: Well, all's I know is, in this
10 case I found out that attorneys and lawyers and
11 judges have a very tight-knit community. And they
12 do almost anything they have to, to protect each
13 other. And, I mean, I -- there's been sworn
14 testimony from --

15 THE COURT: You can make those
16 accusations.

17 MR. HAEG: -- Attorney Dale Dolifka about
18 that, so --

19 THE COURT: But if you're talking about me
20 and if you're talking about my relationship with
21 Mr. Robinson, I've explained my relationship.

22 MR. HAEG: Okay. Well, I understand. And
23 I'm just saying that I --

24 THE COURT: You're suspicious.

25 MR. HAEG: -- don't want any -- any -- you

1 know, any connection means, you know -- so anyway,
2 you've denied it. Can I get going or --

3 THE COURT: I would love to have you get
4 going.

5 MR. HAEG: Okay.

6 ARTHUR ROBINSON,
7 called as a witness on behalf of the applicant,
8 testified as follows on:

9 DIRECT EXAMINATION

10 BY MR. HAEG:

11 Q. Mr. Robinson, did you represent me for a
12 trial and appeal from around December 10th, 2004,
13 to about April of 2006?

14 A. I did represent you. I'm not sure of the
15 exact dates. It's been so long.

16 Q. Well, we could look at your billing -- we
17 could --

18 A. I --

19 Q. If your billing statements kind of
20 show that --

21 A. I don't --

22 Q. -- you'd agree to it?

23 THE COURT: Do you have some billing
24 records he could look at?

25 A. Yeah, because I don't have any of your

1 file there. I destroyed all my files after
2 seven years of retiring from the practice of law.
3 And that would have been as of January of 2018.

4 BY MR. HAEG:

5 Q. Well, I don't --

6 A. I mean, I'm not -- I said I did represent
7 you. It's just that --

8 Q. Okay. Okay. That's good enough.

9 A. -- the dates, they're not --

10 Q. Did you file a pretrial discovery request
11 while you represented me?

12 A. Yeah.

13 Q. Was it violated?

14 A. In what way?

15 Q. Did you ask, for anything that would be
16 used against me at trial, to be given a copy of it
17 to you before trial?

18 A. I believe, Mr. Haeg, what I did in your
19 case, as I did in all of my criminal cases, is
20 that I sent a standard broad request to the
21 District Attorney's Office to reveal to me any and
22 all evidence that it had in its possession
23 regarding the charges against you. So I sent them
24 a letter, yeah.

25 Q. Okay. Is it true that they used a map

1 against me at trial that we, you and I, never got
2 a copy of before trial?

3 A. I learned that later.

4 Q. Okay. But that, in fact, did happen, that
5 you made a request for this map, which was -- and
6 I don't know, do you want to look at it?

7 A. It -- it may help me to remember something
8 I don't know. I --

9 Q. Okay.

10 MR. HAEG: Can I -- your Honor --

11 THE COURT: Yes.

12 MR. HAEG: -- can I go up and show him
13 this map?

14 THE COURT: So if I understand your
15 testimony, yes, they used a map and you learned
16 later something about it?

17 MR. HAEG: Yes.

18 THE COURT: Yeah. Okay. Go ahead. Go
19 ahead.

20 BY MR. HAEG:

21 Q. And this is a copy of a map used against
22 me at trial. Did we get this, something like
23 this, before trial? You and I?

24 A. I remember we got a map. It's going to be
25 very difficult for me to tell you all the details

1 about the map. But as -- what I understood the
2 map to represent was an area in which the state is
3 claiming you had taken wolves without permission.
4 That's what I thought the map was supposed to
5 represent.

6 Q. Okay. But the map that they used against
7 us at trial, you're saying that they gave us a
8 copy of that map before trial?

9 A. No. What I'm saying is that the purpose
10 of requesting evidence would include any
11 geographical evidence, like a map, in which they
12 were using to claim where the alleged crime took
13 place.

14 Q. Okay. And so your testimony is that you
15 made that request, but they never gave you
16 something like this?

17 A. Not that I recall, Mr. Haeg.

18 Q. Okay. And do you remember that they did
19 use this against me at trial? And if you notice,
20 it says prosecution --

21 A. I do remember --

22 Q. -- Exhibit No. 25.

23 A. -- that at trial there was an exhibit from
24 the state which was a map which was used on their
25 part to prove -- or try to prove that you had

1 taken wolves in a certain area.

2 Q. Yeah.

3 THE COURT: What -- does that have a state
4 trial exhibit number on it?

5 MR. HAEG: Yes.

6 THE COURT: What --

7 MR. HAEG: State trial Exhibit No. 25.

8 BY MR. HAEG:

9 Q. And so --

10 THE COURT: Okay. Ask --

11 BY MR. HAEG:

12 Q. -- did you --

13 THE COURT: Go ahead. Go ahead. I -- ask
14 the next question.

15 BY MR. HAEG:

16 Q. So is it true that yes, a discovery
17 request was violated, because you didn't get a
18 copy of this prior to trial, as your discovery
19 request requested?

20 A. Well, I'm not sure that, you know -- if my
21 memory serves me well, there were several smaller
22 maps that were provided by the state, or at least
23 some, in other words, some area where this alleged
24 crime took place. That particular map that you're
25 using to ask me a question about, all I could say

1 is that they brought a map to court.

2 Q. Yeah.

3 A bigger map, a far bigger --

4 A. A way bigger map.

5 Q. -- map than anything -- yeah.

6 A. Yeah. A way bigger map (indiscernible).

7 MR. HAEG: And this, Your Honor, isn't
8 actually full size.

9 THE COURT: Ask him a question.

10 MR. HAEG: It's actually even bigger than
11 this. And we never got a cop- -- and --

12 THE COURT: Well, just hang --

13 MR. HAEG: -- it's true that we --

14 THE COURT: Just slow down.

15 MR. HAEG: -- never got a copy of it.

16 THE COURT: Slow down. Slow down. You've
17 got state Exhibit 25?

18 MR. HAEG: Yes.

19 THE COURT: Was state Exhibit 25 offered
20 and used at trial?

21 MR. HAEG: Yes.

22 THE COURT: And yet you're telling me that
23 there was a different map that was used at trial?

24 MR. HAEG: No. This is a copy of the map
25 used against me at trial. We finally got this

1 eight years --

2 THE COURT: Okay. Hang on.

3 MR. HAEG: -- after trial.

4 THE COURT: But the thing --

5 MR. HAEG: And we should have got it --

6 THE COURT: -- you have in your hand --

7 MR. HAEG: -- before.

8 Huh?

9 THE COURT: The thing you have in your
10 hand was not the actual exhibit used at trial;
11 it's a copy of it?

12 MR. HAEG: Yes.

13 THE COURT: Okay. And the exhibit used at
14 trial, you're telling me, was not provided to the
15 defense in advance of trial?

16 MR. HAEG: Correct.

17 THE COURT: Okay.

18 Is that your recollection, sir?

19 A. My recollection, Your Honor, is this. We
20 were provided discovery. We got to court. A map
21 was introduced in -- at court, alleging where the
22 alleged crime took place. I didn't know, at that
23 time, that what was introduced in court was
24 different than some other map that they produced
25 later on. That's the point I'm making.

1 BY MR. HAEG:

2 Q. Okay. And is it true that -- is it also
3 true that there was a tape recording of Prosecutor
4 Leaders, Trooper Gibbens, and state witness
5 Zellers that was not provided; and that that --
6 that tape recording captured those people
7 discussing how no wolves were killed in my guide
8 unit -- Game Management Unit 19C guide area; and
9 how their map had been falsified to prove this?

10 A. I don't recall hearing any audiotape where
11 anybody admitted to falsifying anything. The tape
12 that I heard, as best as my memory can serve me,
13 were interviews of Mr. Zeller [sic] about what had
14 happened between you and him when you guys were
15 trapping wolves. I don't remember, Mr. Haeg,
16 hearing either Mr. Leaders or the troopers say,
17 we -- we are lying or this is false information.
18 I don't recall that.

19 Q. Okay. Fairly recently --

20 THE COURT: Hang -- let -- just --
21 Mr. Haeg, just --

22 BY MR. HAEG:

23 Q. -- did we have a --

24 THE COURT: Mr. Haeg, wait. I -- let me
25 interrupt you. I'm -- I don't want to leave the

1 map question quite yet, because I'm still not sure
2 I understand the point. And let me summarize what
3 I think you're trying to get across. And if I'm
4 misstating it, tell me, because I don't want to be
5 confused.

6 There's no question that a map called
7 Exhibit 25 was introduced at trial against you.
8 Right there? And what you have in front of you is
9 a smaller copy of the actual trial exhibit. Okay?

10 Is it -- you're right -- I'm right so far?

11 MR. HAEG: Correct.

12 THE COURT: Where is the actual trial
13 Exhibit 25? Was that --

14 MR. HAEG: I believe the state still has
15 it.

16 THE COURT: That was -- was that part of
17 their record in front of the court of appeals?

18 MR. HAEG: Correct. Yeah.

19 THE COURT: Okay. So in theory, it still
20 exists, as far as you know?

21 MR. HAEG: Yeah. At the --

22 THE COURT: Just --

23 MR. HAEG: -- oral arguments to the court
24 of appeals, the state brought in the actual map.
25 And it was used --

1 THE COURT: Okay. So --

2 MR. HAEG: -- on an easel.

3 THE COURT: -- at least at that point, it
4 existed?

5 MR. HAEG: Yes.

6 THE COURT: All right. Now --

7 MR. HAEG: And --

8 THE COURT: Now, just wait. Let me follow
9 up.

10 Your point about the alleged discovery
11 violation is that you're saying that you hadn't
12 seen this giant larger thing until trial itself?

13 MR. HAEG: Correct.

14 THE COURT: Okay. Was there a smaller
15 version of the trial exhibit provided to you in
16 advance of trial?

17 MR. HAEG: No. Not to Mr. Robinson,
18 either. No -- no map that was -- a aeronautical
19 chart was provided.

20 VOIR DIRE BY THE COURT:

21 Q. Is that accurate, through your
22 recollection, Mr. Robinson?

23 A. How far back? In 2004? Or 2000- --

24 Q. Right.

25 No, I mean, I appreciate -- I mean, do you

1 remember anything about, you know, like being at
2 trial --

3 A. I nev- --

4 Q. -- and saying, where did this --

5 A. What I don't --

6 Q. -- thing come from?

7 A. -- what I don't recall is I don't recall
8 during the receipt of discovery from the state
9 there was any discrepancy between any maps that I
10 received in discovery and what they produced at
11 trial. I didn't know there was a different map.

12 Q. Okay. So I mean, we haven't -- I mean, we
13 haven't -- no one's established to me that there's
14 actually a different, changed map yet.

15 But you don't -- whatever you saw at trial
16 was consistent with what you had been given in
17 advance?

18 A. Right. I mean, when I --

19 Q. Even though --

20 A. What --

21 Q. --- the size of the thing was --

22 A. -- what was presented at trial, I had no
23 reason to believe there was some different
24 depiction than what was in Exhibit 25.

25 MR. HAEG: Okay. And -- and --

1 BY THE COURT:

2 Q. But did you think --

3 MR. HAEG: -- I'm not an --

4 THE COURT: Just wait.

5 MR. HAEG: -- attorney --

6 THE COURT: Let me -- one other thing.

7 MR. HAEG: Anyway --

8 VOIR DIRE BY THE COURT:

9 Q. When you get this giant map at trial, the
10 larger version of 25, did you -- do you recall
11 thinking, geez, I've never seen this thing before?

12 A. No. I mean, I didn't know there was
13 anything different not to see, is what I'm saying.

14 Q. But you mean --

15 A. In other words --

16 Q. -- you had gotten in discovery --

17 A. Right.

18 Q. -- something that you thought was what
19 they were using at trial?

20 A. Correct.

21 Q. Okay. All right.

22 MR. HAEG: Well, there was nothing in
23 discovery like this, at least. And I got --

24 THE COURT: Well, he just said there was.

25 MR. HAEG: Well, I'm telling you that we

1 got his file, and there was nothing like this
2 ever -- and the reason why I'm so adamant about
3 this is, when I finally --

4 THE COURT: Ask him questions.

5 MR. HAEG: Okay.

6 DIRECT EXAMINATION CONTINUED

7 BY MR. HAEG:

8 Q. Is it true that you -- I've shown you this
9 map and shown you a copy of the boundaries that
10 are on this, compared to the official fish and
11 game boundaries, and that this map is, in fact,
12 false and, I believe, corruptly altered the game
13 management unit boundaries to prove the wolves
14 were killed in my guide area, when, in fact, they
15 weren't.

16 Have you -- have we discussed this, and
17 you admitted that this map was false?

18 A. We discussed it. You alleged it was
19 false. And my response was that if it was false,
20 if I had known about it at the time of trial, we'd
21 have brought it up as an issue. That's what we
22 discussed.

23 Q. Okay. And did I show you that, in fact,
24 the map was false?

25 A. You showed me what you say are differences

1 between what was shown and what was hidden.

2 Q. Okay. And, in fact, was that -- was --
3 what was falsified, was that -- did the
4 falsification make it seem -- corruptly make it
5 seem like the wolves were killed in my guide area?

6 A. Well, I don't know what you mean by
7 "corruptly," but --

8 Q. Wrongly. Erroneously.

9 A. Well, it turned out that, in fact, the
10 wolves that the state said were taken in a certain
11 area were taken in another area.

12 Q. Yep.

13 And this map helped the state prove that?

14 A. That map or the one -- or -- or
15 Exhibit 25?

16 Q. Exhibit 25.

17 A. Exhibit 25 was used for the purpose of
18 trying to show where the wolves were taken.

19 Q. Correct.

20 And this is a copy of Exhibit 25. And I
21 showed you a copy of this. And it, in fact, is
22 fal- -- so in other words, if this one's --

23 THE COURT: Just wait.

24 BY MR. HAEG:

25 Q. -- false because it's a copy that I --

1 this is a copy I got from the state, the state's
2 map is false also. That's, I guess, what I'm
3 getting at.

4 THE COURT: Well, wait a minute.

5 If I'm understanding what Mr. Robinson
6 just said, and correct me if I'm wrong, is that
7 the state used trial -- Exhibit 25 at trial to
8 prove the location of the criminal taking, alleged
9 criminal taking.

10 And at no time during trial did
11 Mr. Robinson say -- Mr. Haeg say to you, that map
12 is fake, it's been changed; and the issue of the
13 alleged corrupted map never came up at trial?

14 A. No.

15 THE COURT: Okay. So then after trial,
16 Mr. Haeg, at some point, did he come to you and
17 say, hey, I think this thing is wrong or altered
18 or --

19 A. No. Actually, I didn't hear from Mr. Haeg
20 about that issue for -- until he got involved in
21 this (indiscernible).

22 MR. HAEG: Yeah, like a year, a year from
23 now. It took us eight years before we finally got
24 a copy that we could look at --

25 THE COURT: So --

1 MR. HAEG: -- and found out.

2 THE COURT: Okay.

3 So eight years ago would have been -- you
4 said eight years ago from today? So we're, you
5 know, 200- --

6 MR. HAEG: Eight years after my
7 conviction.

8 THE COURT: Okay. So conviction in 2005?

9 MR. HAEG: Yeah.

10 THE COURT: So somewhere around 2013?

11 MR. HAEG: Yeah, whatever.

12 THE COURT: You get -- where do you get
13 this thing?

14 MR. HAEG: Huh?

15 THE COURT: Where do you get this thing?

16 MR. HAEG: I get it -- Judge Bauman. I --
17 realizing all the -- all the crap that went on in
18 my case, I finally -- you know, we got some of the
19 stuff. I finally realized I should go look at the
20 map that was used against me at trial. And so I
21 filed a motion with Mr. -- with Judge Bauman. He
22 ordered the state to produce the map and -- he
23 ordered the state to give him the original map and
24 to give me a copy. Well, then the state never
25 gave me a copy. I ended up going into the Kenai

1 courthouse and looking at the original map that
2 was in --

3 THE COURT: Okay. So sometime --

4 MR. HAEG: -- Judge Bauman's possession.

5 THE COURT: -- in 2013 --

6 MR. HAEG: Yeah, and I'm not --

7 THE COURT: -- through the --

8 MR. HAEG: -- positive.

9 THE COURT: All right. I --

10 MR. HAEG: It's when Judge Bauman was --

11 THE COURT: Sometime in the --

12 MR. HAEG: -- presiding over my case --

13 THE COURT: -- ballpark of 2013, you're in
14 front of Judge Bauman, trying to get access to --

15 MR. HAEG: The map.

16 THE COURT: -- exhibits. And it's during
17 the course of that proceeding that you get the
18 map.

19 Okay?

20 MR. HAEG: A cop- -- yeah.

21 THE COURT: And you looked at it --

22 MR. HAEG: And I don't actually get a
23 copy. I end up having to go in and look at --

24 THE COURT: Okay.

25 MR. HAEG: -- the original one that was in

1 Judge Bauman's possession, found -- realized that
2 it had been falsified to -- to, in essence --

3 THE COURT: Okay. You --

4 MR. HAEG: -- to -- well, to --

5 THE COURT: You think it's --

6 MR. HAEG: -- factually make this a guide
7 case.

8 THE COURT: You think it's been
9 falsified --

10 MR. HAEG: Yep.

11 THE COURT: -- after your 2013 inspection?

12 MR. HAEG: Yep.

13 THE COURT: And sometime after then, 2013,
14 2014, you go to Mr. Robinson, go, here's this
15 thing I've discovered; I think the map is wrong.

16 MR. HAEG: Yeah.

17 And I asked, why didn't we get a copy of
18 this before trial so we could find out before
19 trial it had been falsified? And Mr. Robinson
20 told me, they never gave us a copy of this before
21 trial so we could find out it had been falsified.

22 THE COURT: Okay. What makes you think --
23 just so I'm clear, what makes you think it's
24 falsified?

25 MR. HAEG: Because there is a game

1 management unit boundary that has been altered
2 like 20 or -- sub- -- like 20-some miles.

3 THE COURT: So if I look on this map, can
4 you show me the alteration?

5 MR. HAEG: Yes.

6 THE COURT: Show it to me.

7 MR. HAEG: This. This.

8 THE COURT: In this sort of an orange --

9 MR. HAEG: Yeah. And I --

10 THE COURT: -- thing?

11 MR. HAEG: -- I drew this in, the --
12 because when they gave me a copy --

13 THE COURT: So the -- did --

14 MR. HAEG: -- (indiscernible) the --

15 THE COURT: Just slow down.

16 The orange lines you added?

17 MR. HAEG: I highlighted what the state
18 had so we could see it --

19 THE COURT: But the --

20 MR. HAEG: -- on the black-and-white copy.

21 THE COURT: -- orange is what you added?

22 MR. HAEG: Yes.

23 THE COURT: All right. Go ahead.

24 MR. HAEG: They had a line -- this was
25 the -- the line they used at trial. This is my

1 lodge. And I guide in 19C. This is my lodge.
2 This is where the wolves were killed.

3 And they gave this to my jury, saying,
4 see, and Dave Haeg killed all the wolves in his
5 guide area to benefit his guide business.

6 When, in fact, if you look at the fish and
7 game's boundary, the boundary should have been
8 here. The green is the real boundary. And I can
9 prove that. This is from -- this is from online
10 with fish and game. And how I did this is I
11 took --

12 THE COURT: Just --

13 MR. HAEG: -- Sparrevohn Air Force base
14 and Lime Village, and if you draw a line through
15 it, it goes right through the wolves.

16 THE COURT: Okay. And just so I'm clear
17 here --

18 MR. HAEG: So this is Sparrevohn.

19 THE COURT: Hang on.

20 MR. HAEG: And this is Lime Village.

21 THE COURT: Hang on.

22 What I'm trying to understand is, this
23 thing here accurately represents what was used at
24 trial?

25 MR. HAEG: Correct.

1 THE COURT: Right.

2 And you think --

3 MR. HAEG: The -- the --

4 THE COURT: -- that the labels of the
5 units, the boundaries of the units?

6 MR. HAEG: Yes.

7 THE COURT: And you think that the trial
8 exhibit used inaccurately described the game
9 units?

10 MR. HAEG: Yes. It -- the one used
11 against me at trial has the orange, when, in fact,
12 the real boundary, the orange should have went
13 through here where the green is.

14 THE COURT: Okay.

15 MR. HAEG: And what it did --

16 THE COURT: But --

17 MR. HAEG: -- is it put -- it -- they
18 looped out around to put these wolves in my guide
19 area, because I was not allowed to guide here.
20 And that's the whole -- this is the whole key,
21 Your Honor.

22 THE COURT: But --

23 MR. HAEG: 19D, I'm not allowed to
24 guide --

25 THE COURT: Shh, shh.

1 MR. HAEG: Sorry. Okay.

2 THE COURT: Step back. Step back.

3 MR. HAEG: Okay. So --

4 THE COURT: All the way back.

5 MR. HAEG: Okay.

6 THE COURT: Mr. Haeg, help me out. Did
7 you look at the map at trial?

8 MR. HAEG: No.

9 THE COURT: Why not?

10 MR. HAEG: I was so scared, Your Honor,
11 because my career, my livelihood was at stake.
12 And I hired Mr. Robinson, and I trusted him to do
13 a good job for us. And I did not ever look at
14 this map at trial.

15 THE COURT: Did they give you a map, prior
16 to trial, that showed where the wolves were and
17 where the game unit was?

18 MR. HAEG: No.

19 THE COURT: So you knew that the map at
20 trial was new, because you'd never seen a map that
21 depicted the game unit and the location of the
22 wolf?

23 MR. HAEG: Yeah.

24 THE COURT: So you knew at trial, you
25 yourself knew that this was a brand-new map that

1 had never been provided to you?

2 MR. HAEG: Well, and -- and let me --

3 THE COURT: Answer my question.

4 MR. HAEG: -- rephrase this. Okay.

5 THE COURT: Answer my question.

6 MR. HAEG: I had -- I had actually seen
7 the map before at trial. And this is very
8 important, and --

9 THE COURT: That's what I'm asking --

10 MR. HAEG: -- please bear with me.

11 THE COURT: -- you the question.

12 MR. HAEG: This is --

13 THE COURT: And I'm not getting an answer.

14 MR. HAEG: This map was used during my
15 statement for the plea negotiation. And I'm the
16 one that put all the wolf-kill locations on it.
17 But, see, since it's an aeronautical chart, since
18 it's for airplanes -- and that's what all these
19 lines are; these are airways for flying -- the
20 state then, after I put the wolf-kill locations on
21 it for my plea -- you know, during plea
22 negotiations, they then hand-drew the boundary on
23 by hand. And so --

24 THE COURT: Just hang on. Slow down.

25 MR. HAEG: Okay.

1 THE COURT: So you're telling me that
2 the location of the wolf kills that's depicted on
3 trial 25, you put on during the -- when you gave
4 the statement to the troopers?

5 MR. HAEG: Yes. And, see, that's a whole
6 nother violation.

7 THE COURT: (Indiscernible) just --

8 MR. HAEG: And so this map is --

9 THE COURT: Slow down. Slow down.

10 MR. HAEG: Okay.

11 THE COURT: Just -- did you keep a copy of
12 the map that you worked on with the troopers?

13 MR. HAEG: I did it with Brent Cole. And
14 he -- again, he said, we're -- you know, we don't
15 need anything.

16 THE COURT: Now, just -- you didn't get --

17 MR. HAEG: But I didn't get a copy,
18 anything.

19 THE COURT: You didn't keep a copy?

20 MR. HAEG: Nope.

21 THE COURT: Okay. And so when you -- at
22 trial, when you're preparing for trial, did you
23 get a copy of a map that showed where the wolf
24 kills were?

25 MR. HAEG: Nope.

1 THE COURT: Why didn't you ask for that?
2 Because you knew it existed, because you drew it.

3 MR. HAEG: Mr. Robinson did ask for it.

4 THE COURT: Right.

5 MR. HAEG: And they never gave us one.

6 THE COURT: Right.

7 But didn't you realize prior to trial that
8 you had drawn this -- you know, you'd marked the
9 locations of the wolf kill, and you --

10 MR. HAEG: I was so ignorant --

11 THE COURT: Just listen.

12 MR. HAEG: -- of the law, Your Honor --

13 THE COURT: Listen to me.

14 MR. HAEG: -- I didn't know to ask.

15 THE COURT: It's not a matter of the law.

16 MR. HAEG: I didn't -- I did not ask for
17 it, yes.

18 THE COURT: But you knew it existed?

19 MR. HAEG: Yes, I did.

20 THE COURT: Because you made it?

21 MR. HAEG: Yes.

22 THE COURT: Nonetheless, knowing that you
23 had created this map where you put the locations
24 of the wolf kill and you looked at the stuff the
25 state had given you, didn't you recognize that

1 something was missing?

2 MR. HAEG: No.

3 THE COURT: Why not?

4 MR. HAEG: I was so scared that -- I was
5 petrified. My whole life before me was -- I mean,
6 I was so scared, I sit there at trial like this.

7 THE COURT: Well, how about before trial?

8 MR. HAEG: We didn't have a copy. I
9 didn't know.

10 THE COURT: It -- my point exactly. Why
11 didn't you recognize, during the course of the
12 preparation for the trial, that the map that you
13 had drew on, locating the wolf kill, the most
14 critical piece of information in the whole trial,
15 you drew it, you put it there, where was it?

16 MR. HAEG: Your Honor, that's why I hired
17 Mr. Robinson for \$50,000.

18 THE COURT: Did you tell Mr. Cole, I drew
19 a map?

20 MR. HAEG: He was there when I did it. He
21 told me to put the -- and there's a recording
22 of -- of me talking and Brent saying, yeah, Dave,
23 you take a pen, mark it here, mark it there.
24 There's a recording of me doing it.

25 THE COURT: Okay.

1 MR. HAEG: And then at trial --

2 THE COURT: So --

3 MR. HAEG: -- the state at the -- in the
4 state --

5 THE COURT: And so --

6 MR. HAEG: At trial the recording says the
7 state -- yeah, we used this during Dave Haeg's
8 statement, and here's the map.

9 Well, they recorded me putting on it. So
10 not only is this a violation of my right against
11 self-incrimination, because I put these on, they
12 falsified it so they could make it a guide crime.
13 And then --

14 THE COURT: Ask the -- (indiscernible) --

15 MR. HAEG: -- to boot, to cover up, they
16 didn't give Chuck Robinson a copy of it so we
17 could find out that it had been falsified to frame
18 me.

19 THE COURT: When you put the wolf-kill
20 locations on there, was the boundary of the game
21 unit on the map that you were working on?

22 MR. HAEG: No.

23 THE COURT: Okay. They were put --

24 MR. HAEG: Remember --

25 THE COURT: -- on later?

1 MR. HAEG: -- it was an aeronautical chart
2 with no boundaries. They said --

3 THE COURT: Okay. Okay.

4 MR. HAEG: -- this is pristine.

5 THE COURT: Okay.

6 MR. HAEG: So I marked them. And because
7 it's an --

8 THE COURT: So at --

9 MR. HAEG: -- aeronautical chart --

10 THE COURT: -- trial, you know they're
11 handing you a map that you had prepared, and now
12 your memory is jogged. And you said what to
13 Mr. Robinson about, where did that thing come
14 from?

15 Did you say anything to him?

16 MR. HAEG: I did not say anything. I was
17 sitting with my head down. I probably didn't even
18 see the map.

19 THE COURT: Well, that's --

20 MR. HAEG: It's hard to see a map when
21 you're going like this, Your Honor.

22 THE COURT: Why would --

23 MR. HAEG: My whole guide career from 18,
24 I was maybe Alaska's --

25 THE COURT: Stop.

1 MR. HAEG: -- youngest --

2 THE COURT: Stop.

3 MR. HAEG: -- master guide.

4 THE COURT: Stop.

5 MR. HAEG: My whole life was imploding.

6 And I'm sitting there like this.

7 THE COURT: And --

8 MR. HAEG: And now I found out that my

9 whole --

10 THE COURT: Mr. Haeg.

11 MR. HAEG: -- life imploded because --

12 THE COURT: Mr. Haeg.

13 MR. HAEG: -- they falsified a map. And,

14 to boot, they didn't give Mr. Robinson a copy of

15 it before trial. So me and him in the -- the

16 unstressful conditions of being in his office --

17 THE COURT: Did you testify --

18 MR. HAEG: -- now we're at trial.

19 THE COURT: Did you testify at trial?

20 MR. HAEG: Yes.

21 THE COURT: When you testified, did you do

22 anything with the map?

23 MR. HAEG: No.

24 THE COURT: You didn't stand up and point

25 to it? Did you look at it?

1 MR. HAEG: Nope.

2 THE COURT: Okay. Okay. So the summary
3 here is you crafted the map placing the wolf
4 kills. At the time you put the wolf kills on
5 there, the boundaries of the game unit was not
6 there. You knew you had done this map. You did
7 not keep a copy of the map. When you got the
8 pretrial information from the state, you didn't
9 recognize that the map that you had worked on was
10 missing.

11 Then when at trial, for reasons that
12 because of your stress and fear and confusion, you
13 don't look at the map and recognize that this is
14 something that had not been provided to you in
15 discovery, even though you -- did you also -- did
16 you recognize that, in fact, was the map you
17 worked on?

18 MR. HAEG: I don't even remember that.

19 THE COURT: You don't?

20 MR. HAEG: I just --

21 THE COURT: Where did --

22 MR. HAEG: -- know that --

23 THE COURT: Didn't the state testify?

24 Didn't somebody testify, here's this map; see
25 where the wolf kills are; Mr. Haeg told us that?

1 MR. HAEG: The state testified that
2 Trooper Gibbens put the wolf-kill locations on it.
3 The beauty of it, though, is, is that at the
4 recording --

5 THE COURT: Okay. Now --

6 MR. HAEG: -- of my interview --

7 THE COURT: Okay. Hang on. Hang on.

8 MR. HAEG: -- the state --

9 THE COURT: You're telling me that at
10 trial, the trooper testified that he put the
11 location of the wolf kill on there?

12 MR. HAEG: Yes.

13 THE COURT: And did that sound odd to you
14 at the time?

15 MR. HAEG: I didn't even -- didn't even
16 make it -- I was sitting there like this.

17 THE COURT: Well, Mr. Haeg, I'm having
18 difficulty understanding why you were so -- why
19 you were not focused. I mean, you seem --

20 MR. HAEG: Mr. Cole --

21 THE COURT: -- like a very --

22 MR. HAEG: -- has testified at his
23 deposition, he thought I was going to commit
24 suicide. That's how focused I was.

25 THE COURT: How -- what was the time

1 period when you thought you were as unfocused at
2 trial -- I mean, well, you were unfocused at
3 trial.

4 How far in -- prior to trial do you think
5 you were in that state?

6 MR. HAEG: I'm still in that state. Can't
7 you -- I mean, that's why I act the way I do.

8 THE COURT: The reason I'm wondering is
9 because doesn't that suggest that some of your
10 memory about what happened prior to trial is
11 suspect? Because --

12 MR. HAEG: No --

13 THE COURT: -- you were so --

14 MR. HAEG: -- because there's a recording
15 of Trooper Gibbens, Prosecutor Leaders, me, and
16 Brent Cole. And they're saying, Dave, here's an
17 aeronautical chart.

18 And the beauty about this, Your Honor, is
19 it gets worse.

20 THE COURT: Well, wait. Wait.

21 MR. HAEG: They then use --

22 THE COURT: Wait. Wait.

23 MR. HAEG: -- this map --

24 THE COURT: What --

25 MR. HAEG: -- after my -- after -- after I

1 put the wolf-kill locations --

2 THE COURT: Mr. Haeg.

3 MR. HAEG: -- on it --

4 THE COURT: Mr. Haeg.

5 MR. HAEG: -- they --

6 THE COURT: The recording, when was that
7 made?

8 MR. HAEG: I'd have to look --

9 THE COURT: It -- was it made --

10 MR. HAEG: -- but it would be in --

11 THE COURT: -- at the time that you --

12 MR. HAEG: -- June, June of 2004. So --

13 THE COURT: I'm not worried about dates.
14 I'm worrying about -- this recording is of you

15 putting the wolf-kill indications on the map?

16 MR. HAEG: Yes. Yep. In ink.

17 THE COURT: All right.

18 MR. HAEG: And that's recorded by the
19 state.

20 THE COURT: All right. And so you
21 (indiscernible) --

22 MR. HAEG: Then like --

23 THE COURT: Just another question.

24 You said that there's a recording of
25 Leaders and Gibbens?

1 MR. HAEG: Yes.

2 THE COURT: Gibbens?

3 Confessing to falsification?

4 MR. HAEG: Yeah.

5 THE COURT: Where is that tape?

6 MR. HAEG: This is very important.

7 THE COURT: I know.

8 Where is it?

9 MR. HAEG: It is -- I think my wife has a
10 transcription --

11 THE COURT: Where did it --

12 MR. HAEG: -- of --

13 THE COURT: Where's the tape?

14 MR. HAEG: It's still at home. I mean, I
15 can --

16 THE COURT: Where did --

17 MR. HAEG: -- provide it --

18 THE COURT: -- you get it?

19 MR. HAEG: Huh?

20 THE COURT: Where did you get it?

21 MR. HAEG: I got it from the state
22 nine years after we finally get the --

23 THE COURT: Part of the Judge Bauman --

24 MR. HAEG: Yes.

25 THE COURT: -- thing?

1 MR. HAEG: Yep.

2 THE COURT: And was -- and, I'm sorry, was
3 that -- did you have that at the time of the
4 appeal?

5 MR. HAEG: I'm not certain on that. I
6 don't --

7 THE COURT: Well, you --

8 MR. HAEG: -- think so.

9 THE COURT: -- know when the Bauman
10 hearing was. When was the Bauman hearing --

11 MR. HAEG: There was two -- I know -- when
12 you say "appeal," the original appeal to the court
13 of appeals or when I got into post-conviction
14 relief? There's so many proceedings, that I get
15 confused.

16 THE COURT: Okay. Let's cut it up.

17 Did you have it at the time of the direct
18 appeal, the first appeal?

19 MR. HAEG: I don't believe so, no.

20 THE COURT: Okay. Did you have it at the
21 time of the appeal that got remanded, that I'm
22 dealing with?

23 MR. HAEG: Yes.

24 THE COURT: Did you present that
25 information to the court of appeals?

1 MR. HAEG: Yes.

2 And why I am so freaked out here, and I'm
3 just going to explain this --

4 THE COURT: I don't want --

5 MR. HAEG: -- is they brought in --

6 THE COURT: -- you to tell me about how
7 you're freaked out. I want --

8 MR. HAEG: They brought --

9 THE COURT: I want --

10 MR. HAEG: I -- I --

11 THE COURT: Just listen. Just listen to
12 me, please. Take a deep breath. Take another
13 one. Ready? Good. Good.

14 Now, you think that there's this tape that
15 you have and you have a transcription of it and
16 you're claiming that the state trooper and the
17 prosecutor are confessing to falsification of an
18 exhibit on there?

19 MR. HAEG: Yes.

20 THE COURT: And you showed that to
21 Mr. Robinson at some point?

22 MR. HAEG: Fairly recently. The
23 transcription where Scot Leaders and Gibbens --
24 and it's Tony Zellers --

25 THE COURT: Just --

1 MR. HAEG: -- the state witness --

2 THE COURT: Did you --

3 MR. HAEG: -- Zellers. It was during
4 their interview.

5 THE COURT: Did you -- who transcribed
6 this thing?

7 MR. HAEG: My wife transcribed it.

8 THE COURT: Okay. Did you play the tape,
9 the recording itself, to Mr. -- for Mr. Robinson?

10 MR. HAEG: No, I did not.

11 THE COURT: But you gave him the
12 transcription that your wife generated?

13 MR. HAEG: Yes.

14 THE COURT: Okay. And --

15 MR. HAEG: (Indiscernible) --

16 THE COURT: -- so, Mr. Robinson, did you
17 get a transcription of this tape that supposedly
18 shows the state and the -- the prosecutor and the
19 trooper talking about falsification or something
20 like that?

21 A. Prior to trial?

22 THE COURT: Ever.

23 A. I didn't get anything prior to trial. And
24 most recently, probably within the last year or
25 so, Mr. Haeg showed me a transcript of an

1 interview that Trooper Gibbens and Scott
2 Leaders had --

3 THE COURT: And this --

4 A. -- with (indiscernible) --

5 THE COURT: -- is an interview of Leaders,
6 Gibbens, and Zeller [sic]?

7 A. Correct. But, I mean, I -- by the time
8 Mr. Haeg showed that to me, I'd already retired.
9 I retired in January --

10 THE COURT: Right.

11 A. -- 2011.

12 THE COURT: You may be coming back.

13 But you got it way back when. And this is
14 nothing that you had seen prior to trial?

15 A. Prior to trial, no.

16 THE COURT: Okay. Have you given me a
17 copy of this transcript?

18 MR. HAEG: I don't --

19 THE COURT: Well, give it to me. If you
20 don't have it now --

21 MR. HAEG: Okay. It --

22 THE COURT: -- do it tonight.

23 MR. HAEG: And -- and I -- I -- we won't
24 be able to, till we go home. You know, it may be
25 a few days.

1 THE COURT: Well, it --

2 MR. HAEG: I can't -- I don't know, we
3 brought a lot of stuff up here.

4 THE COURT: Yes, but it --

5 MR. HAEG: It --

6 THE COURT: -- seems to me that if you've
7 got a tape and a transcript of the state and the
8 prosecutor confessing to changing exhibits, that
9 would be something you would want me to look at.

10 MR. HAEG: Yes, it is.

11 THE COURT: So don't hide it.

12 MR. HAEG: Okay.

13 THE COURT: Don't hold back.

14 MR. HAEG: Well, and -- and I apologize.

15 THE COURT: I don't know --

16 MR. HAEG: I'm not a lawyer.

17 THE COURT: -- why you would have left
18 that critical piece of information at home.

19 MR. HAEG: I'm trying to do kind of the
20 best I can. And we may --

21 THE COURT: And you're doing a darn
22 good --

23 MR. HAEG: I'll talk with my wife.

24 THE COURT: You're doing --

25 MR. HAEG: We may have it.

1 THE COURT: You're doing a good --

2 MR. HAEG: We may have it, Your -- here,
3 Your Honor. I don't know. But I'm just --

4 THE COURT: So right --

5 MR. HAEG: -- I just -- I want to --

6 THE COURT: Mr. Haeg, I'm helping you,
7 trying to help you here. Take a moment, on a
8 piece of paper or a notebook or something that
9 you've got, that you won't lose, and say: Get a
10 copy of the recording of the Leader-Gibbens-Zeller
11 [sic] interview and the transcript to the state
12 and the judge.

13 MR. PETERSON: And I believe this argument
14 was made to the court of appeals in the PCR
15 appeal.

16 THE COURT: I don't know.

17 MR. HAEG: It was.

18 MR. PETERSON: Yeah.

19 MR. HAEG: And -- and --

20 MR. PETERSON: It was not remanded.

21 MR. HAEG: -- and --

22 THE COURT: Just --

23 MR. HAEG: -- and right there, can we just
24 talk about this for --

25 THE COURT: No. No.

1 MR. HAEG: -- just a second, please.

2 THE COURT: No.

3 You --

4 MR. HAEG: Okay.

5 THE COURT: -- are going to get that thing
6 for me. I'm going to make it part of this record.
7 I don't know what its significance is. I don't
8 know whether or not the recording or the
9 transcript --

10 MR. PETERSON: Well --

11 THE COURT: -- say what you claim they
12 say. And if they -- court of appeals has already
13 done with -- dealt with it, my hands are tied.

14 If they haven't dealt with it, they will
15 have that in front of them when you go back there,
16 if you do.

17 MR. PETERSON: And --

18 THE COURT: But you -- I don't --

19 MR. HAEG: I'm --

20 THE COURT: -- want you --

21 MR. HAEG: -- I'm just going to say
22 something, please, and don't -- please don't take
23 it the wrong way. The -- the --

24 THE COURT: Go ahead.

25 MR. HAEG: -- the court of appeals, one --

1 they -- they limited us to five issues, right?
2 Your Honor recognized that. To take away what
3 happened with the map and the recording of Scot --
4 of Scot Leaders and Gibbens and Zellers talking
5 about how the map had been falsified, they said I
6 never briefed it well enough and never gave them
7 any evidence of it.

8 And there -- there's a videotape of me at
9 oral arguments to them, where the state brought in
10 the original map. And I said, here is the
11 original map used against me at trial; here's how
12 the state falsified. And there's a recording of
13 them doing it. And -- and there was
14 transcriptions in the briefing to them. I don't
15 know if I sent them the CD or not.

16 But they then said, because, Mr. Haeg, you
17 never brought up that the map was false and you
18 never, you know, gave us any proof -- and I'm
19 here -- you know, I -- I was showing them -- that
20 you don't get to litigate this on remand.

21 And I'm like, that's a lie. There's
22 videotape of me going in --

23 THE COURT: Mr. Haeg.

24 MR. HAEG: -- front of the court of
25 appeals --

1 THE COURT: Mr. Haeg.

2 MR. HAEG: -- and giving them the stuff
3 that I'm giving you.

4 THE COURT: Then let's focus on that.

5 MR. HAEG: I -- I -- I understand.

6 THE COURT: Stop arguing about the court
7 of appeals --

8 MR. HAEG: It --

9 THE COURT: -- screwed up. You're here
10 now. This is --

11 MR. HAEG: Yeah.

12 THE COURT: -- your opportunity.

13 MR. HAEG: And -- and I appreciate it.

14 THE COURT: All right. So I'm trying to
15 help you here.

16 MR. HAEG: Okay.

17 THE COURT: Don't beat the dead horse.

18 MR. HAEG: Your Honor, I want to just
19 break down and cry, because --

20 THE COURT: Well, don't cry.

21 MR. HAEG: -- it's 15 -- my --

22 THE COURT: You keep telling me that.

23 But now it's time for you to focus on this
24 opportunity to tell me how you've been wronged and
25 to show me evidence of that.

1 MR. HAEG: Okay.

2 THE COURT: Stop telling me the court of
3 appeals is a bunch of horses asses.

4 MR. HAEG: Well, I don't --

5 THE COURT: I got that.

6 MR. HAEG: -- understand why they
7 didn't --

8 THE COURT: I got that point.

9 MR. HAEG: -- or --

10 THE COURT: I got that point.

11 MR. HAEG: Okay. Okay.

12 THE COURT: I got that.

13 MR. HAEG: Okay.

14 THE COURT: You don't like what they did.
15 You think they screwed you.

16 Okay?

17 MR. HAEG: Yep.

18 THE COURT: Crystal clear in my mind.

19 MR. HAEG: Okay.

20 THE COURT: Here's your chance.

21 MR. HAEG: Okay.

22 THE COURT: So don't blow it. All right?

23 MR. HAEG: I'll --

24 THE COURT: So stop --

25 MR. HAEG: Yep.

1 THE COURT: -- freaking out about stuff
2 that you've already told me. And focus on what
3 Mr. Robinson did or didn't do.

4 MR. HAEG: Okay.

5 THE COURT: Because they would -- did tell
6 you that you could deal with what you claim to be
7 his ineffectiveness.

8 MR. HAEG: Okay.

9 THE COURT: So --

10 MR. HAEG: And I'll --

11 THE COURT: -- far you've told me --

12 MR. HAEG: Okay.

13 THE COURT: -- one thing --

14 MR. HAEG: Yeah. I'll keep --

15 THE COURT: -- that somehow --

16 MR. HAEG: -- going here.

17 THE COURT: -- he didn't recognize that
18 the discovery violation occurred.

19 MR. HAEG: Okay.

20 THE COURT: Okay?

21 MR. HAEG: Can I --

22 THE COURT: You probably want to focus
23 some more about what he did when he got the case
24 and found out about what Brent Cole had done or
25 not done or what the deal was or what you told him

1 about what Brent Cole had done or -- you know,
2 that's what you clearly can do.

3 And right now --

4 MR. HAEG: Okay.

5 THE COURT: -- if you keep telling me that
6 the court of appeals is a bunch of jerks, you're
7 wasting your time to focus on what they told you
8 you could do here.

9 MR. HAEG: Okay. Okay.

10 THE COURT: Okay?

11 MR. HAEG: I -- I appreciate that.

12 THE COURT: Got that?

13 MR. HAEG: Okay. The -- one more question
14 I'd like to ask Mr. Robinson kind of on this
15 issue, is --

16 DIRECT EXAMINATION CONTINUED

17 BY MR. HAEG:

18 Q. Was part of Leaders' and Gibbens' case
19 against me at trial that I was eliminating wolves
20 in my guide area to improve my guide business?

21 A. Yes.

22 Q. So that was to the jury?

23 A. That was a theory that they --

24 Q. That was --

25 A. -- put forth.

1 Q. -- to the jury.

2 A. Yes.

3 Q. The jury heard that.

4 THE COURT: I get it. I know how --

5 A. Yes.

6 THE COURT: -- the trial works.

7 BY MR. HAEG:

8 Q. And this -- okay.

9 THE COURT: But again, you --

10 MR. HAEG: Okay.

11 THE COURT: What you can clearly do is
12 talk about what Mr. Robinson screwed up on, to be
13 blunt.

14 MR. HAEG: Okay.

15 THE COURT: So the two areas that you
16 talked about was mostly the change -- you know,
17 the failure to enforce the plea agreement that you
18 thought Cole had done for you. So it would really
19 help your case if you asked him questions about --

20 MR. HAEG: I'll --

21 THE COURT: -- what he learned about
22 Mr. Cole's negotiations.

23 MR. HAEG: Okay.

24 THE COURT: And why he did or did not
25 pursue those. Okay? That's --

1 MR. HAEG: I'm -- I'm getting there. It's
2 just, I wrote this up and it's hard -- I'm so
3 stressed that I need to kind of follow my notes or
4 I won't be able to do this.

5 THE COURT: Well --

6 MR. HAEG: Because --

7 THE COURT: -- my suggestion is --

8 BY MR. HAEG:

9 Q. Mr. Robinson --

10 THE COURT: -- you jump ahead to the part
11 that's really important.

12 MR. HAEG: Okay. Well, let me just ask
13 this one --

14 THE COURT: Go ahead.

15 MR. HAEG: -- question here.

16 BY MR. HAEG:

17 Q. Mr. Robinson, has Prosecutor Leaders
18 committed other discovery violations?

19 MR. PETERSON: Objection; relevance.

20 THE COURT: I assume you mean in this
21 case?

22 MR. HAEG: In other cases.

23 THE COURT: That's irrelevant.

24 MR. HAEG: Even one that made the local
25 newspaper?

1 THE COURT: Yes.

2 MR. HAEG: Okay.

3 BY MR. HAEG:

4 Q. Mr. Robinson, is it true that you did not
5 recommend that I go to trial?

6 A. Repeat that question.

7 Q. Is it true that you did not recommend that
8 I go to trial?

9 A. I mean, let me see if I understand that
10 question.

11 Are you asking me whether I recommended
12 that you do or do not go to trial?

13 Q. Did you ever tell me --

14 THE COURT: Ask him a question that
15 doesn't have double negative.

16 MR. HAEG: Okay.

17 THE COURT: And the simple question is,
18 did you advise me to go to trial?

19 BY MR. HAEG:

20 Q. Okay. Did you advise me to go to trial?

21 A. After you decided you wanted to, yes.

22 Q. So there would have never been any point
23 where I said, should we try to make a new plea
24 agreement, and you saying something like, we found
25 this subject-matter jurisdiction and it's so

1 strong that we should go to trial?

2 A. Well, if I understand your question, your
3 question is, did I advise you to take the plea
4 deal or go to trial?

5 Based on my memory, Mr. Haeg, I asked you
6 and told you, I said, we have two avenues that we
7 could take here, Mr. Haeg. We could try to
8 enforce the plea agreement, if we have sufficient
9 evidence that there really was an agreement. Or
10 we can go to trial.

11 We investigated by talking to Brent Cole
12 as to whether or not there was, in fact, a plea
13 agreement. And he said that he and Leaders really
14 never came to any solid agreement. So when I told
15 you that, I said, well, you know, Brent says that
16 there wasn't a solid agreement. And I said, so
17 the choice is yours whether you want to prove
18 there was an agreement or you want to go to trial.

19 I did tell you that in my research I
20 found -- or thought I'd found some case law that
21 says that in order for a court to have
22 jurisdiction over your kind of case, it has to be
23 based on some sworn testimony of a complaint on
24 information. It just can't be a bare allegation.
25 Because the system requires these things to be

1 made under oath.

2 You decided to go to trial, so that's the
3 strategy we took.

4 THE COURT: Did Mr. Cole --

5 Q. Is it true --

6 THE COURT: Hang on.

7 VOIR DIRE BY THE COURT:

8 Q. Does Mr. Cole -- you spoke with Mr. Cole
9 about the status of the plea negotiations?

10 A. Yes, I did.

11 Q. And did Mr. Cole tell you that there --
12 that, in his opinion, there had been a deal
13 struck?

14 A. Well, Mr. Cole said that he'd said that
15 there wasn't -- he kind of put it in the sense
16 that they had discussed dealings, but they hadn't
17 really come to some final, firm agreement. I kind
18 of questioned that a little bit, because I knew,
19 according to David, that there had been a time set
20 up for him to go in and -- and plead guilty to --

21 Q. Something; right?

22 A. -- something.

23 Q. And that would suggest that there was
24 probably a deal or a partial deal if they --

25 A. Right.

1 Q. -- were going to --

2 A. Right.

3 Q. -- they were willing to go in and change a
4 plea?

5 A. Right. But --

6 Q. And it was -- was Mr. Haeg saying, we had
7 a deal?

8 A. Mr. Haeg thought he had a deal --

9 Q. Right.

10 A. -- at some point in time.

11 Q. Right.

12 A. But --

13 Q. And Cole was -- didn't really back that
14 up?

15 A. Right. At -- at least to me, he didn't.

16 Q. Right.

17 A. Now, I don't know whether he -- what he
18 told David or what he told others. But he didn't
19 back up that there was, in fact, a plea agreement
20 that we could enforce.

21 Q. But you told Mr. Haeg that there was
22 two basic options?

23 A. Correct.

24 Q. You know, we -- because Haeg was saying,
25 we -- there was a deal that the state reneged.

1 And we -- and you were telling him, okay, we can
2 try and prove that there was a deal.

3 A. Right.

4 Q. And if we can prove it, we can try and get
5 it enforced?

6 A. Correct.

7 Q. And the other option is it -- you know,
8 either don't do that; or if we fail at that
9 effort, go to trial?

10 A. Well, I don't think -- I don't think it
11 ever came up that I was going to try to
12 renegotiate a plea deal at that particular time.
13 So he decided to go to trial. Those were the
14 options: Try to enforce the agreement, if there
15 was one, or go to trial.

16 Q. But he said -- you're telling me that he
17 opted not to try to enforce, but instead, we're
18 going to trial?

19 A. Correct.

20 Q. I'm an innocent guy; let's go for it?

21 A. Correct.

22 DIRECT EXAMINATION CONTINUED

23 BY MR. HAEG:

24 Q. Is it true, in fact, that you told me that
25 everything that happened with Mr. Cole was water

1 under the bridge and we would have to start
2 renegotiating with the state?

3 A. You didn't have a deal; so, obviously,
4 you'd have to negotiate some --

5 Q. So --

6 A. -- kind of --

7 Q. -- when you say enforce the plea
8 agreement, you mean some new plea agreement and
9 not the one Mr. Cole --

10 A. No.

11 Q. -- had made for me?

12 A. No. Our discussions were about the
13 alleged agreement that Mr. Leader [sic], you, and
14 Mr. Cole had agreed to, according to you; and that
15 Leaders had changed his mind, according to you and
16 according to Mr. Cole.

17 So Mr. Cole was basically telling me that
18 because Mr. Leaders had not gone along with the
19 what the three of you had agreed to before, that
20 you really didn't have an agreement, because
21 Mr. Leaders wanted to change his mind about the
22 deal. That's the way I understood it, David.

23 Q. Okay. Well --

24 MR. HAEG: And just so everybody knows, I
25 have a list. And if I start jumping around, it

1 will get real confusing. And so I'm going to go
2 down my list --

3 THE COURT: Go ahead.

4 MR. HAEG: -- and not jump around.

5 BY MR. HAEG:

6 Q. Is it true your defense for me at trial
7 and on appeal was that there was a lack of
8 subject-matter jurisdiction, because Leaders had
9 not provided an affidavit for the charging
10 information?

11 A. And a point on appeal was made actually at
12 court before it got on appeal. And yes, I argued
13 that the district court not have subject-matter
14 jurisdiction over your case, because they didn't
15 have the proper document before it in order to
16 obtain jurisdiction. In other words, my theory
17 was that if there was a complaint for a
18 misdemeanor, like there is for a felony, our laws
19 require that these things be supported by oath and
20 affirmation. The complaint was not.

21 Q. Okay. Is it --

22 A. And therefore I -- I argued in front of
23 district court Judge Murphy that because it was
24 not a sworn-to complaint, the court didn't have
25 jurisdiction. Because to invoke jurisdiction, you

1 have to have proper documentation to do --

2 THE COURT: And she --

3 A. -- that.

4 THE COURT: You made the argument; she
5 rejected it?

6 A. And she rejected it.

7 BY MR. HAEG:

8 Q. Is it true you told me this defense was so
9 strong that we should not put up any defense at
10 trial?

11 A. No, because there were other cases that
12 you were charged with, besides the moose, if you
13 recall.

14 THE COURT: Let me ask, but your
15 jurisdiction issue, did that --

16 A. With the -- all charges.

17 THE COURT: To all charges?

18 A. Well, he -- the -- the -- the total
19 complaint that was --

20 THE COURT: Right. Okay.

21 A. -- against him, because it wasn't sworn
22 to.

23 THE COURT: Okay. And then -- but you had
24 other -- you thought you had other avenues to --

25 A. Oh, well --

1 THE COURT: -- defend?

2 A. -- and we did --

3 THE COURT: Yeah. Okay.

4 A. -- present other avenues to defend on --
5 on the other charges that he had.

6 THE COURT: Okay. Go ahead, Mr. Haeg.

7 BY MR. HAEG:

8 Q. Can you look at this -- okay. You just
9 testified that you'd never told me that it was so
10 strong that we should not put up any defense at
11 trial. And I just want to --

12 A. No, what I --

13 Q. -- admit a transcription of a meeting with
14 Chuck Robinson, 1/5/06, where --

15 A. When was the meeting?

16 Q. 1/5/06. I think it was in your office.
17 It was me, Jackie, Greg Stoumbaugh, and you. And
18 I'm just going to read it here.

19 THE COURT: What is it you're reading?

20 MR. HAEG: It is a transcription of a
21 meeting with Mr. Robinson while he was my
22 attorney. And he --

23 THE COURT: Who --

24 MR. HAEG: I asked, I --

25 THE COURT: Hang on.

1 MR. PETERSON: I'm --

2 THE COURT: Hang on.

3 MR. PETERSON: -- going to object to
4 him --

5 THE COURT: Hang on.

6 MR. PETERSON: -- reading that into the
7 record.

8 THE COURT: Hang on.

9 MR. HAEG: Can -- okay.

10 THE COURT: Just --

11 MR. HAEG: Do I have him do it?

12 THE COURT: -- wait.

13 Where did this thing -- who made this
14 recording? Who made the transcript?

15 MR. HAEG: I made the recording.

16 Mr. Robinson was there when I had the tape
17 recorders on the table.

18 You remember me and Greg Stoumbaugh come
19 in, and Jackie. It was toward the end of your
20 representation of me. And my wife made the
21 transcription.

22 And can I have him just read this?

23 THE COURT: Well, sure.

24 MR. PETERSON: No. I'm going to object to
25 that. If he wants to ask him questions about it,

1 he can ask him questions about it. There are
2 rules that govern how the evidence comes in. If
3 he disagrees with what the witness testifies to,
4 then he can try to refresh his recollection with
5 it. But you can't just have him read a document
6 that his wife created.

7 THE COURT: You can ask him questions
8 about whether or not something was asked,
9 something was said.

10 MR. HAEG: Okay.

11 BY MR. HAEG:

12 Q. Is it true that on 1/5/06, I stated to
13 you, quote, you said the argument -- and this is
14 the subject-matter jurisdiction -- was so
15 compelling, you recommended I didn't even put on a
16 defense.

17 Do you remember that?

18 A. Yeah.

19 You want me to tell you what I remember?

20 Q. Yeah.

21 A. Okay. What I said to you, Mr. Haeg, is
22 what I would have said to any client in your
23 position, is that in order to make the motion to
24 dismiss your case for lack of jurisdiction, a
25 couple things had to happen.

1 First of all, prejudice had to attach to
2 the case. In other words, we come to court,
3 everybody's there, court's in session, and then
4 jeopardy attaches. For the purpose of the kind of
5 motion that I intended to make was that you would
6 lose that jeopardy attachment if you began to
7 testify about the charges against you. In other
8 words, there wasn't a question whether you did it
9 or not. The question was whether the court had
10 jurisdiction to hear the case or not. I explained
11 that to you.

12 Q. Okay. Is it true that your response was,
13 that was a strategy, that was a strategy
14 suggestion that we had, yes.

15 A. I just told you it was a strategy
16 suggestion we had, yeah.

17 Q. Okay. And then is it true that I
18 responded to you, I said, that you made to me; I
19 didn't bring it up; you did.

20 A. Bring what up?

21 Q. To not put up any defense at trial.

22 A. No, I never told you never to put up a
23 defense.

24 What I told you, Mr. Haeg, was that in
25 relationship to a motion to dismiss, that all we

1 really needed to have was jeopardy to attach.
2 Didn't need testimony from anybody. Didn't make
3 the argument that the court didn't have
4 jurisdiction because it -- it was proceeding on an
5 unsworn-to -- without-a-oath complaint against
6 you.

7 Q. Okay. Is it possible me, as an ignorant
8 person, when you said, don't put up any defense, I
9 just thought that you were not going to do
10 anything?

11 A. I don't know what you thought.

12 Q. Okay.

13 A. I -- I'm just telling you what I thought.

14 Q. Okay. Is it true you told me this defense
15 was so strong that we should, quote/un- -- quote,
16 stand mute at trial, unquote?

17 A. I just explained to you that -- I just
18 told you that for purposes of making a motion like
19 that, all you really need is for jeopardy to
20 attach. And jeopardy attaches when you come to
21 court, judge bangs down the gavel and says, we're
22 ready to proceed. All right. Then jeopardy
23 attaches in a criminal case.

24 So I was explaining to you that if you're
25 going to make a motion that asked the court to

1 dismiss the charges based on the fact of lack of
2 jurisdiction to hear the case, you don't need to
3 put on a defense. Not that I was encouraging not
4 to. I was just explaining to you the procedures
5 involved with that kind of motion.

6 VOIR DIRE BY THE COURT:

7 Q. Well, let me see if I -- let me make sure
8 I understand, I think, where you're going here is
9 that you thought you had case law that said that
10 this complaint had to be based on sworn
11 testimony -- sworn statement, and you thought that
12 this complaint was not?

13 A. Correct.

14 Q. And if you went to this judge in advance
15 of trial and said, this complaint doesn't have a
16 sworn statement, judge would say, hey, you're
17 right, and would dismiss the case, and then the
18 state would just turn around and get a complaint
19 with sworn statement and start the process anew?

20 A. Correct.

21 Q. So for this to be ultimately effective,
22 you wanted to get the case to a point where if the
23 case -- so pick a jury, jeopardy has attached, for
24 purposes of double jeopardy.

25 A. Correct.

1 Q. So that if you then jumped up and said,
2 hey, Judge, you don't have jurisdiction, judge
3 says, you're right, we don't have jurisdiction,
4 then the state would try to fix this problem, but
5 because you had passed the magic line of double
6 jeopardy, they could not do that?

7 A. That's correct.

8 Q. Right.

9 So it was a timing issue and a -- okay.
10 That was -- I mean, that was the context of your
11 advice to him about --

12 A. Correct.

13 Q. -- doing it in a way that would make it
14 effective rather than just simply -- ultimately --
15 to make it incurable; whereas, if you did it early
16 on, it would be curable?

17 A. Correct.

18 Q. Okay.

19 DIRECT EXAMINATION CONTINUED

20 BY MR. HAEG:

21 Q. Is it true you told me the U.S. Supreme
22 Court cases Albrecht versus United States, and
23 Gerstein versus Pugh, supported your defense that
24 the prosecutor not providing an affidavit to the
25 charging information deprived the court of

1 subject-matter jurisdiction?

2 A. I used that case and, I think, couple
3 other cases to support my theory, correct.

4 Q. Okay. But the two main ones were
5 Gerstein --

6 A. Well, I --

7 Q. -- vers- --

8 A. (Indiscernible).

9 Q. -- Albright [sic] versus U.S., and
10 Gerstein versus Pugh?

11 A. Well, that's very difficult. I mean, I've
12 done so much legal research, you know, in the
13 past, it's very difficult now to say that in David
14 Haeg's case, it was only these two cases that --

15 Q. Okay. When it -- is it true that at your
16 deposition, and I don't know exactly what it has
17 there --

18 A. I'm not saying those cases had no -- no --
19 no impact on my theory. I'm just saying that I
20 did tell you about those cases, yes.

21 Q. Okay. So do you admit that those were
22 cases that you relied upon?

23 A. They may not have been the only ones, but
24 yes, they were involved.

25 Q. Okay. Okay. Is it true you told me we

1 shouldn't bring up any other defenses, as this may
2 waive or admit subject-matter jurisdiction?

3 A. I just explained to you and I think the
4 judge just explained to you what the procedure is
5 in court. For this type of motion, had I done it
6 in advance of trial, and we hadn't even talked
7 about testimony or what the defense is going to
8 be, the judge could have granted motion, and then
9 the state would have just been able to amend the
10 complaint, because there was no double jeopardy
11 attached.

12 Q. But that isn't my question.

13 A. But I'm explaining to you the answer to
14 your question. What I explained to you is that if
15 we allow the proceeding to start, including
16 picking of the jury, that once that occurs,
17 jeopardy attaches, double jeopardy attaches.

18 Q. Okay.

19 A. So if we win the motion, then the state
20 can't come back and say, oh, well, we just want to
21 amend the complaint and try to (indiscernible).

22 Q. I don't disagree that that's what you
23 said.

24 A. All right.

25 Q. What I'm asking is, after jeopardy

1 attached and you made the motion after jeopardy
2 attached, that you told me we shouldn't bring up
3 anything else, the false map or anything else --

4 A. Well, I didn't know about the --

5 Q. -- because that may waive -- that may
6 admit and waive to the court that they, in fact,
7 had subject-matter jurisdiction?

8 A. Well, first, you're assuming something
9 that I didn't even know there was a false map at
10 the time we talked about strategy regarding the
11 motion to dismiss, number one.

12 Number two, I was just trying explaining
13 to you that it's not a -- we don't need evidence
14 if the court agrees that because this complaint
15 was not -- or information was not sworn to,
16 there's no thing that the court can take
17 jurisdiction over.

18 Q. Again, I'm asking, is it true that you
19 told me we shouldn't bring up any other defenses
20 after you had raised -- let -- after jeopardy had
21 attached and you had filed the motion, isn't it
22 true you told me we shouldn't bring up any other
23 defenses, because they may waive subject-matter
24 jurisdiction?

25 A. No. I didn't tell you not to bring up any

1 defenses. What I'm saying is that there was
2 any -- there was no need to bring up defenses at
3 the time we're making this motion, because
4 jeopardy had attached.

5 Q. Is it true that --

6 A. That's what I was telling you.

7 Q. -- you told me if we did bring that up, it
8 may sabotage your --

9 A. Prior to jeopardy --

10 Q. No, after jeopardy attaches.

11 A. No.

12 Q. Jeopardy comes in, jeopardy attaches, you
13 file a motion that subject-matter jurisdiction
14 wasn't had, and -- and -- you know, so we're in
15 jeopardy; you file the motion; and then you tell
16 me, hey, Dave, and we shouldn't bring up any other
17 defenses, because this may jeopardize, admit, or
18 waive the subject-matter jurisdiction.

19 A. I don't -- no, I didn't tell you that way.
20 And maybe you interpreted it that way, but I
21 didn't tell you that that way. I didn't tell you
22 that you didn't need to bring up any defenses.

23 What I said was that we don't need to
24 bring up any evidence at this point, because
25 jeopardy's attaching; and if the judge agrees with

1 us, your case is over, period; and the state can't
2 come back and amend the complaint.

3 Q. Okay. But --

4 A. And then after she ruled, I didn't tell
5 you not to bring up a defense. We went ahead with
6 your defense.

7 Q. Okay. So after she ruled, you did not
8 tell me that, hey, if we bring up other defenses,
9 this may waive or admit subject-matter
10 jurisdiction?

11 A. No, I didn't tell you that way, David, no.

12 Q. Okay.

13 A. I did tell --

14 Q. And so at --

15 A. -- you that we could waive defenses if we
16 prematurely ask the court to dismiss the case for
17 lack of jurisdiction.

18 Q. And so is it true during my trial and then
19 later on appeal that the subject-matter
20 jurisdiction defect, because of the prosecutor not
21 swearing to the charging information, that that
22 defect or that defense was valid through trial and
23 on appeal?

24 A. The question on appeal would be, did the
25 court err by not granting your motion to dismiss?

1 That would have been the issue on appeal, which I
2 raised on appeal for you.

3 Q. Okay. And so, basically, we went through
4 trial and into appeal with you continuing to rely
5 on the subject-matter jurisdiction?

6 A. Along with other points on appeal. Yes.

7 Q. Okay. Okay. Thank you.

8 Is it, in fact, true that you knew before
9 trial and appeal that Leaders had cured the
10 subject-matter jurisdiction defect?

11 A. No. He hadn't cured it, because the
12 complaint that you were going to court on wasn't
13 sworn to.

14 MR. HAEG: I'd like to point out that --

15 A. Now, he may have cured it afterward.

16 MR. HAEG: -- in Robinson's deposition, on
17 page 10, he admits he knew that Scot Leaders had
18 cured the subject-matter jurisdiction before
19 trial.

20 A. I don't think that I got anything that
21 showed that your complaint was sworn to, which was
22 the -- in my opinion, the only way it could be
23 corrected.

24 THE COURT: I'm sorry, what are you trying
25 to show him?

1 MR. HAEG: Just hang on here.

2 THE COURT: All right.

3 MR. HAEG: Okay. I'd like to have
4 Mr. Robinson read into the record, like, halfway
5 down page 10 and the beginning of page 11 in his
6 deposition.

7 THE COURT: Okay. But -- this the --
8 Robinson's deposition?

9 MR. HAEG: Robinson deposition of --

10 THE COURT: Page 10?

11 MR. HAEG: Page 10 and 11. And it's a
12 September 9th, 2011, deposition.

13 MR. HAEG: So I'd like you to read this
14 here.

15 And the state's questioning Mr. Robinson,
16 and he's answering.

17 So from about here down to here. Top of
18 the next page.

19 THE COURT: Mr. Robinson, would you give
20 me the -- he's pointing to somewhere. Give me a
21 line number. Page 10, line what?

22 A. This is page 10. He's showing me line 17.

23 MR. HAEG: And then through to page 11,
24 like line 3 or so.

25 A. I'm reading it.

1 Okay. I read it. What's the question?

2 BY MR. HAEG:

3 Q. And can you read it into the record,
4 please.

5 A. Yeah, gladly.

6 (Whereupon a portion of the Arthur
7 Robinson deposition dated September 9, 2011, was
8 read as follows:)

9 And did you raise that issue in a motion
10 prior to trial?

11 Yes, I did.

12 And how did the court rule on that motion?

13 Denied the motion.

14 And you --

15 No answer.

16 -- and allowed Mr. Leaders to amend the
17 information. So prior to actually completing
18 trial, the information was amended?

19 Yes.

20 (Whereupon the reading of a portion of the
21 Arthur Robinson deposition was concluded)

22 Q. Curing this defect --

23 A. Well, that was after we made the motion --

24 Q. And --

25 A. -- David, not before.

1 Q. -- Robinson answers: Yes.

2 A. Yeah, but that was after the -- it was --
3 listen. I do have a memory about that proceeding.

4 MR. HAEG: My point is, during trial and
5 even after trial, he was telling me this was
6 valid, when now he's testified he knew before
7 trial it was no good.

8 A. No. I didn't say --

9 MR. PETERSON: It's not what he just --

10 MR. HAEG: So he's sending me --

11 MR. PETERSON: -- testified to.

12 MR. HAEG: -- to trial on something that's
13 no good.

14 (Indiscernible - simultaneous speech)

15 UNIDENTIFIED SPEAKER: What's going on?

16 MR. HAEG: He's sending me to appeal on
17 something that's no good. And you know, I'm
18 sorry, Your Honor --

19 A. (Indiscernible).

20 MR. HAEG: -- 15 years --

21 MR. PETERSON: That's the exact
22 opposite of --

23 MR. HAEG: -- down the road --

24 MR. PETERSON: -- what he just said.

25 MR. HAEG: -- and I -- I --

1 A. Your Honor, may I read this
2 (indiscernible)?

3 MR. HAEG: -- I wanted to have a -- I
4 wanted to have a beautiful life with my wife and
5 kids. We built an awesome guiding business.

6 MR. PETERSON: Objection --

7 MR. HAEG: The state of Alaska --

8 MR. PETERSON: -- this is not a question.

9 MR. HAEG: -- came in and asked me to kill
10 wolves for them and gave me a permit and told me
11 where to kill them.

12 THE COURT: Please stop.

13 MR. HAEG: And I've lost everything,
14 because not only did they lie --

15 THE COURT: Please, please --

16 MR. HAEG: -- about things --

17 THE COURT: -- stop. Please stop.

18 MR. HAEG: Okay.

19 THE COURT: This is not helpful.

20 MR. HAEG: I'm sorry.

21 A. I would just like to --

22 THE COURT: I'm trying to help you.

23 A. Right.

24 MR. HAEG: Can -- do -- would you look at
25 this, please, right here and now.

1 A. Page 10 --

2 THE COURT: Line 11 through page 11 --

3 A. -- line 17.

4 THE COURT: -- line 3.

5 A. No. Line 17 on page 10 through lines 2 --
6 1 and 2 on page 11.

7 MR. HAEG: And I want it on the record
8 that Scot Leaders amended the information long
9 before trial, curing the defect.

10 A. No, he did not.

11 THE COURT: Whatever he did --

12 MR. HAEG: Yes, he did.

13 THE COURT: -- whatever he did is already
14 on record.

15 A. I don't recall him doing it until the --
16 till the --

17 MR. HAEG: You filed a motion --

18 A. -- judge allowed him to do it --

19 THE COURT: Stop.

20 A. -- at trial.

21 THE COURT: Both of you.

22 Mr. Haeg, go back to your table.

23 Ask your next question. I've read it.

24 BY MR. HAEG:

25 Q. Is it true during your deposition, is it

1 true you testified during your deposition that my
2 only defense at trial and on appeal was the lack
3 of subject-matter jurisdiction?

4 A. No, I did not, because you were charged
5 with other things, as well. What I told --

6 MR. HAEG: Can I --

7 A. -- you and I will tell --

8 MR. HAEG: -- approach and get --

9 A. -- you -- hold it.

10 MR. HAEG. -- my book again?

11 A. What I told you, David --

12 THE COURT: Let him answer the question
13 first.

14 A. What I told you, David, was yes, if we win
15 this motion, all the charges are gone, because the
16 sta- -- because the court lacked subject-matter
17 jurisdiction. Yes.

18 THE COURT: Do you want to show him
19 something that you think contradicts that answer?

20 MR. HAEG: Yeah, if I could. Can I --

21 THE COURT: Certainly.

22 BY MR. HAEG:

23 Q. Okay. Page 135, line 4 through 16. And I
24 guess, can you read that and, I guess, have Your
25 Honor read it also after he's done?

1 A. What's the page again, Mr. Haeg?

2 Q. 135.

3 A. 4 through 16?

4 Q. Correct.

5 A. (Pause) Okay. What's your question?

6 Q. Is it true that you told me to rely on the
7 subject-matter jurisdiction and -- gosh, I'd have
8 to go look at my question.

9 MR. HAEG: Do you remember what I asked?

10 THE COURT: I think you are accusing him
11 of telling you that the subject-matter
12 jurisdiction defense was so powerful, you should
13 do nothing whatsoever else.

14 MR. HAEG: Okay. And --

15 THE COURT: Is that what you're accusing
16 him of doing?

17 MR. HAEG: Yes. And --

18 THE COURT: Now, he's --

19 MR. HAEG: -- I wanted --

20 THE COURT: Okay. And --

21 MR. HAEG: -- him to --

22 THE COURT: -- just hang on.

23 MR. HAEG: -- read, whatever, 4 through
24 16. And if he read it out loud, that might
25 help --

1 THE COURT: He denies that.

2 MR. HAEG: Okay.

3 THE COURT: So do you have something in
4 this deposition --

5 MR. HAEG: Yes.

6 THE COURT: -- that contradicts that?

7 MR. HAEG: And can I read it right now --

8 THE COURT: Just give it to me.

9 MR. HAEG: -- or can you read it?

10 THE COURT: I'll read it.

11 MR. HAEG: I'd like it read into --

12 THE COURT: I'll --

13 MR. HAEG: -- the record.

14 THE COURT: -- I will read it into the
15 record.

16 MR. HAEG: Okay.

17 THE COURT: Okay. 135, starting at
18 line 4.

19 (Whereupon a portion of the Arthur
20 Robinson deposition dated September 9, 2011, was
21 read as follows:)

22 Question: I'm just wanting -- oh,
23 sometimes it's hard to get this stuff by asking a
24 question. So you -- is it true that you told
25 me you recommended going to trial and not putting

1 on evidence?

2 THE COURT: (Interjecting) So hang on
3 here a second.

4 So, Mr. Haeg, you're the questioner here
5 in this deposition? So this question is by
6 Mr. Haeg. (End of interjection)

7 Okay. I'm just wanting -- oh, sometimes
8 it's hard to get this stuff by asking a question.
9 So you -- is it true that you told me that you
10 recommended going to trial and not putting on
11 evidence?

12 Answer: After you decided that we -- that
13 we were going to go to trial and not pursue the
14 plea agreement enforcement, then I said, you know,
15 there's no need putting on evidence and what we
16 needed to do was to establish this defect.

17 Question: Okay. In other words, you
18 thought we should just rely totally on a defect
19 and not actually try to win the case on the
20 merits?

21 Answer: Correct.

22 (Whereupon the reading of a portion of the
23 Arthur Robinson deposition was concluded)

24 MR. HAEG: Yeah.

25 And so what I want established -- and

1 sorry I'm talking now -- is that he told me that
2 this defect was so great, we shouldn't even put up
3 any other defense.

4 THE COURT: Did you put on a defense?

5 MR. HAEG: Yes, because I demanded it.

6 THE COURT: Okay.

7 MR. HAEG: And -- but what I'm getting at
8 is, all the stuff that should have helped me, like
9 them using my statement against me --

10 THE COURT: Go on.

11 MR. HAEG: -- the map being falsified,
12 none of that came up. It was all a song and
13 dance. It was all a sham. And my attorneys were
14 in on it.

15 THE COURT: They were in on it?

16 MR. HAEG: Yes.

17 THE COURT: Who were they in on it with?

18 MR. HAEG: The state of Alaska.

19 THE COURT: Why do you think that?

20 MR. HAEG: Because when you look at the
21 totality of all the evidence that was falsified,
22 all the evidence that's destroyed, and my attorney
23 that I paid, I think, about \$50,000 to, admitting
24 he's using a defense for me at trial and on
25 appeal, that he's now admitted he knew at the time

1 was no good --

2 A. I never admitted that that --

3 MR. HAEG: -- I think that --

4 A. -- was no good.

5 MR. HAEG: -- that's wrong.

6 THE COURT: Your next question? You have
7 a list?

8 MR. HAEG: I was going to ask -- I -- this
9 might not be allowed.

10 BY MR. HAEG:

11 Q. Mr. Robinson, how can you testify that my
12 only defense at trial and on appeal was the lack
13 of subject-matter jurisdiction and also testify
14 that you knew prior to trial this was not a
15 defense?

16 A. First of all, it isn't true that I knew
17 prior to trial there wasn't a defense.

18 Q. You admitted that --

19 A. No, I didn't.

20 Q. -- Scot Leaders cured the defect.

21 A. After the motion was denied. And that was
22 after we'd gone to court, not before.

23 Q. You admitted that the defect was cured.

24 A. After the judge denied it, which sort of
25 proves my point, if the --

1 THE COURT: Ask the next question.

2 MR. HAEG: Okay.

3 BY MR. HAEG:

4 Q. Is this perjury by inconsistent
5 statements?

6 A. Is what perjury?

7 Q. You testifying that this is my only
8 defense at trial, and then also testifying during
9 this same deposition that you knew it had been
10 cured before trial.

11 A. First of all, I didn't testify in my
12 deposition that I knew it was cured before trial.
13 I said the motion was denied and the judge amended
14 the complaint -- or the information at the time.
15 So that's --

16 Q. And Scot Leader- --

17 A. -- after trial.

18 Q. -- and the state asked you, did Scot
19 Leaders amend the complaint and cure this defect?
20 And you said yes.

21 A. The judge allowed the state to amend the
22 complaint after she denied the motion to dismiss.

23 THE COURT: Ask --

24 BY MR. HAEG:

25 Q. But still you admitted that the --

1 THE COURT: Mr. Haeg.

2 BY MR. HAEG:

3 Q. -- defect was cured.

4 THE COURT: Mr. Haeg. Mr. Haeg. You're
5 kind of wasting your time.

6 MR. HAEG: Okay.

7 THE COURT: You've made your point.

8 MR. HAEG: Okay.

9 THE COURT: So unless you want this all
10 just to --

11 MR. HAEG: Okay. I'm sorry.

12 THE COURT: No, I don't want you to be
13 sorry. I want to make sure that you get an
14 opportunity to tell me what you think is
15 important. And sometimes --

16 MR. HAEG: I'm trying.

17 THE COURT: -- you get a little
18 over-focused on details.

19 MR. HAEG: Okay.

20 THE COURT: So I want you to move on to
21 another important argument.

22 MR. HAEG: And so I should move on from
23 this subject-matter jurisdiction thing, in your
24 opinion?

25 THE COURT: Yeah. As far as I can tell,

1 he filed the motion, it got denied, and it was
2 appealed. Right? And --

3 MR. HAEG: He filed a motion; it was
4 denied. The prosecutor swore to the information,
5 and he admitted that cured --

6 THE COURT: All --

7 MR. HAEG: -- the defect.

8 THE COURT: -- of this is part of the
9 existing record.

10 MR. HAEG: Okay.

11 THE COURT: So the purpose of this hearing
12 is to give you a chance to put on stuff that's not
13 part of the existing record.

14 MR. HAEG: Okay.

15 THE COURT: So you shouldn't focus on
16 redoing what's already in the existing record.

17 MR. HAEG: Well --

18 THE COURT: So --

19 MR. HAEG: -- and I agree, Your Honor.
20 The problem is, the courts --

21 THE COURT: -- so move on.

22 MR. HAEG: -- below -- the courts above
23 and below you haven't looked at this stuff. And
24 that's why --

25 THE COURT: So --

1 MR. HAEG: -- I'm so --

2 THE COURT: -- I can't solve that problem
3 for you.

4 MR. HAEG: Okay. Well, I --

5 THE COURT: What I can solve --

6 MR. HAEG: -- believe a grand jury will,
7 at some point, I believe a grand jury of the
8 citizens of this state --

9 THE COURT: Mr. Haeg.

10 MR. HAEG: -- will eventually have --

11 THE COURT: Mr. Haeg.

12 MR. HAEG: -- judges and prosecutors and
13 troopers and defense attorneys come in and say,
14 how is this going on in our courtrooms --

15 THE COURT: Mr. Haeg.

16 MR. HAEG: -- right under our noses?

17 THE COURT: Mr. Haeg.

18 MR. HAEG: But that's -- I'll go to the
19 next question.

20 BY MR. HAEG:

21 Q. Is it true that you saw --

22 THE COURT: You're using up your time.

23 MR. HAEG: Okay. I'm --

24 BY MR. HAEG:

25 Q. Is it true that you saw Judge Murphy

1 riding around with Trooper Gibbens during my
2 trial?

3 A. I heard that. I didn't see it.

4 Q. Would you have ever stated this?

5 A. I don't remember if I did or not.

6 That I saw them together in the car?

7 Q. Is it true that you saw Judge Murphy
8 riding around with Trooper Gibbens during my
9 trial?

10 A. I heard that.

11 Q. You would have never said it?

12 A. I said I heard that she had.

13 Q. You would have never said that you seen --

14 A. I don't know what --

15 Q. -- personally seen?

16 A. -- I would have never said. I just said I
17 heard that. Now, if you can show me where I said
18 I saw that, then --

19 THE COURT: Wait. Wait. Did --

20 A. -- show it to me.

21 THE COURT: When did you hear that she was
22 riding with the trooper? I mean, was that during
23 trial that you heard it, or was it months later
24 or --

25 A. It was so long ago, Judge, it's kind of

1 hard to say when exactly it occurred that I heard
2 it.

3 THE COURT: Well, let me ask you this.
4 Was the allegation that Murphy was riding with the
5 trooper, was that raised during trial?

6 A. No.

7 THE COURT: No. Okay.

8 MR. HAEG: Okay.

9 THE COURT: But you don't -- you
10 certainly --

11 MR. HAEG: I have a --

12 THE COURT: -- never saw it, and you're
13 not sure when you heard these allegations?

14 A. Correct.

15 THE COURT: All right.

16 A. I mean, I know I heard the allegations.

17 THE COURT: No, I understand that.

18 A. But I don't recall seeing.

19 THE COURT: But you're not sure when you
20 heard them?

21 MR. HAEG: Okay. Can I admit a phone
22 conversation between Chuck Robinson and David Haeg
23 made on 2/4/11? And can I hand this to him and --

24 THE COURT: If it's got --

25 MR. HAEG: -- have him read it --

1 THE COURT: If it's the prior --

2 MR. HAEG: -- and you look at it -- huh?

3 THE COURT: -- inconsistent statement to
4 what he just said, sure.

5 MR. HAEG: Yeah. And I guess have him
6 read it. And then if you'll be kind enough to
7 read it into the record.

8 MR. PETERSON: I'll object to that
9 procedure.

10 THE COURT: What's the objection?

11 MR. PETERSON: That the judge doesn't get
12 to just read documents that the petitioner hands
13 him into the record. That's not how --

14 THE COURT: How would you --

15 MR. PETERSON: -- evidence comes in.

16 THE COURT: -- prefer that he do it?

17 MR. PETERSON: He can ask questions of the
18 witness. And if they're inconsistent, then he can
19 impeach him with that. But he has to state what
20 it is and where it came from. And I'm guessing
21 this is another transcript that he created.

22 THE COURT: Okay.

23 MR. PETERSON: So I want that as part of
24 the record.

25 THE COURT: You -- now it is.

1 MR. PETERSON: Well, I don't know if
2 that's true yet. He'll have to say that.

3 THE COURT: What is this thing?

4 MR. HAEG: It is a recording of a
5 tape-recorded conversation --

6 A. Yeah, what I said was --

7 MR. HAEG: -- with Mr. Robinson.

8 A. Uh-huh (affirmative). What I said was,
9 when you brought up this other woman from the
10 other department who was investigating some
11 judicial --

12 MR. PETERSON: I'm sorry. I can't hear.

13 A. -- complaint --

14 MR. PETERSON: What?

15 A. All right. This was in regard to a call
16 he called me about, wanting to know whether a
17 Marla Grinstein [sic] had ever contacted me about
18 Judge Murphy. And what I said was -- okay. Let's
19 get it from the beginning, so we have full
20 context.

21 MR. HAEG: Okay.

22 MR. PETERSON: Wait. Hold, hold on.

23 Do you remember saying whatever is written
24 on that paper?

25 A. No.

1 MR. PETERSON: Okay.

2 Where did that paper come from?

3 THE COURT: Don't know yet.

4 MR. PETERSON: He can't just read
5 something that the defendant hands him --

6 THE COURT: He can read --

7 MR. PETERSON: -- as though they're his
8 own words.

9 THE COURT: -- anything he wants --

10 A. Yeah --

11 THE COURT: -- to refresh recollection.

12 A. -- refresh my memory.

13 MR. PETERSON: Sure. And then ask him
14 another question based upon it. But he can't
15 just --

16 THE COURT: Well, we're not --

17 MR. PETERSON: -- read --

18 THE COURT: -- there yet.

19 A. Right.

20 THE COURT: So your objection's denied.

21 A. So now I've read it.

22 BY MR. HAEG:

23 Q. Do you agree that that's a true and
24 accurate --

25 A. No. I don't know how accurate this is,

1 because I didn't do the transcript, not even know
2 I was being recorded, but -- at the time. But --
3 so I can't vouch for the accuracy of this
4 document, because I don't know anything about its
5 background --

6 Q. Well, does it --

7 A. -- other than --

8 Q. -- equate to what you remember?

9 A. I remember you calling me. I was in
10 Washington, D.C., at the time. My mother had just
11 passed away. And I remember you calling me.

12 THE COURT: So what's your question?

13 MR. HAEG: My question is, is this an
14 accurate representation --

15 THE COURT: And he's answered --

16 MR. HAEG: -- of a conversation we had.

17 THE COURT: -- he doesn't know.

18 MR. HAEG: Okay.

19 THE COURT: So whether it's accurate or
20 not, ask him the basic question about --

21 MR. HAEG: Okay.

22 THE COURT: -- what is the -- this --

23 BY MR. HAEG:

24 Q. Did you ever -- is it true that you seen
25 Trooper Gibbens and Judge Murphy running around in

1 the trooper car?

2 A. My best reco- -- recollection is that I
3 heard it. And if you read that statement very
4 closely, if I said I saw it, I also said I could
5 be wrong.

6 Isn't that true?

7 Q. Uh-huh (affirmative).

8 A. Okay.

9 Q. Okay. Can you -- how do I go about this?
10 It also says -- I said, and do you remember it
11 happening during my trial? And Mr. Robinson
12 replies, I saw it. And I said, and/or sentencing?
13 And Robinson said, I saw it during the trial, I
14 believe.

15 And that's -- and he does say, I could be
16 wrong --

17 MR. PETERSON: Objection.

18 A. (Indiscernible).

19 BY MR. HAEG:

20 Q. -- you know, all these days --

21 MR. PETERSON: So that's not --

22 BY MR. HAEG:

23 Q. -- kind of blend --

24 MR. PETERSON: -- a question.

25 BY MR. HAEG:

1 Q. -- together, so --

2 MR. PETERSON: That should all be
3 stricken.

4 MR. HAEG: Anyway, and I don't know what
5 to do -- Your Honor, I don't know what to do with
6 this stuff.

7 THE COURT: You think he's got a prior
8 inconsistent statement? Okay.

9 MR. HAEG: Yes.

10 THE COURT: Got it.

11 MR. HAEG: Okay. And there is a recording
12 of this that we could provide.

13 BY MR. HAEG:

14 Q. Is it true the reason you didn't protest
15 Judge Murphy riding around with Trooper Gibbens
16 was that you didn't think it was your job to
17 protest Judge Murphy riding around with Trooper
18 Gibbens?

19 A. That's not true.

20 THE COURT: Next question.

21 MR. HAEG: It --

22 THE COURT: He said it's not true.

23 MR. HAEG: Okay. I'd like to admit some
24 notes that I took with Mr. Robinson during a
25 1/14/18 meeting -- or, let's see, page 51 of

1 1/14/18 meeting. And so what refutes that is
2 page 51 of 1/14/18 meeting and notes of 1/9/18 --

3 THE COURT: If --

4 MR. HAEG: -- meeting.

5 THE COURT: These are notes that you made?

6 MR. HAEG: Yes.

7 THE COURT: No, you can't do that.

8 MR. HAEG: Huh?

9 THE COURT: You can't do that.

10 MR. HAEG: I gave him a copy of the
11 notes --

12 THE COURT: Doesn't matter whether --

13 MR. HAEG: -- that I made at the time.

14 BY MR. HAEG:

15 Q. When we had -- did -- okay. Mr. Robinson,
16 did we have a meeting on January 14 of 2018 and a
17 meeting on January 9th of 2018?

18 And I think -- I believe both of them,
19 Dave Brummel, a friend of mine, Dave Brummel, was
20 with, so it would have been me and Dave --

21 A. I recall --

22 Q. -- Brummel.

23 A. -- meeting in with you a couple times in
24 January of 2018. One was at a coffee and waffle
25 restaurant in Soldotna, and the other one was at

1 my house.

2 Q. Yeah.

3 And can I approach and show you notes and
4 see if you recognize them? And --

5 THE COURT: You can ask --

6 BY MR. HAEG:

7 Q. -- I believe I --

8 THE COURT: You can --

9 BY MR. HAEG:

10 Q. -- and did I give you a copy of notes I
11 made during those meetings?

12 A. You may have. I don't have any of those
13 notes. But you may have.

14 Q. Okay.

15 THE COURT: You can show him --

16 BY MR. HAEG:

17 Q. Can I approach and show you these notes
18 and see --

19 THE COURT: You can show him something and
20 ask him if it refreshes his recollection.

21 MR. HAEG: Okay.

22 THE COURT: If he says yes, then you ask
23 him the question.

24 MR. HAEG: Okay.

25 THE COURT: Not what the notes say, not

1 the contents of the notes, but the que- -- what's
2 the question you're trying to ask him?

3 MR. HAEG: I'm trying to refute that he --

4 THE COURT: What's the question that
5 you're trying to originally ask him?

6 MR. HAEG: I originally asked, is it true
7 that he didn't think it was his job to protest
8 Judge Murphy riding around with Trooper Gibbens?

9 THE COURT: And he said that's not true.

10 MR. HAEG: And he said that's not true.

11 THE COURT: Okay.

12 MR. HAEG: And I'm --

13 THE COURT: And so what --

14 MR. HAEG: -- I have a note here that I
15 made while he was sitting there watching me do it,
16 that -- and I gave him copies of the notes.

17 BY MR. HAEG:

18 Q. Does that refresh your memory?

19 A. No, it doesn't. It doesn't refresh my
20 memory that I ever told you that it wasn't my job
21 to do one thing or the other. I don't understand
22 what -- how that's written in there. I -- I don't
23 know. I'm just saying I can't --

24 THE COURT: It doesn't refresh his
25 recollection, so move on --

1 MR. HAEG: Okay.

2 THE COURT: -- to another question.

3 MR. HAEG: And I think I have a recording
4 that refutes this, that he made, but I -- I'm a
5 little --

6 THE COURT: How much longer do you think
7 you have with Mr. Robinson?

8 MR. HAEG: Probably a while, I don't know,
9 maybe --

10 THE COURT: I don't know what that means.

11 MR. HAEG: -- maybe an hour?

12 THE COURT: Okay. Because we're done at
13 1:30 for today.

14 MR. HAEG: Okay.

15 THE COURT: So my --

16 MR. HAEG: I'll try -- I'll just keep --
17 I'll try to go as fast --

18 THE COURT: So --

19 MR. HAEG: -- as I can here.

20 THE COURT: -- hang on. Hang on.

21 So it is likely that you won't be done by
22 1:30. So you want Mr. Robinson to be here
23 tomorrow morning?

24 MR. HAEG: Correct.

25 THE COURT: Okay.

1 What's your schedule tomorrow morning?

2 A. I had planned to be at home tomorrow
3 morning. But if Mr. Haeg wants me to testify
4 tomorrow, then I would request that he pay for my
5 expenses of staying overnight, including a room --

6 THE COURT: You would --

7 A. -- and so includes --

8 THE COURT: -- do that, Mr. Haeg?

9 MR. HAEG: What was that?

10 THE COURT: Because this is taking so
11 long, he will have to spend the night. And he's
12 suggesting that since you subpoenaed him, you
13 should pay him.

14 MR. HAEG: I have no problem with that,
15 Your Honor.

16 THE COURT: Okay.

17 MR. HAEG: Does he want the money now or
18 later?

19 THE COURT: You guys work out where he's
20 going to stay, and you pay for his room.

21 MR. HAEG: Okay.

22 THE COURT: And then it will be tomorrow
23 morning.

24 MR. HAEG: Okay.

25 THE COURT: But you can keep going. We're

1 going to stop at 1:30. And when we -- if you're
2 not done, you'll --

3 MR. HAEG: Pick up where we left off?

4 THE COURT: -- Mr. Robinson will be
5 here --

6 MR. HAEG: Okay.

7 THE COURT: -- 8:30 tomorrow, we'll keep
8 going, and the state's going to have an
9 opportunity to cross-examine.

10 And then besides Mr. Robinson, just so
11 that I can get a sense, you said Mr. Zeller [sic]
12 will be testifying?

13 MR. HAEG: Yep. And I actually had some
14 others I wanted --

15 THE COURT: And who else?

16 MR. HAEG: My wife, Tom Stepnosky, Drew
17 Hilterbrand, and Dale Dolifka.

18 THE COURT: Okay. So I don't know what
19 any of those people are going to say. You do.

20 MR. HAEG: I know. And this is going
21 longer than I thought, so --

22 THE COURT: So --

23 MR. HAEG: Okay. So I'll hurry along.

24 THE COURT: -- focus -- just, Mr. Haeg,
25 wait. Just let me try to help. It is possible

1 you're not going to be able to get all those
2 witnesses on tomorrow. So my advice to you is you
3 decide who are the most important ones.

4 Right?

5 MR. HAEG: Okay.

6 THE COURT: And then you have those
7 individuals be here at 9 o'clock so that they're
8 here to start. Don't -- if you don't have time
9 for all of them, don't start with your least
10 important witnesses.

11 MR. HAEG: Well, I --

12 THE COURT: Start with --

13 MR. HAEG: -- would have started --

14 THE COURT: -- your most --

15 MR. HAEG: -- with Mr. Robinson, but he
16 wasn't here.

17 THE COURT: Yes, but --

18 MR. HAEG: And Cole --

19 THE COURT: -- Mr. Cole was --

20 MR. HAEG: -- was one of the kind of more
21 not necessary. So anyway --

22 THE COURT: My --

23 MR. HAEG: -- I'm just --

24 THE COURT: Wait.

25 MR. HAEG: -- saying that that tripped me

1 up.

2 THE COURT: My point simply is, I want you
3 to identify your most important witnesses and
4 you -- and put them next after Mr. Robinson, so
5 you'd --

6 MR. HAEG: I understand.

7 THE COURT: -- get the -- you got that?

8 MR. HAEG: I do understand.

9 THE COURT: Good. Good.

10 MR. HAEG: I -- loud and clear.

11 THE COURT: Good.

12 MR. HAEG: I also want it on the record
13 that I wanted two weeks for this evidentiary --

14 THE COURT: Now you're wasting your time.

15 MR. HAEG: -- hearing, and I got 10 hours.

16 THE COURT: Now you're burning up your
17 clock. Go a- --

18 MR. HAEG: Okay.

19 THE COURT: Burn off --

20 MR. HAEG: I have a --

21 THE COURT: -- if that's what you want.

22 MR. HAEG: I have another recording that
23 I'd like to show Mr. Robinson, see if it refreshes
24 his memory --

25 THE COURT: You may do that.

1 MR. HAEG: -- about -- huh?

2 THE COURT: You may do that.

3 MR. HAEG: Okay.

4 THE COURT: And you ask him this simple
5 question, does this --

6 BY MR. HAEG:

7 Q. Okay. This is a --

8 THE COURT: -- refresh your recollection?

9 BY MR. HAEG:

10 Q. This is a --

11 THE COURT: Don't talk about it. Show it
12 to him.

13 BY MR. HAEG:

14 Q. Can you read from there to there, see if
15 that refreshes your recollection.

16 THE COURT: What's the question you want
17 to ask him, that you're concerned with, that you
18 -- I don't want you to talk about what's -- is in
19 that. What's the question?

20 MR. HAEG: Whether it's true he, in fact,
21 told -- stated that it was not his job to protest
22 Judge Murphy running around with Trooper Gibbens
23 --

24 THE COURT: Why do you think this is
25 important?

1 MR. HAEG: -- during my trial.

2 Because the court of appeals remanded it,
3 and they said not only do I have to prove that
4 they ran around together during my trial, I also
5 have to prove that Mr. Robinson was told about it
6 and Mr. Robinson didn't have a valid reason for
7 not protesting. And I think him telling me that
8 it's not his job to protest, well, if it's not his
9 job to protest, Your Honor, whose job is it, when
10 I paid him \$50,000?

11 THE COURT: Let me help you out here.

12 MR. HAEG: Huh?

13 THE COURT: Let me help you out here.

14 MR. HAEG: Okay.

15 THE COURT: The first part, it -- there's
16 three parts to this. A, she drove around with the
17 trooper. Okay? You got to prove that. Secondly,
18 that somebody told Robinson at the time that
19 Murphy's driving around with the trooper, or that
20 he saw it. Okay?

21 MR. HAEG: And I brought into evidence
22 that says that he thinks, you know, saw it during
23 trial.

24 THE COURT: Okay. All right.

25 MR. HAEG: And now I --

1 THE COURT: So what's your question?

2 BY MR. HAEG:

3 Q. The question is, is it true -- did this
4 refresh your memory that you didn't believe that
5 it was your job to protest Judge Murphy riding
6 around with Trooper Gibbens?

7 A. Okay. I'm not sure that this addresses
8 that issue, David.

9 THE COURT: So the answer would be no.

10 MR. HAEG: Okay. Well, and on a -- do you
11 want to look at this or not?

12 BY MR. HAEG:

13 Q. Is it true you thought Judge Murphy was a
14 law-enforcement-type judge and not the independent
15 judiciary type I was supposed to have?

16 A. I don't know what you mean by "supposed to
17 have." I've -- I've held several opinions about
18 judges in my 38 years of practicing law.

19 Q. Okay. What's your opinion of Judge
20 Murphy?

21 A. At the time that she had your trial?

22 Q. Yeah.

23 A. I had the opinion that Judge Murphy was a
24 judge that could be prone to agreeing more with
25 prosecutors than defendants' lawyers.

1 Q. Okay. And so is it true that you thought
2 Judge Murphy was a law-enforcement-type judge and
3 not the independent judiciary type I was supposed
4 to have?

5 A. I thought that Judge Murphy, like other
6 judges in our system, may have shown more
7 inclination to side with law enforcement than with
8 the criminal defense.

9 Q. Okay.

10 MR. HAEG: And I'm just going to -- and
11 just to make it a little clearer, I'd like to show
12 him his deposition. And I'd like you to write
13 this down, Your Honor. Deposition page 204, line
14 No. 14 through 17. And can I --

15 A. Page again?

16 MR. HAEG: It's that one, whatever it is.

17 THE COURT: 204.

18 MR. HAEG: 204, 14 through 17.

19 A. Okay.

20 MR. HAEG: And, I guess, can Your Honor
21 read this into the record, please.

22 A. What's the question?

23 THE COURT: What's the question?

24 (Whereupon page 204, lines 14 through 17
25 of the Arthur Robinson deposition was read as

1 follows:)

2 BY MR. HAEG:

3 Q. The question is: Is it true that Judge
4 Murphy was a law-enforcement-type judge and not
5 the independent judiciary type you're supposed to
6 have?

7 THE COURT: (Interjecting) And the
8 answer?

9 A. My answer was --

10 BY MR. HAEG:

11 Q. And his (indiscernible). (End of
12 interjection)

13 Mr. Robinson's answer under oath was:
14 That was my opinion of her.

15 A. (Interjecting) (Indiscernible).

16 THE COURT: Okay.

17 A. It was my thinking at the time; isn't that
18 what it said? Mr. Haeg? A correction in the
19 deposition. Didn't it say that was my thinking at
20 the time, or that was my opinion at the time?

21 THE COURT: At the time of the deposition?

22 BY MR. HAEG:

23 Q. It doesn't say. (End of interjection)

24 It says: That was my opinion of her.

25 (Interjecting) Period.

1 A. Oh, okay. (End of interjection)

2 Q. And then I said: So it's likely you said
3 that?

4 And you answered: It's likely.

5 (Interjecting) Period.

6 (Whereupon the reading of a portion of the
7 Arthur Robinson deposition was concluded)

8 THE COURT: Your next question?

9 BY MR. HAEG:

10 Q. Is it true that Judge Murphy made
11 conflicting decisions, at the request of the
12 state, to take away the defense that my wolf
13 control permit would have given me?

14 A. I'm not sure I quite understand that
15 question, David.

16 Could you make it a little more --

17 Q. Is it true --

18 A. -- clear?

19 Q. -- that you filed a motion that I could
20 not be charged as a guide --

21 A. Right.

22 Q. -- I could only be charged under the wolf
23 control program --

24 A. Correct.

25 Q. And she -- the state said, this is a

1 factual question that has to go to the jury, and
2 she's not going to rule it on it; it's going to go
3 to the jury. And then a week later, the state
4 files a protection order saying, because this is
5 now a -- and the -- to get the judge to testify
6 that way, they said, the state said, Judge, you
7 can't rule on this; you can't rule on this; it's a
8 factual issue; it has to go to the jury. A week
9 later --

10 THE COURT: This is --

11 MR. HAEG: -- the state changes it --

12 THE COURT: -- all part of the record;
13 right?

14 MR. HAEG: Yeah. But I'm just -- I
15 want --

16 THE COURT: So what's your point?

17 MR. HAEG: -- it in here because the
18 public doesn't know the record. And this case --

19 THE COURT: Your --

20 MR. HAEG: -- is going to be decided
21 with --

22 THE COURT: -- clock is running, Mr. Haeg.

23 MR. HAEG: Okay. I understand.

24 BY MR. HAEG:

25 Q. But anyway, a week later --

1 THE COURT: (Indiscernible).

2 BY MR. HAEG:

3 Q. -- the state filed a protection order
4 saying that -- or asking for a protection order
5 that said, because this is a legal issue, we want
6 a protection order ordering them not to bring up
7 that he should have been charged under the wolf
8 control program and not as a guide.

9 Do you remember Judge Murphy making those
10 two conflicting decisions?

11 A. I remember making a point in your case
12 that you had a license or permission to allow you
13 to trap, not hunt, and that you should have been
14 charged with a trapping violation in violation of
15 your permit. The judge didn't allow that.

16 Q. And, in fact --

17 A. Because the state --

18 Q. -- she said it had to go --

19 A. -- well, the state --

20 Q. -- to the jury.

21 A. -- did argue that it was a factual
22 question, so the jury should determine that. Then
23 the state said no, it's a legal issue, and they
24 should determine. But anyway, it --

25 Q. And then she granted that.

1 So what I'm saying is, how can she rule
2 that it's both a legal issue and a factual issue,
3 to side against me both times?

4 A. You're asking me, or are you asking the
5 judge?

6 Q. Anybody.

7 A. Oh, I don't --

8 Q. The public.

9 A. David, I don't know.

10 Q. So --

11 A. I brought it up on appeal.

12 Q. Okay.

13 A. That's all I know.

14 Q. I'm just going to read out of your
15 deposition, and tell me if this is true.

16 THE COURT: Mr. Haeg, is this something
17 that you think is important to the ruling I'm
18 going to make or the court of appeals? Or is this
19 something you want to tell your supporters?
20 Because if it's something you want to --

21 MR. HAEG: It shows -- it shows that --

22 THE COURT: If it's something you --

23 MR. HAEG: -- Judge Murphy was
24 biased against me.

25 THE COURT: Yes, but all of this is

1 already in the record, so you're wasting your time
2 here.

3 MR. HAEG: Okay. Well, I'll move on here.

4 THE COURT: Okay. Focus on things that
5 aren't in the record, that you're using this
6 hearing --

7 MR. HAEG: Okay.

8 THE COURT: -- to develop.

9 BY MR. HAEG:

10 Q. Is it true that the Alaska Commission on
11 Judicial Conduct investigator Marla Greenstein
12 never contacted you during the investigation of
13 Judge Murphy riding around with Trooper Gibbens
14 during my trial?

15 A. I can say that I was never contacted by
16 her.

17 Q. Okay. So -- and I guess I -- you know,
18 I'm not allowed to testify now, but there's a
19 certified document.

20 Have you seen a certified document from
21 Marla Greenstein stating that, in fact, she had
22 contacted you?

23 A. I can't remember whether it was at my
24 house or at the coffee --

25 Q. It was at your --

1 A. Go ahead.

2 Q. -- where you broke your hip and you were
3 in the recovery room at the hospital.

4 A. Oh, right. You did see me at the
5 hospital. I remember that now. I didn't remember
6 that before.

7 Q. Okay.

8 A. But I remember you (indiscernible) --

9 Q. And I was there with --

10 A. But I remember --

11 Q. -- Senator Micciche's aide.

12 A. -- you showing me some stuff at the
13 hospital or at the house or at the coffee shop,
14 I'm not sure now which one it was, but that
15 apparently somebody said they had contacted me
16 about that issue.

17 THE COURT: So, I mean, the bottom line is
18 that Greenstein -- or Green- -- whatever her name
19 is, Marla never contacted you regarding the
20 Murphy-trooper allegation?

21 A. Right.

22 THE COURT: Okay.

23 BY MR. HAEG:

24 Q. And then she wrote a certified -- and is
25 it true that when you seen that certified

1 document, she -- you agreed that that was proof of
2 perjury by Marla Greenstein?

3 A. Well, I didn't agree that it was any proof
4 of perjury, but that's what you were claiming.
5 I'm just saying that she didn't (indiscernible) --
6 she didn't contact.

7 Q. So you would have never agreed that that
8 was perjury?

9 A. I -- I --

10 Q. In a certified document?

11 A. -- I don't make up perjury decisions.
12 Now, whether or not --

13 Q. Okay.

14 A. -- she made a false -- or not false
15 statement, but a true or not true statement,
16 that's another question.

17 Q. But, in fact, her statement that she'd
18 contacted you was not true?

19 A. She never contacted (indiscernible).

20 Q. Okay.

21 MR. HAEG: And I'm sorry that I'm so
22 disorganized here.

23 I'm sorry. Can I just try to
24 (indiscernible) --

25 THE COURT: I don't know what you're

1 doing, but I'm --

2 MR. HAEG: Okay.

3 BY MR. HAEG:

4 Q. Does this recollect your -- can you read
5 this and tell me if this is a true --

6 A. What is it, David?

7 Q. It is a response, a certified response by
8 Marla Greenstein to the Alaska Bar Association.

9 And in it she says, in Mr. Haeg's matter,
10 I interviewed Mr. Haeg's attorney, Arthur
11 Robinson.

12 Is that a true statement, Mr. Robinson?

13 A. I -- I was never interviewed by her.

14 Q. So this document made under -- certified
15 as true, is false, the document; correct?

16 A. And it says: This letter constitutes a
17 true and correct statement of the facts, to my
18 best knowledge and belief. Doesn't say it was
19 signed under perjury, but I don't know.

20 Q. Okay.

21 MR. HAEG: But --

22 THE COURT: You --

23 MR. HAEG: -- where she says this, and I'd
24 like --

25 THE COURT: Mr. Haeg, you --

1 MR. HAEG: -- to admit this into evidence.

2 THE COURT: -- you've made the point that
3 Mr. Robinson has testified that she never spoke
4 with him.

5 MR. HAEG: Well, I want you to please look
6 at this so that you know what --

7 THE COURT: I --

8 MR. HAEG: Can I admit this into evidence?

9 THE COURT: Sure.

10 MR. HAEG: And I'd like to just state this
11 is a --

12 MR. PETERSON: Wait. For what purpose?

13 THE COURT: Pardon?

14 MR. PETERSON: Well, I'll object --

15 MR. HAEG: To prove --

16 MR. PETERSON: -- because it's irrelevant.
17 So what's --

18 MR. HAEG: Okay.

19 MR. PETERSON: -- the purpose of this?

20 MR. HAEG: This is a proof --

21 THE COURT: I have no idea.

22 MR. PETERSON: What are we doing here?

23 MR. HAEG: -- that there was a cover-up by
24 the Alaska Commission on Judicial Conduct that my
25 judge was chauffeured by the main witness against

1 me during my trial. And I, as an American
2 citizen, has a constitutional right to an unbiased
3 judge. And not only was my judge running around
4 full-time with the main witness against me --

5 THE COURT: Mr. Haeg, let me help you out
6 here.

7 MR. HAEG: -- the only person that
8 investigates judges in this state falsified an
9 official investigation. And not only did she do
10 that, when I filed a bar complaint, she then
11 falsified a certified document to cover up her
12 corrupt investigation. And I want it on the
13 record.

14 MR. PETERSON: So it's irrelevant, and it
15 shouldn't be admitted.

16 THE COURT: It's admitted.

17 (Exhibit 6 admitted)

18 MR. HAEG: It proves there was a cover-up.

19 THE COURT: Mr. Haeg, I'm admitting it.

20 MR. HAEG: Okay. Thank you, Your Honor.

21 THE COURT: Do you have any witness that
22 says he or she saw Judge Murphy in the trooper
23 car?

24 MR. HAEG: Yes.

25 THE COURT: Who?

1 MR. HAEG: Whole slew of them.

2 THE COURT: Okay.

3 MR. HAEG: All over.

4 THE COURT: All right.

5 See --

6 BY MR. HAEG:

7 Q. Mr. Robinson --

8 THE COURT: Mr. Haeg.

9 BY MR. HAEG:

10 Q. -- is it true --

11 THE COURT: Mr. Haeg, let me help you
12 here. If you have witnesses who saw Judge Murphy
13 in the trooper car, that's important information.
14 And --

15 MR. HAEG: That's all in the record.
16 There's affidavits. Like you said, it's all in
17 the record. There are affidavit, after affidavit,
18 after affidavit --

19 THE COURT: Where?

20 MR. HAEG: -- saying --

21 THE COURT: Where are these?

22 MR. HAEG: -- we personally witnessed --

23 THE COURT: Where?

24 MR. HAEG: -- Judge Murphy --

25 THE COURT: Where are these?

1 MR. HAEG: -- riding around.

2 THE COURT: Just where are --

3 MR. HAEG: Tony Zellers, Tom Stepnosky,
4 Drew Hilterbrand.

5 THE COURT: Mr. Haeg.

6 MR. HAEG: Wendell Jones, who's now
7 dead --

8 THE COURT: Mr. Haeg.

9 MR. HAEG: -- a former trooper.

10 THE COURT: Mr. Haeg, rather than spend
11 time convincing me that Gruenstein -- Greenstein
12 made some sort of false allegation, it would be
13 more helpful to your case if you put the witnesses
14 on who saw Judge Murphy driving around with the
15 trooper.

16 MR. HAEG: Okay.

17 THE COURT: That's the important part.
18 Not that the judicial conduct commission is a
19 fraudulent entity. Not that Marla is a lying --

20 MR. HAEG: But you --

21 THE COURT: -- person.

22 MR. HAEG: -- see, Your Honor --

23 THE COURT: What's important --

24 MR. HAEG: -- you -- what you --

25 MR. HAEG: -- for your case in this

1 hearing is for you to prove that, in fact, Judge
2 Murphy drove around with the trooper. So if you
3 have witnesses of that, those are more important
4 witnesses.

5 MR. HAEG: What I believe --

6 THE COURT: But your --

7 MR. HAEG: -- is more important --

8 THE COURT: But --

9 MR. HAEG: -- for the citizens of this
10 state to know that the only investigator of judges
11 for the past 30 years, and that's investigator of
12 you --

13 THE COURT: Mr. Haeg.

14 MR. HAEG: -- and every other judge in
15 this state --

16 THE COURT: Mr. Haeg.

17 MR. HAEG: -- is falsifying --

18 THE COURT: Mr. Haeg.

19 MR. HAEG: -- investigations to cover up
20 for corrupt judges.

21 THE COURT: Mr. Haeg, I think that's an
22 important point for you to make.

23 MR. HAEG: Okay.

24 THE COURT: But not --

25 MR. HAEG: You think I've made it well

1 enough?

2 THE COURT: Yes, but you're wasting your
3 time.

4 MR. HAEG: Okay.

5 THE COURT: You can --

6 MR. HAEG: Mr. --

7 THE COURT: -- make that allegation
8 outside to the public. You can do it all you
9 want. I encourage you --

10 MR. HAEG: Okay.

11 THE COURT: -- to do that.

12 MR. HAEG: Is --

13 THE COURT: But what you're wasting your
14 time on is the proof you need to prove, which is,
15 in fact, that Murphy actually drove with the
16 troopers. So if you have witnesses who saw
17 that --

18 MR. HAEG: Okay. Well --

19 THE COURT: -- you should bring them in.

20 Because if you get to 1:30 tomorrow and
21 you say, geez, Judge, I don't have time to put my
22 witnesses on who saw Judge Murphy --

23 MR. HAEG: All --

24 THE COURT: -- I'm going to say, then why
25 were you talking about Marla so damn much?

1 MR. HAEG: Okay. All those witnesses have
2 already sworn out affidavits, and they're in the
3 court record.

4 THE COURT: You do what you think is best.

5 MR. HAEG: Okay.

6 BY MR. HAEG:

7 Q. Is it true, Mr. Robinson, that in Alaska,
8 there is, quote, a, quote, good boy network,
9 unquote, of prosecutors, cops, judges, and
10 magistrate who protect their own?

11 A. That's probably true throughout the whole
12 country.

13 Q. Okay. So you agree that it's true here in
14 this state also?

15 A. Well, I'm of the opinion, and I'm not the
16 only one, that there are certain cliques that
17 exist in all professions, all industries, and that
18 the legal profession is probably not exempt from
19 it.

20 Q. Okay. Is it true the reason you could not
21 pursue the plea agreement Brent Cole made was
22 because you were not part of that deal?

23 A. No. That's not the reason.

24 MR. HAEG: I have a recording -- a
25 transcription of a recording refuting that. And

1 I'd like to admit it, have Mr. Robinson --

2 MR. PETERSON: Objection.

3 MR. HAEG: -- look at it.

4 THE COURT: Well, you can ask him if it
5 refreshes his recollection, and ask him that
6 question.

7 MR. HAEG: Okay.

8 THE COURT: But you can't just put the
9 conversation in without laying a foundation, and
10 having somebody testify about who participated in
11 the conversation.

12 BY MR. HAEG:

13 Q. And this is a transcription of a recording
14 made with Chuck Robinson on January 5th of 2006.
15 And see if this refreshes your recollection, the
16 highlighted part.

17 THE COURT: And the question is what?

18 MR. HAEG: I forget.

19 THE COURT: Not --

20 MR. HAEG: Is it true he didn't enforce --
21 he -- is it true he told me he could not enforce
22 the plea agreement Brent Cole had made, because he
23 was not part of that deal?

24 A. When was this made?

25 BY MR. HAEG:

1 Q. January -- it's right at the bottom,
2 January 5th of 2006.

3 A. And where was it made?

4 Q. In your office.

5 A. And -- well, I'm not sure I understand
6 why -- what your question is. This doesn't seem
7 to go to your question.

8 Q. My question was, is it true that you
9 couldn't enforce the plea agreement I made with
10 Brent Cole, because you were not part of that
11 deal?

12 A. Well, that's sort of taken out of context,
13 Mr. Haeg, if you look over to there, right there.

14 Q. Okay. Anyway, so your --

15 A. No, no, not "anyway."

16 Q. Okay. So what are you -- what's your
17 answer?

18 A. Well, I said I can't answer that question
19 the way you asked it, because it's not in the
20 context of what's in the document.

21 (Whereupon a portion of the Arthur
22 Robinson transcription dated January 5, 2006, was
23 read as follows:)

24 Q. (Interjecting) Is it true that I stated:
25 (End of interjection)

1 Remind me again why we didn't pursue the
2 deal Brent Cole had. Because I've been thinking
3 about that and thinking about that and thinking
4 about that. And is it true?

5 You responded: You're asking me why
6 you --

7 (Interjecting) Meaning me. (End of
8 interjection)

9 -- didn't pursue that deal?

10 A. (Interjecting) No. Meaning you --

11 Q. Yeah.

12 A. -- if that's me [2:13:27].

13 Q. Okay.

14 A. (Indiscernible).

15 Q. And then I say -- (End of interjection)

16 You say: You're asking me why you didn't
17 pursue that deal?

18 I say: Why we, me and you, didn't pursue
19 the deal Brent Cole had.

20 And then you jump in: We --

21 And I say: You and I, why didn't you and
22 I?

23 And you said, quote: I wasn't part of
24 that deal.

25 (Interjecting) Unquote. (End of

1 interjection)

2 (Whereupon the reading of a portion of the
3 Arthur Robinson transcription was concluded)

4 A. Yeah, but then you got to --

5 Q. Okay. Read it.

6 A. I'm not sure the --

7 Q. You think it --

8 A. -- Court wanted me to read it, but --

9 Q. Okay.

10 A. Should I read it?

11 THE COURT: I don't know what you're
12 getting at.

13 MR. HAEG: What I'm getting at is
14 Mr. Robinson, when I asked him --

15 THE COURT: Ask him the simple question,
16 why didn't you enforce the Cole deal?

17 MR. HAEG: Yeah.

18 BY MR. HAEG:

19 Q. Why didn't you enforce the Cole deal?

20 A. I think I already answered that. I gave
21 you an option. You chose to go to trial.
22 Number two, it wasn't really clear, from speaking
23 to Brent Cole, that there was a deal.

24 Q. Isn't it true --

25 A. And I mention that in here, too.

1 Q. Isn't it true, though, at the time, you
2 said that you couldn't enforce it, because you
3 were not part of that deal?

4 A. No.

5 The question's, why didn't you enforce
6 it with --

7 Q. I'm not an --

8 A. -- Mr. Cole?

9 Q. -- attorney.

10 A. I know.

11 Q. And I tried to enforce it with Cole. I
12 think that's abundantly --

13 A. Okay. Well --

14 Q. -- clear.

15 A. -- but my --

16 THE COURT: Move on to your next question.

17 A. -- but my point was --

18 BY MR. HAEG:

19 Q. Okay. I'm --

20 A. -- my point -- my point --

21 Q. Do you want that or --

22 A. Well, my -- no, I'd like to answer the
23 question.

24 My point to you at the time, Mr. Haeg, was
25 that the deal that you were talking about was

1 something that you and Brent Cole were trying to
2 put together, not me, you, and anybody else.

3 Q. Okay.

4 A. All right?

5 Q. So it's true that you couldn't enforce any
6 deal that me, Brent Cole, and Scot Leaders put
7 together?

8 MR. PETERSON: That's asked and answered
9 several times.

10 MR. HAEG: Okay. Well --

11 A. Now, wait a minute.

12 MR. HAEG: Can I --

13 A. But I don't want you to go away without
14 reading this part.

15 BY MR. HAEG:

16 Q. Can you read it?

17 A. Yeah.

18 What I told you was, was it was fuzzy as
19 to whether or not Scot Leaders had agreed to the
20 deal that you and Brent tried to give to him,
21 based on what Brent said and what Scott said. So
22 both you were the one in the deal with Brent, not
23 me.

24 Q. Yeah, exactly.

25 A. (Indiscernible).

1 Q. We had a deal. And when we came to you,
2 you said, no matter what -- how enforceable the
3 deal was, you couldn't do it, because you weren't
4 part of the deal.

5 A. No, that's not how that is, Mr. --

6 THE COURT: Move on to another topic.

7 A. Right.

8 BY MR. HAEG:

9 Q. Is it true you told me that everything I
10 did with Cole was, quote, water under the bridge,
11 unquote?

12 A. With regard to what, Mr. Haeg?

13 Q. Statements, plea deal, everything, not
14 doing anything, basically, selling me out to the
15 state.

16 THE COURT: Who sold you out to the state?

17 MR. HAEG: Brent Cole.

18 A. I never told you Brent Cole sold you --

19 MR. HAEG: And Mr. Robinson and

20 Mr. Osterman.

21 A. I never told you that Brent Cole sold you
22 out to the state --

23 BY MR. HAEG:

24 Q. Okay.

25 A. -- and water was --

1 Q. Well --

2 A. -- under the bridge, if that's what you're
3 trying to --

4 BY MR. HAEG:

5 Q. Okay.

6 A. -- (indiscernible).

7 Q. So you would have never said that
8 everything with Brent Cole was, quote, water under
9 the bridge, unquote?

10 A. When you decided to go to trial, it didn't
11 matter to me that you and Brent had some
12 disagreement about a plea deal that Mr. Leaders
13 was not going to agree to.

14 I put it to you, do you want to try to
15 make it a plea agreement --

16 Q. Okay.

17 A. -- or do you want to go to trial? You
18 decided to go to trial.

19 Q. Is it true you have stated that you
20 assumed I was relying on something when I gave up
21 a whole year's income and gave Prosecutor Leaders
22 and Trooper Gibbens a five-hour interview?

23 A. I'm -- I'm not following that question,
24 Mr. Haeg.

25 What is --

1 Q. Is it true --

2 A. -- the question?

3 Q. -- that you assumed that I was relying on
4 something to quit guiding for a year and to give
5 the government a statement?

6 A. I'm not sure what you were assuming. But
7 you said that --

8 Q. No.

9 A. -- you had a --

10 Q. Is it true that you assumed I was relying
11 on something?

12 A. Well, I assumed you were relying on some
13 kind of --

14 Q. Okay.

15 A. -- discussions or talks. But I never saw
16 anything in writing that said you'd done anything.

17 Q. I know.

18 But didn't we tell you that Brent Cole
19 never put anything in writing?

20 A. Yeah, but what I'm saying is that you're
21 asking me --

22 Q. Okay.

23 A. -- something that I can't really verify --

24 Q. Okay.

25 A. -- one way or the other.

1 Q. Is it true an attorney lying directly to
2 his client may not be ineffective assistance of
3 counsel?

4 A. Lying about what, that the sky is blue?

5 Q. And my next thing was, would you ever have
6 said this while you and I were discussing whether
7 Brent Cole lied to me about my agreement?

8 A. Repeat the question once again, Mr. Haeg.

9 Q. Is it true -- I'm going to combine these
10 two questions. Is it true that Brent Cole lying
11 to me about my plea agreement was not ineffective
12 assistance of counsel?

13 A. I don't remember telling you anything like
14 that, but --

15 Q. Well, I have a transcription that proves
16 that.

17 And I guess, is it true that I told you
18 that Cole said he could not do anything that
19 would, quote, piss Leaders off, unquote, because
20 he had to be able to make deals with Leaders in
21 the future?

22 A. Well, that's true you told me that, but I
23 don't know whether that, in fact --

24 Q. That happened?

25 A. -- happened.

1 Q. Okay. I see. Yeah.

2 Is it true that you never thought of an
3 ineffective assistance of counsel claim against
4 Brent Cole?

5 A. I didn't have, in my opinion, enough
6 evidence at the time that we decided to go to
7 trial, to sue Brent Cole for ineffective
8 assistance of counsel when both Scot Leaders and
9 you saying there was no deal.

10 Q. Okay. Is it true that when I asked you if
11 you could file an ineffective assistance of
12 counsel claim against Cole, you responded, I never
13 paid you for an ineffective assistance claim
14 against Brent Cole?

15 A. Well, that's true, you didn't hire me for
16 ineffective -- ineffective assistance claim
17 against Brent Cole. You hired me to defend you in
18 a criminal case.

19 Q. Is it true you can claim ineffective
20 assistance of counsel on appeal?

21 A. You can always claim on appeal anything
22 you want to claim on appeal.

23 Q. Okay. So you could have actually brought
24 up ineffective assistance of counsel when you
25 filed my appellate points?

1 A. Well, now, the question is whether or not
2 there was reasonable basis for doing so. And I
3 didn't think there was a reasonable basis, because
4 there was no agreement between Scot and Leader- --
5 and -- and -- and -- between Scot Leaders and
6 Brent Cole, that there was ever an agreement,
7 David.

8 Q. Okay. Is it true that your private
9 investigator Joe Malatesta did not find that there
10 was an enforceable plea agreement?

11 A. I -- in addition to Mr. Malatesta
12 investigating your claim about this agreement,
13 Mr. Malatesta also spoke to Mr. Cole. And from my
14 understanding of his report to me, Mr. Cole again
15 reit- -- reiterated that Scot Leaders changed his
16 mind; there was no deal.

17 Q. So you would have never had anything from
18 Mr. Malatesta leading you to believe that you
19 should try to enforce the plea agreement?

20 A. I don't remember having anything.

21 MR. HAEG: I'd like to admit a copy of
22 private investigator Joseph Malatesta giving
23 Mr. Robinson a written note that says, don't
24 forget to remember to motion on the DA backing out
25 of the original offer.

1 A. Well, "backing out" means there wasn't a
2 deal, apparently. I don't understand your point.

3 MR. HAEG: Shit. I don't know, I had --

4 THE COURT: Mr. Haeg, let me make a
5 suggestion. You seem to be a little disorganized
6 right now, probably because it's been a long day
7 and you're tired.

8 Would this be a good time to stop, and
9 we'll start up again tomorrow at 8:30?

10 MR. HAEG: I'd like to get in as much as I
11 can. I found it right here.

12 THE COURT: All right. Go ahead.

13 MR. HAEG: And so --

14 MR. PETERSON: Yeah, I'm going to object
15 to hearsay.

16 THE COURT: I don't know what this is, so
17 I --

18 MR. PETERSON: Oh, I thought that was the
19 letter from his private investigator that he was
20 just --

21 MR. HAEG: It is.

22 MR. PETERSON: -- talking about.

23 MR. HAEG: It's a note from --

24 MR. PETERSON: Yeah, that's hearsay.

25 MR. HAEG: -- his private investigator to

1 Mr. Robinson, dated January 25th, 2005. And I'd
2 like you to read the -- I think couple pages in,
3 there's a highlighted section.

4 THE COURT: This is a letter to whom?

5 MR. HAEG: To Mr. Robinson from
6 Mr. Robinson's --

7 A. It's work product.

8 MR. HAEG: -- private investigator.

9 A. It's work product from Mr. Malatesta to
10 me.

11 THE COURT: Okay.

12 A. Well, it's fairly long, David. I'm --

13 BY MR. HAEG:

14 Q. Yeah.

15 A. You know?

16 Q. Well, can you look at --

17 A. Well, I can -- I can say that this appears
18 to be a work product --

19 Q. Can you go to the last page, please.

20 Not -- and that's the billing statement, the very
21 last page. The last page of the -- right there.

22 Can you read that into the record?

23 THE COURT: No. Not yet.

24 MR. HAEG: Okay.

25 A. Yeah.

1 THE COURT: You can ask him if that
2 refreshes his --

3 MR. HAEG: Okay.

4 BY MR. HAEG:

5 Q. Does that --

6 THE COURT: -- recollection, what's --

7 BY MR. HAEG:

8 Q. -- refresh your mind?

9 A. Well, I haven't read it yet.

10 Q. Okay.

11 A. I -- I got to read it to determine whether
12 it refreshes my memory, right?

13 Okay. And what's your question?

14 Q. Question was, did you ever -- or I forget.

15 Anyway, you had said that you had your
16 investigator investigate, and he didn't find
17 anything showing there was a plea agreement.

18 And I asked, would there have ever been
19 anything from your investigator -- I said, so you
20 would have never received anything from your
21 investigator indicating that he thought there was
22 a plea agreement?

23 A. I didn't interpret it to mean that
24 Mr. Malatesta had found, in fact, there was a plea
25 agreement. What he says here is just don't forget

1 to remember to motion on the DA backing out of the
2 original offer. But then Brent Cole said there
3 was no deal. So --

4 Q. Okay. But --

5 A. -- where was that original offer, though?

6 Q. But a private investigator wrote you --
7 your private investigator wrote you a note
8 stating, don't -- and it says, note to attorney,
9 don't forget to remember to motion on the DA
10 backing out of the original offer.

11 MR. HAEG: And I'd like to admit this as
12 evidence, if I can.

13 MR. PETERSON: I'll renew my objection.

14 MR. HAEG: No?

15 THE COURT: Well, actually, wait a minute.
16 The -- you want to put that in merely for the fact
17 that the prosec- -- that the investigator --

18 MR. HAEG: Wrote him a note.

19 THE COURT: -- made some, please remember
20 this?

21 MR. HAEG: Yep.

22 THE COURT: Okay. And what's your
23 objection to that?

24 MR. PETERSON: Well, I object to the
25 hearsay. But I guess if it's not entered for the

1 truth and --

2 THE COURT: It's not a --

3 MR. PETERSON: -- it's just being shown to
4 show that he wrote the note --

5 THE COURT: It's admissible.

6 MR. PETERSON: -- then I think it's
7 irrelevant. So I'll object to relevance, because
8 he just said that he --

9 THE COURT: It's admissible.

10 MR. PETERSON: -- then followed up and --

11 THE COURT: Mark it.

12 Hearsay objection's overruled.

13 (Exhibit 7 marked/admitted)

14 THE COURT: I don't know whether it's
15 relevant until I get the whole ball of wax.

16 MR. PETERSON: Well, if there's something
17 else in there, other than that statement, then I
18 need to look at it. There might be a --

19 THE COURT: You can look at it --

20 MR. PETERSON: -- lot of other things --

21 THE COURT: -- if you want.

22 MR. PETERSON: -- to object.

23 THE COURT: All I'm admitting it for is
24 the little part that he just talked about --

25 MR. PETERSON: Okay.

1 THE COURT: -- the please remember
2 regarding the -- to enforce the deal. That
3 statement.

4 MR. PETERSON: Okay.

5 BY MR. HAEG:

6 Q. Is it true that it's common sense that if
7 you make a deal that involves having your client
8 give a statement that eventually is going to be
9 used against him, you should get it in writing?

10 A. From whom?

11 Q. Is it true that you --

12 A. Well, wait, wait, wait.

13 Get it in writing from whom?

14 Q. That's something that you said. I assumed
15 what you meant is Brent Cole should have got
16 something in writing from Scot Leaders, Trooper
17 Gibbens, about what I might get for talking to
18 them, what they could do with the statement,
19 anything. And I think that's what you were
20 talking about.

21 Because I believe -- and so the question
22 again is, is it true that it's common sense that
23 if Brent Cole made a deal that involved David Haeg
24 giving a statement that is eventually going to be
25 used against David Haeg, Brent Cole should have

1 got it in writing?

2 A. There are certain things that should be in
3 writing when the -- when deals are made. And
4 there are other things that are not in writing
5 that still become part of the deal when they go to
6 court and memorialize it on the record.

7 Q. Is that one of them? Your client going
8 and giving a statement, is that one of them that
9 should be put in writing?

10 A. That the client's going to give a
11 statement? Or the writing itself? Or the
12 statement itself? I'm --

13 Q. I don't know.

14 A. -- (indiscernible).

15 Q. It says that involves your
16 client give it -- that involves giving your client
17 a statement that eventually is going to be used
18 against him.

19 And so you were talking about the deal.
20 You were saying that the deal, whatever was going
21 to happen with me going in and talking to Trooper
22 Gibbens and --

23 THE COURT: Let me help you out.

24 If there was an agreement regarding
25 Mr. Haeg giving a statement, should it have

1 been -- with the prosecutor, should it have been
2 put in writing?

3 A. Is that your question, Mr. Haeg?

4 BY MR. HAEG:

5 Q. Yes.

6 A. I would want it to be in writing, simply
7 so there wouldn't be any misunderstanding later of
8 what there was agreed to.

9 Q. Yeah.

10 Especially maybe 15 years later?

11 A. No. I would have been more interested in
12 what would have happened between the time the
13 statement was made and when it was going to be
14 used, not 15 years later.

15 Q. Okay. So it would be common sense that
16 you'd get that in writing?

17 A. Well, I'm not sure that I can characterize
18 it as common sense, but it would make sense that
19 if it's such an important statement, I would like
20 to have it in writing and I would like for my
21 client to have it in writing.

22 Q. Okay.

23 THE COURT: But it is also true that you
24 can give a statement to the police without there
25 being an agreement?

1 A. Yes.

2 THE COURT: But if there is an agreement
3 about what can and cannot happen with the
4 statement given by the witness, that should be put
5 in writing. Okay. I --

6 MR. HAEG: Okay.

7 THE COURT: -- I'm with you there.

8 BY MR. HAEG:

9 Q. Was my statement used against me?

10 A. Was your statement used against you after
11 you testified -- while you were testifying?

12 Q. Was my statement used against me in the
13 informations forcing me to trial?

14 A. In the information or the trial? I'm not
15 sure which date you're talking about here.

16 Q. The -- what -- it's called a charging
17 information. It is the --

18 A. Did --

19 Q. -- charging document from the prosecutor.
20 Did Scot Leaders put my statement in there
21 to force me to trial?

22 A. He put parts of it in there, yes.

23 Q. Okay. So that's a yes.

24 Was my statement used against me at trial,
25 in this map right here, when I'm the one that put

1 these marks on this map and they used it against
2 me at trial, is that my statement being used
3 against me at trial?

4 THE COURT: The answer to that question is
5 obviously yes.

6 A. Yeah.

7 THE COURT: But, again, let me point out
8 to you, all of that is --

9 MR. HAEG: Obviously yes.

10 THE COURT: -- part of the record.

11 MR. HAEG: Let me write this down real
12 quick: Obviously --

13 THE COURT: Look --

14 MR. HAEG: -- yes.

15 THE COURT: -- Mr. Haeg, all of that is --
16 what happened at trial is part of the trial
17 record. So you're --

18 MR. HAEG: But, see, the court of appeals
19 doesn't want to deal with it. And this means my
20 trial is invalid. And I know it. And Your Honor
21 knows it.

22 MR. PETERSON: (Indiscernible).

23 MR. HAEG: Chuck Robinson knows it.
24 Probably all --

25 THE COURT: Mr. Haeg.

1 MR. HAEG: -- these law enforcement
2 officers know it also. And that's why David Haeg
3 is so upset --

4 MR. PETERSON: I would --

5 MR. HAEG: -- is because I have the proof
6 that I was given an illegal trial. Everybody
7 around me knew it except me. And it took me
8 15 years to figure it out. That's why I'm upset.

9 THE COURT: We're going to stop now. And,
10 again, let me advise you to try to prioritize what
11 you believe is the most important information that
12 is not currently in the record. And that's the
13 witnesses that -- that's what -- you want your
14 witnesses to focus on the new information that you
15 don't yet have in the record.

16 All right?

17 MR. HAEG: Okay.

18 THE COURT: See you tomorrow morning.
19 Have a good afternoon.

20 MR. HAEG: Well, and thank you for being
21 as forthright as you have been, Your Honor.

22 THE COURT: That's -- no one has ever
23 called me forthright before, Mr. Haeg. I
24 appreciate that. See you tomorrow.

25 THE CLERK: Please rise. Court stands in

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