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IN 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 II
TRANSCRIPT OF PROCEEDINGS
January 29, 2019, Pages 319 through 575

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EVIDENTIARY HEARING
BEFORE THE HONORABLE WILLIAM MORSE
Superior Court Judge

Anchorage, Alaska
January 29, 2019
8:37 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
310 K Street, Suite 601
Anchorage, Alaska 99501

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P R O C E E D I N G S

8:37:07 AM

THE CLERK: (Inaudible) State of Alaska is now in session. The Honorable William Morse presiding.

THE COURT: Please be seated.

We're on the record in 3KN-10-01295.

Counsel for the state and Mr. Haeg are present. We don't have Mr. Robinson yet.

MR. HAEG: He's out in the hall.

THE COURT: Oh, okay.

MR. HAEG: Want me to call him?

THE COURT: Sure.

MR. HAEG: Can somebody call Chuck, or --
(Pause).

THE COURT: Good morning.

THE WITNESS: Good morning, Judge.

THE COURT: Mr. Robinson, would you just state your name for the record. You're still under oath, however.

THE WITNESS: Yes. Arthur Robinson.

THE COURT: All right. Mr. Haeg, you may proceed.

ARTHUR ROBINSON

previously sworn, called as a witness on behalf of

1 the Applicant, testified as follows on:

2 DIRECT EXAMINATION CONTINUED

3 BY MR. HAEG:

4 Q. Okay. Did I demand that you subpoena Cole
5 to my sentencing in McGrath?

6 A. Yes.

7 Q. Did you do so?

8 A. No.

9 Q. You didn't -- never subpoenaed him?

10 A. No, I didn't.

11 I mean I -- I may have subpoenaed him and
12 then released him. I'm not -- I can't remember it
13 now.

14 Q. Okay. Well, there was a subpoena issued
15 and he received it.

16 A. Yeah. It's been so long ago, I just
17 can't --

18 Q. Okay. So I demanded you subpoena Cole and
19 you subpoenaed him.

20 Is it true that Cole failed to show up in
21 McGrath in response to your subpoena?

22 A. Yes.

23 Q. Huh?

24 A. Yes.

25 Q. So --

1 A. He didn't show up.

2 Q. Okay.

3 When I asked at the time, you did you tell
4 me nothing could be done about Cole failing to
5 show up as subpoenaed?

6 A. I don't recall -- I don't think I told you
7 nothing could be done, but that it was an issue
8 between the Court and -- and -- and Brent Cole,
9 because the subpoena comes from the court.

10 Q. So it was your opinion that you shouldn't
11 have asked the court to order him to appear; it
12 was the court's responsibility, on its own, to
13 make him appear?

14 A. Sure.

15 Q. So you're telling me --

16 A. (Indiscernible) a court order, it's not an
17 attorney order.

18 Q. Okay.

19 So you could not have asked the Court to
20 order him --

21 A. I could have, but I don't know whether I
22 was obligated completely to do so.

23 Q. Okay.

24 So you didn't do so because you thought
25 the Court should have done so?

1 A. Could have done so.

2 Q. And why didn't the Court?

3 A. You'd have to ask Judge Murphy.

4 Q. Okay.

5 Is it true that you never called Cole to
6 testify at my sentencing because his testimony
7 wasn't relevant to my guilt?

8 A. I'm not -- as I said earlier, Mr. Haeg, I
9 can't remember all the conversations I had with
10 you over a decade ago. Whether his testimony was
11 relevant to your sentencing or not, I'm not sure.

12 Q. Okay.

13 MR. HAEG: I'd like to admit a
14 transcription of a 2/1/06 phone call with Robinson
15 in which he specifically stated that he did not
16 call Cole to testify at my sentencing because his
17 testimony wasn't relevant to my guilt.

18 THE COURT: Mr. Haeg, what -- what's the
19 testimony that you think Mr. Cole would have
20 provided?

21 MR. HAEG: That I had given up a year of
22 guiding in reliance on the prosecutor, the state,
23 promising to give me credit for it.

24 THE COURT: And did that assertion get
25 made at the sentencing hearing?

1 MR. HAEG: No, it did not.

2 THE COURT: And why -- I mean, you were
3 there. You were the one who certainly knew what
4 you did or didn't do and what you relied on or
5 not. Why didn't you, yourself, make that argument
6 or provide that testimony? I mean, there was
7 sources other than Cole.

8 MR. HAEG: My -- I was sentenced at almost
9 2:00 in the morning after, like, whatever it
10 was -- I forget how many hours it was. I was so
11 beat down, wore out. And Mr. Robinson even said
12 after 10:00 p.m. because he's a diabetic, he had
13 stated that he was barely there by 10:00 p.m. And
14 I was sentenced at 2:00 a.m. after -- after going
15 through -- I don't know, it started at, what,
16 10:00 in the morning. At 2:00 a.m. the next day
17 when it's still going on, me as a defendant, I was
18 not there -- I maybe was there in body, but I
19 wasn't there in mind.

20 THE COURT: Well, you were there in mind
21 and fresh at 10 o'clock in the morning, I mean.
22 I -- I understand what you're saying about --

23 MR. HAEG: I was not allowed to testify
24 until at -- very nearly midnight.

25 THE COURT: Did you testify?

1 MR. HAEG: Yes.

2 THE COURT: But, for some reason, you
3 chose not to bring up the topic of your reliance?

4 MR. HAEG: I was so wore out -- I said on
5 the record, I'm so wore out and tired and beat, I
6 don't even know what's going on. That is on the
7 record. I said I'm so wore out, beat, I don't
8 know what the hell's going on. That is on the
9 record, at nearly midnight.

10 THE COURT: Okay.

11 MR. HAEG: The crucial thing is, is I
12 ordered that man to subpoena Mr. Cole. He did.
13 Mr. Cole did not show up. And I had given
14 Mr. Robinson written questions to ask Mr. Cole
15 about the plea agreement.

16 THE COURT: Okay.

17 MR. HAEG: About me giving up the year of
18 guiding.

19 THE COURT: Okay. Okay.

20 Ask your question.

21 MR. HAEG: Okay. So I would like to admit
22 this as proof that Mr. Robinson stated --

23 THE COURT: You're going to have to lay
24 some sort of foundation for whatever that is.

25 MR. HAEG: It is a phone call between me

1 and Mr. Robinson, a transcription of a phone call
2 made on 2 -- February 1st of 2006. So I don't
3 know, should I give it to Mr. Robinson or can I
4 just admit it?

5 THE COURT: You have to lay a foundation
6 what's -- what it is.

7 MR. HAEG: I just said it's a phone call
8 between me and Mr. Robinson, in which Mr. Robinson
9 says he never called Cole to testify at my
10 sentencing because his testimony wasn't relevant
11 to my guilt.

12 THE COURT: And was it?

13 MR. HAEG: My next question for
14 Mr. Robinson was going to be: Why would you state
15 this when I had already been found guilty and was
16 being sentenced?

17 THE COURT: Okay. Ask him that question.

18 BY MR. HAEG:

19 Q. Mr. Robinson, why did you state that you
20 didn't call Cole to my sentencing because his
21 testimony wasn't relevant to my guilt, when I had
22 already been found guilty and was being sentenced?

23 A. Well, I mean, if I said that, the point
24 was that if you were going to call Cole to talk
25 about a plea agreement that never existed, what

1 does that have to do with whether or not you took
2 the wolves or didn't take the wolves in the area
3 that was not permitted?

4 Q. It was about me getting credit for a year
5 that I gave up that the state promised they would
6 give me credit for. And Cole told me that. And
7 me and my wife almost went bankrupt and we had two
8 baby daughters, and I never got credit for that
9 year.

10 And Mr. Cole, during his deposition -- I
11 think you have this -- said Mr. Robinson should
12 have made that argument at my sentencing that I
13 should get credit for that year. Mr. Cole has
14 stated that in one of the documents. And I'll
15 find it here, but I don't know if I have it right
16 now, because I didn't know this was going to come
17 up.

18 Mr. Cole said Mr. Robinson should have
19 made this argument at my sentencing. Mr. Robinson
20 didn't. I wanted Cole there to have the word from
21 the horse's mouth. So I subpoenaed him. We
22 bought him an airline ticket. We bought him a
23 hotel room. He never showed up. And then I was
24 told nothing could be done about it. I got taken
25 for a ride. So that's the issue there. I'll move

1 on.

2 After Cole received his subpoena, did he
3 call you and tell you he did not intend on being
4 available to testify?

5 A. I don't know. I --

6 Q. Okay.

7 MR. HAEG: I would like to admit a letter
8 from Cole to Robinson 8/25/05 which state this --

9 MR. PETERSON: Objection; hearsay.

10 MR. HAEG: It's in writing signed by Brent
11 Cole. It says: As I discussed --

12 MR. PETERSON: It's an out-of-court
13 statement, it's hearsay.

14 MR. HAEG: -- as I discussed with you in
15 an earlier telephone conversation, I was not
16 intending to be available -- well, the first part
17 says: I'm in receipt of your letter from your
18 office dated August 22, 2005 --

19 THE COURT: So what -- he's made a hearsay
20 objection. Okay?

21 MR. HAEG: Okay.

22 THE COURT: So hearsay means it's
23 somebody's statement made outside of court. So
24 that letter would typically be hearsay, possibly.

25 MR. HAEG: Can Robinson verify it?

1 THE COURT: It's not a matter of whether
2 it's a -- there's any dispute about it getting
3 written.

4 What do you want me to do with that
5 information?

6 MR. HAEG: I want it to prove that Cole
7 affirmatively stated, when he got the subpoena,
8 that he was affirmatively stating he was not going
9 to obey it.

10 MR. PETERSON: So he wants to show an
11 out-of-court statement to prove the truth of the
12 matter asserted. It's hearsay. There's also no
13 foundation. It's also irrelevant.

14 MR. HAEG: It's a letter signed by Brent
15 Cole to Chuck Robinson. And the significance of
16 this is Mr. Robinson never gave me this letter or
17 told me that he received it a month before Cole
18 was supposed to testify. And so I was led to
19 believe all along that Cole was going to be there.

20 THE COURT: I will allow the letter to
21 show that Mr. Robinson had knowledge of Mr. Cole's
22 purported unwillingness, reluctance, refusal, to
23 appear. That goes to Robinson's state of mind.

24 MR. HAEG: Okay. So --

25 MR. PETERSON: There's still no

1 foundation.

2 THE COURT: We'll mark it as the next
3 exhibit. And it's admitted.

4 MR. HAEG: Okay. Thank you.

5 (Exhibit 8 was admitted)

6 BY MR. HAEG:

7 Q. Is it true you filed in court a written
8 protest that Leaders violated Evidence Rule 410,
9 specifically, that he violated Evidence Rule 410,
10 when he recited my plea negotiation statement to
11 support the charges against me in all three
12 charging informations?

13 A. I really can't answer that question,
14 Mr. Haeg, because it's been so long.

15 Q. Okay. Well, I would like to --

16 A. I know -- I know the issue came up as to
17 whether or not --

18 MR. HAEG: I'd like to admit --

19 A. -- anything you said in the plea
20 negotiation can be used against you.

21 MR. HAEG: I'd like to admit a document
22 Mr. Robinson submitted to the court --

23 THE COURT: Mr. Haeg, remember what I
24 talked about yesterday? If this is already in the
25 record, if he submitted this, as you claim he did,

1 to the sentencing judge, you're wasting your
2 time -- your valuable time, because that's already
3 part of the record.

4 BY MR. HAEG:

5 Q. Okay. Well, I -- is it true that in the
6 record, you complained --

7 THE COURT: That he did what you wanted
8 him to do.

9 Q. -- about Scot Leaders using my statement
10 in the thing, and you certified on it that you
11 delivered it to him, to Scot Leaders, by courier
12 and fax on the 6th day of May, 2005. And you
13 included an affidavit by me saying, you know,
14 David Haeg protests you using these statements.

15 MR. HAEG: And, I guess, can I just show
16 Mr. Robinson, see if this refreshes his memory?

17 THE COURT: You can, but again, what --
18 help me out so I understand where you're going.
19 Why is this important since it's already -- why is
20 it important for you to emphasize this again since
21 it's already part of the sentencing record? That
22 he, in fact --

23 MR. HAEG: It proves that Scot Leaders was
24 notified that he was using my statement in
25 violation of Evidence Rule 410, and he never took

1 my statement out of the charging information that
2 I went to trial on. And that means the whole
3 charging information is invalid, because Rule 410
4 says no statements that were made during plea
5 negotiations can be used in any civil,
6 administrative, or legal proceedings.

7 THE COURT: I know what the rule says.

8 MR. HAEG: So Mr. Leaders was on notice
9 and he didn't do anything about it. And what
10 makes it even worse, far worse, is when I filed a
11 bar complaint against Mr. Leaders, in a certified
12 written response, he stated that he never used my
13 statement in any charging information. And he
14 says if he had, somebody would have protested.

15 So not only do the charging information
16 show that he used my statement, Robinson
17 protested, gave it to him, and in -- and in
18 violation of all that, in knowledge of all that
19 happening, Mr. Leaders still wrote a certified
20 document that he never used my statement.

21 THE COURT: Mr. Leaders is not on trial,
22 here. I don't know whether he 1 himself, I don't
23 know whether he should be disbarred. But even if
24 he should, that's not happening as a result of
25 this hearing.

1 MR. HAEG: Okay. Well, I just want --

2 THE COURT: What's happening as a result
3 of this hearing is that --

4 MR. HAEG: Okay.

5 THE COURT: -- you're on an evidentiary
6 hearing to see whether or not you can prove
7 ineffective assistance of counsel. And right now
8 you're telling me that your lawyer did what you
9 wanted him to do, that he filed an objection.
10 Which, I don't know what Judge Murphy did with it,
11 but if she made a legal error and let that stuff
12 in, the recourse is to appeal that.

13 Was that a point on appeal?

14 MR. HAEG: Yes, it was.

15 THE COURT: Okay.

16 MR. HAEG: And they didn't do anything --
17 they didn't even address it.

18 THE COURT: I can't do anything about
19 that.

20 MR. HAEG: Well, see --

21 THE COURT: The court of appeals, I don't
22 know why they rejected that argument.

23 MR. HAEG: Yeah.

24 THE COURT: I have no idea.

25 MR. HAEG: Neither do I. And that's why

1 I'm upset, is I don't --

2 THE COURT: I know you're upset.

3 MR. HAEG: -- believe they could. I don't
4 think, legally, they could have, you know, do it.

5 THE COURT: I don't have authority to
6 overrule the court of appeals.

7 MR. HAEG: Okay. Well, can I, Your
8 Honor --

9 THE COURT: If you want to spend all your
10 time relitigating what's already --

11 MR. HAEG: I'm almost done.

12 THE COURT: Been litigated --

13 MR. HAEG: I have, like, two more
14 questions for Mr. Robinson.

15 THE COURT: I'll let you do it, sir, but
16 I'm pointing out to you that you have precious
17 little time. And you are beating a dead horse.

18 MR. HAEG: Okay. Can I admit these into
19 evidence, please?

20 THE COURT: What are they?

21 MR. HAEG: It's Robinson's protest --

22 THE COURT: Yes, you may.

23 MR. HAEG: -- in the record. And then
24 it's Leaders' certified bar response in which he
25 says --

1 THE COURT: Yes, you may.

2 MR. HAEG: Huh?

3 THE COURT: Yes.

4 MR. HAEG: Okay. Thanks.

5 (Exhibit 9 was admitted)

6 (Exhibit 10 was admitted).

7 MR. PETERSON: And, just for the record,
8 objection. They're duplicative. The thing's
9 already in the record. There's no foundation for
10 those documents that are relevant to this
11 proceeding, among other things. Hearsay.

12 THE COURT: Those are overruled.

13 Well, I don't know whether they're
14 relevant. I don't think they're relevant, but I
15 want them to be part of the record, even though
16 they -- some of it already is.

17 BY MR. HAEG:

18 Q. Did you ever file a motion to suppress my
19 statement?

20 A. I didn't move to suppress -- I didn't make
21 a motion to suppress evidence in your case, as I
22 recall.

23 Q. Why didn't you move to suppress my
24 statement when you protested that Mr. Leaders was
25 using it?

1 A. That is a suppression motion. There's a
2 difference between -- I think what you were
3 getting at is whether I moved to suppress evidence
4 based on the search. I didn't.

5 However, I did protest them using your
6 statement in the informations that were used to
7 charge you.

8 Q. But that was --

9 A. So if --

10 Q. -- did not state it was a motion to
11 suppress.

12 A. It didn't have to be a motion to suppress.

13 Q. Okay.

14 A. I'm just saying the ultimate result would
15 be that if the Court agreed with me, they would
16 not have been able to use your statements and they
17 would have been suppressed for the purpose of the
18 information.

19 Now, you have to also remember, Mr. --
20 Mr. Haeg, that once you've testified in court,
21 then those statements come in.

22 Q. Okay.

23 Did you protest the use of my statement
24 against me at trial?

25 A. Yes.

1 Q. The map? That I had put all the wolf kill
2 locations on, did you protest them using that map
3 against me?

4 A. I didn't know there was a reason to
5 protest it.

6 Q. Okay.

7 A. Because at that time I didn't know --

8 Q. Because you -- because they hadn't given
9 you a copy in discovery?

10 A. Right. I didn't know there was another
11 map out there.

12 Q. Okay.

13 Did I ever ask you to include Leaders' use
14 of my statement in my points of appeal? So did I
15 ever ask you: Hey, Chuck, do you think we
16 should --

17 A. I think the point of appeal was made that
18 an error was made on the part of the judge by not
19 granting that motion.

20 Q. Nope. It was not.

21 MR. HAEG: And I'd like -- that is in the
22 record. That's Robinson's points of appeal. I'd
23 like to just state in the record he never did
24 appeal that.

25 I would also --

1 THE COURT: Hang on. Just --

2 MR. PETERSON: That's not a question --

3 THE COURT: I'm not clear.

4 MR. HAEG: Okay. On --

5 THE COURT: Hey. Wait.

6 MR. HAEG: Okay.

7 THE COURT: What is it that you think
8 should have been appealed but was not?

9 MR. HAEG: The use of my statement in the
10 charging information.

11 THE COURT: Okay.

12 MR. HAEG: You know, forcing me to trial.

13 THE COURT: The statement, -- you mean
14 the --

15 MR. HAEG: And the use of --

16 THE COURT: -- you mean the statement --

17 MR. HAEG: And the use -- the use of the
18 map, my statement at trial.

19 THE COURT: The statement you gave to the
20 troopers back in April, May?

21 MR. HAEG: Right. Yes.

22 THE COURT: Okay.

23 MR. HAEG: Okay.

24 BY MR. HAEG:

25 Q. Did I ever ask you to include Leaders' use

1 of my statement in my points of appeal?

2 A. No.

3 MR. HAEG: I'd like to add --

4 A. Not that I recall.

5 MR. HAEG: Okay. I'd like to admit a --
6 a -- an email to Mr. Robinson dated October 17,
7 2015, in which I say: Chuck, here's some stuff
8 about the appeal. Down at the bottom it says:
9 Also, should we again point out the information
10 uses much of my statement made in plea
11 negotiations.

12 Robinson responds the same day: Thanks
13 for your thoughts and research.

14 And I'd like to admit that into evidence.

15 THE COURT: It's admitted.

16 (Exhibit 11 admitted)

17 MR. HAEG: And I actually have Robinson's
18 points of appeal. Should I --

19 THE COURT: If you want to repeat what's
20 already in the record, sure, go ahead.

21 MR. HAEG: And that's it for Mr. Robinson
22 for me.

23 (Exhibit 12 admitted)

24 MR. PETERSON: May I approach the witness?

25 THE COURT: You may.

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ARTHUR ROBINSON

testified as follows on:

CROSS-EXAMINATION

BY MR. PETERSON:

Q. Mr. Robinson, I have a copy of a court of appeals unpublished opinion from 2000 -- I believe it's from 2008. And this is the appeal that went up to the court of appeals. It says the defendant primarily argued the prosecutor violated the Alaska Rules of Evidence 410; is that right?

Right there. I highlighted it.

(indiscernible) blow it up, make it bigger, if that --

A. I'm not sure I got the right lens for my glasses, here.

Yeah, I see it now.

Q. Okay. That is what it says?

A. Yes.

Q. So the court of appeals did take up that issue that he just said the court of appeals didn't take up?

A. Yes.

Q. Okay.

All right. So let's talk about the testimony yesterday. There was some discussion

1 about a deal, whether one existed or not. And
2 that's been the subject of a lot of discussion
3 here, hasn't it?

4 A. (No audible response).

5 Q. All right. So I'm going to pull up the
6 deposition.

7 MR. PETERSON: May I approach?

8 Q. All right. This is a copy of the
9 deposition, page 112.

10 THE COURT: Whose deposition?

11 MR. PETERSON: Mr. Robinson's deposition.

12 A. See if I can read it better.

13 Q. Says right here -- go ahead and read that,
14 and I'll ask you a question about it.

15 A. (Indiscernible).

16 Q. Sure.

17 A. I don't think these lens powers work.

18 Q. No problem.

19 A. Yeah, I see that. My answer. Uh-huh.

20 Q. All right. So you were asked if there was
21 a deal on the table before you came into the case,
22 or if there was a deal at the time you came into
23 the case. And what did you say?

24 A. It wasn't very clear to me that there was
25 a deal that was agreed to by all parties.

1 Q. Okay. And at that time, did you know that
2 there had been -- the framework of a deal had been
3 worked out. But then Mr. Haeg actually introduced
4 a new term to swap the planes -- the plane that
5 was agreed on to be forfeit; did you know that
6 that had happened?

7 A. Repeat that again.

8 Q. At the time that you were deposed, did you
9 know that before you came into this case, Mr. Cole
10 and the prosecutor had worked out a deal. And
11 after they worked out that deal, Mr. Haeg came
12 back and said, actually, I want a different deal,
13 I want to forfeit a different plane than the one
14 that was used in the offense?

15 A. No, I didn't know that.

16 Q. You didn't know that. Okay.

17 And I think you testified yesterday that
18 you gave Mr. Haeg the option, you told him that
19 you could try to work out another deal with the
20 prosecutor, or we could go to trial. And what did
21 he want to do?

22 A. Well, it wasn't a matter of working out
23 another deal. What I told Mr. Haeg was that if he
24 wanted to enforce the deal that he thought he had,
25 we could pursue that or go to trial.

1 Q. Okay. And what did you choose to do?

2 A. Go to trial.

3 Q. Okay.

4 All right. And there was also a question
5 put to you yesterday about why you didn't pursue
6 an ineffective assistance of counsel claim against
7 Mr. Cole. Do you remember that?

8 A. Yeah, I remember that question.

9 Q. Okay.

10 So did you -- did you know at any time
11 during this litigation, that the deal that Mr.
12 Cole had initially worked out, before Mr. Haeg had
13 introduced a new term into the deal, was that
14 Mr. Haeg would have been back to guiding in the
15 fall of 2005, less than one year of a full
16 suspension, because he guided in the spring of
17 2004?

18 A. I'm trying to think back, Mr. Peterson, as
19 to whether that issue came up or not. I knew that
20 sometime during my representation with Mr. Haeg
21 that he mentioned giving up or agreed to give up
22 hunting for -- for a certain period of time, for
23 like a year, I think.

24 But I'm not sure that we ever talked about
25 it, other than he said he'd agree to do it.

1 Whether or not the state was obligated to go
2 forward with it. And, I mean, as far as the
3 reliance question is concerned, if there was no
4 deal, I'm not sure --

5 Q. Right.

6 A. -- what the deal was about.

7 Q. I'm just asking you now if you knew that
8 there had been an initial framework of a deal
9 whereby he would have been back to guiding in the
10 fall of 2005?

11 A. I knew that Mr. Haeg said that he had
12 voluntarily given up for a year. Now, when that
13 would have gone back into effect is just too far
14 in the past for --

15 Q. Fair enough. I'll --

16 A. -- me to give you an exact time. But
17 there was some understanding on his part that he
18 would be back to guiding.

19 Q. Okay.

20 And how long did you practice criminal
21 defense law in Alaska?

22 A. Well, I came to Alaska in 1972 as an
23 intern, second-year law student from UCLA working
24 for the public defender agency. I did that for
25 six months. I went back and in my third year

1 before I graduated, I came back to Alaska and
2 worked in the DA's office for another intern
3 period.

4 Then when I graduated from UCLA, I came
5 back and became an assistant district attorney in
6 Anchorage. And I did that until 1976. And then
7 from 1976 until I retired, I had a contract with
8 the Office of Public Advocacy to do criminal work.
9 And did quite a few criminal cases like that. I
10 had, in addition to those criminal cases, I also
11 had a couple -- three murders, assaults. I mean,
12 I did a lot of criminal work.

13 Q. Okay.

14 So you have a lot of experience in
15 criminal practice in Alaska, criminal law practice
16 in Alaska?

17 A. Yeah.

18 Q. Were you familiar with wildlife guide
19 sentencing around the early mid-2000s?

20 A. I had done -- I can't -- you know, I can't
21 remember the exact number of wildlife cases I did.
22 But I had done some wildlife cases before I took
23 Mr. Haeg's case.

24 Q. So --

25 A. Both federal and state, by the way.

1 Q. Okay. Would that, in your view, if
2 Mr. Haeg would have been back to guiding by the
3 fall of 2005 with just a one-year guide license
4 suspension, would that have been a very favorable
5 deal for him, in your view?

6 A. Given what the maximum sentence could be
7 for that, sure, that would have been a good deal.

8 Q. A lifetime guide license revocation is the
9 maximum sentence for a guide committing a same-day
10 airborne; right?

11 A. That's the potential exposure.

12 Q. Right. Three years to a lifetime
13 suspension?

14 A. Right.

15 Q. All right.

16 So there was some talk about the judge and
17 the trooper. You didn't see Judge Murphy in a
18 truck with the trooper, did you?

19 A. That question came up yesterday. And the
20 first time somebody asked me that was Mr. Haeg in
21 2011, several years after his case was over.

22 Q. And what year was the trial?

23 A. I think it was 2005, 2006, somewhere in
24 that period.

25 You know, I thought about this last night.

1 I know I heard about it. I know I said I may have
2 seen it, but I could be wrong. And I'm still at
3 that position.

4 You know, I saw the trooper and the judge
5 in many circumstances during that whole time. I
6 just can't clearly say that I saw him chauffeur
7 her around.

8 Q. And you said the first time that you heard
9 about it was in 2011?

10 A. First time somebody asked me whether I saw
11 it or not, yeah.

12 Q. Okay.

13 You're aware that there was more than one
14 trooper in McGrath at the time, I assume?

15 A. I didn't know there was more than one
16 trooper other than Gibbens at the time. I didn't
17 see any other -- as far as I can recall, I didn't
18 see any other law enforcement person from the
19 state troopers' office at trial or in the
20 courthouse, other than Trooper Gibbens. Now,
21 there may have been somebody else I didn't see.

22 Q. And what about a public safety technician,
23 do you recall seeing a public safety tech around,
24 someone else that works for DPS, but isn't a
25 uniform trooper?

1 A. Like I said, the only person that I saw
2 that I thought was a law enforcement official at
3 the time that I was in the courthouse, or what was
4 set up to be a courthouse, was Trooper Gibbens.

5 Q. Okay.

6 A. Now, that's not to say there was no other
7 person around.

8 Q. Right. No. I understand.

9 A. I'm just saying that's what I recall.

10 Q. So if someone would have told you during
11 trial that the judge was spending a significant
12 amount of time alone with the state's witness, is
13 that something you would have brought up in your
14 practice?

15 A. During the trial I probably would have
16 brought it up, if it had been made a big issue,
17 yeah. But -- maybe I didn't think it was such a
18 big issue at the time, knowing how rural Alaska
19 works.

20 Q. And that's important. So how rural Alaska
21 works. Is McGrath -- well, the trial was in
22 McGrath; right?

23 A. Rural McGrath.

24 Q. Rural McGrath. Okay.

25 Is that a big city?

1 A. I think it's just a little more than a
2 village.

3 Q. Are there taxicabs in McGrath?

4 A. I don't know. I didn't -- I didn't call
5 for one. But I don't know whether there's taxis
6 in McGrath or not. I walked pretty much the whole
7 time I was in McGrath.

8 Q. Okay?

9 A. Or bicycle. I think there was a bike
10 around. I might have taken --

11 Q. Let's say that one of the defendant's
12 friends tells you during trial that he's seen the
13 trooper driving the judge back and forth from
14 court and eating lunch together. Is that
15 something you would bring up during trial, in your
16 practice?

17 A. If I'd have heard about the lunch
18 together, maybe. But I don't remember hearing
19 about lunches together. I did hear that they were
20 seen in the same car, driving around. But I don't
21 recall being told that they were having lunch
22 together.

23 Q. Okay.

24 And just to clarify, I'm just asking you
25 what your practice would be in this scenario.

1 And --

2 A. Had I been made aware that they were
3 dining together, then I would have protested that.
4 But I don't --

5 Q. And I'm certainly not suggesting that they
6 were.

7 In any event, it was not brought to your
8 attention or your -- your testimony now is that
9 you don't recall it being brought to your
10 attention. It was not a significant issue that
11 was brought to your attention?

12 A. Not the lunch part, no. I didn't -- I
13 don't recall being told that they were having
14 lunch.

15 Q. Okay. Let's forget about lunch. Driving
16 together; you said the first time you were asked
17 about it was --

18 A. I heard about --

19 Q. -- in 2011, which was some six years after
20 the trial; some five, six years?

21 A. No. Not -- no. You misunderstood what I
22 said. As I recall, the first time somebody asked
23 me if I saw it was in 2011.

24 Q. Right.

25 A. By Mr. Haeg.

1 As far as hearing about it, I heard about
2 it while we were in McGrath. But I didn't give it
3 a whole lot of significance, understanding how
4 rural things work in McGrath, getting around and
5 stuff.

6 In fact, it kind of reminded me of a
7 situation that me and Paul Davis and ex-Judge
8 Singleton had back in 1974 when the three of us
9 drove, in the middle of winter, to cover court
10 calendars in Glennallen and Valdez. And the three
11 of us rode together for days. And the only thing
12 we really talked about was the flattening of Judge
13 Singleton's tires in McGrath when it was 65 below
14 zero, and overnight the tires were flattened on
15 the bottom.

16 But then the whole time that we rode
17 together, which was several days, we never talked
18 about any cases, we didn't engage in any topics
19 that were related to the court calendar.

20 Q. All right.

21 A. So, in other words, having that
22 experience, I didn't -- I don't know, it just
23 didn't occur to me that that alone was a big deal.
24 I mean, had I known about the lunch --

25 Q. Well, again, I was using that as an

1 example to see, to ask you about what your
2 practice would have been in a situation like that.

3 THE COURT: Let me make sure I've got this
4 summary right. Your recollection is that someone
5 told you during trial that Murphy was in a vehicle
6 with the trooper?

7 THE WITNESS: Right.

8 THE COURT: You never saw that at all
9 during the trial?

10 THE WITNESS: I don't recall it, no.

11 THE COURT: And that didn't -- that --
12 whoever told you that, whatever the information
13 was, didn't trigger any sort of concern,
14 because -- in part, because of your experience
15 previously driving around rural Alaska with the
16 DA, the judge, on a circuit, if you will?

17 THE WITNESS: Correct.

18 THE COURT: And there was no suggestion of
19 any interaction between the judge and the trooper
20 beyond this -- this rumor of driving from, what,
21 to court, that's basically it?

22 THE WITNESS: Right.

23 THE COURT: Okay.

24 BY MR. PETERSON:

25 Q. And do you know if that was during trial

1 or sentencing that you heard this rumor?

2 A. Boy, it's been so long ago, Mr. Peterson,
3 I can't remember whether I heard it while it was
4 before or after, or during sentencing. I heard it
5 while we were in McGrath before everything was
6 over, but I can't tell you whether it was during
7 the trial portion or the sentencing.

8 Q. Okay.

9 MR. HAEG: Excuse me? I have something
10 that refutes --

11 Q. All right. Let's move on to --

12 MR. HAEG: What's happening here? Do I
13 have a chance to -- when do I do that, I guess?

14 THE COURT: Do what?

15 MR. HAEG: Mr. Robinson --

16 MR. PETERSON: No. No. He doesn't get to
17 do this.

18 THE COURT: Just let him speak for a
19 second so I can understand what he's trying to do.
20 And then I will rule on his possible objection.
21 Okay?

22 Now, what are you trying to do?

23 MR. HAEG: There's the letter that I
24 already submitted, I believe --

25 THE COURT: You can ask him further

1 questions after he's done with his questioning.

2 MR. HAEG: Okay.

3 THE COURT: Okay?

4 MR. HAEG: Okay. So I wait.

5 THE COURT: Wait until he's entirely done,
6 then you'll get another chance to ask questions.

7 MR. HAEG: Okay. Thanks.

8 BY MR. PETERSON:

9 Q. All right. Have you ever raised an
10 objection like that during trial, say, hey, you
11 know, there's -- there was talk -- or at
12 sentencing for that matter, that the judge was
13 talking to a witness? Have you ever raised an
14 objection like that during any trial or
15 sentencing?

16 A. Not that I can remember.

17 Q. Okay. Okay.

18 And you have a great deal of experience in
19 this type of practice, as we've already talked
20 about. In your experience, if the judge says,
21 yeah, that didn't happen, what kind of relief
22 would be granted if you did bring it up?

23 A. Well, if Judge Murphy -- if I'd have
24 brought it up and Judge Murphy said it didn't
25 happen, then I guess we'd have to have an

1 evidentiary hearing with another judge to
2 determine whether or not it happened. I mean,
3 I --

4 Q. The judge could do that, or the judge
5 could say it didn't happen; we're moving on?

6 A. Yeah, she could say it didn't happen. And
7 then I -- you know, at least (indiscernible) what
8 to do about a denial of the rumor. But I guess to
9 resolve the question of whether it did or didn't
10 happen, you'd have to have some third party make
11 that decision, because the judge is just making an
12 assertion that somebody else has to decide whether
13 it's true or not.

14 Q. And so if it would have been brought up to
15 you as something that was significant, you would
16 have gone through that; is that right?

17 A. Yes.

18 Q. Okay. All right.

19 So there was some talk about subject
20 matter jurisdiction. The signing, the swearing of
21 the affidavit for a complaint; right?

22 A. Right.

23 Q. And then that was cured when the
24 prosecutor filed an information --

25 A. Well, in the opinion of the court, the

1 district court it was cured; in my opinion it
2 wasn't cured because in my opinion it shouldn't
3 have been amended.

4 Q. Okay. And that was all made -- all that
5 argument was made after Mr. Haeg had decided to go
6 to trial; is that right?

7 A. Oh, yes.

8 Q. And you filed a motion to dismiss. I
9 don't know if that was clear yesterday. You did
10 file a motion to dismiss the charging document
11 based upon that procedural failing?

12 A. Yes.

13 Q. And the state simply amended the
14 information at that point?

15 A. Well, they argued that they didn't have
16 to -- as I recall, Scot Leaders argued that it
17 wasn't a requirement that these allegations be
18 sworn to.

19 Q. Okay.

20 But that wasn't your defense at trial, was
21 it? I mean, you had a defense at trial?

22 A. Yes.

23 Q. Other than that?

24 A. I had other defenses. I mean, one of them
25 was I thought that instead of David being charged

1 with illegal guiding, he should have been charged
2 with illegal trapping, because the permit that he
3 got from the state was not a hunting license
4 permit, but a trapping license permit.

5 And I did make a request that the Court
6 instruct the jury that he should be held liable or
7 guilty at all, under the regime that was set up
8 for the trapping permit.

9 Q. Okay. So you had an, actually relatively
10 technical legal argument about why he should be
11 convicted of a lesser offense; is that right?

12 A. Yeah.

13 In addition, the facts showed that David
14 wasn't guiding. He and Mr. Zeller were out trying
15 to take wolves, he wasn't trying to take a wolf
16 for the benefit of giving that wolf to a guiding
17 client. As I recall, they sold the pelts for a
18 few hundred dollars, or something. So it wasn't
19 really a guiding operation, in my opinion. I
20 thought he was just out illegally trapping, at
21 most.

22 Q. All right.

23 MR. PETERSON: So -- may I approach?

24 THE COURT: Yes.

25 Q. Okay. I've got a copy of the 2004-2005

1 Alaska Fish and Game laws and regulations. This
2 is Chapter 54 from Title 8, 720. So go ahead and
3 read, it's (a)(8), first. Then I'll ask you a
4 question about it.

5 A. I'll have to hold it up pretty closely.

6 THE COURT: This is A.S. 08.54.720(a)(8).

7 MR. PETERSON: (A)(8) 2004-2005 statute.

8 A. The statute (indiscernible).

9 Q. A statute, right.

10 A. One through 8?

11 Q. No, (a)(8).

12 A. Oh, (a)(8).

13 Okay.

14 Q. Okay.

15 A. Okay.

16 Q. And then also (a)(15), which is right
17 here. Same title and chapter.

18 A. Uh-huh.

19 Q. So your argument at trial was that they
20 should convict him, instead of a trapping offense,
21 which would have been --

22 A. No. Instead of a hunting offense. My
23 argument at trial was that --

24 Q. Yeah.

25 A. -- instead of being convicted of a hunting

1 offense, he should be convicted of a trapping
2 offense because he wasn't airborne hunting.

3 Q. Right. And what 54.720 covers, guides'
4 activity generally; right?

5 A. When they're guiding.

6 Q. Well, it says: It is unlawful for a
7 guide -- for a person licensed under this
8 chapter -- and this is the chapter that licenses
9 guides; right? -- to commit a wildlife offense, a
10 violation of a state game statute or regulation,
11 that's what (a)(8) says; right?

12 A. Yes.

13 Q. And (a)(15) says: A person licensed under
14 this chapter to knowingly violate a game statute
15 or regulation prohibiting same-day airborne?

16 A. Right. Which --

17 Q. So your argument --

18 A. But the argument in this case, you have to
19 remember, Mr. Peterson, the state's position in
20 this case was that, precisely what's laid out in
21 (15), that Mr. Haeg was out hunting, airborne a
22 day ahead of time.

23 Q. Right.

24 A. In other words, as I understood the
25 airborne statute is that you can search for game,

1 you just can't shoot them on the same day that you
2 search for them with an airplane. My argument was
3 that Mr. Haeg was not going out hunting for --

4 Q. Sure.

5 A. -- wolves for the purpose of his guiding
6 business, he wasn't same-day airborne for the
7 purpose of hunting.

8 Q. Right.

9 A. He was same-day airborne for the purpose
10 of trapping.

11 Q. Understand. Totally understand.

12 A. And that was the defense.

13 Q. And that's -- that's a pretty good defense
14 to these charges, isn't it?

15 A. I thought so.

16 Q. That's the best one that you could come up
17 with?

18 A. That's what I thought I could come up
19 with.

20 Q. Have you thought of a better one since
21 then, in the last decade?

22 A. No.

23 You have to also remember that Mr. Haeg
24 was charged with some other offenses, too, that
25 were unrelated to the wolves.

1 Q. Right. Right. Falsifying the sealing
2 certificate, and so forth.

3 But to talk about your defense at trial,
4 that --

5 A. Well, I thought that given the fact that
6 the state's theory of Mr. Haeg's guilt was that he
7 was same-day airborne hunting. And that's what
8 they argued. And my position was, well, it isn't
9 hunting, it's trapping.

10 Q. Sure. And that was your defense.

11 A. And the --

12 Q. As I said, that's a pretty good defense.

13 A. And the regime that he was given the
14 permit under, which was another statute,
15 authorized the giving of a trapping permit, not a
16 hunting permit.

17 Q. All right.

18 And in addition to that, on
19 cross-examination of the State Trooper, Gibbens,
20 you got him to admit that he was mistaken on
21 direct, didn't you?

22 A. I got him to admit that he was mistaken as
23 to the unit in which the --

24 Q. The subunit?

25 A. -- the wolves were taken.

1 Q. Right. He said 19C, but, in fact, it was
2 19D. And he said, yes, I misspoke.

3 A. Right.

4 Q. So you were alert and aware during
5 cross-examination. You got a state's primary
6 witness to admit that they made a mistake?

7 A. Right.

8 Q. All right.

9 So there's a copy of a map that was talked
10 about yesterday.

11 MR. PETERSON: Is this -- Mr. Haeg, is
12 this the same map?

13 MR. HAEG: Yep.

14 MR. PETERSON: May I approach?

15 THE COURT: Uh-huh.

16 MR. PETERSON: Can I have this map to show
17 the witness?

18 MR. HAEG: Sure.

19 BY MR. PETERSON:

20 Q. So this is the same map that Mr. Haeg was
21 asking you about yesterday?

22 A. Yes.

23 Q. It appears to be a map of the McGrath
24 area, and has some highlighting and some markings
25 on it. I think you said yesterday there was

1 nothing significant about the map at trial for
2 you?

3 A. There was no indication to me, at the time
4 that the state put up the exhibit showing where
5 the alleged crime took place, that that was false.
6 In other words, there wasn't anything other than
7 the -- the misstatement of the unit, C and D,
8 there wasn't anything other than that, that showed
9 me that that was a fabricated exhibit that we were
10 using at trial.

11 Q. Okay. And you see here down at the
12 bottom, in the middle, it says A, B, C, D, E, Z
13 along the kill sites. It's got them listed out
14 here; right?

15 A. On that map. But I'm not sure that
16 that's a plaintiff exhibit. In other words, I've
17 never seen a plaintiff exhibit that lists these
18 things underneath.

19 Q. Okay. Well --

20 A. I recognize (indiscernible - simultaneous
21 speech)

22 Q. -- I'm showing you this. And that's what
23 it says here; right?

24 A. Right.

25 Q. Okay.

1 And it's clearly marked 19C, 19D here?

2 A. Right.

3 Q. Now, at trial do you recall a state's
4 witness --

5 MR. PETERSON: Thank you.

6 Q. -- talking about marking a map with the
7 kill sites?

8 A. (Indiscernible) I just can't recall --

9 Q. I'll ask you a more specific question.

10 Do you recall Mr. Zellers talking about
11 marking the map where on the map the wolves were
12 killed using letters A, B, C, D, E, and Z?

13 A. What I recall about Mr. Zellers' testimony
14 is that he testified at trial that these wolves
15 were not taken in the area where they should have
16 been. That's -- that's the upshot of what I
17 recall Mr. Zellers' -- specifically, you know --

18 Q. So if a witness for the state would have
19 said these letters correspond to the kill sites,
20 during trial on a map, and those letters
21 correspond with what is being shown on that map,
22 would that give you cause to believe that the map
23 has somehow been altered or that you should object
24 to the use of that map?

25 A. No.

1 Q. Okay. Maps are publicly available; right?

2 A. Yes.

3 Q. Anybody can go to the USGS and get a copy
4 of a map, even in 2004, '5, '6, '7, '8?

5 A. It's my understanding.

6 Q. You can't go to USGS anymore because they
7 closed down for that part of it, but you can print
8 them off the internet.

9 And surely you've been in trial and a
10 prosecutor shows up with a map that's publicly
11 available, the Court can take judicial notice of
12 maps; right?

13 A. Right.

14 Q. And certainly a map of the area is
15 something that you would have access to in the
16 discovery?

17 A. Right.

18 Q. The permit actually has a copy of the map
19 on it; right?

20 A. Yeah.

21 Q. And you had a copy of that? And Mr. Haeg
22 had a copy of that; right?

23 A. A permit map was a map showing the general
24 area and then the area that was open for trapping.

25 Q. Right. And this is a blown-up version of

1 that; right?

2 A. I can't remember if it's a blown-up
3 version or not.

4 Q. Fair enough.

5 Any reason to believe -- well, that's
6 fine. We'll move on.

7 Now, you recall yesterday Mr. Haeg said
8 that he believed the map was corruptly altered to
9 show that the wolves were killed in his guide use
10 area. But didn't the trooper say during your
11 cross-examination at that trial that the wolves
12 were not killed in Mr. Haeg's guide use area?

13 A. Well, after I brought out the fact that he
14 was wrong --

15 Q. Right.

16 A. -- about where the wolves were taken, you
17 know, then he -- once he admitted that, he had to
18 say that apparently they were not taken in
19 Mr. Haeg's guiding area.

20 Q. Right. He said: You're right, I
21 misspoke; it was 19D not 19C; right?

22 A. Right.

23 Q. Not Mr. Haeg's guide use area?

24 A. Not Mr. Haeg's guiding area, right.

25 Q. All right.

1 And, in fact, Mr. Haeg also took the stand
2 at trial and admitted that he killed the wolves
3 outside the wolf control area as well; right?

4 A. Yes. He admitted that he had taken the
5 wolves outside the area that he was permitted to
6 do so.

7 Q. And his co-defendant, who had pled and --

8 A. And Mr. Zellers --

9 Q. -- was testifying for the state also
10 testified to that; right?

11 A. Mr. Zellers said the same thing. As I
12 understand it, David was flying the plane,
13 Mr. Zellers was using a rifle. And Mr. Zellers
14 was the one that shot the wolves while Mr. Haeg
15 was flying over. That's the way I understood it
16 happened.

17 Q. So regardless of what any map shows,
18 state's witness that was there said they killed --
19 "they," being the defendant and that witness --
20 killed the wolves outside of the wolf control
21 area. And your own client, the defendant, took
22 the stand and said the same thing; right?

23 A. Yes.

24 Q. Okay.

25 Now, do you have any idea where the

1 subunit lines for the guide use area 19 -- the
2 game management unit 19 --

3 A. No.

4 Q. -- area were in 2004?

5 A. No. I mean, other than what I looked at
6 and researched for the purpose of the trial, I
7 wasn't aware of those guiding units or hunting
8 units, or whatever you want to call them --

9 Q. Okay.

10 A. -- you know, before then. In fact, I had
11 never been to McGrath before this either.

12 Q. And Mr. Haeg was a guide; right?

13 A. Yes.

14 Q. He killed the wolves illegally, whether it
15 was trapping or hunting, or whatever the argument
16 was; right?

17 A. The jury found he'd killed them without
18 permission.

19 Q. Okay. All right.

20 MR. PETERSON: Nothing further.

21 THE COURT: Mr. Haeg, do you have
22 additional questions?

23 MR. HAEG: Okay. I'd like to show
24 Mr. Robinson the transcribed -- but I think it's
25 maybe already been admitted, if I may?

1 THE COURT: Sure.

2 MR. HAEG: What it says is they now --

3 THE COURT: Show him what you want to show
4 him.

5 MR. HAEG: Okay.

6 ARTHUR ROBINSON

7 testified as follows on:

8 REDIRECT EXAMINATION

9 BY MR. HAEG:

10 Q. You said now you just heard -- is it true
11 that you just heard that the chauffeuring took
12 place but, in fact, didn't you say, specifically
13 say: I know -- but while we were there I saw it?

14 A. Yes, I said that. But I also said I saw
15 it during trial, I believe; I could be wrong.

16 I also said that.

17 Q. Okay. But -- but --

18 A. So I could be wrong.

19 Q. -- after that you said that, you said:
20 But while we were there I saw it.

21 A. And what did I say?

22 MR. PETERSON: Objection. He's trying to
23 mischaracterize --

24 THE WITNESS: Right.

25 MR. PETERSON: -- what the witness just

1 said. That is completely inappropriate. It's
2 inappropriate.

3 A. I also said, I believe, but I could be
4 wrong.

5 MR. HAEG: Can I admit this into evidence?

6 THE WITNESS: I thought it was admitted
7 yesterday.

8 MR. HAEG: It may have already been, but
9 -- sorry.

10 THE COURT: Is this already in?

11 MR. HAEG: I don't know for sure.

12 THE COURT: Would you have an objection to
13 a prior inconsistent statement coming in?

14 MR. PETERSON: I'd like to see it.

15 THE COURT: Sure. You may.

16 Show that to him, please.

17 MR. PETERSON: Okay. Yes, I do object,
18 because it doesn't have his complete statement.
19 Also, it's a transcribed phone call that -- made
20 by who knows who, so there's no foundation. It's
21 hearsay. He's got the witness on the stand, he
22 can ask him about it. And it's not a prior
23 inconsistent statement, because the witness just
24 said he said it and he also said more. So,
25 therefore, it isn't a prior inconsistent

1 statement.

2 THE COURT: Well --

3 MR. PETERSON: It's a transcription, we
4 have no idea where it came from.

5 THE COURT: -- I understand
6 (indiscernible) but I'm thinking about what you
7 just said. Your waving your hands and rolling
8 your eyes don't help. Okay? You're a grown-up,
9 you're an experienced lawyer. I get it, you're
10 frustrated. Act professionally. I'm sure you
11 can.

12 Now, your hearsay objection is overruled.
13 The foundation -- you -- Mr. Haeg, you
14 have to show some sort of foundation of what this
15 is. This is just a piece of paper with some words
16 on it. No one has any idea where this came from.

17 MR. HAEG: It's a -- it's a conversation
18 that I had with Mr. Robinson when, I believe,
19 he -- you said your mom had died, you were in
20 Washington DC. And I actually have a thumb drive
21 with the actual audio that we can provide the
22 Court and the state. I don't know if I have it
23 right now. I'm not -- I'm a one-man band, and I
24 don't know how to do all this.

25 THE COURT: You're going to have to put on

1 some sort of testimony about what that is, either
2 your testimony, someone else's testimony,
3 Mr. Robinson's testimony --

4 MR. HAEG: Okay.

5 THE COURT: -- about what this thing is.

6 MR. HAEG: Okay.

7 THE COURT: So you can either ask him --

8 MR. HAEG: Okay.

9 THE COURT: I don't know whether he knows.

10 BY MR. HAEG:

11 Q. Does that -- in your best recollection, is
12 that a true version of what happened?

13 THE COURT: We'll start with -- ask him
14 whether or not he had a conversation at some point
15 in time.

16 Q. Okay. Did you have a conversation with me
17 at some point in time about Judge Murphy and
18 Trooper Gibbens?

19 A. At some point in time, yes. That
20 particular time -- if you want to know about 2011;
21 is that the time you want to know about?

22 Q. Yes.

23 A. I do recall that I was in Washington DC.
24 I had been there since October because my mother
25 was dying from cancer. I stayed there to help

1 take care of some personal stuff after she passed
2 away in January. And I remember you calling me
3 within the ten days, two weeks or so, after she'd
4 passed. It could have been sooner, could have
5 been later.

6 So I do recall you talking to me, yes, on
7 the phone.

8 Q. Okay.

9 A. I didn't know it was recorded, but I do
10 remember you talking to me.

11 Q. Okay.

12 MR. HAEG: And I don't know what to do
13 right now.

14 A. But I can tell you right now, that as I
15 recall the issue of seeing or not seeing the
16 trooper, I would have said the same thing. If
17 that's what I said, I would say it again today.
18 I'm not certain that I saw it. I could be wrong.

19 Q. But then you -- you -- after that you
20 said: But I know I seen it while I was there.

21 A. No. After the trial in 2011, when you
22 talked to me on the phone, if that's a transcript
23 of what we talked about, what I said is that I saw
24 it, I believe, but I could be wrong. And I still
25 feel that way. I'm not sure today that I saw it.

1 THE COURT: Let me see the piece of paper.
2 I don't think this is a prior inconsistent
3 statement. I think this is a consistent
4 statement, which is that he might have seen it
5 during trial, wasn't sure. So I'm not going to
6 admit it.

7 His testimony about what he saw or didn't
8 see and remembered is certainly admissible, but
9 that statement isn't.

10 MR. HAEG: Okay. If I have a tape
11 recording of this, is there any way that I can get
12 it in --

13 THE COURT: No. No. It's not a matter of
14 whether it's recorded or not. But give that to
15 the clerk, have her mark it as an exhibit. It's
16 not admitted, but it's marked.

17 MR. HAEG: Okay. And so she --

18 THE COURT: It's not part of the record,
19 but if I'm making a legal error in excluding it,
20 we'll know what you wanted to be in the record.

21 (Exhibit 13 was marked)

22 MR. HAEG: Okay.

23 BY MR. HAEG:

24 Q. And, Mr. Robinson, you just testified
25 that -- that Prosecutor Leaders swearing -- or

1 filing a new information with a sworn affidavit
2 did not cure the defect, it was still valid. Is
3 that what you said?

4 A. Here's what's my point is. I asked the
5 Court to get rid of the charges against you
6 because they were not sworn to, as I understand
7 the requirement for making criminal accusations
8 that give the court jurisdiction to adjudicate
9 them.

10 Mr. Leaders argued that it didn't need to
11 be sworn. Judge Murphy agreed. But -- which I
12 still don't understand, if it didn't need to be
13 sworn, then it didn't need to be amended with an
14 affidavit of both. But the Court allowed
15 Mr. Leaders to do that. In other words, the Court
16 says, well, go ahead and amend it and give us the
17 oath. And that's what he did. And that was
18 considered to cure the defect.

19 Now, my opinion was that it didn't cure
20 the defect, because it should have been sworn to
21 in the beginning, but that's just my legal
22 opinion. But the Court did cure it for the
23 purpose of adjudicating the charges against you at
24 court.

25 Q. Okay.

1 MR. HAEG: I'd just like to put on the
2 record that Robinson's deposition, page 10 and 11,
3 the state asked if, when Mr. Robinson -- or
4 Mr. Leaders amended the information, if that cured
5 the defect. And Mr. Robinson answered yes.

6 A. And it did for the purpose of your trial,
7 because had it not cured the defect, you wouldn't
8 have been able to proceed for adjudication. So
9 for purposes of your trial, the Court allowed the
10 state to cure the defect by amending the complaint
11 under oath.

12 Q. Okay.

13 MR. HAEG: Well, that's all I have for
14 Mr. Robinson.

15 THE COURT: You have other questions of
16 him?

17 MR. HAEG: No other questions.

18 THE COURT: Any recross?

19 MR. PETERSON: No, Your Honor.

20 THE COURT: Mr. Robinson, you're excused.

21 (Witness excused)

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: Have a safe journey back to
24 the Peninsula.

25 THE WITNESS: I sure will.

1 MR. HAEG: Can I go grab my next witness?

2 THE WITNESS: My Warriors won last night
3 even though I missed the game.

4 THE COURT: Don't rub it in.
5 Your witness' name, please?

6 MR. HAEG: Tony Zellers.

7 THE COURT: Mr. Zellers, will you take the
8 stand?

9 THE CLERK: Sir, if you'd remain standing
10 and raise your right hand.

11 (Oath administered.)

12 MR. ZELLERS: I do.

13 THE CLERK: Thank you. You may be seated.
14 For the record, please state your name, spelling
15 both first and last name.

16 THE WITNESS: Tony Zellers, T-O-N-Y
17 Z-E-L-L-E-R-S.

18 THE CLERK: Thank you.

19 THE COURT: You may proceed.

20 TONY ZELLERS
21 called as a witness on behalf of the Applicant
22 testified as follows on:

23 DIRECT EXAMINATION

24 BY MR. HAEG:

25 Q. Were you a trial witness for the state

1 against me?

2 A. Yes.

3 Q. On or about June 23, 2004, did you,
4 Prosecutor Scot Leaders and Trooper Gibbens have a
5 meeting?

6 A. Yes, we did.

7 THE COURT: I'm sorry. What was the date
8 again?

9 MR. HAEG: On or about June 23, 2004.

10 THE COURT: You mean between Leaders,
11 Gibbens, and Mr. Zellers?

12 MR. HAEG: Correct.

13 THE COURT: Okay.

14 A. Along with my attorney, and I think
15 Trooper Dewar (PH) was there, too.

16 Q. Did Leaders and Gibbens tape record this
17 meeting?

18 A. Yes.

19 Q. Is this --

20 MR. HAEG: Can I approach and have him
21 look at this, see if it's an accurate transcript
22 of the meeting?

23 THE COURT: Yeah.

24 Q. Does this look like an accurate
25 transcription of that meeting?

1 A. This looks like the meeting.

2 Q. Okay. During this meeting, did Leaders
3 and Gibbens show you an aeronautical map?

4 A. Yes, they did.

5 Q. Can I approach and see if you agree that
6 this is a copy of what you were shown?

7 THE COURT: Sure.

8 A. This is a copy. The only thing that's
9 slightly different is the green line on it.

10 Q. Okay.

11 THE COURT: That's Exhibit 25?

12 MR. HAEG: Yes, Trial Exhibit 25.

13 THE COURT: Hang on. Hang on just a
14 second.

15 When -- that thing has, for example,
16 indications where wolves were killed?

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: So when they showed you this
19 map, did the map -- was it exactly the way it is
20 there with the wolf kills on there?

21 THE WITNESS: Yes, it was.

22 THE COURT: Okay. But the only thing that
23 was not on there, and correct me if I'm wrong, is
24 the color highlight of some kind of a boundary
25 unit?

1 THE WITNESS: Yes.

2 THE COURT: That was not there?

3 THE WITNESS: The boundary unit was drawn
4 on there, but it wasn't highlighted.

5 THE COURT: The highlight wasn't there?

6 THE WITNESS: Right.

7 THE COURT: Okay. Go ahead.

8 BY MR. HAEG:

9 Q. Did Prosecutor Leaders and Trooper Gibbens
10 tell you that I had marked the wolf kill locations
11 on this map when they interviewed me during my
12 plea negotiations with them?

13 A. Yes, they did.

14 Q. Did you prove to Prosecutor Leaders and
15 Trooper Gibbens that that map had false hand-drawn
16 game management unit boundaries on it?

17 A. Yes, I did.

18 Q. Did you use the Alaska Department of Fish
19 and Game game management unit's physical
20 description to do this?

21 A. I'm pretty sure I did use the -- the
22 written description of the game management units.

23 Q. Okay. Is this description published in
24 all Alaska hunting regulations?

25 A. Yes, it is.

1 Q. Can you point out to --

2 THE COURT: Hang on. Let me just ask a
3 question, make sure I understand what you just
4 said.

5 You were shown this map, and the map had
6 preexisting unit boundary lines marked on it;
7 right?

8 THE WITNESS: Yes.

9 THE COURT: Okay. And you looked at those
10 lines and said that they were in error?

11 THE WITNESS: I looked at the lines and
12 said they were in error. There was a discussion
13 between Trooper Gibbens and myself about he wanted
14 to say the wolf kills were in 19C. I said, no,
15 they were in 19D. And I quoted the boundary line
16 and how this was wrong, to him.

17 THE COURT: So you -- you told him at the
18 time that the boundary lines shown in the map were
19 inaccurately drawn?

20 THE WITNESS: Yes.

21 THE COURT: Okay. Go ahead.

22 BY MR. HAEG:

23 Q. Can you point out to the Court or me what
24 boundary was falsified and where the correct
25 boundaries should have been?

1 A. Using the map here, 19C area doesn't have
2 what I'll just call is this toe area that
3 encompasses and circles these wolf kills down
4 here. So 19C's western boundary is where the
5 Babel flows into the Swift. And then everything
6 downstream on the Swift is actually 19D. And
7 upstream is 19C. All the wolf kills were
8 downstream of that point.

9 Q. Okay. Do the false boundaries --

10 THE COURT: So downstream of Swift is 19D,
11 as in David?

12 THE WITNESS: 19D is downstream of where
13 the Babel River flows into the Swift River.

14 MR. HAEG: And the North Fork.

15 THE WITNESS: And the North Fork, yes, of
16 the Swift.

17 THE COURT: Go ahead.

18 Q. Did the false boundaries on that map
19 corruptly make it seem as if the wolves were
20 killed in my game management unit 19C guide area,
21 instead of being killed in game management unit
22 19D?

23 A. Yes.

24 Q. As far as you know, was I ever allowed to
25 guide in 19D?

1 A. No. As far as I know, you were never
2 allowed.

3 Q. Okay. Did Prosecutor Leaders and Trooper
4 Gibbens and you discuss how I was not allowed to
5 guide in 19D but was allowed to guide in 19C?

6 A. Yes, we had that discussion, so --

7 Q. Okay. Did Prosecutor Leaders, Trooper
8 Gibbens and you discuss how my killing wolves in
9 19D would not benefit my guide business?

10 A. Yes, we had -- I had the discussion with
11 the trooper that because these were killed outside
12 your guide unit, they were not directly related to
13 your guide, so --

14 Q. Did Prosecutor Leaders, Trooper Gibbens,
15 and you discuss how my killing wolves in 19C would
16 benefit my guide business?

17 A. Yes.

18 Q. Was the wolf control program actually
19 taking place in 19C or 19D?

20 A. As I recall, there was nothing in 19C, but
21 there were parts of 19D that had.

22 Q. Okay. During this meeting, did you point
23 out to Prosecutor Leaders and Trooper Gibbens that
24 their search warrant affidavits also falsified the
25 wolf kill locations to my 19C guide area?

1 A. Yes. The affidavits listed the wolf kills
2 in 19C. And I pointed out to them that that was
3 incorrect information.

4 Q. And you may not know this, but did
5 Prosecutor Leaders and Trooper Gibbens tell my
6 jury that I killed the wolves in 19C area to
7 benefit my guide business?

8 A. I can't testify to what, or the reason why
9 they testified that, but Trooper Gibbens did
10 testify under direct from -- from Prosecutor
11 Leaders that the wolves were killed in 19C. He
12 later had to recant that under cross-examination.

13 Q. Okay.

14 A. And say they were killed in 19D.

15 Q. But do you ever remember reading any
16 transcripts or have an idea that Scot Leaders, the
17 prosecutor, said that I was killing wolves in my
18 guide area to benefit my guide business?

19 A. Yes.

20 Q. Basically, that was the state's case
21 against -- to my jury, is that I was killing
22 wolves in my guide area to benefit my guide
23 business?

24 A. Yes.

25 Q. Did Prosecutor Leaders and Trooper Gibbens

1 use the map upon which I placed the wolf kill
2 locations during plea negotiations against me at
3 trial?

4 A. Yes.

5 Q. Did Prosecutor Leaders and Trooper Gibbens
6 know the map had been falsified to support their
7 case against me when they presented it to my jury
8 as the reason to convict me?

9 A. Yes.

10 Q. Did Prosecutor Leaders and Trooper Gibbens
11 know the wolves were killed in 19D when they
12 testified to my jury the wolves were killed in
13 19C?

14 A. Yes. As I stated, the trooper had to
15 recant under cross.

16 Q. And because of your meeting with him, he
17 knew before he ever testified the first testimony
18 that what he was saying was perjury?

19 A. Yes.

20 Q. I'd like you to read an affidavit that you
21 have made out on July 21st of 2010, if I may. Can
22 I approach and have you read this into the record?

23 A. This is the affidavit --

24 MR. PETERSON: I'm going to object. He
25 can't just read his own affidavit into the record.

1 If the petitioner wants to ask the witness
2 questions about what's in it, he can do that. And
3 if it's relevant, then some of it might come in.

4 THE COURT: Okay. Ask him questions. It
5 doesn't matter whether he wrote it in the
6 affidavit, just ask the basic question you want
7 him to testify about.

8 MR. HAEG: Okay. Okay.

9 BY MR. HAEG:

10 Q. Were you a state witness during my trial
11 in McGrath?

12 A. Yes.

13 Q. Did you also attend my sentencing in
14 McGrath on 9/29/05 and 9/30/05?

15 A. Yes.

16 Q. On these days, were you present -- at both
17 trial and sentencing, were you present in court
18 every hour that court was in session?

19 A. After I was called as a witness, I was
20 present in court. Prior to being called as a
21 witness, I was held at the trooper office until
22 going up, Your Honor.

23 Q. Okay. On 7/28/05 [sic] and 9/29/05, did
24 you personally observe Judge Margaret Murphy being
25 shuttled in a white trooper pickup truck driven by

1 Bret Gibbens?

2 A. Yes.

3 Q. Did you observe them leave -- did you
4 observe Judge Margaret Murphy leaving and
5 returning with Trooper Gibbens in the same truck
6 during breaks, lunch, and dinner, and finally
7 leave with Trooper Gibbens when court was finished
8 for the day?

9 A. Yes.

10 Q. Did nearly all the rides that you
11 witnessed -- were nearly all of them -- did most
12 of them happen before I was sentenced?

13 A. Yes.

14 Q. And, just to be clear, a lot of them that
15 you seen was during trial; correct?

16 A. Correct.

17 Q. Because you were a state witness, and you
18 were at the --

19 A. Correct.

20 Q. Was Trooper Gibbens the primary witness
21 against me at trial?

22 A. Yes.

23 Q. At any point ever, during both trial and
24 sentencing, did you ever see Judge Murphy arrive
25 or depart the courthouse alone or with anyone

1 other than Trooper Gibbens?

2 A. No.

3 Q. Has anyone, other than myself, ever
4 contacted you about whether or not Trooper Gibbens
5 gave Judge Murphy rides during my trial?

6 A. No.

7 MR. HAEG: Okay. I think this is part of
8 the record, but can I admit this into the record
9 again, or just call it good?

10 THE COURT: It's testimony. It's what's
11 admitted.

12 MR. HAEG: Okay.

13 BY MR. HAEG:

14 Q. Were you -- do you know if Chuck Robinson
15 was aware of the rides Trooper Gibbens was giving
16 Judge Murphy during my trial?

17 A. I was with Chuck when we would see them go
18 in and out of the courtroom, so --

19 Q. So you would assume that he seen what you
20 seen?

21 A. I would assume so, yeah. I can't testify
22 to what he sees or remembers. But we were in --
23 standing outside -- Chuck Robinson smoked
24 cigarettes, so during all the breaks and lunch
25 breaks, we would always go outside and gather.

1 So, and then, right outside the courthouse door or
2 the Iditarod Building door.

3 Q. Just for the record, is McGrath like a
4 metropolis with lots of roads, or is there,
5 basically, one little road between where we're
6 staying and where the courthouse is?

7 A. It's a Bush village, so there's only one,
8 couple little roads around the area.

9 Q. So it's very easy to see who's coming and
10 going; is that true?

11 A. Correct.

12 MR. HAEG: Okay. That's all I have for
13 Mr. Zellers.

14 THE COURT: Cross?

15 TONY ZELLERS

16 testified as follows on:

17 CROSS-EXAMINATION

18 BY MR. PETERSON:

19 Q. Good morning, Mr. Zellers.

20 A. Morning.

21 Q. So what map did you mark?

22 A. I did not mark a map. I put, maybe, one
23 mark on here, because there was one wolf kill
24 location on the Stony River -- I was unsure of
25 where Dave had marked it.

1 Q. So you marked that map?

2 A. I didn't -- like I said, the wolf kills
3 were already marked on here when the map was
4 presented to me, so --

5 THE COURT: I'm sorry. Did you -- 25, the
6 one that's in front of you, did you put anything
7 on that map?

8 THE WITNESS: I'm not sure if I actually
9 put a mark on that map, Your Honor. What I was
10 doing is -- is talking to Trooper Gibbens. And
11 I'm not sure if Trooper Gibbens marked or not. I
12 would, you know, I'm not even sure that that one's
13 on this (indiscernible - simultaneous speech) --

14 Q. All right. So the prosecutor asked you a
15 question at trial and said, so let me have you
16 mark the female where -- because the female where
17 you're marking, and I'll have you put one --
18 actually, I'm sorry -- an A. And you said: Yeah,
19 it's got to be right in this area, roughly. And
20 he said: And you've marked that as an A? And you
21 said: Correct.

22 Do you remember that? Here. I'll show
23 you the transcript.

24 A. Sure. I appreciate it.

25 You're talking at the trial?

1 Q. At the trial.

2 A. Oh, at the trial. I think I pointed. I
3 didn't mark.

4 (Whispered conversation)

5 A. Okay.

6 Yeah, that's not my handwriting. But --

7 Q. Okay. So at trial you testified that you
8 marked an A; right? He said, you marked that as
9 an A? And you said correct?

10 A. Yes, according to the transcript.

11 Q. Okay. Right here on the map that
12 Mr. Haeg's been talking about, Plaintiff's 25 at
13 trial, there's an A marked right there; right?

14 A. Yes.

15 Q. That's the same handwriting as B, C, D, E,
16 and Z; right?

17 A. Correct. But it is not my handwriting.

18 Q. Okay. And you testified at trial that you
19 marked that map; right?

20 A. I testified at trial; what I believe I was
21 testifying to was that the A marks that location
22 that we were (indiscernible - simultaneous
23 speaking) --

24 Q. The question was: Let me have you mark
25 the female, where you killed the female with an A.

1 You said: Yeah, it's got to be right in this
2 area, roughly. And Mr. Leaders said: And you've
3 marked that as an A? And you said?

4 A. Yes.

5 Q. Correct. Okay.

6 That was at trial when your memory was
7 fresh; right? Over a decade ago?

8 A. Yes.

9 Q. Okay.

10 With respect to C, do you recall being
11 asked if you marked C on that map?

12 A. I'm sure you have the transcript.

13 MR. PETERSON: I can approach. May I
14 approach?

15 THE COURT: You may.

16 Q. Go ahead and read the top three lines.

17 A. Yep.

18 Q. Okay. So the question was: You marked
19 that with a C?

20 And your answer?

21 A. Yes.

22 Q. Okay.

23 While I'm up here, right in this region
24 there, you marked them with an A and B?

25 A. So it says: We've marked.

1 Q. Yeah, the prosecutor said that to you and
2 your answer was?

3 A. I said yes: We've --

4 Q. So you marked that with a C; correct?

5 A. Correct.

6 Q. Okay. I'm sorry. That was C.

7 A. Yes. The next one down says: We've.

8 Q. B was -- okay. And you -- you and --

9 A. The state.

10 Q. The prosecutor?

11 THE COURT: I'm sorry. What was the one
12 that you two jointly marked?

13 THE WITNESS: I believe he was talking
14 about D.

15 THE COURT: B, as in boy?

16 THE WITNESS: No.

17 MR. PETERSON: This is all the trial
18 transcript.

19 THE COURT: I'm sorry?

20 THE WITNESS: Delta.

21 THE COURT: Delta. I'm sorry.

22 BY MR. PETERSON:

23 Q. Okay. So -- I believe we've covered that.
24 Let's see --

25 I actually have another question for you.

1 Do you recall testifying about the game management
2 area expanding?

3 A. I don't recall talking about a game
4 management unit expanding. I think we're talking
5 about the wolf control zone expanding.

6 Q. Oh, the wolf control management area?

7 A. Yes.

8 Q. Right. The management area?

9 A. Yes.

10 Q. And how had it expanded?

11 A. Well, initially the map that was initially
12 shown to me had the north boundary of the wolf
13 control zone just as a straight line. And it
14 expanded to include the contours of that mountain
15 range way up north, which was at the northern
16 boundary.

17 So when I was asked if this is a -- -- the
18 wolf control area that we went out to during that
19 time, I was like, no, it expanded to include that
20 area up there, so --

21 Q. Okay. And did that map, Plaintiff's 25,
22 at trial reflect that change?

23 A. If I recall, that was brought up to the
24 judge that this map was not an accurate reflection
25 of that by the state, if I recall correctly. And

1 they clarified that the northern boundary was not
2 accurate on this map.

3 Q. Okay. So the discrepancy in the map was
4 actually addressed on the record?

5 A. Yes, I believe so.

6 Q. Okay. All right.

7 And it also doesn't matter whether the
8 wolves were killed in subunit D, 19D or 19C for
9 the crimes Mr. Haeg was charged with; you're aware
10 of that, right?

11 A. I'm -- I'm not an expert on the law and
12 those statutes, I mean, so --

13 Q. Okay. They were killed outside the wolf
14 control management area; right?

15 A. Yes.

16 Q. Okay.

17 Now, describe for us the predator control
18 program, what it was at that time.

19 A. To control and work to get the moose
20 population back up. So certain pilots were
21 allowed to shoot wolves from air within the
22 control area that was defined.

23 Q. Okay. Are you familiar with where wolves
24 might be found, generally?

25 A. Wolves can generally be found pretty much

1 everywhere, yeah, so, in general.

2 Q. Do they stay in one place for their entire
3 life?

4 A. No. They have -- they have a territory.

5 Q. Do you know about how far they might
6 range?

7 A. I think that depends where you are. So, I
8 mean, you know, we have the Muldoon pack here in
9 Anchorage that goes from Fort Rich all the way
10 over to O'Malley, so --

11 Q. All right. So you testified at trial, I
12 believe, that -- that you knew it was illegal, you
13 and Mr. Haeg knew it was illegal to kill wolves
14 outside of that management area; right?

15 A. Yes.

16 Q. And you made a deal with the state to
17 testify against Mr. Haeg at trial; right?

18 A. Yes.

19 Q. Okay. And you did show up at court at
20 trial and testified about where all the wolves
21 were killed, didn't you?

22 A. I testified for the state, yes.

23 Q. And during that testimony, you agreed
24 that, in fact, the very first wolf that you killed
25 under this wolf control permit, the predator

1 management area, or -- was outside the predator
2 management area; is that right?

3 A. Yes.

4 Q. And the second wolf was also outside of
5 the predator management area?

6 A. Yes, I believe so.

7 Q. And, in fact, you said it was, quote,
8 clearly outside of the boundary; is that right?

9 A. Yes.

10 Q. Okay. And you also testified that by the
11 time you had killed three wolves, you and
12 Mr. Haeg, from the air, not a single one of those
13 three wolves were taken inside the management
14 area; right?

15 A. As I recall, yes.

16 Q. So what did you have to do after killing
17 the wolves under this program?

18 A. You had to take the wolves to McGrath to
19 have them sealed and tagged, basically.

20 Q. And was that done in this case?

21 A. I believe some of the wolves were taken.
22 I'm not -- I can't recall, since this was 15 years
23 ago, if all of them were taken. I believe so, but
24 I think they were logged in and tagged.

25 Q. And you're required to give the location

1 of where the wolves were killed; right?

2 A. Yes.

3 Q. And who did the sealing -- or I'm sorry.
4 Who filled out the sealing certificate?

5 A. I think that was the biologist.

6 Q. Who filled out the paperwork and provided
7 the information to the biologist?

8 A. I -- I can't recall who -- who actually
9 wrote it. I think -- I think the paperwork was
10 filled out in McGrath when we were in front of the
11 biologist. I can't -- I didn't necessarily fill
12 out all the paperwork, so --

13 Q. Okay. Did you discuss with Mr. Haeg
14 falsifying the reports, the coordinates, to make
15 it appear as though the wolves were killed within
16 the boundary?

17 A. I'm sure we did.

18 Q. Well, did you?

19 A. As best I recall, I'm sure we did, yes.

20 MR. PETERSON: Just a moment.

21 May I approach?

22 THE COURT: You may.

23 Q. This is just another excerpt from your
24 trial transcript -- from his trial's transcript, I
25 should say. Go ahead and read that.

1 A. Yes.

2 Q. So did you discuss with Mr. Haeg
3 falsifying the information to make it appear as
4 though the wolves were taken legally?

5 A. After refreshing, yes, we did.

6 Q. Okay. And you testified to that at trial?

7 A. Yes, I did.

8 Q. Do you recall if you flew inside the
9 boundary of the wolf control area to take a GPS
10 coordinate, or if you just made it up? And by
11 you, I mean you and Mr. Haeg.

12 A. I don't necessarily recall. I mean, we
13 could have probably marked a coordinate inside as
14 we flew up to McGrath, to say they were in this
15 area.

16 Q. Okay. And there were six wolves total
17 that were taken outside the area; is that right?

18 A. As far as I recall, yes.

19 Q. And -- well, you testified at trial to
20 six --

21 A. As far as I can recall, yes.

22 Q. Okay. And you testified, as we just
23 covered, that Mr. Haeg falsified the sealing
24 certificates?

25 A. Yes.

1 Q. And you were present for all these wolf
2 kills; right?

3 A. Yes.

4 Q. All right.

5 So Mr. Haeg asked you if Trooper Gibbens
6 was the star witness. Sounds like you were the
7 star witness at trial, weren't you?

8 A. You're going to have to ask Prosecutor
9 Leaders who his -- his star witness was at
10 trial --

11 Q. Well, you were present at --

12 A. -- but I was definitely --

13 Q. You were integral to the state's case,
14 right?

15 A. Yeah, I believe so.

16 Q. I mean, you were there when the crimes
17 were committed?

18 A. Yes.

19 Q. You were involved with them; right?

20 A. Yes.

21 Q. And you cut a deal to testify against
22 Mr. Haeg?

23 A. Yes.

24 Q. Okay.

25 MR. PETERSON: All right. Nothing

1 further.

2 MR. HAEG: Can I approach with some stuff?

3 TONY ZELLERS

4 testified as follows on:

5 REDIRECT EXAMINATION

6 BY MR. HAEG:

7 Q. Mr. Zellers, this is part of your -- the
8 transcription of the meeting you had. And can you
9 read into the record this part here?

10 MR. PETERSON: Objection. What is it?

11 THE COURT: Wait. What are you trying to
12 do? You can just ask him the straight question.

13 Q. Okay. During your meeting with Scot
14 Leaders and Trooper Gibbens, did the state say
15 this is where the Stony River wolf kill, this is
16 where the big batch of five killed.

17 And is it true that you asked them: Did
18 Dave tell you that's where he was killed?

19 And is it true that the state told you:
20 Dave put that mark there, yes?

21 A. Yes, it is true. And it's on page 53 of
22 the transcript.

23 Q. Okay. And now I want you to go over, this
24 is -- this is the official transcript of my trial.
25 I'd like you to look at it, Mr. Lead -- or

1 Zellers, sorry. Is it true that Mr. Leaders
2 states that my trial -- that this is a map Trooper
3 Gibbens has said you were the one that -- right,
4 that did this?

5 And Trooper Gibbens says, is it true
6 that -- said that?

7 A. Yeah, Trooper Gibbens acknowledged that he
8 was the one who did that.

9 THE COURT: Did what? Did what?

10 MR. HAEG: I don't know how to do this.

11 Q. Is it true that they were talking about a
12 map and they say: And then it was used in an
13 interview, one with Mr. Haeg, which is not
14 admissible because it was based on plea
15 negotiations, and also with Mr. Zellers regarding
16 where the wolves were taken.

17 And so based on this, along with this, is
18 it beyond any doubt that I'm the one that put
19 those kill locations on the map?

20 MR. PETERSON: Objection. What is he
21 reading from?

22 A. No (indiscernible) --

23 THE COURT: He has no idea.

24 MR. HAEG: The transcript of trial. It's
25 the first days of trial. It's page --

1 THE COURT: What are you trying to get him
2 to do?

3 MR. HAEG: I'm trying to get --

4 THE COURT: Just slow down for a second.
5 Are you trying to figure out who put the wolf kill
6 on the map?

7 MR. HAEG: Yes.

8 THE COURT: Ask him that simple question.

9 BY MR. HAEG:

10 Q. Who put the wolf kill on the map,
11 according to these documents?

12 THE COURT: Not according to anything.
13 According to him; does he know? Ask him: Do you
14 know who put the wolf kill markings on the map?

15 Q. Do you know who put the wolf kill
16 locations on the map?

17 A. Trooper Gibbens told me you put the wolf
18 kills on the map, locations.

19 Q. Okay. And that was during your meeting
20 with Trooper Gibbens.

21 And, I guess, can you look at this and
22 tell me --

23 THE COURT: Where -- what's the point
24 you're trying to make, so I understand the
25 context?

1 MR. HAEG: The point I'm trying to make is
2 this --

3 THE COURT: You want to show that --

4 MR. HAEG: This map, there's recordings of
5 the state troopers and prosecutor recorded having
6 me put the wolf kill locations on this map that
7 was then used against me at trial.

8 THE COURT: Okay.

9 MR. PETERSON: And we need to back up. I
10 need to object to it. I couldn't tell what the
11 purpose of that was. But if the purpose of saying
12 that Gibbens told him that something else happened
13 to prove that that happened, I'm objecting.
14 That's hearsay.

15 THE COURT: I don't know what you're
16 getting at.

17 MR. HAEG: What I'm getting at is during
18 the meeting --

19 THE COURT: You want to show that you put
20 the wolf kills on the map --

21 MR. HAEG: Yeah.

22 THE COURT: -- during your interview with
23 the troopers in April or May?

24 MR. HAEG: Correct.

25 THE COURT: Is there any dispute about

1 that? Just so I'm clear, I don't know what
2 we're --

3 MR. PETERSON: On that map, specifically
4 the one that was used at trial?

5 THE COURT: Yeah.

6 MR. PETERSON: Well, Mr. Zellers just
7 testified under oath that he testified at trial, a
8 long time ago when it was fresh in his memory,
9 that he put those there.

10 THE COURT: He just said that -- didn't
11 you just tell us that Gibbens told you that the
12 map, the locations of the wolf (indiscernible)
13 were put there by --

14 THE WITNESS: Yes.

15 MR. PETERSON: And I objected to hearsay.

16 THE WITNESS: Yes.

17 THE COURT: And did you put those little
18 squares on there or not?

19 THE WITNESS: No. I did not put any
20 little squares on there.

21 THE COURT: So that's what I'm -- that's
22 what he is talking about, the little squares.

23 MR. PETERSON: The -- the -- no. The
24 letters identifying --

25 THE COURT: I don't care about the

1 letters.

2 MR. PETERSON: That's what identifies
3 the -- the location.

4 THE COURT: Well, no. There's two --
5 there are letters, which he put on; right?

6 You put the letters on the map during
7 trial; correct?

8 THE WITNESS: Yes.

9 THE COURT: And the little rectangles --

10 MR. HAEG: The little squares, I put on
11 the map.

12 THE COURT: -- were on the map previously;
13 correct?

14 THE WITNESS: Correct.

15 THE COURT: Okay. And is there any
16 dispute that the rectangles came from Mr. Haeg?

17 MR. PETERSON: As to that exhibit
18 specifically? Well, I'm not a witness.

19 THE COURT: I'm trying to figure out
20 whether we have a dispute here. Do you dispute
21 that -- he claims, Haeg says I put the little
22 squares on the map?

23 MR. PETERSON: Then he can take the stand
24 and testify to that, Judge. I can't answer. I
25 can't answer that question, I'm not a witness. If

1 he wants to try to prove that, he can take the
2 stand and say that or point somewhere in the
3 record where that's the case.

4 MR. HAEG: And that's what I'm trying to
5 do. The record says --

6 THE COURT: Mr. Haeg, this is not your
7 testimony time.

8 Did you put the rectangles on Trial
9 Exhibit 25 during your interview with the troopers
10 in April or May of '04?

11 MR. HAEG: I did.

12 THE COURT: And there were six of the
13 little triangles?

14 MR. HAEG: Yep.

15 THE COURT: Correct. Okay. That's good.

16 Now, you've -- that's in the record. Move
17 on to a different topic.

18 MR. HAEG: And I'm sorry, I'm not a
19 lawyer.

20 THE COURT: I understand that. It's very
21 clear to me. Move on to your next topic.

22 BY MR. HAEG:

23 Q. And I think -- let me just look --

24 THE WITNESS: Your Honor, do you need
25 this?

1 THE COURT: I don't know if he may use it
2 again. I don't know.

3 THE WITNESS: Thank you.

4 MR. HAEG: I think I'm done with
5 Mr. Zellers.

6 THE COURT: Okay. Mr. Zellers --
7 I'm sorry. Do you have any other
8 questions?

9 MR. PETERSON: No, Your Honor.

10 THE COURT: Thank you. You may step down.

11 THE WITNESS: Thank you, Your Honor.

12 (Witness excused)

13 MR. HAEG: Can I go out and call the next
14 witness?

15 THE COURT: Sure.

16 Can you come forward up to the witness
17 stand, please.

18 THE CLERK: Sir, please remain standing
19 and raise your right hand.

20 (Oath administered.)

21 MR. DOLIFKA: I do.

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

25 THE WITNESS: My name is Dale Dolifka,

1 D-A-L-E, Dolifka D-O-L-I-F-K-A.

2 THE CLERK: Thank you.

3 THE COURT: You may proceed.

4 DALE DOLIFKA

5 called as a witness on behalf of the applicant,
6 testified as follows on:

7 DIRECT EXAMINATION

8 BY MR. HAEG:

9 Q. I'd just like to say thank you for coming,
10 Mr. Dolifka.

11 After what happened in my case with Brent
12 Cole and Chuck Robinson, did you start reading
13 documents in my case and became so confused and
14 concerned that you contacted Judge Hanson?

15 A. That's true.

16 Q. And what did you and Mr. Hanson talk
17 about?

18 A. Well, your case. I was very puzzled. And
19 I had total faith in him. He had been my mentor
20 as a superior court judge. He was appalled, and
21 he was disgusted, and he was confused, which left
22 me --

23 THE COURT: Now, wait. Wait.

24 MR. PETERSON: Objection. What's going
25 on?

1 THE COURT: Slow down.

2 MR. PETERSON: I'm going to object to
3 relevance. I'll start there.

4 THE COURT: What are we doing here?
5 Explain to me what you want Mr. Dolifka to say.
6 That he read some stuff, he wasn't happy, he
7 talked to Judge Hanson?

8 MR. HAEG: Yes.

9 Q. You -- you had said --

10 THE COURT: Judge Hanson's statements to
11 him are not admissible.

12 MR. HAEG: Okay.

13 Q. Is it -- is it true that Alaska's
14 attorneys have banded together against me?

15 MR. PETERSON: Objection; relevance.

16 THE COURT: You're going to have to do a
17 little more than that just to simply ask him some
18 opinion.

19 MR. HAEG: Okay. Well --

20 THE COURT: You've got to show a basis for
21 opinion. You've got to show --

22 MR. HAEG: I'm sorry.

23 Q. Are you an attorney licensed in this
24 state?

25 A. Yes.

1 Q. Have you been involved with this case, or
2 familiar with this case?

3 A. Yes.

4 THE COURT: How so?

5 THE WITNESS: Well, Mr. Haeg was my
6 client. He had a corporation with an airplane in
7 it. So do you want me to say more? Or that's --

8 THE COURT: That's not much. That's got
9 little to do with --

10 THE WITNESS: Well, that's --

11 THE COURT: My assumption is that you know
12 something about the prosecution. And I want to
13 know, were you part of the prosecution? Were
14 you -- attend the trial? Did you read the
15 transcripts? You tell me what you seem to know
16 about this. Where did you get your --

17 THE WITNESS: Well, I read, probably,
18 everything about the case. It starts out, I did a
19 corporation for him. He put his airplane in it.
20 Through the course of this case, they took his
21 airplane.

22 THE COURT: Okay.

23 THE WITNESS: Which --

24 THE COURT: Okay.

25 THE WITNESS: -- appeared to me without

1 due process.

2 THE COURT: And you want this man to
3 testify what? About his opinion about due
4 process?

5 MR. HAEG: About the conduct of my
6 attorneys in representing me.

7 THE COURT: Well, you're going to have
8 to --

9 MR. HAEG: And, Your Honor --

10 THE COURT: Just listen to me. I'm trying
11 to help you so you don't wander off into the
12 wilderness.

13 I have a vague sense that you're trying to
14 have this gentleman use his legal knowledge to
15 opine about the quality of your representation.

16 MR. HAEG: Somewhat, yeah.

17 THE COURT: Is that where we're getting?

18 MR. HAEG: Yeah. And I'd like to point
19 out that Your Honor, in one ruling, said that to
20 prove what you're trying to prove, you generally
21 need the testimony of someone that's in the legal
22 field or expert, or whatnot.

23 THE COURT: Okay. So now I'm
24 understanding where you're coming from.

25 MR. HAEG: Okay.

1 THE COURT: So you want him to say I have
2 evaluated Mr. Cole or Mr. Robinson, or both?

3 MR. HAEG: Both.

4 THE COURT: Okay. And you've evaluated
5 their performance in some fashion and you're going
6 to give me an opinion about whether they rendered
7 effective assistance; is that --

8 MR. HAEG: Correct.

9 THE COURT: -- what you're wanting to do?

10 MR. HAEG: Yeah.

11 THE COURT: Then you're going to have to
12 lay a foundation of what Mr. Dolifka reviewed
13 concerning the lawyers' conduct.

14 MR. HAEG: Okay.

15 VOIR DIRE BY THE COURT:

16 Q. I assume, correct me if I'm wrong, sir,
17 you read the trial transcript?

18 A. Yes.

19 Q. Have you spoken to Mr. Cole?

20 A. I did early on when -- okay. Dave got
21 charged. We all encouraged him to get good
22 representation. Brent Cole was known as the --

23 Q. My question to you is, you apparently have
24 made an -- after the conclusion of Mr. Cole's
25 representation have done an investigation of some

1 sort and have come to a conclusion about the
2 quality of that representation. Am I correct so
3 far?

4 A. Yes.

5 Q. Did you make your opinion about the
6 quality of the representation during his
7 representation or only after it was concluded?

8 A. Well, both.

9 Q. Okay. And what is the basis of what your
10 knowledge of what Mr. Cole did or did not do?

11 A. Well, what puzzled me was the plea
12 agreement, which I thought that he had been
13 charged with something. I thought there was a
14 plea agreement. And then, all of a sudden, the
15 plea agreement doesn't seem to be there. Come --
16 the wheels come off. So then --

17 Q. So when did you -- how did you gather any
18 information about a supposed plea agreement?
19 Where did that come from?

20 A. Mr. Haeg.

21 Q. And when did Mr. Haeg tell you about this?

22 A. I'm following this case, from the time he
23 got charged, through. He would call me, I would
24 visit with him. Not as his attorney, probably
25 more as his friend. And -- and --

1 Q. Okay. During the course of Mr. Cole's
2 representation, you're talking to Mr. Haeg about
3 his interactions with Cole?

4 A. He would call me. I wasn't charging him,
5 I was just listening to his concerns and what he
6 would say.

7 Q. Okay. So prior to Mr. Cole ending the
8 representing, did you speak with Mr. Cole about
9 Mr. Haeg's assertion regarding a possible plea
10 agreement?

11 A. I don't recall that.

12 Q. Did you gather any information about the
13 supposed plea agreement from anyone other than
14 Mr. Haeg?

15 A. At some point I called Mr. Robinson and
16 said --

17 Q. Just --

18 A. Well, then I guess, no, I didn't.

19 Q. So you didn't talk to Cole about the plea
20 agreement; is that correct?

21 A. I don't recall that I talked to him about
22 it.

23 Q. And you didn't talk to Mr. Leaders, did
24 you?

25 A. No.

1 Q. So the only source of information about
2 whether there was a plea agreement or the status
3 of the negotiations, or anything, is entirely from
4 Mr. Haeg?

5 A. That's probably true.

6 Q. Okay. So what is it -- what is your
7 opinion about the effectiveness of Mr.
8 Cole's representation -- well, let me back up.

9 Is the opinion you're about to give me, is
10 that just, basically, concerning the quality of
11 the plea negotiations, and the quality of the
12 deal? Is that what your opinion's about?

13 A. My opinion of quality of his
14 representation -- because I'm not a criminal
15 attorney -- was when Mr. Robinson reviewed the
16 conduct of Mr. Cole and told me -- he was the one
17 that really led me to believe that the plea
18 agreement was not -- something was amiss with
19 that. And that was largely from Mr. Robinson.

20 Q. Did you make your own independent judgment
21 about the quality of Cole's representation?

22 A. Well, only via what Mr. Robinson said.
23 And he -- because I said, I'm not a criminal
24 attorney. So Mr. Robinson and I -- we basically
25 practice law together in the same firm. We're

1 both in Soldotna. I have the utmost respect for
2 him. And so when he tells me there's something
3 wrong, and he's a very, very good criminal
4 attorney, then, in light of that, I formed a
5 belief that something was amiss with --

6 Q. But your opinion is simply based on two
7 things; one, Mr. Haeg told you some body of
8 information about the supposed plea negotiations
9 and deal, agreement. And, secondly, your hearing
10 Mr. Robinson talk about what he thought about all
11 of that?

12 A. Yes.

13 Q. Okay. Are you also here to give us an
14 opinion about the quality of Mr. Robinson's
15 representation?

16 A. Well, I guess I'm not allowed to talk
17 about it. But I then, after that, became more and
18 more confused. And that's when I then, if I'm
19 allowed to say, went to Judge Hanson.

20 Q. I'm trying to find out what you're here
21 for. Are you here to give --

22 A. I don't know why I'm here.

23 Q. Do you have an opinion about the quality
24 of Mr. Robinson's representation?

25 A. Yes, I have an opinion.

1 MR. PETERSON: And just so I'm clear, this
2 is a lay opinion; right?

3 THE COURT: I assume.

4 MR. PETERSON: Because he just said he's
5 not an expert in criminal law, so it can't be an
6 expert opinion based upon the perceived failings
7 of what a criminal defense attorney --

8 THE COURT: That's not necessarily true.
9 But I assume -- let's just find out.

10 Q. What is your opinion? You think that --
11 well, let me back up. Do you think Mr. Cole gave
12 ineffective assistance of counsel?

13 A. Based on what I've seen and what I'm
14 allowed -- I'm not a criminal attorney -- I would
15 say, yes, it was ineffective counsel.

16 Q. And in what manner? Why was he
17 ineffective?

18 A. Well, if I'm correct in what I understood
19 happened, there was a plea agreement at which
20 Mr. Haeg agreed to plea. Then -- my understanding
21 was then that the DA expanded on it and charged
22 him beyond the scope of that plea agreement. It's
23 something to that effect.

24 Which I then visited with Mr. Robinson,
25 and Mr. Robinson said that's not right. I mean,

1 that is -- there's something inherently wrong with
2 that. So even as a layperson, without a law
3 degree, I could see that.

4 I then went to Judge Hanson again. I'm
5 confused. He's mentored me all these years. I'm
6 trying to get unconfused. And he validated that
7 something seemed amiss. I didn't need a law
8 degree to see that something was amiss.

9 So I'm not here as an expert witness. I'm
10 not a criminal attorney. But something seemed
11 wrong.

12 Q. Okay. Do you have an opinion about
13 whether Mr. Robinson gave ineffective assistance
14 of counsel to Mr. Haeg?

15 A. Well, what Mr. Robinson said he was going
16 to do and what Robinson ended up doing did not
17 match. He told me that he believed that --

18 Q. Let me ask --

19 MR. PETERSON: Objection; hearsay.

20 Q. My question was: Do you have an opinion
21 about the effectiveness of Mr. Robinson's
22 representation; yes or no?

23 A. Yes.

24 Q. What is that opinion?

25 A. It was ineffective.

1 Q. How so?

2 A. Based on what he told me his view of the
3 Settlement agreement -- or the agreement and how
4 it played out, it didn't match up.

5 Q. How was he ineffective?

6 A. Well, maybe he wasn't ineffective. Maybe
7 what he thought was going to happen and what did
8 happen don't match. But what he told me he was
9 going to do and what happened was didn't match.

10 Q. What did he tell you he was going to do?

11 A. Well, I was under the impression he was
12 going to go back, erase all that went on and get
13 Haeg another trial, or something to that effect.
14 He was going to make right what appeared wrong.

15 Q. And because he failed that, he did not
16 achieve that result, you think that was
17 ineffective?

18 A. Maybe he wasn't ineffective, it just
19 wasn't what he told me originally was going to
20 happen.

21 Q. You just told me you thought he was
22 ineffective. So how was he ineffective?

23 A. Well, I go back, when I look at what
24 happened with the plea agreement and my -- just
25 forget being a lawyer, just common sense, if I'm

1 going to plead to something, to me as a layperson,
2 it just seemed like they changed the rules. So if
3 they didn't, then he wasn't ineffective. If
4 that's how it is, and the law said --

5 Q. You don't know what happened, other than
6 what Mr. Haeg told you?

7 A. I know what happened based on what
8 Mr. Haeg told me and what Mr. Robinson told me.

9 Q. Do you have additional questions of
10 Mr. Dolifka?

11 DIRECT EXAMINATION CONTINUED

12 BY MR. HAEG:

13 Q. You also stated that you read the court
14 transcripts; correct?

15 A. Yeah. I read a lot of things for this
16 case.

17 Q. Okay. And then so, it isn't true that you
18 just had information from Mr. Cole and
19 Mr. Robinson, you also had information on charges
20 being changed, and whatnot, that are in the court
21 record; correct?

22 A. Correct.

23 Q. And is it true that one of my concerns,
24 and I believe your concern, is how it could be
25 that I could go in and give a statement to law

1 enforcement on my belief that I would be charged
2 with minor crimes, and that being taken away from
3 me and being charged with greater crimes, and
4 using my statement that I made for the smaller
5 crimes to be used as justification for the larger
6 crimes. Is that --

7 MR. PETERSON: Objection; leading.

8 Q. -- one of the concerns that you had?

9 THE COURT: Go ahead. You can answer
10 that.

11 A. Well, there's that. You got to remember I
12 sat in the courtroom just like this one other time
13 with the judge, went through this same process.
14 And certainly appeared to me that that judge
15 thought you'd been ineffectively represented. So
16 I guess I added that to it.

17 Went with you to the FBI. I mean, again,
18 I'm just speaking as a layperson. I don't have to
19 be a lawyer to read these things and believe that
20 something was inherently wrong. So --

21 Q. And it was -- what was wrong --

22 THE COURT: What was that? What was
23 wrong? What do you, as a layperson, think was
24 wrong?

25 THE WITNESS: As simple as I can put it,

1 if I am charged with something -- so maybe I
2 misunderstood everything from the beginning. I
3 thought he was charged with a lesser crime. I
4 thought his attorney turned him over to the DA.
5 The DA expands on whatever it was. And he gets
6 charged with a greater crime. If I'm wrong about
7 that, then I had it wrong. As a layperson, I
8 misunderstood the facts.

9 When I came to the court -- I don't know
10 how many years ago it was -- setting just like
11 this with another judge, probing exactly as we are
12 right now, she appeared to -- and she certainly
13 added to my concerns about it was as simple as
14 that, if I'm charged with this --

15 THE COURT: Was this in front of Judge
16 Joannides?

17 THE WITNESS: Yes.

18 MR. HAEG: And I'd like --

19 THE COURT: Okay. Mr. Haeg, help me on
20 this. Why was anybody in front of Judge
21 Joannides? I know that that happened, I just
22 don't remember.

23 MR. HAEG: In my case I had concerns of
24 Judge Murphy running around with Trooper Gibbens
25 and that Judge Murphy went into the court record

1 and removed out my evidence.

2 On appeal, when I got to post-conviction
3 relief, Judge Murphy was assigned to conduct my
4 post-conviction relief. And I about had a heart
5 attack, because I'm like, how can the very person
6 I'm claiming is corrupt --

7 THE COURT: How did Joannides get
8 involved?

9 MR. HAEG: When Judge Murphy denied my
10 request to disqualify her for cause, she ruled on
11 her own -- she says, no, I can be fair. There's
12 an Alaska statute that says --

13 THE COURT: So she did the review of the
14 recusal --

15 MR. HAEG: She reviewed the recusal. And
16 during that proceeding many things kind of came to
17 light.

18 THE COURT: But that's what Judge
19 Joannides --

20 MR. HAEG: Correct.

21 THE COURT: -- she held some sort of a
22 hearing dealing with the Murphy's denial over the
23 recusal on the post-conviction relief?

24 MR. HAEG: Yep. And that's where I --

25 THE COURT: That's all I need to know.

1 MR. HAEG: Okay. And Mr. Dolifka
2 testified --

3 THE COURT: So one other question.

4 MR. HAEG: Okay.

5 THE COURT: Did you appeal the Murphy
6 recusal?

7 MR. HAEG: Judge Joannides got rid of
8 Judge Murphy and said on the record that, quote,
9 at a minimum, at a minimum, there was the
10 appearance of impropriety by Judge --

11 THE COURT: Okay. So that's when --

12 MR. HAEG: -- Murphy at my trial.

13 THE COURT: Got it. So then Bauman -- who
14 took over?

15 MR. HAEG: Bauman.

16 THE COURT: Okay. So now --

17 MR. HAEG: And so what we're getting at is
18 there's --

19 THE COURT: Ask your next question.

20 Ask your question of him. You want him
21 here for some reason.

22 MR. HAEG: Okay.

23 BY MR. HAEG:

24 Q. Is it true Alaska's attorneys have banded
25 together against me?

1 A. I don't -- I don't know the answer to
2 that.

3 Q. Would you have said this?

4 A. I might have.

5 Q. Okay. So it's possible that you would
6 have said that?

7 A. Well, I guess the only way I know to
8 answer your question is I listened to you for
9 hours and hours and hours. Because I was worried
10 about you. I find out in the court hearing with
11 Joannides that you had been taping me this whole
12 time. And you chose to cherry-pick what you
13 wanted and left the rest.

14 So my wife and I felt very betrayed by
15 you, because we were trying to befriend you. I
16 was worried about your mental health. I would be
17 asleep late at night. I would get a phone call.
18 My wife would get me up, and I would listen to
19 you. I probably said a lot of things to you,
20 Dave, out of just trying to be a good friend.

21 So now I've sat here, again, this case
22 will never end. I'm just here as a layperson,
23 more as your friend. I'm --

24 Q. Okay.

25 A. I got it. I'm not a criminal lawyer.

1 I've said that many times. But I don't have to be
2 a criminal lawyer to know that something
3 inherently was wrong with this case. And in front
4 of Judge Joannides, I sat right here, and she told
5 me that. She said, at the very least, there is
6 something amiss.

7 So I have all these things add up. I'm
8 not talking about it as a lawyer. I'm talking
9 about it as a person, just a layperson, a farm boy
10 that raises cows and -- and so here I am again, it
11 just adds more and more to the confusion.

12 But I said a lot of things to you just --
13 I was half asleep some of the times, and you're
14 taping me. So I feel very estranged from you, but
15 it also doesn't take away from the fact that I
16 still believe you got a raw deal. It doesn't
17 change any of that.

18 Q. And is it your opinion --

19 THE COURT: Ask him a question.

20 Q. Is it your opinion that it may be why I'm
21 so upset and frustrated is that it's now 15 years,
22 and we're still dealing with the same things that
23 were identified very early on --

24 MR. PETERSON: I'll object. His opinion
25 whether Mr. -- (indiscernible).

1 (indiscernible - simultaneous speech.)

2 MR. HAEG: I guess --

3 MR PETERSON: -- is irrelevant.

4 THE COURT: Ask a different question.

5 MR. HAEG: Okay.

6 BY MR. HAEG:

7 Q. I'm going to ask you this question. In
8 your opinion, looking at the seizure of my
9 airplane, did I get due process with the seizure
10 of my airplane?

11 A. As a layperson, no.

12 Q. Okay.

13 THE COURT: What does that mean? What --
14 what --

15 Q. The warrants --

16 A. Well, okay. No, you did not get due
17 process.

18 Q. Okay.

19 THE COURT: What do you mean by that?
20 How -- what was the violation of due process?

21 THE WITNESS: As I understood it, they
22 basically just, one day, went and got his
23 airplane. I don't -- maybe I misunderstood.

24 THE COURT: That's all you know is they
25 got his airplane and therefore his due process was

1 (indiscernible) --

2 THE WITNESS: Well, I read stuff that led
3 me to believe that. I don't --

4 THE COURT: Well, you --

5 MR. HAEG: Did you read things --

6 THE COURT: Stop.

7 Help me out here. You've made this
8 assertion here: I think he didn't get due
9 process. Why not?

10 THE WITNESS: My memory is there wasn't a
11 hearing, there wasn't anything. His airplane was
12 in a corporation -- unless I missed something, my
13 view was --

14 THE COURT: What do you understand
15 happened that you think was improper?

16 THE WITNESS: They just went and got his
17 airplane.

18 THE COURT: They just went and got his
19 airplane. And that's all you know. And, as far
20 as you know, that was improper? That's the basis
21 of your opinion?

22 THE WITNESS: Well, there was -- yeah.
23 We'll just leave it at that. Yep.

24 THE COURT: Okay. Go ahead. Your next
25 question.

1 BY MR. HAEG:

2 Q. Is it true that when they seized my
3 airplane, which I used for my business, they were
4 required to give me a prompt post-seizure hearing;
5 is that your understanding?

6 A. Yes, that was my understanding.

7 Q. Okay. Is that one of your concerns, is
8 that they seized the lifeblood of my ability to
9 provide for my family, and never gave me the due
10 process of a prompt post-seizure hearing?

11 A. Yes.

12 Q. Did you ever read in the court documents
13 and find out from Mr. Robinson or Mr. Cole, that
14 the warrants, the affidavits used in the warrants
15 to seize my airplane had been falsified; that all
16 the evidence locations had been falsified, my
17 guide area?

18 A. Well, when I talked with Robinson about
19 representing you, I think the issues about the
20 airplane were probably the most egregious. That's
21 how I remember it.

22 Q. Okay. Did you ever hear that even the
23 warrants, not only did they not give me a prompt
24 post-seizure hearing, but there was actually an
25 error in the warrants they actually used to seize

1 it. So, in other words, not only did they not
2 give me a hearing, they also used false warrants
3 to do so?

4 MR. PETERSON: Objection. The question
5 was did he hear that. That's not relevant.

6 Q. Is it your understanding that occurred?

7 MR. PETERSON: That's not relevant.
8 Objection.

9 THE COURT: What difference does it make
10 whether he heard it or not?

11 BY MR. HAEG:

12 Q. Is that -- could that be -- could that be
13 part of the reason I didn't get due process, is
14 that they used false warrants?

15 A. The only way I know to answer that is that
16 Mr. Robinson led me to believe that, based on him
17 as a criminal attorney, you had been denied due
18 process regarding your airplane.

19 Q. Okay. So that was from Mr. Robinson?

20 A. Yes.

21 Q. Okay. Did you -- is it true that after I
22 fired Mr. Robinson, is it true that you knew I
23 hired an attorney by the name of Mark Osterman?

24 A. Well, I didn't know you did that until
25 much later. I had nothing, whatsoever, to do with

1 you hiring Mark Osterman.

2 Q. Okay. Did you ever read any transcripts
3 of my conversations with Mr. Osterman?

4 A. I think by that time I just started
5 disengaging from -- I don't remember anything with
6 Osterman.

7 Q. Is it true that, kind of, what happened
8 with Mr. Osterman was what you were maybe afraid
9 of, if I hired a third attorney inside this state?

10 A. I -- I don't remember. I --

11 Q. Okay.

12 MR. HAEG: And, again, this may help me
13 feel better about this. And I want it on the
14 record that I feel horrible about what I'm doing
15 with Mr. Dolifka, here, but I believe --

16 THE COURT: Then don't do it.

17 MR. HAEG: That this -- it requires the
18 state -- our state, integrity of our judicial
19 system in the state compels me to do this --

20 THE COURT: Mr. Haeg.

21 MR. HAEG: -- and that's --

22 THE COURT: I don't know where you're
23 going.

24 MR. HAEG: Well, anyway --

25 THE COURT: What do you want this man to

1 testify about? Ask him a question.

2 MR. HAEG: Okay.

3 BY MR. HAEG:

4 Q. Is it true -- and this may help me again.
5 You've admitted that you testified to -- to Judge
6 Joannides; is that correct?

7 A. Yes.

8 Q. And that was true testimony that you gave
9 at that time?

10 A. The best I remember, yes.

11 Q. Okay.

12 MR. HAEG: And so I'd like it on the -- if
13 I can, on the record that on August 25th, 2010,
14 that he testified in --

15 THE COURT: It's in the record. That part
16 is in the record already.

17 MR. HAEG: Okay. Okay.

18 And I apologize. I don't know how this is
19 supposed to go, or how I do this.

20 THE COURT: Let me explain to you again.
21 If it's already in the record, you don't need to
22 go over it to get it in the record; it's there
23 already.

24 MR. HAEG: Okay.

25 BY MR. HAEG:

1 Q. Is it true, Mr. Dolifka, that one of the
2 concerns you had is that -- and you may have
3 already answered this -- is that when Cole had me
4 give a statement, my statement was used to, I
5 believe you used the words, increase the charges
6 against me exponentially?

7 MR. PETERSON: Objection. Relevance.
8 What he thinks of what happened is not relevant.
9 He's established he's not -- he doesn't even know
10 anything about criminal law. So it's not
11 relevant.

12 THE COURT: Isn't that the truth, sir?
13 Isn't that objection accurate?

14 MR. HAEG: I -- I guess.

15 Q. Can I ask you this Mr. -- is it true,
16 Mr. Dolifka, you have been a criminal defense
17 attorney at one point?

18 A. I did misdemeanors for the Teamsters,
19 DUIs. I did not do felonies.

20 Q. Okay. Is it true, in your opinion, that
21 never has there been a case in history that cries
22 out more for outside intervention, because I've
23 been to all the major players?

24 A. I don't -- I can't answer that.

25 Q. Okay.

1 MR. HAEG: And I'd just like to state that
2 he testified to that on August 25th.

3 THE COURT: Ask your next question.

4 Q. Is it true I sold my soul for a deal, and
5 then Cole sold me down the river?

6 A. I don't know.

7 Q. Okay. Other than an outright payoff of a
8 judge or jury, it's hard to imagine anyone being
9 sold down the river more?

10 MR. PETERSON: Objection. That's not a
11 question.

12 THE COURT: Sustained.

13 Ask your next question.

14 Q. Is it true with my plea agreement that my
15 end of the bargain was not met. It was heads, I
16 win; tails, you lose?

17 MR. PETERSON: Objection. No personal
18 knowledge from this witness. Relevance.

19 THE COURT: Sustained.

20 Next question.

21 MR. HAEG: Okay.

22 Q. Is it true that you believe that the fruit
23 of the poisonous tree started with the warrants
24 that were used to seize evidence in my case?

25 MR. PETERSON: Objection. He's already

1 testified that he's not an expert in this field;
2 not qualified to give an opinion --

3 THE COURT: Sustained.

4 Next question.

5 Q. Is it true that once you poison something
6 like this, it's like a house without a foundation?

7 THE COURT: Next question.

8 Q. Mr. Dolifka, is it true that one of the
9 seminal issues in your belief is how did this case
10 go on when a lot of it was built on lie and a
11 sworn affidavit?

12 MR. PETERSON: Objection. Calls for
13 speculation, relevance.

14 THE COURT: That's sustained.

15 Next question.

16 Q. Is it true, Mr. Dolifka, that if my
17 attorney did right by me, the DA would take it out
18 on them in other cases?

19 MR. PETERSON: Objection. Calls for
20 speculation.

21 THE COURT: I don't want you to speculate.
22 But you can answer the question.

23 A. I would -- I don't -- that's not
24 necessarily true.

25 MR. HAEG: Okay. I'd just like to point

1 out that he testified to that on page 56 of the
2 testimony given with Judge Joannides.

3 A. My memory of that is actually that you
4 told me that's what Cole told you, and that that
5 was a reiteration.

6 You're -- again, I think you're
7 cherry-picking from probably hours, and hours, and
8 hours of our visit. You're taking out of context
9 what I said. I --

10 Q. Okay. And I --

11 A. I'm not going to say -- I'm not going to
12 say that a DA is going to take out on a criminal
13 lawyer, just inherently do that. If I said that,
14 I didn't mean it like that.

15 Q. Well, in my case -- in my case, did that
16 appear like it may have happened, or would have
17 happened?

18 A. My memory is that you told me that Cole
19 said that if you did it that way, with his
20 specialty was Fish and Game cases. And that if he
21 did your case a certain way, they would take it
22 out on him and others. That's my memory.

23 Q. Okay.

24 THE COURT: And that's Mr. Haeg telling
25 you what Mr. Cole said?

1 THE WITNESS: Yes.

2 THE COURT: Okay.

3 Your next question.

4 Q. Is it true I had a series of situations in
5 which everyone was doing things to protect
6 everyone rather than me, because there was a price
7 to pay?

8 MR. PETERSON: Objection. This --

9 THE COURT: Sustained.

10 MR. PETERSON: -- witness has no personal
11 knowledge. And it's irrelevant.

12 THE COURT: Sustained.

13 Next question.

14 Q. Does my case have shades of Selma in the
15 '60s, where judges, sheriffs, and even assigned
16 lawyers --

17 THE COURT: Next question.

18 Q. -- are all in cahoots together?

19 THE COURT: Next question.

20 Q. Is it true that corruption is the reason I
21 have still not resolved my legal problems?

22 A. I don't know if it's corrupt -- I wouldn't
23 say it's corruption. It just seems like a lot
24 of -- I just don't understand it. I'll just leave
25 it at that.

1 Q. Okay.

2 MR. HAEG: I'd like to point out that he
3 testified to this, page 59 and 60, when -- on
4 August 25th, 2010.

5 Q. Is it true that when my case came up on
6 appeal, the Court was sitting there, looking at a
7 pile of dung, and if they did right by me and
8 reveal you have the attorneys going down, you have
9 the judges going down, and you have the troopers
10 going down?

11 A. I don't -- I don't know how to answer that
12 question. That's --

13 Q. Would you have ever stated that? That had
14 they done -- had the appellate court done the
15 right thing, the judge --

16 A. I might have said something like that.
17 You're just, again, you're cherry-picking. I said
18 a lot of things to you just in an emotional time.
19 I was trying to -- and a lot of stuff I think
20 you're saying is you would say it and I might have
21 just agreed. I don't --

22 Q. Okay.

23 A. You have hours, and hours, and hours of
24 tape testimony of me when I'm half asleep, I'm
25 trying -- you're crying. I'm trying to be a good

1 friend. I'm worried that you're going to do
2 something stupid to yourself. So I don't know
3 what you're going to find that I might have said,
4 Dave.

5 Q. Okay. Is it true -- and this is it --
6 this will be the last question I have for you.
7 And I can show you it.

8 THE COURT: Ask him.

9 Q. Is it true that you wrote a letter at some
10 point about what you thought -- you know, to -- it
11 starts out: To whom it may concern.

12 A. I did write something to the effect
13 that -- again, and to this day, sitting here
14 again, I still am confused about so many parts of
15 this case. And I wrote something to that effect.

16 Q. Okay. And I'll -- I'll just find it here.

17 And, I guess I can just have you testify.
18 Is it true -- okay. And this, basically, sums all
19 of this up. Is it true you are concerned about
20 the, quote, outrageous process, unquote, with
21 which the State of Alaska has prosecuted me?

22 A. I was concerned about it.

23 THE COURT: Your next question?

24 Q. Okay.

25 MR. HAEG: Okay. That's -- that's it.

1 THE COURT: Do you have any
2 cross-examination?

3 MR. PETERSON: I do.

4 DALE DOLIFKA
5 testified as follows on:

6 CROSS-EXAMINATION

7 BY MR. PETERSON:

8 Q. So, Mr. Dolifka, you just said there was a
9 question about the outrageous process with which
10 Mr. Haeg was prosecuted. What was outrageous
11 about it?

12 A. Well, you've got to remember my state of
13 mind during this whole process. That was a very
14 dark time on the Kenai Peninsula. And a lot of my
15 concern with Haeg's cases was a concern for
16 everything that was going on down there. And I
17 know that's irrelevant, but that would answer that
18 question. It was not just David Haeg's case.

19 Q. Okay. So with respect to his case
20 specifically, there was nothing that was
21 outrageous about the prosecution. It's just,
22 generally, what you say was happening made you
23 feel that way; is that right?

24 A. I think a lot of us in the Kenai Peninsula
25 during that era, felt that our judicial system

1 down there was becoming unmoored --

2 Q. Okay. Well, that's not really my
3 question.

4 A. Well, okay. Then --

5 THE COURT: Well, you asked it.

6 Q. Well, no. The question I asked was it
7 wasn't specifically with respect to Mr. Haeg's
8 case; right?

9 THE COURT: Go ahead.

10 Q. I didn't ask for a colloquy about the
11 judicial system, generally.

12 A. I had concern about the judicial system,
13 in general.

14 Q. But not specifically about Mr. Haeg's
15 case?

16 A. Well, included Haeg's.

17 Q. So any case, any prosecution was
18 outrageous on the Kenai Peninsula at that time?

19 A. Not any. Some.

20 Q. Some. How many?

21 A. Well, you got to remember, I served on a
22 grand jury during this era, which --

23 Q. We're not going to get into that.

24 A. Okay. Well, then I can't answer your
25 question. I was concerned about the system at the

1 time, not every single case; some cases. And his
2 case was one of them.

3 Q. Okay. So I believe you testified that it
4 is your lay opinion that Mr. Cole was ineffective.
5 I want to ask you about that.

6 Mr. Haeg was charged with being a guide
7 and taking wildlife on the same day that he was
8 airborne; right?

9 A. Well, if he was okay. I don't -- I don't
10 remember.

11 Q. You've reviewed everything --

12 A. I've reviewed it. It's been many years
13 ago. So I'm --

14 Q. Okay. Let's say that's the case.

15 A. Okay. Let's say that's the case.

16 Q. All right. And the potential penalty for
17 that offense is a three-year to lifetime guide
18 license revocation.

19 Are you aware of that?

20 A. Well, I am now, I guess, if you say so.

21 Q. So if Mr. Cole worked out a deal whereby
22 Mr. Haeg would be back to guiding within one year
23 of the prosecution, less than a year of the date
24 of conviction, even though the minimum for a guide
25 taking wildlife same-day airborne is a three-year

1 guide license suspension, would you say that would
2 be a very good deal for a big game guide?

3 A. I don't know if it would or wouldn't.

4 Q. You don't know?

5 A. That would be for a criminal attorney for
6 decide.

7 Q. Okay.

8 You don't -- you can't form a lay opinion
9 on that? If the minimum is three years to a
10 lifetime revocation, putting someone out of
11 business, whether a one-year guide license
12 revocation would be a good deal? You can't form a
13 lay opinion about that?

14 A. No.

15 Q. Okay. All right.

16 And you said that his plane was taken
17 without due process. Are you aware that his plane
18 was seized pursuant to a warrant?

19 A. I'm basing the airplane -- what I say
20 about due process regarding the airplane on what
21 Mr. Robinson told me.

22 Q. Okay.

23 A. So, again, I'm a layperson. I don't know,
24 but a criminal attorney that I trust told me he
25 was denied due process regarding his airplane.

1 Q. So just so I'm clear on this, it's your
2 lay opinion that his plane was taken without due
3 process?

4 A. My lay opinion, based on what a criminal
5 attorney that I trust told me.

6 Q. Okay. Are you aware of the language in
7 A.S. 16.05.195?

8 A. No. No. I'm not aware of that.

9 Q. You're not?

10 A. No. As a layperson, I'm not aware.

11 Q. -- (indiscernible) forfeiture of equipment
12 used in big game guiding offenses?

13 A. No.

14 Q. Are you aware of the language in
15 16.05.190, which talks about the seizure --

16 A. I don't know that statute.

17 Q. Okay. Are you aware that people and
18 entities whose instrumentalities are seized
19 pursuant to a warrant are able to petition the
20 court for a prompt post-seizure hearing, that they
21 have that ability in Alaska; are you aware of
22 that?

23 A. Well, that's the part I was told amiss.
24 Something about that part of it, he -- that's
25 where the due process was amiss.

1 Q. So he was -- you are aware that that is
2 due process that is available to everyone whose
3 property is seized; right?

4 A. That's my understanding.

5 Q. Okay. Are you aware that instead of
6 petitioning to get the property back, it was
7 decided to work out a deal whereby he would
8 only -- he, being the defendant, would only be
9 suspended for one year, which is one-third of the
10 minimum for the crimes for which he was
11 culpable --

12 A. I'm not -- I'm not aware of --

13 Q. -- (indiscernible) the crime, in which he
14 could have got a lifetime revocation?

15 A. I'm not aware of that part.

16 Q. You're not aware of that?

17 A. No.

18 Q. Okay.

19 MR. PETERSON: Nothing further.

20 THE COURT: Do you have any follow-up
21 questions?

22 DALE DOLIFKA

23 testified as follows on:

24 REDIRECT EXAMINATION

25 BY MR. HAEG:

1 Q. I'll try one.

2 If Cole made, as the state said, offered
3 me something that seemed kind of attractive -- I
4 guess, let me ask you this. Did it ever come out
5 that I gave up guiding for a whole year for this
6 plea agreement also? Not only did I give a
7 statement, but I gave up a year of guiding?

8 A. I don't remember any of the specifics
9 right now.

10 Q. Okay.

11 If Mr. Cole, as the state said, had come
12 to me with some deal, but we asked Mr. Cole if the
13 state could break that deal, keep what we had
14 given them, and then make a new deal, no matter
15 how good the deal was originally, that would not
16 be something you should do, because even though it
17 was attractive, you know --

18 MR. PETERSON: Objection. Relevance.

19 Q. -- but the attorney said it couldn't be
20 enforced, that the state could continue to break
21 the deal and get more. Is that -- would that --
22 in your opinion, as a layperson, seem --

23 MR. PETERSON: Objection. Relevance.

24 THE COURT: You can answer, if you can.

25 A. Well, you lost me with the complexity of

1 your question. I just -- I don't -- ask it again.
2 I don't get it.

3 Q. Okay. If Mr. Cole came to me with a deal
4 that seemed attractive, but told me he couldn't
5 enforce it if I went for it. Even though it was
6 attractive, wouldn't it be crazy to do it because
7 they could take it away after you paid for it?

8 MR. PETERSON: Objection. Assumes facts
9 not in evidence. Calls for speculation
10 (indiscernible) --

11 THE COURT: You can answer, if you
12 understand.

13 A. Well, if it was exactly like that, that
14 would make no sense, that you would plead to
15 something that might be taken away from you.

16 Q. Yes. So even though you may have
17 something that you wanted, but they said there's
18 nothing to keep them from taking it back after you
19 maybe gave another statement, or gave your house
20 up, or another airplane, or your first-born child,
21 no matter how attractive it was, you would not go
22 for it, because there would be no guarantee that
23 you would get it?

24 A. Well, let me try to make this as simple
25 as -- I'm running out of ways to answer your

1 question. Let me make it as simple as I can. The
2 wheels came off. My understanding you'd,
3 basically, come to an end in your relationship
4 with Cole. Talked to Robinson, inquired of
5 Robinson about what you're talking about. He led
6 me to believe that that agreement was amiss and
7 that he was going to rectify it.

8 I really don't have anymore to say than
9 that. I relied on Mr. Robinson telling me that
10 what had happened with your agreement was amiss
11 and he was going to, quote, fix it. Beyond that,
12 I don't know what else to say.

13 Q. Okay. And your term fix, do you know if
14 he was going to try to enforce the plea agreement,
15 or do you have any idea of what he meant by fix
16 it?

17 A. Well, no. I guess rectify or make right,
18 I guess.

19 Q. Okay. And you may not know and I -- I --
20 you know, but if -- so in other words, you didn't
21 know how he was going to rectify it, he just said
22 he was going to rectify it in some manner?

23 MR. PETERSON: Objection. Hearsay, I
24 guess.

25 THE COURT: You can answer it, so we can

1 get this over with.

2 A. He seemed upset by what had happened. I
3 was of the opinion that he was going to rectify,
4 make right; whatever word you want to use. And I
5 trusted him implicitly to do that. Because he --
6 I viewed him as an excellent criminal attorney.
7 So if he told me something was amiss, I believed
8 it was. And I relied on it. And I believed he
9 would make things right. I can't get any simpler
10 than that.

11 Q. Okay. In your opinion, did Mr. Robinson
12 make it right?

13 A. Well -- I guess -- I don't really know how
14 to -- I'm confused about that by now. Because he
15 said he was going to make it right. And then it
16 started getting really gray to me as to what that
17 meant. The whole case has gotten gray to me by
18 now. It's just --

19 Q. Okay.

20 A. Because it veered off from being about the
21 plea agreement to all these collateral goings-on.
22 And that's where the case lost me, was the
23 simplicity of Mr. Robinson telling me there was
24 something amiss with the case, and he's going to
25 make it right. As a layperson, I could process

1 that. But then there's all this collateral FBI,
2 all this other stuff just left my wife and me
3 drained. Because it -- I don't -- I don't know
4 what -- I still, to this day, do not totally know
5 what happened.

6 Q. Okay. But -- but just the large scheme of
7 things is, to make it as simple as possible,
8 you're concerned not only -- I guess I'll put it
9 this way. When you talked to Judge Hanson after
10 you told Judge Hanson or when he investigated, was
11 Judge Hanson concerned?

12 THE COURT: That's not admissible.

13 MR. HAEG: Okay.

14 Anyway I think that's it. And I -- I'm
15 done.

16 MR. PETERSON: I have no recross.

17 THE COURT: You're excused. Thank you.

18 (Witness excused)

19 THE COURT: How many additional witnesses
20 do you have? We're going to take a break here in
21 a couple seconds. I'm just trying to get a sense
22 of how many witnesses you have.

23 MR. HAEG: I have potentially four, not
24 including myself. But I don't -- I could probably
25 get by with not calling them, but anyway.

1 THE COURT: It's your case. As I said to
2 you yesterday, you have a finite amount of time.
3 Prioritize.

4 MR. HAEG: So I can call another witness?

5 THE COURT: No. We're going to take
6 another break. We'll be back at 11:15.

7 MR. HAEG: 11:15. Okay.

8 THE CLERK: Please rise.

9 Court stands in recess.

10 (Off record)

11 THE CLERK: Please rise. Superior court
12 resumes its session, the Honorable William Morse
13 presiding.

14 THE COURT: Be seated, please.

15 Your next witness?

16 MR. HAEG: You go up there, Jack.

17 THE COURT: Ma'am, if you'd come up to the
18 witness stand, please.

19 THE CLERK: And if you'd remain standing
20 and raise your right hand.

21 (Oath administered)

22 MS. HAEG: I do.

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

1 A. My name is Jackie Haeg, J-A-C-K-I-E,
2 H-A-E-G.

3 THE CLERK: Thank you.

4 THE COURT: You may proceed.

5 JACKIE HAEG,
6 called as a witness on behalf of the applicant,
7 testified as follows on:

8 DIRECT EXAMINATION

9 BY MR. HAEG:

10 Q. Did you ever remember our first attorney,
11 Brent Cole, saying anything about the governor, in
12 regard to my case?

13 A. He said it was such a --

14 MR. PETERSON: Objection; hearsay.

15 THE COURT: Did -- if I'm recalling,
16 the -- there was a question asked of Cole about
17 whether Murkowski gave instructions to set an
18 example. So if that's what you're referring to,
19 this is potentially a prior inconsistent
20 statement.

21 So go ahead.

22 Q. Is it true that Mr. Cole told us that
23 Alaska's Governor Frank Murkowski --

24 THE COURT: Ask her non-leading questions.

25 MR. HAEG: Okay.

1 THE COURT: So ask her, what did --

2 Q. What do you --

3 THE COURT: -- Cole say about Murkowski?

4 Q. -- remember Cole saying about the
5 governor?

6 A. He said that this was such a big case,
7 that the governor would probably be wanting to
8 make an example of you.

9 Q. Okay. Did he ever say anything about
10 calling my prosecutor or judge?

11 A. I can't remember that.

12 Q. Okay. Do you remember Mr. -- did Mr. Cole
13 ever lead us to believe I had a plea agreement?

14 A. Yes, he did.

15 Q. And as far as you know, what did that plea
16 agreement entail?

17 A. You were going to go out to McGrath and be
18 able to plead open sentence. And the airplane --
19 the judge would determine whether or not you could
20 get your airplane back.

21 Q. And --

22 A. I don't remember all of the --

23 Q. And --

24 A. -- how many years or --

25 Q. Okay. Would -- was that agreement that he

1 talked -- or is it your understanding that I could
2 be sentenced to a one-year suspension of guide
3 license?

4 A. Yes.

5 Q. Okay. Do you remember Mr. Cole telling us
6 to give up guiding, in reliance on this -- did
7 Mr. Cole ever tell us to give up guiding?

8 A. He said that it would look good if you did
9 not guide --

10 Q. Okay. Did he ever --

11 A. -- for --

12 Q. -- tell us that the prosecutor, Scot
13 Leaders, agreed to give us credit if we didn't?

14 A. Yes.

15 Q. Okay. Did we give up guiding for that
16 plea agreement?

17 A. Yes, we did.

18 Q. Did we also fly in witnesses from as far
19 away as Illinois on the eve of going out to be
20 sentenced?

21 A. Yes.

22 Q. Did we ever make that plea agreement?

23 A. What do you mean?

24 Q. Did we ever finalize it?

25 A. Oh. Did we ever go out? No.

1 Q. Okay. And why was that?

2 A. Because when we got to the office --

3 Q. And whose office?

4 A. Mr. Cole's office.

5 -- Mr. Cole came in, and he said, I have
6 bad news; Prosecutor Leaders has changed the plea
7 agreement; we're not going to be able to go out to
8 McGrath tomorrow.

9 Q. Did Mr. Cole say we could -- he could do
10 anything to get the other agreement back?

11 A. He told you -- or he told all of us that
12 the only thing he could do would be to contact
13 Leaders' boss, because she was a woman that he had
14 worked with in the past.

15 Q. Did he ever say anything about not wanting
16 to piss off the prosecutor, because he had to make
17 deals with him in the future?

18 A. Yes.

19 Q. We went to -- is it correct we went to
20 Anchorage on November 8th, 2004, with the intent
21 of flying to McGrath on November 9th, 2004?

22 A. Yes.

23 Q. Okay. On the night of -- was I arraigned
24 telephonically on the 9th? Rather than going out
25 to McGrath, did we do a telephonic thing with the

1 court?

2 A. Yes.

3 Q. Okay. After that, did -- on the night of
4 November 9th, what was the mood of everybody, all
5 the witnesses, Cole included, on the night of
6 November 9th?

7 A. Everybody was up- -- upset we didn't go
8 out there to McGrath.

9 Q. And was everybody, including Mr. Cole,
10 extremely angry about what Mr. Leaders had done?

11 A. Yes.

12 Q. And so as if Mr. Cole has testified under
13 oath that everybody was ecstatic, that would not
14 be true?

15 A. That wouldn't be true, no.

16 Q. Okay. You ever hear Mr. Robinson -- or
17 did we ever ask Mr. Robinson about enforcing the
18 plea agreement?

19 A. Yes.

20 Q. And what did Mr. Robinson say?

21 A. That he couldn't do anything. It was -- I
22 think his term was "water under the bridge."

23 Q. Okay. And you were there personally when
24 Mr. Robinson said that?

25 A. Yes. I remember him saying that, yes.

1 Q. Did you -- is it true, did Mr. Robinson
2 say anything about how Cole had represented me?

3 I guess, did Mr. Robinson say something
4 about -- I don't know how to make this not
5 leading -- but about Brent Cole lying to me?

6 Did he -- did we talk about Brent Cole
7 lying to me, with Mr. Robinson?

8 A. I don't remember that.

9 Q. Okay. Do you ever remember Mr. Robinson
10 saying even if Cole was lying to me, it might not
11 be ineffective assistance of counsel?

12 A. Oh, I remember that, yes. We were in a
13 meeting with him.

14 Q. Okay.

15 A. With Robinson.

16 Q. Yeah.

17 A. Yeah.

18 Q. And so what Robinson had said is even if
19 Mr. Cole had lied to me about the plea agreement,
20 it might not have meant that I got ineffective
21 assistance of counsel?

22 A. That's what I understood, yes.

23 Q. Okay. Did Mr. Robinson ever -- okay. I
24 (indiscernible).

25 In other words, Mr. Robinson said he

1 couldn't enforce any deal I had with Cole?

2 A. Correct.

3 Q. Did you ever hear Mr. Robinson say
4 something about a defense called subject-matter
5 jurisdiction?

6 A. Yeah, I remember --

7 MR. PETERSON: Objection.

8 A. -- him saying that.

9 MR. PETERSON: Relevance. Mr. Robinson's
10 already testified to all of this.

11 MR. HAEG: Okay.

12 THE COURT: It's still relevant. I'm not
13 sure why we're going over it --

14 MR. PETERSON: Okay. No --

15 THE COURT: -- again.

16 MR. PETERSON: -- personal knowledge,
17 then.

18 MR. HAEG: Okay.

19 BY MR. HAEG:

20 Q. Did Mr. Robinson ever say if I brought up
21 other defenses, this may waive subject-matter
22 jurisdiction or admit it? He said "waive," didn't
23 he? Anyway.

24 A. I remember hearing that.

25 Q. Okay. Did you attend my trial in McGrath?

1 A. I did.

2 Q. And would those dates include 5/17/05,
3 5/18/05, 7/25/05, 7/26/05, 7/27/05, 7/28/05, and
4 7/29/05?

5 A. That sounds correct, yes.

6 Q. So that's -- one, two, three, four, five,
7 six -- seven days.

8 Is it true trial went to nearly midnight
9 some days?

10 A. Yes.

11 Q. Were you present in the courthouse every
12 hour of trial?

13 A. I was, yes.

14 Q. Were you also in McGrath at the courthouse
15 during my sentencing -- or were you in McGrath for
16 my sentencing?

17 A. Yes, I was in McGrath.

18 Q. Okay. Is it true Judge Murphy lived in
19 Aniak and flew with us on the same plane to
20 McGrath?

21 A. Yes.

22 Q. And can you explain how that happened? I
23 mean, where we got on --

24 A. Yeah.

25 Q. -- where she got on.

1 A. We got on in Anchorage. We would fly to
2 Aniak, pick up the people in Aniak, and then go
3 back to McGrath. And everybody in -- that was
4 going to McGrath would get off the plane there.

5 Q. Is it true that Judge Murphy lived in
6 Aniak, and so, at first, we got on the plane in
7 Anchorage, flew down without Judge Murphy, but
8 picked her up in --

9 A. Yes.

10 Q. -- McGrath -- in Aniak, and then we all
11 went to McGrath?

12 A. Yes, we'd pick her up in Aniak.

13 Q. And when we got off the plane, where
14 did Judge Murphy go?

15 A. She went right over to the truck with
16 Trooper Gibbens.

17 Q. And that happened more than once when we
18 arrived?

19 A. Yes.

20 Q. Okay. Did we usually travel to McGrath
21 with Mr. Robinson?

22 A. Yes.

23 Q. Would he have seen Judge Murphy get in
24 with Trooper Gibbens?

25 A. Yes.

1 Q. During my trial, how often did you see --

2 THE COURT: I have a question.

3 VOIR DIRE BY THE COURT:

4 Q. Did this -- was there single flight from,
5 you know, the Anchorage-Aniak to McGrath?

6 A. Yes.

7 Q. So there was one time --

8 A. Well --

9 Q. -- when Murphy departed the McGrath
10 airport with the trooper? And there's only one
11 flight; right?

12 A. I believe there --

13 MR. HAEG: Trial got split into --

14 A. -- was more than --

15 THE COURT: It's his -- her questions.

16 A. I believe there --

17 MR. HAEG: Okay.

18 THE COURT: She's the witness.

19 A. -- was more than one flight, yes.

20 Q. How many times did you fly --

21 A. I --

22 Q. -- with Murphy to McGrath?

23 A. -- I -- I think it was two times.

24 Q. Two times?

25 A. I think so, yes.

1 Q. And you -- how many times did she go with
2 the trooper?

3 A. Each time.

4 DIRECT EXAMINATION CONTINUED

5 BY MR. HAEG:

6 Q. During my trial, you testified you were at
7 the courthouse. How often did you see Judge
8 Murphy riding around with Trooper Gibbens?

9 A. Anytime she left the courthouse, she would
10 get in the truck with him, with Trooper Gibbens.

11 Q. Okay. And did they arrive together also
12 at the courthouse?

13 A. When -- yeah. At times that we would see
14 her arrive also, yes.

15 Q. Okay. And did this riding around together
16 during trial, did this include breaks, lunch, and
17 dinner?

18 A. Yes.

19 Q. And because it -- is it true that trial
20 went so late, midnight, that actually we would
21 leave to go eat dinner sometimes somewhere else?

22 A. Correct.

23 Q. And come back to go until midnight.

24 And then at every day of -- is it true
25 that when Judge Murphy left at the end of each

1 day, she left with Judge Murphy also -- or, I
2 mean, left with Trooper Gibbens?

3 A. Correct.

4 Q. Okay. Did you ever see Judge Murphy and
5 Trooper Gibbens eat together?

6 A. We would eat at the -- there was a hotel
7 that was right at the airport, and we would have
8 our meals there. And there was times that Judge
9 Murphy was in there, and Trooper Gibbens was
10 sitting at the table with her, yes.

11 Q. Okay. And do you remember the name of
12 that place?

13 A. I can't remember that.

14 Q. Could it have been the McGrath B and B?

15 A. It could have been, yes.

16 Q. Okay. And did we stay at the McGrath
17 B and B with Judge Murphy?

18 A. We did.

19 Q. Okay. Is it true that Robinson smoked?

20 A. Yes, he smoked.

21 Q. Would we sometimes go outside the
22 courthouse while he smoked?

23 A. Any break they let us have, he would go
24 outside and be with us and smoke, yes.

25 Q. And at that time when you were with

1 Robinson, did we ever see Judge -- or did you ever
2 see Judge Murphy get in the truck with Trooper
3 Gibbens?

4 A. When we would go on break, yes, she would
5 leave with Trooper Gibbens.

6 Q. Okay. Just taking an estimate, how many
7 times do you think you seen Judge Murphy riding
8 around with Trooper Gibbens during my trial alone?

9 A. I don't know.

10 Q. Just a guesstimate?

11 A. If there was -- I don't know how many days
12 did you say we had --

13 Q. Well, and --

14 A. -- seven --

15 Q. -- the arriving, so --

16 A. Maybe 10.

17 Q. Okay.

18 A. Or more.

19 Q. Well, I mean, if they arrived in the
20 morning, maybe left for lunch and dinner, and then
21 came back and then left after court was done -- I
22 guess I'll put it this way. Did you ever see
23 Judge Murphy arrive or leave the courthouse
24 with -- alone or with anyone other than Trooper
25 Gibbens?

1 A. No.

2 Q. And so based on that, would it be true
3 that she would arrive there, that would be one
4 ride in the morning, she would leave at least
5 probably at noon for another ride, probably for
6 dinner, and then leave after court was over.

7 So would it be fair to say that there's at
8 least four times, if not more, because of breaks,
9 that she was running around with Trooper Gibbens
10 per day?

11 A. Yeah.

12 Q. Okay. And if you took that four times the
13 seven days of trial alone, four times seven is?

14 A. 28.

15 Q. So probably over 20 rides with --

16 A. It could have been over 20 rides.

17 Q. Okay. Did I ever complain to Mr. Robinson
18 about Trooper Gibbens giving Judge Murphy rides?

19 A. Yes, you did.

20 Q. And what did Chuck Robinson say?

21 A. Basically, said, this is the way it is in
22 the village; there's nothing you can do about it.

23 Q. Okay. How often were you --

24 (indiscernible) this.

25 Were you physically with Mr. Robinson most

1 of the time you seen the rides taking place?

2 A. Yes.

3 Q. And that's because we walked to court with
4 him, walked away from court with him, went on
5 breaks with -- basically, we were with --

6 A. We were --

7 Q. Because no --

8 A. -- we were --

9 Q. I --

10 A. -- with him all the time.

11 Q. Yeah.

12 Because none of us had a house there, we
13 were -- we stayed in the same place, so --

14 A. Yes.

15 Q. Okay.

16 A. We rented a house together.

17 Q. In other words, Mr. Robinson must have
18 seen Trooper Gibbens Judge Murphy rides almost, if
19 not more -- I mean, almost as many times as you
20 did?

21 MR. PETERSON: Objection; she couldn't
22 possibly know that.

23 THE COURT: Overruled.

24 A. Yes, I believe that.

25 BY MR. HAEG:

1 Q. Did you ever hear the tape recordings of
2 my prosecution capturing Judge Murphy and Trooper
3 Gibbens joking about the rides Trooper Gibbens was
4 giving Judge Murphy?

5 A. Yes, I heard that.

6 THE COURT: Who was on this tape?

7 A. It was Judge Murphy -- they were going on
8 break, and Judge Murphy said to Trooper Gibbens
9 that -- I believe she was out of Coca-Cola and
10 wanted to commandeer him to take her to -- to the
11 store.

12 Q. And in that same recording, in fact,
13 didn't Judge Murphy --

14 THE COURT: Where did -- wait a minute.
15 Where did this -- where did you hear this?
16 What -- who recorded this?

17 A. The state did -- or, well --

18 MR. PETERSON: It's on the trial --

19 A. -- it was the court recording.

20 MR. PETERSON: -- transcript.

21 THE COURT: I'm sorry?

22 A. It was a court recording of the
23 proceedings. I believe I was transcribing them
24 when I heard it.

25 MR. HAEG: Well, it was the state

1 transcribed it.

2 A. Well, yeah. I mean, I was listening to
3 the tapes.

4 BY MR. HAEG:

5 Q. Did we -- how adamant was I that Mr. Cole
6 testify at my sentencing?

7 A. You wanted him there. We got a hotel room
8 for him. I -- yeah, we bought tickets for him.
9 And you told Chuck Robinson that you wanted him
10 there.

11 Q. And is the reason why I wanted them there
12 is I wanted to get credit for the year of guiding,
13 that we gave up?

14 A. Yes.

15 Q. Was there any question at all that
16 Mr. Robinson was going to subpoena and question
17 Mr. Cole about that under oath at my sentencing?

18 A. No.

19 Q. Did Mr. Cole ever testify at my
20 sentencing?

21 A. No.

22 Q. Did he ever show up in McGrath?

23 A. No.

24 Q. Did you ever hear me ask Mr. Robinson what
25 could be done about that?

1 A. I don't remember that.

2 Q. Okay. When I was on appeal, did you find
3 anything wrong with the court record?

4 A. We went into the Kenai court to look at
5 the record, and I found a cover letter that
6 Mr. Cole had stated that Dave -- Dave had written
7 up a letter to the court, explaining why he had
8 done what he did. And the cover letter was in the
9 court record, but the whole letter wasn't there.

10 Q. And so is it your opinion that the court
11 record itself was tampered with to remove my
12 evidence?

13 A. It was gone.

14 Q. And the proof that it was in there and
15 properly admitted is the cover letter, which
16 remained in the court record?

17 A. Correct.

18 Q. And is that letter -- as far as you know,
19 was that letter the evidence I had that I was
20 killing the wolves where the state told me to?

21 A. Yes. You said that in the letter.

22 Q. Okay. And so to sum this up, my evidence
23 was corruptly removed out of the official court
24 record?

25 A. Your evidence was gone, yes.

1 Q. Did we ever go back out to McGrath after
2 we had fired Chuck Robinson?

3 A. I don't remember going back out there.

4 Q. Do you remember a friend of ours, Greg
5 Pearson, and we went out --

6 A. Oh.

7 Q. -- and I started represent --

8 A. Yes.

9 Q. -- myself?

10 A. Yes. Yes.

11 Q. Does that --

12 A. Yes. Sorry. Yes, we went out, and you
13 talked to Magistrate Woodmancy.

14 Q. And is it true we went out there for a,
15 quote/unquote, representation hearing for me to
16 start representing myself?

17 A. Yes, that's correct.

18 Q. And at that hearing, who was there?

19 A. Magistrate Woodmancy and Trooper Gibbens.
20 You were there, I was there, and Greg Pearson was
21 there.

22 Q. Okay. Do you remember how long this
23 lasted?

24 A. I think it was a couple days.

25 Q. Okay. Well, is it true it probably --

1 it -- and I don't know -- it's true we were there
2 a couple days, because there was only one flight,
3 so we -- whatever. And anyway, I guess we can
4 move on with that.

5 Did you hear -- at the end of that
6 hearing, did you hear Mr. Woodman- -- or
7 Magistrate Woodmancy say anything?

8 A. Yeah. We were -- I believe we were going
9 on a break, maybe to lunch or dinner. And he
10 asked Trooper Gibbens if he could give him a ride.
11 And Trooper Gibbens said something to the effect
12 that no, I can't do that, because of what happened
13 on the last time. And I believe he meant with --

14 MR. PETERSON: I'm going to object to
15 hearsay. Trooper Gibbens or Magistrate Woodmancy
16 can both come and testify to the contents of their
17 conversation.

18 THE COURT: Sustained.

19 MR. HAEG: And I'll just point out,
20 Magistrate Woodmancy's now dead, so he's not
21 available, but --

22 THE COURT: Still sustained.

23 BY MR. HAEG:

24 Q. Has anyone -- well, I guess we don't need
25 to do that over.

1 MR. HAEG: That's all I have.

2 THE COURT: Cross?

3 JACKIE HAEG,

4 testified as follows on:

5 CROSS-EXAMINATION

6 BY MR. PETERSON:

7 Q. So, Mrs. Haeg, you testified that you
8 heard on the record the Court asked about getting
9 a Diet Coke from the trooper; right?

10 A. She ask- --

11 Q. Or say that he was getting -- that she was
12 going to commandeer his vehicle to get a Diet
13 Coke; right?

14 A. She wanted him to take her to the store.
15 I did hear that, yes.

16 Q. And then when they came back on the
17 record, she explained that no ex parte
18 communication occurred?

19 A. I don't remember that.

20 Q. You don't remember that?

21 A. I don't remember that, no.

22 Q. Okay. Are you aware that she filed an
23 affidavit in this matter, stating that the only
24 ride that she ever received from Trooper Gibbens
25 was after the sentencing, because it was late at

1 night --

2 A. Yes, I'm aware --

3 Q. -- in McGrath?

4 A. -- of that. I am aware of that, yes.

5 Q. Now, this has been -- just the PCR alone
6 is almost 10 years old now; right?

7 A. Correct.

8 Q. And fair to say it has significantly
9 impacted your life?

10 A. That's fair to say, yes.

11 Q. You want it to be resolved favorably in
12 your husband's favor; right?

13 A. I want it to be resolved, no matter what.

14 Q. Okay. Preferably --

15 A. But --

16 Q. -- favorably in his favor?

17 A. Of course.

18 Q. Okay. Could you describe Sergeant Matt
19 Dobson, wildlife trooper?

20 A. I don't know --

21 Q. Describe his appearance?

22 A. -- I don't know who he is. I don't know
23 who that --

24 Q. You didn't see another trooper in McGrath
25 during this trial?

1 A. I don't remember seeing any other trooper,
2 no.

3 Q. Do you remember seeing a public safety
4 technician that drove trooper vehicle?

5 A. No.

6 Q. You never saw anyone else, any other
7 public safety employee?

8 A. There was a, I forget what they call them,
9 a VS or OP or the -- I don't remember what they
10 call them.

11 Q. A VPSO --

12 A. There was some other --

13 Q. -- or a VPO?

14 A. -- or something, yeah, like that. Yeah,
15 there was another --

16 Q. Okay. It could have been --

17 A. -- guy there.

18 Q. -- could be that and not a public safety
19 tech. But some other public safety employee was
20 there and had --

21 A. There was --

22 Q. -- a vehicle?

23 A. -- he was -- I believe he drove a
24 different vehicle. He didn't drive a trooper
25 truck.

1 MR. PETERSON: Let me just have a quick
2 moment here. Nothing further.

3 THE COURT: You may step down. Thank you.

4 MR. HAEG: Can I ask one more question?

5 THE COURT: Sure.

6 JACKIE HAEG,

7 testified as follows on:

8 REDIRECT EXAMINATION

9 BY MR. HAEG:

10 Q. The affidavit that Judge Murphy swore to
11 under penalty of perjury that she only got one
12 ride and it was after I sent -- after our
13 sentence, is there any doubt whatsoever in your
14 mind that that is a false affidavit?

15 A. Not --

16 MR. PETERSON: Objection; calls for
17 speculation.

18 THE COURT: Overruled.

19 You can answer that question.

20 A. I believe her statement was false. No
21 doubt.

22 Q. Based on personal --

23 A. Based --

24 Q. -- observation?

25 A. -- on everything I saw, yes.

1 Q. And --

2 MR. HAEG: That's all I have for you.

3 THE COURT: All right. You --

4 MR. HAEG: Thank you.

5 THE COURT: -- may step down.

6 (Witness excused)

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

9 THE CLERK: Sir, if you'd remain standing
10 and raise your right hand.

11 (Oath administered)

12 MR. HILTERBRAND: I do.

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

16 A. My name is Drew Hilterbrand. The first
17 name D-R-E-W. Last name Hilterbrand,
18 H-I-L-T-E-R-B-R-A-N-D.

19 THE CLERK: Thank you.

20 THE COURT: You may proceed.

21 DREW HILTERBRAND,
22 called as a witness on behalf of the applicant,
23 testified as follows on:

24 DIRECT EXAMINATION

25 BY MR. HAEG:

1 Q. Did you attend my sentencing in McGrath?

2 A. Yes.

3 Q. Did it occur on 9/29/05 and go through the
4 night into 9/30/05?

5 A. Yes.

6 Q. On -- were you in the courthouse for every
7 hour of that?

8 A. Yes.

9 Q. Was I finally sentenced at nearly
10 1:00 a.m. on the 30th?

11 A. Yes.

12 Q. Okay. Did you ever observe, before I was
13 sentenced, Judge Murphy riding around with Trooper
14 Gibbens?

15 A. Yes, I did.

16 Q. How often did you see that?

17 A. The time -- anytime that, you know, I -- I
18 was outside the courthouse or saw them, that I
19 actually saw them arrive or depart.

20 Q. Okay. And so all of this happened before
21 I was actually sentenced -- or most of it, nearly
22 all of it?

23 A. Yes.

24 Q. Okay. Did you ever see Judge Murphy
25 arrive or leave the courthouse alone or with

1 anyone other than Trooper Gibbens?

2 A. Not that I recall, no.

3 Q. And so just in a rough estimate, how many
4 times did you see them traveling together?

5 A. That I can remember, three, maybe
6 four times. I'm not sure exactly.

7 Q. And that was just basically from the
8 morning of the 29th to 1:00 in -- 1:00 a.m. on the
9 30th?

10 A. Yeah.

11 Q. Other than myself, has anyone ever
12 contacted you about Trooper Gibbens giving Judge
13 Murphy rides --

14 A. No.

15 Q. -- in my case?

16 A. No.

17 Q. Were you supposed to go to McGrath on
18 November 9th to testify at my sentencing --

19 A. I --

20 Q. -- originally, November 9, 2004?

21 A. Yes.

22 Q. Okay. Did we fly you in from Silver
23 Salm- -- a little village across the inlet from
24 Silver Salmon, to do so?

25 A. Yes.

1 Q. And did we provide you transportation to
2 Anchorage also?

3 A. Yes.

4 Q. Okay. Did we ever -- and this -- was this
5 for -- with the intent of going to McGrath --

6 A. Yes. That's --

7 Q. -- to --

8 A. -- that was my --

9 Q. -- testify?

10 A. -- understanding.

11 Q. Did we ever go to McGrath?

12 A. No.

13 Q. And can you explain very clearly why that
14 was?

15 A. We showed up at Brent Cole's office to go
16 over some things. David was going over some
17 things with him. And basically, Leaders, he had
18 talked to Leaders, and the deal that they had made
19 previously was put off for whatever reason.

20 Q. Okay. And was it -- did Mr. Cole --
21 did -- was I angry?

22 A. Yes.

23 Q. Was Mr. Cole angry?

24 A. More or less, I gue- -- not angry, but
25 resigned, I would say.

1 Q. Okay. And did I ever ask Mr. Cole what
2 could be done about this?

3 A. Yes.

4 Q. And what did Mr. Cole say?

5 A. More or less, if I recall, he said that he
6 could possibly talk to Leaders' boss, but not --
7 not much, that I recall. He said something to the
8 effect that he had to work with him in the future.

9 Q. Okay. And so is it true, did he say
10 anything like, I can't do anything to piss Leaders
11 off?

12 A. That was more or less, yeah, the statement
13 that he made, that he had to work with him in the
14 future.

15 Q. Okay. And so was it your impression that
16 Mr. Leaders -- or Mr. Cole, basically said, I
17 can't do anything to get you your plea agreement,
18 because it will affect my ability to work with the
19 state in the future?

20 A. That would -- yeah, the conclusion I would
21 draw from that, yeah.

22 Q. On the evening of November 9th, the day we
23 were supposed to fly out to McGrath, what was the
24 mood of all the -- everybody that was there? Were
25 we ecstatic, happy, sad, angry? If you had to

1 pick the gamut, the day that we were supposed to
2 go out there, what was the mood of the people?

3 A. Disappointed, perplexed, I guess.

4 Q. Okay. Did you testify at my sentencing?

5 A. Yes, I did.

6 Q. And the night before sentencing, were you
7 given -- did you know about written questions that
8 were given to Chuck Robinson about the plea
9 agreement?

10 A. Yes.

11 Q. And was it your impression that Chuck
12 Robinson was also going to ask questions about the
13 plea agreement of Brent Cole?

14 A. I think so. He said he did. We went over
15 some, yeah.

16 Q. Okay. And did you -- did -- we went
17 over -- so it's your memory that we had written
18 questions for Mr. Robinson?

19 A. Yeah. I --

20 Q. About the plea agreement?

21 A. Yeah. I have a vague recollection of it,
22 yeah.

23 Q. Okay. Did Mr. -- as far as you know and
24 the court record will bear this out, did
25 Mr. Robinson ever ask you the written questions

1 about the plea agreement?

2 A. Not that I recall, no.

3 Q. Okay. And just -- did Brent Cole show up
4 at my sentencing?

5 A. No.

6 Q. Okay. And did you ever hear me ask
7 Mr. Robinson what could be done about that?

8 A. I believe so, but --

9 Q. And do you remember --

10 A. -- I'm not sure.

11 Q. -- Mr. Robinson's response?

12 A. No, I don't really, no.

13 Q. Okay.

14 MR. HAEG: That's all for -- or hang on
15 here.

16 Q. Do you know if Mr. Robinson -- were you
17 with Mr. Robinson anytime that you seen Trooper
18 Gibbens giving Judge Murphy rides?

19 A. I believe so, but it's been so long ago, I
20 can't remember --

21 Q. Okay. So --

22 A. -- exactly.

23 Q. -- it's possible, but --

24 A. Yeah.

25 Q. -- you can't --

1 A. Yeah.

2 Q. Okay.

3 MR. HAEG: That's all I have for you.

4 THE COURT: Hang on. Hang on.

5 A. Oh. Sorry.

6 THE COURT: Any cross?

7 DREW HILTERBRAND,

8 testified as follows on:

9 CROSS-EXAMINATION

10 BY MR. PETERSON:

11 Q. So, sir, you're a big game guide; right?

12 A. Yes.

13 Q. Where do you guide?

14 A. Alaska Peninsula, mostly. Some on Kodiak.

15 Q. And who do you guide for?

16 A. I'm sorry?

17 Q. Who do you guide for?

18 A. I'm a registered guide. But I also -- I
19 mostly guide for Frank Sanders, who's a friend of
20 mine.

21 Q. What's your relationship to Mr. Haeg?

22 A. I met David 15, 16 years ago. I packed
23 for him, originally.

24 Q. Okay. So you worked -- oh, well -- oh,
25 you packed for him?

1 A. Yeah.

2 Q. And when you're a packer, to become an
3 assistant guide, you first generally have to be a
4 packer for, what, two years; is that right?

5 A. Yeah. It's something like that, yeah.
6 It's a certain number of days, but yeah.

7 Q. And the registered guide that you work for
8 has to write you a letter of recommendation to the
9 board, to get your assistant guide license, then;
10 right?

11 A. Right.

12 Q. Mr. Haeg wrote you that letter?

13 A. Yeah. Uh-huh (affirmative).

14 Q. So he's responsible for your guiding
15 career?

16 A. Yes. But that all happened before any of
17 this happened.

18 Q. Okay. And you've remained friends with
19 him since then?

20 A. Yeah. Uh-huh (affirmative).

21 Q. Did you ever guide for him as assistant
22 guide?

23 A. Yes, I did.

24 Q. Around what time?

25 A. 2000- -- early 2004, I think.

1 Q. The spring bear season?

2 A. Yes.

3 Q. Okay. He's friend of yours?

4 A. Yeah.

5 Q. You filed a sworn affidavit on July 19th,
6 2010, in which you said that Trooper Gibbens the
7 primary witness against David Haeg at sentencing
8 and, I believe, at trial.

9 Right?

10 A. What's that? Yes.

11 Q. Yeah.

12 Were you at the trial?

13 A. No, I was not.

14 Q. Okay. Did you know that another friend of
15 Mr. Haeg, Mr. Zellers, actually was also charged
16 along with him?

17 A. Yes.

18 Q. And then made a deal with the state, to
19 testify against him at trial?

20 A. I've -- recall him saying something about
21 that, yeah, more or less. I don't know all the
22 details, but yes.

23 Q. Okay. So if you don't remember what
24 happened at trial, what made you write in a sworn
25 affidavit in 2010 that Trooper Gibbens was the

1 primary witness against Mr. Haeg at trial?

2 A. I was told he was a trial at -- the
3 primary witness at trial.

4 Q. Okay. So you swore out an affidavit, I
5 declare under penalty of perjury the foregoing is
6 true and correct, based upon what someone told
7 you?

8 A. Well, I mean, it was -- it should be a
9 matter of court record, so yes.

10 Q. But that's not what you just said. You
11 didn't say it was a matter of court record and
12 that you analyzed that. You said that someone
13 told you that; right?

14 A. (No audible response).

15 Q. Okay.

16 A. Yeah. I --

17 Q. You're nodding in affirmation. You're
18 agreeing; is that right?

19 A. I guess, I -- yeah.

20 Q. Okay.

21 A. I mean, I don't know.

22 MR. PETERSON: Nothing further.

23 DREW HILTERBRAND,

24 testified as follows on:

25 REDIRECT EXAMINATION

1 BY MR. HAEG:

2 Q. Is it true that in that affidavit you just
3 said, I believe? You didn't know? You just said,
4 based on the information that you had, you believe
5 that Trooper Gibbens was --

6 A. I --

7 Q. -- primary witness?

8 A. -- I believe so, yes. I'd have to see a
9 copy of it, but yes.

10 Q. Okay.

11 MR. HAEG: Nothing further.

12 THE COURT: I have some questions.

13 VOIR DIRE BY THE COURT:

14 Q. You went to the sentencing; right?

15 A. Yes, sir. Uh-huh (affirmative).

16 Q. Did you fly out there with Mr. Haeg?

17 A. Yes.

18 Q. How many people were with him, roughly?

19 A. Five or six.

20 Q. Okay. And --

21 A. I don't remember exactly.

22 Q. -- did those five or six all fly out
23 together?

24 A. Yes, as much as I can recall, yeah.

25 Q. Did you guys overnight?

1 A. Yes.

2 Q. Stay at same place? Aren't many options,
3 I guess.

4 A. Yes, we did stay at the same place.

5 Q. Okay. And were you around Mr. Haeg during
6 the sentencing process?

7 I mean, it went on for whatever it was --

8 A. Yes.

9 Q. -- you know, 15, 16 hours.

10 Did you talk to him at breaks?

11 A. Yes, I'm sure we did.

12 Q. Okay. And did you point out to him what
13 you had observed about Judge Murphy?

14 A. I -- I can't recall exactly. I couldn't
15 say that we did.

16 Q. Was that something --

17 A. I think it was mentioned --

18 Q. Was that something --

19 A. -- amongst us, but --

20 Q. -- you were surprised about and -- that,
21 you know, you thought was noteworthy, when you saw
22 Murphy and the trooper together? Did the --
23 you -- that seem inappropriate to you?

24 A. It seemed unusual.

25 Q. Okay. And so did you say to Chuck

1 Robinson, hey, that's kind of weird; what do you
2 think about it?

3 A. I don't recall that I specifically said
4 something to him.

5 Q. Did you say anything to David Haeg about
6 that?

7 A. I honestly can't recall.

8 Q. Okay.

9 THE COURT: Do you have any additional
10 questions?

11 MR. HAEG: No.

12 THE COURT: You can step down. Thank you.

13 A. Thank you.

14 (Witness excused)

15 MR. PETERSON: The -- before the next
16 witness comes in, there's something on the witness
17 stand there. Not sure what it is, but it's been
18 there for --

19 THE COURT: Some document that --

20 MR. PETERSON: -- since Mr. Zellers, I
21 think.

22 THE COURT: Some document that you had
23 provided somebody?

24 MR. HAEG: Yeah. I think it's the
25 transcription of the meeting between --

1 THE COURT: Okay. Well, you --

2 MR. HAEG: -- Mr. Zellers --

3 THE COURT: You can retrieve it.

4 MR. HAEG: And can I admit it as evidence?

5 THE COURT: What is it?

6 MR. HAEG: It's the transcription of the
7 meeting of Tony Zellers, Prosecutor Leaders, and
8 Trooper Gibbens which Tony Zellers points out the
9 map's false.

10 THE COURT: Is this already part of the
11 record?

12 MR. HAEG: I --

13 MR. PETERSON: I --

14 MR. HAEG: -- believe it is, but I don't
15 know, maybe the state can help --

16 THE COURT: And where did you get it?
17 (Indiscernible).

18 MR. PETERSON: I objected, when he asked
19 if he could admit it, as lacking in foundation.
20 And also, it's unclear where the transcript came
21 from.

22 THE COURT: This is not an official
23 transcript that was put in --

24 MR. HAEG: No.

25 THE COURT: Okay. No, you can't.

1 MR. HAEG: And I was going to ask you a
2 question, Your Honor. You said you wanted the
3 tape recording. I believe the state -- we got
4 this tape recording. And the -- this is something
5 that confused me, is we got a tape recording of
6 this meeting, and it cut off in mid sentence. And
7 for years we thought that's all the state had.
8 And finally, we got another -- we kept hounding
9 the state, and we finally got another tape that
10 has where they're talking about the map being
11 falsified. And so we got that from the state.

12 And I guess, can we give Your Honor that
13 tape? I mean, you said you wanted the recording,
14 whatever. And we're not at our house, where we
15 have access to everything.

16 THE COURT: I don't -- I'm lost.

17 MR. HAEG: Okay. We -- you'd asked if I
18 have a recording of them talking about the map
19 being false, before trial --

20 THE COURT: Is this your --

21 MR. HAEG: -- and get that to you.

22 THE COURT: Do you claim that this is
23 something that the prosecutor and the troopers
24 recorded?

25 MR. HAEG: Yes.

1 THE COURT: Okay. And --

2 MR. HAEG: And then they gave us a copy of
3 it later, many years after trial.

4 THE COURT: Many years after trial?

5 MR. HAEG: Yes. It should have been
6 provided in discovery prior to trial. And only --
7 because we didn't get it, we didn't realize what
8 had happened with the map, until many years after.
9 And so this is another reason why I believe there
10 was a --

11 THE COURT: Did you raise all this --

12 MR. HAEG: -- very bad discovery --

13 THE COURT: Have you raised this --

14 MR. HAEG: -- violation.

15 THE COURT: -- previously?

16 MR. HAEG: Yes.

17 THE COURT: In the earlier ineffective
18 claim or the earlier appeal?

19 MR. HAEG: I don't know if we had this
20 information during the appeal. I think we
21 actually got this tape after my appeal was done.
22 And it was sometime coming up through PCR when we
23 obtained the tape.

24 THE COURT: Is it part of the PCR hearing
25 in front of Bauman?

1 MR. HAEG: I believe I brought it up, and
2 I wanted an evidentiary hearing. And I think he
3 denied me having an evidentiary hearing on this
4 evidence.

5 THE COURT: I will mark it. And it is not
6 admitted as an exhibit, but it is part of the --
7 it is kept so that you can show you tried to get
8 it in, but it's not part of the record.

9 MR. HAEG: Okay.

10 THE COURT: So you mark that as an
11 exhibit, but it's not admitted.

12 (Exhibit 14 marked)

13 MR. PETERSON: It's a court exhibit?

14 And just as a point of clarification, for
15 my own edification, Your Honor.

16 THE COURT: Sure. Go ahead.

17 MR. PETERSON: What is this? It's a
18 transcript that the petitioner created of a tape
19 that they got, and this purports to be an exact
20 copy of that tape? Is that --

21 MR. HAEG: That's it.

22 MR. PETERSON: -- what's --

23 MR. HAEG: Yeah.

24 MR. PETERSON: -- being --

25 THE COURT: Wait a minute.

1 I thought you said that the transcript
2 itself was created by the troopers and was
3 given --

4 MR. HAEG: No. The recording --

5 THE COURT: -- to you in discovery.

6 MR. HAEG: -- the recording was created by
7 the troopers, the tape recording. We transcribed
8 it when we got it.

9 THE COURT: Okay. So you got a partial
10 recording, and then you got a full recording?

11 MR. HAEG: Correct.

12 THE COURT: And when did you get the
13 partial recording?

14 MR. HAEG: I think that was maybe
15 sometime -- a year or two, maybe three after
16 trial. And then we listened to that and
17 transcribed it. And it cut off in mid sentence,
18 you know. And there was -- you know, so we knew
19 there was more. And so we kept asking, for years,
20 where's the rest of it? And so then it was a
21 number of years later we got the part that
22 actually records the map being discussed as being
23 false.

24 THE COURT: Does this transcript show
25 where the first tape ended?

1 MR. HAEG: I can't answer that. I don't
2 know.

3 MR. PETERSON: And who made the
4 transcript?

5 MR. HAEG: My wife.

6 MR. PETERSON: So this is the objection
7 that I have, Your Honor.

8 THE COURT: Go ahead.

9 MR. PETERSON: Look, if they have a tape
10 that shows something like this, then he could call
11 a witness to establish that foundation. He's had
12 a decade now to do that. Hasn't done it. In
13 fact, he's refused to do it, even though the court
14 of appeals specifically told him to do it.

15 THE COURT: Where's the tape?

16 MR. PETERSON: Now, but my objection to
17 this is --

18 THE COURT: All right. Now --

19 MR. PETERSON: -- we have no idea if it's
20 accurate or not. And the problem with that, Your
21 Honor, and I need to make this on the record, is
22 that the clerk that looks at it, the court of
23 appeals clerk that looks at it, may not recognize
24 that it isn't, in fact, an authentic, you know,
25 legal transcription of a verified audio. This

1 could have been made up of whole cloth. We don't
2 know.

3 THE COURT: Okay.

4 MR. PETERSON: I'm not saying it was. We
5 don't know.

6 THE COURT: I understand exactly --

7 MR. PETERSON: And --

8 THE COURT: -- what you're saying.

9 MR. PETERSON: -- that needs to be very
10 clear. If it is a court -- if it does come in as
11 a court exhibit, then it needs to be --

12 THE COURT: I did not --

13 MR. PETERSON: -- branded in some way to
14 reflect that.

15 THE COURT: -- did not admit it as an
16 exhibit.

17 MR. PETERSON: No, as a court exhibit,
18 not -- I understand that it's not being admitted
19 as an exhibit for the purposes of this hearing.
20 But --

21 THE COURT: You made your record.

22 MR. PETERSON: -- for the record on
23 appeal, it should be branded as such.

24 THE COURT: Who gave you the tape, the
25 original one? The original recording, who gave it

1 to you?

2 MR. HAEG: The State of Alaska.

3 THE COURT: Do you acknowledge that? I'm
4 not talking about this --

5 MR. PETERSON: I don't know anything about
6 this specifically. It's not a matter that's
7 before this court for the PCR --

8 THE COURT: I'm asking you --

9 MR. PETERSON: -- so I have nothing to say
10 about it.

11 THE COURT: -- a simple question. If you
12 know the answer, tell me. If you don't know the
13 answer, that's fine.

14 MR. PETERSON: I don't know the answer.

15 THE COURT: Okay. That's good.

16 MR. PETERSON: And if it would have been
17 part of this hearing, then I would know the
18 answer, but I haven't researched that.

19 THE COURT: Okay. It would be helpful for
20 me if you had the tape. Because I don't
21 know what -- you know, this transcript --

22 MR. HAEG: Well --

23 THE COURT: -- who knows what it --

24 MR. HAEG: Okay. And what I'm saying is,
25 when we get home, I will make it my first thing I

1 do, to try to get this court -- and if the -- I
2 assume the state has the recording.

3 THE COURT: I have no idea.

4 MR. HAEG: No, we got a copy from them.
5 That's all I know. And so I can get you the
6 audio.

7 THE COURT: Did you bring all the -- now,
8 just -- I -- you asked this before, but I can't
9 remember what you said. Did you bring this up in
10 front of Bauman?

11 MR. HAEG: Yes.

12 THE COURT: And what happened down there?

13 MR. HAEG: He -- I asked for an
14 evidentiary hearing, because we just found out
15 this evidence. And he dismissed my request and, I
16 think the same day or a day after, ruled on my
17 PCR, decided it, and said, I am -- you know,
18 denying my request for an evidentiary hearing, and
19 then denied my PCR, but overturned my sentence.

20 And so I never have had an evidentiary
21 hearing on -- I never got this in, in other words,
22 although I asked in an official request. I said,
23 lo and behold, you know, whatever it was, 13 years
24 after my trial, we get a tape recording of the
25 prosecutor and trooper and state witness talking

1 about how their trial exhibit was false, before
2 trial, and then they still used it against me.

3 That's where they talk about --

4 THE COURT: When do --

5 MR. HAEG: -- the maps.

6 THE COURT: -- you think this thing was
7 made?

8 MR. HAEG: The what?

9 THE COURT: The recording.

10 MR. HAEG: It was made exactly on the day
11 of Mr. Zellers' meeting with Scot Leaders and
12 Trooper Gibbens prior to my trial, and it may have
13 a date on it. I don't know.

14 THE COURT: Okay. You can submit that --
15 you can submit a copy of the partial recording and
16 the full recording.

17 MR. HAEG: Okay. And it was made on
18 6/23/04. And there was a number on the tape.

19 THE COURT: I need it.

20 MR. HAEG: Would that help if I had -- if
21 you guys --

22 THE COURT: (Indiscernible).

23 MR. HAEG: -- had the tape number from --

24 THE COURT: You seem --

25 MR. HAEG: -- the (indiscernible)?

1 THE COURT: -- to claim that there's two
2 tapes, two recordings: One partial, one full.

3 MR. HAEG: Okay.

4 THE COURT: I'm going to give you an
5 opportunity to --

6 MR. HAEG: So you want both tapes? You
7 want the partial --

8 THE COURT: Yes, I do. You're making
9 accusations that --

10 MR. HAEG: Okay.

11 THE COURT: Okay?

12 MR. HAEG: Okay.

13 The next witness is a Tom Stepnosky. He's
14 in Pennsylvania, and he has a number here we could
15 try call- -- if we could try calling it? Is that
16 available?

17 THE COURT: Sure. What's the number?

18 MR. HAEG: (570) 960-4040.

19 THE CLERK: And what was that name again?

20 MR. HAEG: Tom Stepnosky.

21 THE CLERK: Thank you. (Pause)

22 Hi, is this Tom Stepnosky? This is Judge
23 Morse's clerk calling in for a (indiscernible) in
24 the David Haeg versus State of Alaska case. Okay?
25 Hold on just a moment.

1 Okay. We have Tom Stepnosky
2 (indiscernible) --

3 THE COURT: Mr. Stepnosky, can you hear
4 me?

5 MR. STEP NOSKY: Yes, I can, sir.

6 THE COURT: My name is William Morse. I'm
7 a superior court judge here in Anchorage. You're
8 being called as a witness by David Haeg in a case
9 he has against the State of Alaska that arises out
10 of his conviction. He is calling you as a
11 witness. He'll be asking you questions first, and
12 then the state's attorney, Mr. Peterson, may have
13 some follow-up questions for you.

14 So are you available for some testimony?

15 MR. STEP NOSKY: Yes, sir.

16 THE COURT: I'd like you to raise your
17 right hand, and the clerk will swear you in.

18 THE CLERK: Okay. Mr. Stepnosky?

19 MR. STEP NOSKY: Yes?

20 (Oath administered)

21 MR. STEP NOSKY: I do.

22 THE CLERK: Thank you. And for the
23 record, please state your name, spelling both
24 first and last name.

25 A. Thomas Stepnosky, T-H-O-M-A-S. Stepnosky

1 is S-T-E-P-N-O-S-K-Y.

2 THE CLERK: Thank you.

3 THE COURT: Go ahead.

4 THOMAS STEP NOSKY,
5 called as a witness on behalf of the applicant,
6 testified telephonically as follows on:

7 DIRECT EXAMINATION

8 BY MR. HAEG:

9 Q. Did you attend my sentencing in McGrath
10 in -- I believe it was 2005?

11 A. Yes, I did.

12 Q. Okay. Did my sentencing start on 9/29/05
13 and go into the early morning hours of 9/30/05?

14 A. Yes, it did.

15 Q. Were you in the courthouse for all of this
16 time?

17 A. Yes, I was.

18 Q. During this period, did you ever see Judge
19 Murphy ride around with Trooper Gibbens?

20 A. Yes, I did, multiple times.

21 Q. Okay. And when you say "multiple times,"
22 did they leave during the day, come back? I mean,
23 can you explain what multiple times means?

24 A. Well, when we drove from where we were
25 staying, she drove down with Trooper Gibbens. And

1 then at the courthouse, when we went on breaks,
2 Trooper Gibbens would give her a ride to the store
3 for her to pick up soda and snacks, and then drive
4 her back multiple times.

5 Q. Okay. Is it true I was sentenced at maybe
6 midnight or 1:00 a.m. on the 30th?

7 A. I don't remember the exact time, but it
8 was very late, yes.

9 Q. Okay. And these rides that you seen Judge
10 Murphy getting from Trooper Gibbens, did they
11 occur before I was sentenced or after?

12 A. Before. Multiple times.

13 Q. Okay. Did you ever see Judge Murphy
14 arrive or depart the courthouse alone or with
15 anyone other than Trooper Gibbens?

16 A. No, I did not.

17 Q. Were you ever contacted by anyone, other
18 than me, about Trooper Gibbens riding with Judge
19 Murphy?

20 A. No one contacted me. But I, on my own
21 volition, contacted Marla Greenstein.

22 Q. Okay. And what did you tell
23 Ms. Greenstein?

24 A. What I saw of Trooper Gibbens driving
25 around, driving the judge.

1 Q. Okay. And it -- so if Marla Greenstein
2 has -- is recorded stating that you never seen
3 that happening, that would be false; correct?

4 A. Completely false.

5 Q. Okay. Were you ever with Mr. Robinson
6 when you seen Judge Murphy riding around with
7 Trooper Gibbens?

8 A. Yes, I was. I'm a smoker and so was, is
9 or was, Mr. Robinson at the time. And we would be
10 outside the courthouse, smoking, when Trooper
11 Gibbens would give Judge Murphy a ride to the
12 store for her to pick up soda and snacks.

13 Q. Okay. So you're pretty sure that
14 Mr. Robinson had to see the rides take place,
15 because you were with him?

16 A. Oh, he definitely had to see it. We were
17 standing right next to each other. They would
18 pull up in the truck, get out, and walk right by
19 us, back into the courthouse. Of course he seen
20 them.

21 Q. Okay. And, again, this was all before I
22 was sentenced; correct? Or most of it?

23 A. It was all before you were sentenced.

24 Q. Okay. And if Judge Murphy has sworn an
25 affidavit that she only received a ride from

1 Trooper Gibbens after I was sentenced, would that
2 be a false affidavit from Judge Murphy?

3 A. That would definitely be false.

4 Q. And how sure are you about that?

5 A. I am absolutely positively --

6 Q. Okay.

7 A. -- know that that is a false statement by
8 Judge Murphy.

9 Q. Okay. And since it's a sworn statement,
10 would you consider that perjury?

11 A. Yes, I certainly would.

12 Q. Were you supposed to go out to McGrath on
13 November 9th, 2004, for me to plea out?

14 A. Yes, I was.

15 Q. Did we ever go to McGrath on November 9th?

16 A. No, we did not.

17 Q. Can you explain very clearly and
18 accurately why we didn't?

19 A. Because the district attorney changed
20 everything that you were supposed to get. He told
21 you one thing; and then when it came time to go
22 out there, he completely changed everything.

23 Q. Okay. Did I ever ask Mr. Cole what we
24 could do about that?

25 A. Yes, you did.

1 Q. And what did Mr. Cole say?

2 A. I can't do anything about that. I have to
3 continue to work with the DA. I don't want to
4 piss him off. The only thing I can do is call his
5 superior and see what they say.

6 Q. Okay. Were you ever with me personally
7 when I talked to Mr. Robinson?

8 A. Yes, I was, many times.

9 Q. Okay. Did you ever hear Mr. Robinson
10 state anything about his ability to enforce the
11 plea agreement I'd made with Mr. Cole?

12 A. My recollection is -- was, he said he
13 can't do anything; that was water under the
14 bridge.

15 Q. Okay. Did you ever hear Mr. Robinson tell
16 me anything about standing mute at trial?

17 A. Yes, I did. I heard him tell you not to
18 say anything.

19 Q. And was he also saying that he should
20 stand mute also?

21 A. That, I do not recollect.

22 Q. Okay. Do you remember any of that coming
23 up in the context of subject-matter jurisdiction?

24 A. Yes, I remember that.

25 Q. Okay. And did Mr. Robinson say, if we put

1 up a defense, it may admit or waive subject-matter
2 jurisdiction?

3 A. Correct. That's exactly what he said.

4 Q. Okay. Did we stay with Judge Murphy at
5 the McGrath B and B -- or did you stay with Judge
6 Murphy at the McGrath B and B?

7 A. Well, we stayed at the -- not with her,
8 but we stayed in the same place, yes.

9 Q. Okay. While you were there, did you ever
10 see Trooper Gibbens eating with Judge Murphy where
11 we were staying?

12 A. Yes, I did. They sat in the back of the
13 little restaurant there, at a table, sitting
14 alone.

15 Q. Okay. Were you with Mr. Robinson when you
16 seen this?

17 A. Yes, I was.

18 Q. Okay. Were you with Mr. Robinson -- how
19 often were you with Mr. Robinson when you seen
20 Judge Murphy riding around with Trooper Gibbens?

21 A. Well, every break we got during -- at the
22 courthouse, we would go outside and have a
23 cigarette. And every time that we went out,
24 Trooper Gibbens would give Judge Murphy a ride to
25 the store for soda and snacks. So I would say, in

1 the course of the -- the time period that we spent
2 there during the day, I would say at least six to
3 eight times.

4 Q. Okay. And do you remember Mr. Robin- --
5 do you remember me asking Mr. Robinson to ask
6 questions about the year of guiding I gave up for
7 the plea agreement, that I didn't get?

8 A. You asked him that and -- and other
9 things, and he never asked any of those questions.

10 Q. And do you remember, the night before, him
11 agreeing to ask all those questions?

12 A. Yes. As a matter of fact, we were -- we
13 were going over what questions were going to be
14 asked the next day at the sentencing. And he
15 never said a word.

16 Q. Okay. And were those questions actually
17 written out on paper?

18 A. That, I do (indiscernible) recall.

19 Q. Okay. Were you with me when I hired an
20 attorney called Mark -- or named Mark Osterman?

21 A. Yes, I was.

22 Q. Do you remember us doing anything unusual
23 with Mr. Osterman?

24 A. When you say "unusual," as far as what?

25 Q. By the time I hired Mr. Osterman, did we

1 recognize we had a problem with Brent Cole and
2 Chuck Robinson?

3 A. Oh, yes, definitely.

4 Q. Okay. And --

5 A. But (indiscernible) as a matter,
6 Mr. Osterman made that statement.

7 Q. Okay. And what did Mr. Osterman say?

8 A. Well --

9 MR. PETERSON: Objection; hearsay.

10 A. -- that you've been sold out by your
11 previous attorneys.

12 THE COURT: It's hearsay. I
13 won't (indiscernible) --

14 MR. HAEG: Even if he's -- if he's dead,
15 how do I get around that? Or is it just gone
16 forever?

17 THE COURT: It's gone forever.

18 BY MR. HAEG:

19 Q. Is it true that because of the problems
20 with Mr. Cole and Mr. Robinson, we tape-recorded
21 Mr. Osterman?

22 A. Yes.

23 Q. Did you help in recording that, tho- --
24 making those recordings?

25 A. Yes, I did.

1 Q. As far as you can -- as to your knowledge,
2 is it true that I taped-recorded everything?

3 A. I'm not sure, as far as everything. But I
4 know you made recordings.

5 Q. Okay.

6 A. Or we -- we made recordings.

7 Q. Yeah.

8 You -- did you -- you personally helped
9 make recordings of him?

10 A. Yes, I did.

11 Q. Okay.

12 MR. HAEG: That's all I have for you,
13 Mr. Stepnosky.

14 A. All right. Thank you.

15 THE COURT: Don't hang up yet.

16 MR. HAEG: Don't hang up.

17 THE COURT: Don't hang up.

18 A. No.

19 THE COURT: Any cross?

20 MR. PETERSON: Just very brief.

21 THOMAS STEPNOSKY,

22 testified as follows on:

23 CROSS-EXAMINATION

24 BY MR. PETERSON:

25 Q. So, Mr. Stepnosky, how do you know

1 Mr. Haeg?

2 A. I've been a friend of his for many years.
3 I worked with his wife, and that's how I got to
4 know him. And went out to his lodge, started
5 doing some work out there, and eventually actually
6 worked for him.

7 Q. Okay. In what capacity did you work for
8 him?

9 A. I was the camp manager.

10 Q. Okay. And did you like that job?

11 A. Yes, I loved it.

12 Q. Okay. How long did you do that for?

13 A. Oh, I would have to say probably
14 five years.

15 Q. What were those years?

16 A. Pardon me?

17 Q. What were those years?

18 A. I believe they were like from 2001 to
19 2005, or 2000 to 2005, somewhere in that range.

20 Q. Okay. Would you have preferred to keep
21 doing that, keep acting as his camp manager?

22 A. Oh, yes, definitely.

23 Q. And so when Mr. Haeg was charged, that
24 sort of ended your work out there; is that right?

25 A. Yes.

1 Q. And you maintained your friendship with
2 Mr. Haeg throughout that?

3 A. Yes, I did. Still do.

4 Q. You're close?

5 A. Pardon me?

6 Q. You're close? You're close friends?

7 A. Oh, yes. I would -- I would consider us
8 very close friends.

9 Q. Very close friends. Okay.

10 And in that capacity as his friend, you
11 surreptitiously recorded an attorney without his
12 knowledge?

13 A. Yes.

14 Q. Okay. You said on direct that the
15 district attorney changed the deal. How do you
16 know that? Were you privy to conversations
17 between Mr. Cole and Mr. Leaders?

18 A. Between Mr. Cole and Mr. Leaders?

19 Q. Yes.

20 A. No. But I was there when Mr. Cole told us
21 that Mr. Leaders had changed the deal and we
22 wouldn't be flying out to McGrath.

23 Q. When he told you there was no deal and you
24 wouldn't be flying out, you were there for that?

25 A. No --

1 Q. But you don't know what the --

2 A. -- he --

3 Q. -- content of that deal was; right?

4 A. -- I didn't say that; I didn't say there
5 was no deal. I said, Mr. Cole said Mr. Leaders
6 changed the original deal to something else and we
7 would not be flying out to McGrath.

8 Q. Do you know what that original deal was,
9 then?

10 A. Well, all I can say is this. It was
11 nowhere near what Mr. Haeg wound up getting. The
12 exact of it, I really don't remember offhand.

13 Q. Okay.

14 A. What I know was, instead of getting hit
15 with a little ball-peen hammer, he got hit with a
16 sledgehammer.

17 MR. PETERSON: Okay. Nothing further.

18 THE COURT: Any other questions?

19 MR. HAEG: Nope.

20 THE COURT: Thank you, sir. You may hang
21 up.

22 A. All right. Thank you.

23 (Witness excused)

24 MR. HAEG: Can I call myself?

25 THE COURT: Sure.

1 MR. HAEG: Can I stay here, or do I have
2 to go up there?

3 THE COURT: You can stay there.

4 THE CLERK: Okay. Mr. Haeg, if you'd
5 stand and raise your right hand.

6 (Oath administered)

7 MR. HAEG: I do.

8 DAVID HAEG,
9 called as a witness on his own behalf, testified
10 as follows on:

11 DIRECT TESTIMONY

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

15 A. David Haeg, D-A-V-I-D, H-A-E-G.

16 THE CLERK: Thank you.

17 THE COURT: Mr. Haeg, let me caution you.
18 You have a brief period of time. You've got the
19 five topics that I'm authorized to deal with. I
20 know you have a lot to say. My recommendation to
21 you is you focus on the five topics. Nonetheless,
22 you can say whatever you want.

23 A. Okay.

24 THE COURT: But don't waste your
25 opportunity.

1 MR. HAEG: Okay. I would just like to
2 testify that I was present at my trial and
3 sentencing every day, every hour, and flew out to
4 McGrath, I think, almost every time with Judge
5 Murphy. Every single time that I seen Judge
6 Murphy, she got in a truck with Trooper Gibbens.

7 We stayed with Judge Murphy at the McGrath
8 B and B. While we were there, I personally
9 witnessed them eating together. I pointed -- when
10 it first started happening, I pointed it out to
11 Chuck Robinson. And he said, hey, there's nothing
12 I can do about it; that's the way it is in the
13 villages; you know, get over it.

14 Again, we -- because McGrath's such a
15 small place, we walked from where we stayed. Or,
16 like Chuck said, sometimes we borrowed bicycles,
17 little gravel road, Judge Murphy, Trooper Gibbens
18 going by us all the time. You know, I seen
19 them -- I think I may have already testified this,
20 but I seen them eat together. Basically, they
21 were together a very large portion of the time
22 that we were out of court. And, you know, that
23 was just what we could see. You know, behind
24 closed doors, maybe there was more. But I -- you
25 know, I don't know about that.

1 At the courthouse, I personally never seen
2 Judge Murphy arrive or leave alone or with anyone
3 other than Trooper Gibbens throughout the whole
4 amount of the trial and sentencing. And, again,
5 we rode with Judge Murphy on the same plane. And
6 she would get on and off of the plane with -- or
7 get off the plane, get in with Trooper Gibbens.

8 One of the items I'm allowed to litigate
9 is whether Mr. Robertson gave me competent advice
10 about the strength of my defense. He's admitted
11 and testified that he -- and excuse me for a
12 second here.

13 He told me that subject-matter
14 jurisdiction was my def- -- the defense for me and
15 that we should depend on it, to the exclusion of
16 all else, and told me that, in fact, it's so
17 strong that at trial, both he and I should stand
18 mute and never put up a defense.

19 I was so scared that I contacted friends
20 and relatives, including some of those that had
21 friends that were lawyers, and ran this by them.
22 And they were all, of one word, horrified that any
23 attorney would suggest that. And, in fact,
24 Mr. Robinson told me that should we try to put on
25 a defense, that this would waive subject-matter

1 jurisdiction and thus ruin our defense.

2 I -- after I fired Mr. Robinson, I
3 actually looked into what's subject-matter
4 jurisdiction. And let me just find the stuff I
5 need here for a second. Anyway.

6 THE COURT: Isn't it true, Mr. Haeg, that
7 he made the motion regarding subject-matter
8 jurisdiction?

9 MR. HAEG: What was that?

10 THE COURT: Isn't it true that he made
11 the -- he raised that motion? He --

12 MR. HAEG: Correct.

13 THE COURT: Okay. And it got denied.

14 MR. HAEG: And I --

15 THE COURT: And you appealed that.

16 MR. HAEG: Yeah. And he appealed that.

17 THE COURT: Okay. Second question, you
18 didn't stand mute at trial, did you? You
19 provided --

20 MR. HAEG: No, I did not.

21 THE COURT: -- a variety of defenses?

22 MR. HAEG: What was that?

23 THE COURT: You provided a variety of
24 defenses?

25 MR. HAEG: Yes.

1 THE COURT: Okay.

2 MR. HAEG: Yeah, I'm not very good -- not
3 very organized right now. It's got to be here.
4 Can't believe where it would have went. Anyway.

5 THE COURT: You want to break?

6 MR. HAEG: What was that?

7 THE COURT: Do you want to break?

8 MR. HAEG: Just hang on one second here,
9 please.

10 I found it. Sorry about that. I got a
11 lot of papers.

12 Because my career and my family's welfare
13 depended on it, I started looking into what
14 Mr. Robinson had said and why he based everything
15 on subject-matter jurisdiction.

16 THE COURT: But he didn't.

17 MR. HAEG: That's what he told me, and it
18 was his appeal point. So I'm just --

19 THE COURT: Right, but I --

20 MR. HAEG: Okay.

21 THE COURT: -- know you state --

22 MR. HAEG: Can I --

23 THE COURT: Just --

24 MR. HAEG: -- can I put on my -- my
25 defense --

1 THE COURT: Yes, you can.

2 MR. HAEG: -- please, Your Honor.

3 THE COURT: But you can't make stuff up.
4 You didn't stand mute.

5 MR. HAEG: I'm getting beyond that.

6 THE COURT: Okay. All right. Good.

7 MR. HAEG: Okay. I started looking into
8 what Mr. Robinson recommended I stand mute. And
9 you're right, we didn't. But I wanted to check to
10 see if he was telling me the truth, that --
11 because I very nearly said, let's stand mute. It
12 was on a razor's edge. And so after, as
13 Mr. Dolifka said, things --

14 THE COURT: When did you --

15 MR. HAEG: -- are confusing --

16 THE COURT: -- decide not to stand mute?

17 MR. HAEG: I don't know, it was like the
18 day of trial or --

19 THE COURT: The day of trial?

20 MR. HAEG: Well, I mean, I don't -- it was
21 probably prior to that, but it was --

22 THE COURT: Well, that's --

23 MR. HAEG: -- right up to close to the day
24 of trial. Okay.

25 So I looked into subject-matter

1 jurisdiction, and I found that it is set by state
2 statute. And I'm looking at a Cornell Law School
3 definition of "subject-matter jurisdiction." And
4 it says --

5 THE COURT: What -- get to the -- cut to
6 the chase.

7 MR. HAEG: Okay.

8 THE COURT: What --

9 MR. HAEG: It says that --

10 THE COURT: -- is the point of this, that
11 you're trying to do? Because I --

12 MR. HAEG: The -- the --

13 THE COURT: Sounds to me like you're --

14 MR. HAEG: -- point of it is -- and it
15 would sure help if I could talk without being
16 interrupted.

17 THE COURT: All right. Go for it.

18 MR. HAEG: It says: In state court,
19 systems statutes that create different courts
20 generally set boundaries on their subject-matter
21 jurisdiction.

22 And so state statute sets subject-matter
23 jurisdiction. And Mr. Robinson said that if I
24 brought up other defenses, it could waive
25 subject-matter jurisdiction.

1 The definition in the Cornell Law School,
2 it says: While litigating parties may waive
3 personal jurisdiction, they cannot waive
4 subject-matter jurisdiction.

5 So right there, I knew Mr. Robinson was
6 telling me a falsehood. He told me that if we
7 brought up other defenses, it would waive
8 subject-matter jurisdiction. And here it says,
9 from the Cornell Law School, that it cannot be
10 waived. And so I believe my attorney was lying to
11 me.

12 I kept looking into this.

13 VOIR DIRE BY THE COURT:

14 Q. Have you ever been wrong?

15 A. Yes, many times.

16 Q. Were you lying when you were wrong?

17 A. Sometimes.

18 Q. Now?

19 A. Okay. So -- okay.

20 Q. I mean, is it possible someone can make a
21 mistake without --

22 A. It --

23 Q. -- lying?

24 A. -- it is possible, yes. I'll agree --

25 Q. And you --

1 A. -- to that.

2 Q. -- don't think it's possible that your
3 lawyer made a mistake? You insist on believing he
4 was lying?

5 A. Okay.

6 Q. Well, I'm asking you.

7 A. There's so much proof that he was lying,
8 it shocks me.

9 Can I go over why I feel that way?

10 Q. Well, I've been listening to a man who is
11 exhibiting an enormous quantity of moral outrage,
12 who thinks that he has been wronged.

13 And the one question I've always wanted to
14 ask you is, you lied when you described where you
15 got the wolves and prepared those documents to the
16 state.

17 Right?

18 A. Yep. Yes.

19 Q. Where's the moral outrage there?

20 A. The moral outrage is the state official
21 running the program told me to shoot the wolves
22 where we did, and then he told me to claim that
23 they were shot inside the area.

24 Q. And so you --

25 A. That's my moral outrage.

1 Q. But you lied; right?

2 A. Yes. But a state official that's running
3 the program says the whole future of this program
4 is at stake, and for it not to be shut down, they
5 have to kill wolves. And since there's no wolves
6 inside the area that's open, he says, go outside
7 the area and shoot wolves and claim they're taken
8 on the inside so that artificially it will look
9 like the program is successful.

10 Q. Why would you do that?

11 A. Because I believed the person telling me,
12 he -- he was the -- Ted Spraker, the guy running
13 the program, he was a senior state of Alaska
14 biologist, and he was running the wolf control
15 program. And he said, David, this program --

16 MR. PETERSON: Objection; hearsay.

17 A. -- is going to go down the tubes if you
18 don't make it work. And here's what you need to
19 do.

20 VOIR DIRE BY THE COURT:

21 Q. And you said to yourself, what a great
22 idea, I'll lie, jeopardize my career and family?

23 A. I did not. I trusted him that that was
24 the proper thing to do.

25 Q. Out of curiosity, did you raise this

1 defense at trial? That you were --

2 A. Mr. Ro- -- I was told --

3 Q. Did you?

4 A. -- I was told that it was an illegal
5 defense, and I did not raise it, because I was
6 told specifically it was an illegal defense.

7 DIRECT TESTIMONY CONTINUED

8 MR. HAEG: And why I'm so outraged, and
9 thank you for letting me get this out, the -- the
10 document that I put into the court record
11 explained exactly what I was told by the state.
12 And it's in the court record. It's like being
13 with the -- your clerk now. I can't go take -- I
14 can't go pull the court record out without her
15 watching me. You know, once it's in the court
16 record, it's kind of -- the word is "inviolable," I
17 think, or whatever.

18 And so my proof that the state told me
19 this was removed out of the court record after it
20 was admitted. And there's a cover letter that
21 proves it was in there. And I -- years after --
22 my wife found out it was missing. And I'll --
23 I'll -- I want this on the record.

24 When I brought it up, the court of
25 appeals -- I said, I want to reconstruct the

1 record, and here's the -- you know, this document.
2 The state never even opposed. And because the
3 cover letter says that it not only went to the
4 court, but because everything that goes to the
5 court has to be copied to the state prosecutor's
6 office, they obviously got a copy of my evidence.

7 So when I wanted to reconstruct the court
8 record, they didn't oppose. So that led me to
9 believe that they knew that that evidence was
10 originally in the court record and it had properly
11 been copied to them. They never asked for another
12 copy of the evidence.

13 And so what happened is, this happened --

14 THE COURT: Did you ultimately get --

15 MR. HAEG: -- with Brent Cole --

16 THE COURT: (Indiscernible).

17 MR. HAEG: -- and it never --

18 THE COURT: Did you get a copy of the
19 letter back?

20 MR. HAEG: Huh?

21 THE COURT: Did you get a copy of the
22 letter back?

23 MR. HAEG: No.

24 THE COURT: Well, did you ask --

25 MR. HAEG: We had one. We had one that we

1 submitted, but we never knew where it went. And
2 the problem --

3 THE COURT: Did you ask to --

4 MR. HAEG: -- Your Honor, is, is that
5 we --

6 THE COURT: Go ahead.

7 MR. HAEG: When I reconstructed the
8 record, the state -- we didn't get it done in time
9 for my original appeal, and then it got into
10 post-conviction relief. And this is where, when I
11 realized Judge Murphy was running around with
12 Trooper Gibbens, the -- the cover letter said that
13 it was received by the McGrath court and signed
14 for, M -- MM -- it's Margaret Murphy, M -- I don't
15 know what her middle initial is.

16 But then the -- the -- the evidence is
17 gone. And so when I filed the complaint of Judge
18 Murphy riding around with Trooper Gibbens, part of
19 that complaint that I put before the courts was, I
20 believe Judge Murphy went into the court record
21 and removed it out, becau- -- to favor Trooper
22 Gibbens and to eliminate my defense.

23 And that never really got liti- -- it just
24 kept -- you know, I would make these claims.
25 There should have been an evidentiary hearing.

1 There never was. And now we're, you know, 15 day-
2 -- years down the road.

3 But the significance of that is, there was
4 evidence in the court record, that is no longer
5 there, that the trial court never seen -- or did
6 see and took out so that it would, you know --
7 and -- and that goes right along with the false
8 map and my attorneys not telling me the truth.
9 All of a sudden, right or wrong, I believe that
10 everybody was against me, including my own
11 attorneys and the judge and everybody.

12 And then, like you heard testimony that
13 every -- nearly everybody here says that this
14 affidavit from Judge Murphy, this sworn affidavit,
15 is false.

16 To have evidence like that, Your Honor,
17 that a sitting judge has committed felony perjury
18 is disturbing, not just to me, but to all these
19 people that are here, that want -- these
20 courtrooms have to be -- they have to have
21 integrity.

22 And, I mean, you should agree with that,
23 if they don't --

24 THE COURT: I do.

25 MR. HAEG: -- have integrity, you don't

1 have anything.

2 THE COURT: I agree with you.

3 MR. HAEG: Okay. That's why I'm -- you
4 know, and your office -- the -- the troopers here,
5 whatever, I hope they listen to this. Because if
6 you lose -- if the public loses faith in these
7 courtrooms and courthouses and judges, we begin to
8 act irrationally and wrongly.

9 And, you know, the last time I was -- not
10 this last time, but, you know, a while back, I was
11 tased in a courtroom solely for saying this map
12 was falsified at trial and this -- or before
13 trial, and there's evidence that the prosecutor
14 and trooper knew this map was false; and they,
15 knowing that it was false, used it against me.

16 And when I tried to bring that out,
17 instead of somebody stepping back and saying,
18 Mr. Haeg, hey, we'll give you an opportunity, they
19 come at me with tasers and tase me. And because
20 of that, I didn't get that opportunity. I'm glad
21 I got it again. But what if I'd had a heart
22 attack when I was tased, and I died? That would
23 never have come in. And all this evidence that
24 Judge Murphy is lying about what happened would
25 never have come out.

1 And, you know -- and I know I'm kind of
2 going off the rails here somewhat with what you
3 want me to do. But I -- it is so important, Your
4 Honor, it is so important that Marla Greenstein,
5 something be done. Everybody tells me -- this is
6 a common refrain, and I'm sure it's yours -- what
7 Marla Greenstein did years after your conviction
8 has no bearing on your conviction.

9 Would you agree with that, Your Honor?

10 THE COURT: Correct.

11 MR. HAEG: Okay. Every single person
12 here, if I ask them whether or not they would
13 decide I got a fair trial or not, whether or not
14 Marla Greenstein, whatever it was, eight years
15 after my trial, falsified an investigation to
16 cover up what my trial judge did, I will guarantee
17 you, every one of those person would raise their
18 hand and say, that would help me decide that you
19 didn't get a fair trial. So their opinion, the
20 public's and mine, differs from yours.

21 Because the question is this. If
22 something didn't go wrong at my trial, why did
23 Marla Greenstein cover up what happened at my
24 trial?

25 THE COURT: You have anything else you

1 want to say?

2 MR. HAEG: Yes, I do.

3 THE COURT: Then this is your opportunity.

4 MR. HAEG: Okay. I looked into
5 subject-matter jurisdiction. I found out it's set
6 by state statute. I looked up to see if Alaska
7 has such a statute. I found A.S. 22.15.060,
8 criminal jurisdiction.

9 (Whereupon a portion of A.S. 22.15.060 was
10 read as follows:)

11 It says: The district court has
12 jurisdiction of the following crimes, a
13 misdemeanor.

14 (Whereupon the reading of a portion of
15 A.S. 22.15.060 was concluded)

16 In other words, when I was charged in
17 district court with a misdemeanor, the court had
18 subject-matter jurisdiction. And it makes zero
19 difference, zero, what Mr. Leaders does in either
20 swearing to or not swearing to a charging
21 information. That is fact.

22 So when Mr. Robinson said there was some
23 defect, that is a -- that is false. Okay.
24 I'll -- I won't say it's a lie. I'll just say
25 that that was false information.

1 And for him to tell me to put all my eggs
2 in one basket on this, when it's now false, and he
3 was touted as one of Alaska's top criminal defense
4 attorneys, just like with what happens with Marla
5 Greenstein, all of our hackles stick up.

6 Because my family and I, Your Honor, hired
7 the best. We didn't hire the bottom of the
8 barrel. We went to the top of the barrel. And
9 now my top of the barrel is telling me to rely on
10 a defense that, beyond a shadow of a doubt, was
11 invalid. And he has testified under oath that it
12 was valid. And I know and these people can go
13 right on Google, Cornell Law School, and verify
14 that.

15 Mr. Robinson has testified that when I
16 asked him what case law supported his belief that
17 the subject-matter jurisdiction was valid, he gave
18 me two cases, U.S. Supreme Court cases. One of
19 them was Albrecht versus United States, 19- -- in
20 1927. The other one that he gave me was Gerstein
21 versus Pugh, decided in 1975. Mr. Robinson told
22 me that the prosecutor not swearing to the
23 charging information deprived the court of
24 subject-matter jurisdiction, and that these cases
25 prove that.

1 And remember, Your Honor, this is very
2 important and you should take a note on this, if
3 you have a pencil, or have the clerk do so, is I
4 was never arrested. Brent Cole said, it's time to
5 go into court. And so under my own power, I went
6 into court.

7 And so I started looking through Albart
8 [sic] versus United States.

9 (Whereupon a portion of Albrecht versus
10 United States was read as follows:)

11 Down a ways, it says: As the affidavits
12 on which the warrant issued had not been properly
13 verified, the arrest was in violation of the
14 clause in the Fourth Amendment, which declares no
15 warrants shall issue, but upon probable cause,
16 supported by oath or affirmation.

17 But then it says: But it does not follow
18 that, because the arrest was illegal, the
19 information was or became void.

20 (Interjecting) In other words,
21 Mr. Robinson's case law that he gave me proved the
22 exact opposite of what he told me they proved.
23 Again, the hackles go up on the back of my neck.
24 Again, I'm like, what is going on with a top
25 criminal defense in this -- this state, telling

1 me -- again, that's a mistake; right? In your
2 book, that's a mistake. Well, maybe it was a
3 mistake that he said, you know, it couldn't be
4 wai- -- or it could be waived, when, in fact, it
5 can't. That might be a mistake. But now he's
6 made two massive mistakes.

7 So then I keep looking through. (End of
8 interjection)

9 And it says here, a little further down in
10 Albright [sic], it says: The invalid -- in- --
11 invalidity of the warrant is not comparable to the
12 invalidity of the indictment. A person may not be
13 con- -- punished for a crime without a formal and
14 sufficient accusation, even if he voluntarily
15 submits to the jurisdiction of the court.

16 But a false arrest does not necessarily
17 deprive the court of jurisdiction of the
18 proceeding in which it was made. Where there was
19 an appropriate accusation, either by indictment or
20 information --

21 (Interjecting) And remember, I was
22 charged by information. (End of interjection)

23 -- a court may acquire jurisdiction over
24 the person of the defendant by his voluntary
25 appearance.

1 (Interjecting) And remember, I
2 voluntarily appeared. And the -- the distinction
3 is, I just want to make this clear for everybody,
4 these cases concern personal jurisdiction. The
5 court has to have two kinds of jurisdiction, and I
6 believe you know that, subject matter and
7 personal. They have to have the -- like here in
8 this court, you know, in a -- basically, in a
9 district court, in my district court, if I'd have
10 been charged with a felony, they would have had --
11 not had subject-matter jurisdiction, because the
12 statute says they're limited to misdemeanors.

13 Personal jurisdiction is what both these
14 cases are about, and it proves that what
15 Mr. Robinson told me was a lie. (End of
16 interjection)

17 And, in fact, it says right here: Here,
18 the court had jurisdiction of the subject matter,
19 and the persons named as defendants were within
20 the territorial jurisdiction.

21 (Whereupon the reading of a portion of
22 Albrecht versus United states was concluded)

23 In other words, they're saying that the
24 subject matter isn't -- isn't what's being
25 addressed in this case. It is the personal

1 jurisdiction, the ability to arrest somebody.

2 I'm going to go over Gerstein versus Pugh.

3 (Whereupon a portion of Gerstein versus
4 Pugh was read as follows:)

5 It says right here: The sole issue in
6 this case is whether there is probable cause for
7 detaining the arrested person pending further
8 proceedings.

9 (Interjecting) I was never arrested. How
10 can Mr. Robinson, who I've paid many tens of
11 thousands of dollars to, say that this supports
12 the -- his notion that the court didn't have
13 subject-matter jurisdiction, when it is solely
14 about the issue of whether there's probable cause
15 for detaining an arrested person pending further
16 proceedings?

17 And remember, again, I was never arrested.
18 So why is he saying this proves my defense, when
19 it's all about being arrested, and it -- they --
20 it specifically says, if you're not arrested, this
21 doesn't apply anyway?

22 So then I look through it a little more.
23 I go -- (End of interjection)

24 In holding that the prosecutor's
25 assessment of probable cause is not sufficient

1 alone to justify restraint of liberty pending
2 trial --

3 (Interjecting) And I was never
4 restrained. (End of interjection)

5 It says: -- we do not imply that the
6 accused is entitled to judicial oversight or the
7 review of the decision to prosecute.

8 (Whereupon the reading of a portion of
9 Gerstein versus Pugh was concluded)

10 In other words, the prosecutor can write
11 up a -- an information, sign it, and it is
12 completely valid for a -- for a charging document.
13 He doesn't have to provide anything with it.
14 That's one of the -- the issues I have, is that
15 maybe Mr. Robinson made a mistake in the first
16 instance, when he told me those cases prove that
17 the court didn't have jurisdiction over me. They
18 prove the exact opposite, and it's clear for
19 anybody.

20 Something else. I believe we proved in
21 this case that my statement and the charging
22 information bear this out, and I would like to
23 have Your Honor actually ask the state's
24 attorney --

25 THE COURT: Keep speaking.

1 MR. HAEG: Huh?

2 THE COURT: Keep talking.

3 MR. HAEG: Okay.

4 -- is, if my statement made during plea
5 negotiations was ever taken out of the charging
6 information. In other words, the charging
7 information that forced me to the trial, did it
8 still include my statement made during plea
9 negotiations? It did, Your Honor.

10 And Chuck Robinson protested it to Scot
11 Leaders. Certified that it -- it got to Scot
12 Leaders -- actually, I told -- it came out that
13 it -- came out in two ways. It actually went to
14 Mr. Leaders in three ways.

15 Mr. Robinson's staff certified that they
16 hand-delivered it, couriered it over to
17 Mr. Leader's office, that they faxed it to his
18 office.

19 But then they found out Mr. Leaders was
20 attending a district attorney conference at the
21 Alyeska ski resort. And they wrote a letter
22 there -- or a fax document and faxed it to there.
23 And in the faxed document, it says, here's Dave
24 Haeg's affidavit protesting your use of his
25 statement in a charging information sending him to

1 trial. And they -- on the cover letter, it says,
2 you know, Alyeska see -- ski resort staff, give
3 this to District Attorney Leaders ASAP.

4 So when Mr. Leaders -- when I filed a bar
5 complaint, in a certified document, when he said,
6 I never used Mr. Haeg's statement in the charging
7 informations, we know that's true. The charging
8 informations prove it. I mean, it's just -- it
9 says, Dave Haeg came in, said, this, this, and
10 this; and this is why we're charging him with
11 this, this, and this. I mean, it's all over in
12 it. Your Honor should look at that.

13 Not only that is -- Mr. Leaders then says
14 in the certified document, the proof, the proof
15 that I did not use Mr. Haeg's statement, the proof
16 is nobody complained about it.

17 This certified document, Your Honor, was
18 made after, after prosec- -- or Robinson's staff
19 certified informing Scot Leaders in three
20 different ways.

21 I believe that means that Prosecutor
22 Leaders, to cover up, he gave me an illegal trial
23 based on an information that wasn't worth the
24 paper it's written on, because it violated my
25 right against self-incrimination, plain and

1 simple, including Evidence Rule 410, that -- to
2 keep me convicted, he was willing to falsify a
3 certified document, which I believe is perjury.
4 He was willing to commit a felony to cover up that
5 I had a unconstitutional trial.

6 I want to read Evidence Rule 410, which is
7 what Scot Leaders -- or what Arthur Robinson
8 protested was violated by Scot Leaders' use of my
9 plea agreement statements to charge me with crimes
10 to force me to a jury trial.

11 Remember, if Your Honor remembers, I never
12 pled out. I had a jury trial. Do we all agree on
13 that? Okay. Okay. So here we go.

14 (Whereupon a portion of Evidence Rule 410
15 was read as follows:)

16 Evidence Rule 410. Inadmissibility of
17 Plea Discussions in Other Proceedings. Statements
18 or agreements made in connection with any of the
19 foregoing pleas or offers is not admissible in any
20 civil or criminal action, case, or proceeding
21 against the accused person who made the plea offer
22 if --

23 (Interjecting) This has to be one
24 condition. (End of interjection)

25 -- a plea discussion did not result in a

1 plea of guilty.

2 (Whereupon the reading of a portion of
3 Evidence Rule 410 was concluded)

4 I never pled out. How can my statement be
5 used against me to force me to trial?

6 Then, even worse, we've -- we've seen a
7 lot of people testify about this map. Well, it is
8 proven beyond any doubt whatsoever that I put
9 these marks on this map. The state itself
10 recorded me putting them on during my plea
11 negotiations statement. They then show this map
12 to Mr. Zellers, and they say, Dave Haeg, put these
13 marks on there; can you confirm them and write,
14 you know, some numbers down? So he does so.

15 Then at trial, at trial -- if I can find
16 my trial book.

17 I'm sorry I'm kind of disorganized.

18 At trial, Mr. Scot Leaders -- and this is
19 the official transcripts from my trial, on
20 page 281.

21 (Whereupon a portion of page 281 of trial
22 transcripts was read as follows:)

23 Mr. Leaders says: This is a map Trooper
24 Gibbens has said --

25 Then he says: You are the one that did

1 this; right -- or one that, right, did this?

2 Trooper Gibbens responds: Yes.

3 Mr. Leaders says: And he did, trying to
4 fairly, fairly depict the boundaries of the permit
5 area. And then it was used in an interview, one
6 with Mr. Haeg.

7 (Whereupon the reading of a portion of
8 page 281 was concluded)

9 So they're talking about this. And we
10 have yet to identify that they -- actually, this
11 is 25, which is not admissible, be- -- because it
12 was based on plea negotiations. And also with
13 Mr. Zellers regarding where the wolves were taken.

14 And remember, we have a recording -- or a
15 transcription and a recording of Mr. Zellers and
16 the prosecutor and trooper talking about how I put
17 the locations on this map and how Tony Zellers
18 confirmed them. So now they're talking about this
19 map that was used in my plea negotiation
20 statement.

21 And we go down page 28 -- or 281. You
22 just kind of zip, they're -- keep talking about
23 different stuff, but they still -- kind of talking
24 about this map.

25 (Whereupon a portion of page 286 of trial

1 transcripts was read as follows:)

2 And then they say on 286, they said --
3 Mr. Leaders says: Okay. I can mark it as an
4 exhibit. That way, well, then we'll have a -- a
5 stipulation, I think, on that Exhibit 25.

6 (Whereupon the reading of a portion of
7 page 286 was concluded)

8 And if you look at this, it says right
9 here, plain as day: Prosecution Exhibit 25
10 admitted. In other words, there's zero doubt that
11 not only was my statement used incorrectly,
12 illegally, unconstitutionally, to force me to
13 trial, at my very trial they gave my jury my
14 statement, in violation of my right against
15 self-incrimination.

16 And what's even worse is, not only was
17 this map wrong with that, Scot Leaders, Trooper
18 Gibbens and Tony Zellers, before trial, are
19 talking about how the game management unit
20 boundary had been falsified to prove I was killing
21 the wolves inside my guide area to benefit my
22 guide business.

23 And I'll tell everyone here, including all
24 these people, the whole -- the state's whole case
25 against me to my jury was, Mr. Haeg is killing the

1 wolves in his guide area to benefit his guide
2 business. Let's lay the hammer to him.

3 Everyone there knew this was a lie.

4 Not only that, Trooper Gibbens got up on
5 the stand, put his right hand in the air, and he
6 swore under oath those wolves were killed in my
7 guide area, 19C.

8 Yet there's a recording, prior to trial,
9 of him talking -- and -- and remember, Scot
10 Leaders, the prosecutor, accepted this. So not
11 only did Trooper Gibbens know he was committing
12 perjury, and that's the word it is, perjury,
13 Prosecutor Leaders was what's -- doing what's
14 called suborning perjury. He was letting it
15 happen while knowing it's perjury. So Mr. Leaders
16 is also guilty of a felony there. They were
17 guilty of two felonies when they falsified the
18 map. Now they're guilty of two more.

19 Let me think for just a minute here.

20 Oh, something else that is interesting, is
21 that later on down the line here, Trooper Gibbens
22 says it's he that put the wolf-kill locations on
23 this map, when there's a recording of him telling
24 me to: Mr. Haeg, can you take a pen and in ink
25 place the wolf-kill locations on here?

1 Now because they know that using my
2 statement would mean I had an illegal trial, he's
3 willing to lie again under oath in my trial that
4 he put them on there. So now we're up to -- how
5 many felonies is that now? I'm starting to lose
6 count. Five, six, seven?

7 I'll try to find the -- the page where
8 Trooper Gibbens says that. Ah, right here,
9 page 333.

10 (Whereupon a portion of page 333 of trial
11 transcripts was read as follows:)

12 Mr. Leader-- -- or Mr. Robinson says: This
13 is --

14 Mr. Leaders says: Exhibit 25.

15 Mr. Robinson: Exhibit 25.

16 The Court: This is Exhibit 25.

17 (Interjecting) Let me check again here.
18 Yep, Exhibit 25. (End of interjection)

19 Officer, first of all, I'm going to show
20 you what's marked as Exhibit 25, and I want to see
21 if you recognize that.

22 Answer from Gibbens: Yes, I do.

23 Question: And what is that?

24 Answer: That's an aircraft sectional for
25 the McGrath area.

1 (Interjecting) And guess what this is?
2 It's an aircraft sectional. It says right here:
3 McGrath sectional aeronautical chart. (End of
4 interjection)

5 And then Mr. Gibbens says: Marked with
6 marks and a legend placed on it by myself.

7 (Whereupon the reading of a portion of
8 page 333 was concluded)

9 Well, there's a recording that Mr. Gibbens
10 made himself, of him telling me to put the marks
11 on this map.

12 And I'll try to hold myself down. I'll be
13 calm. But I am so angry. Fifteen years of my
14 life went down the tubes. I was the youngest
15 master guide in this state, professional pilot.
16 And the State of Alaska asked for my help. And I
17 was honored, Your Honor, I was honored that they
18 asked me for my help. And I went out, and I did a
19 job for them. And I did exactly what they asked.
20 And then they ripped me and my family apart from
21 one end to the other, and they used my attorneys
22 as double agents to do it.

23 And when a grand jury looks into this, and
24 a grand jury there will be, because these people
25 are going to make sure there's a grand jury

1 investigation into this -- because our court
2 system, the integrity is compromised, period.
3 Marla Greenstein, who falsified my complaint of
4 Judge Murphy and then lied in a certified document
5 to cover up what she did, she has been the sole
6 investigator of judges in this state for the past
7 30 years. One judge investigator for the past
8 30 years.

9 I want everybody to think about that. For
10 30 years. I talked to Ms. Greenstein. She
11 gets -- I don't know, it's like 15 or 20
12 complaints against judges a month. You multiply
13 that by 12 months, and then you multiply that by
14 30 years. And the harm that that single person
15 could have done to Alaska's judicial system is
16 incomprehensible.

17 And as much as I would like to say, hey,
18 Your Honor, overturn my conviction, let me go, the
19 real issue here is the integrity of Alaska's
20 judicial system. My attorney that I hired, lying
21 to me about basic things. He was running me down
22 a rathole so I would never start looking into
23 this. Marla Greenstein covered up what Judge
24 Murphy did.

25 And because of that, the word's starting

1 to spread and our judicial system in Alaska is
2 losing credibility and -- and faith from the
3 people. And if we let that happen, Your Honor, we
4 don't have hardly anything. I mean, I hope you
5 agree with that.

6 If -- if we, the people, lose faith in you
7 people, what -- in reality, what do we have? We
8 have anarchy. When we come in here, we need to
9 believe that you're going to do the right thing
10 and you're going to follow these rules that are
11 there for a reason. It's because people fought
12 and died for them.

13 And you have the power to put me in jail,
14 to tase me, to take away my airplane and my
15 career. And if you're doing it illegally and by
16 trumping up charges and trying to cover it up, you
17 are going to have a rebellion that no one can
18 stop. And if you doubt that, you wait another
19 couple years, if no one does anything, and there
20 will be hell to pay.

21 I found something online that I'm going to
22 read. Because when I read it, I knew -- I know
23 exactly what we're dealing with here in the State
24 of Alaska. And I want everybody to think about
25 these errors that I brought up, how one of the

1 best attorneys in the state could make such a
2 unbelievable error, tell me that the holy grail of
3 my defense is something that is no good,
4 100 percent, how the prosecutor and troopers could
5 get away with falsifying a map and not be found
6 out.

7 And by the way, I don't know if I went
8 over this. Arthur Robinson filed a written
9 discovery request for this map and the recording
10 of them talking about falsifying it. Does anyone
11 here actually believe that was a mistake by
12 Mr. Leaders to not provide this map and that
13 recording prior to trial? Because those two
14 things together would prove they had committed
15 felony tampering with evidence and that they were
16 going to commit perjury and subornation of
17 perjury.

18 Does anybody here think that that
19 prosecutor, Scot Leaders, the sole thing on his
20 mind is, we can't give this to Mr. Robinson or
21 Mr. Haeg, or they'll find out what we're doing?

22 Right here. This is the independent
23 Mollen Commission report on corruption. It was in
24 New York City. It was -- this report was made on
25 7/7 of '94.

1 (Whereupon a portion of the Mollen
2 Commission report was read as follows:)

3 It says: What we found is that the
4 problem of police corruption extends far beyond
5 the corrupt cop.

6 It is a multifaceted problem that has
7 flourished because of a culture that exal- --
8 exalts loyalty over integrity; because of the
9 silence of honest officers who fear the
10 consequences of, quote/unquote, ratting out
11 another cop, no matter how grave the crime;
12 because of willfully blind supervisors who fear
13 the consequences of a corruption scandal more than
14 the corruption itself; because of the demise of
15 the principle of accountability that makes all
16 commanders responsible for fighting corruption.

17 All these factors contributed to the state
18 of corruption we uncovered. To cover up their
19 corruption, officers created even more: They
20 falsified official reports and perjured themselves
21 to conceal their misdeeds.

22 (Interjecting) I want everybody right now
23 to stop and think of this. What did Scot Leaders
24 and Marla Greenstein do when I filed bar
25 complaints about them? They falsified official

1 documents and perjured themselves to cover up what
2 happened to me.

3 This report confirms that this is what
4 happens in a -- what's called systemic corruption
5 society. It means that many people are -- are in
6 on it and covering up for the others. (End of
7 interjection)

8 It says: Thus, police corruption has
9 become more serious and threatening than ever
10 before. In the face of this problem, the
11 department allowed its systems for fighting
12 corruption virtually to collapse. It had become
13 more concerned about the bad publicity that
14 corruption disclosures generate than the
15 devastating consequences of corruption itself.

16 As a result, its corruption controls
17 minimized, ignored, and at times concealed
18 corruption rather than rooting it out.

19 (Interjecting) I want everybody here to
20 remember Marla Greenstein, who stated that she
21 contacted all five witnesses, that I gave her, to
22 the corruption of a sitting judge. And Marla said
23 she contacted all five of them.

24 She was covering it up rather than rooting
25 it out. She should have went right to Judge

1 Murphy and said, Judge Murphy, you were riding
2 around with a main witness in a case you're
3 presiding over. We are going to have to remove
4 you as a judge. That didn't happen.

5 Instead, instead, Marla covers up, says,
6 oh, the witnesses didn't see anything. Then what
7 does Judge Murphy do? Rather than admit it
8 happened, what does she do? She files a sworn
9 affidavit that the rides never took place.

10 Now, Your Honor, now not only do we have
11 lawyers and -- and prosecutors and troopers
12 committing perjury, we have a sitting judge
13 committing perjury. I will see Judge Murphy stand
14 trial or investigated, or I'll die trying. I will
15 see Marla Greenstein investigated and stand trial,
16 or die trying.

17 Because before this happened, I had no
18 idea what our Constitution meant. But now I
19 understand totally what it means. It is our
20 protection from you, you, you, and you and you.
21 It is our only protection against you guys banding
22 you together and coming and arresting me and
23 taking my airplane. And how did they do it? By
24 lying and cheating and stealing. And, in essence,
25 they stole my airplane, they stole my livelihood,

1 they stole my life.

2 Okay. Going to go on here. (End of
3 interjection)

4 Such institutional reluctance to uncover
5 corruption is not surprising. No institution
6 wants its reputation tainted, especially a
7 department that needs the public's confidence and
8 partnership to be effective.

9 (Interjecting) That's exactly what this
10 court system is losing. They're losing the
11 public's confidence in it. And I pointed out why.
12 (End of interjection)

13 Since no entity outside the department was
14 responsible for reviewing the department's success
15 in policing itself, years of self-protection
16 come- -- continued unabated until this commission
17 commenced its independent inquiries.

18 (Whereupon the reading of a portion of the
19 Mollen Commission report was concluded)

20 I want to stop here. I found out in this
21 state, in this state, that we do have an
22 independent -- an entity outside the department.
23 That entity in this state, Your Honor is called
24 the grand jury. A grand juror in Kenai tried to
25 litigate -- tried to look into this evidence, this

1 very exact evidence, as a entity outside the
2 department, to look into this stuff.

3 Scot Leaders, the person who falsified
4 this map and then falsified a certified document,
5 to cover up what he had done, he is the very
6 person that ordered the grand jury to not
7 investigate.

8 You talk about scary, that when our
9 independent entity, the grand jury, wanted to look
10 into the stuff I went presented, that grand jury
11 was shut down in the face of a statute that says
12 this.

13 (Whereupon a portion of A.S. 12.40.040 was
14 read as follows:)

15 If an individual grand juror knows or has
16 reason to believe that a crime has been committed
17 that is triable by the court, that juror shall
18 inform the other grand jurors, who shall
19 investigate.

20 (Whereupon the reading of a portion of
21 A.S. 12.40.040 was read concluded)

22 This was a crime by a district attorney
23 and a trooper. We also have proof that a sitting
24 judge committed perjury. That grand juror was
25 ordered not to present his evidence and reasons to

1 believe to the other grand jurors. There's a
2 Alaska statute that says he is obligated to do
3 that.

4 But no, the very person they were going to
5 investigate, Scot Leaders, runs into the grand
6 jury room and drags the grand juror out of the
7 grand jury room, into a locked courtroom, where
8 the public was not allowed to witness, and a
9 sitting judge ordered him not to present his
10 evidence to the other grand jurors. You talk
11 about a problem.

12 I'll continue.

13 (Whereupon a portion of the Mollen
14 Commission report was read as follows:)

15 This abandonment of effective
16 anticorruption efforts did more than avoid public
17 exposure of corruption, it fueled it. It sent a
18 message through the department that integrity was
19 not a high priority and that the department bosses
20 did not really want to know about the corruption.
21 In short, it gave everyone in the department an
22 excuse for doing what was easiest: Shutting their
23 eyes to the corruption around them.

24 (Interjecting) That's what's been
25 happening in my case, wave after wave. That's why

1 Mr. Dolifka is sitting there, not even knowing how
2 to testify, because it is so extensive, the
3 corruption. He doesn't even know where to begin.

4 We did go to the FBI. And Mr. Dolifka was
5 actually called to the FBI a second day to testify
6 about all the other cases in which he knew there
7 was corruption. It's a serious problem when the
8 FBI calls you back for another day to testify
9 about all the other cases. (End of interjection)

10 And -- and that is precisely what
11 happened. The principle of command
12 accountability, which holds commanders responsible
13 for fighting corruption, completely collapsed.
14 Supervisors and commanding officers were largely
15 complacent about maintaining integrity. Few were
16 concerned with corruption on their watch, unless
17 it exploded into an embarrassing corruption
18 scandal.

19 (Whereupon the reading of a portion of the
20 Mollen Commission report was concluded)

21 And I predict -- I'm going to ask every
22 one of these people, that after this hearing's
23 done, we're going to walk right over to governor
24 -- the governor's office. And I'm going to hand
25 him this petition here -- actually, I don't know

1 if I have it with me. Yep, this is it here.

2 There's about 500 signatures here, Your
3 Honor. And you know what? We would have at least
4 10 times this. But you know what the people
5 manning the booth at the Alaska State Fair said?
6 They said the single most common thing they hear
7 is, if we sign this petition asking for a grand
8 jury investigation of the troopers and Your Honor
9 and the prosecutors, they'll come after us.
10 They'll have our name. They'll have our address.
11 They'll have our phone number.

12 Now, when you have the public, Your Honor,
13 refusing to -- you know, refusing to ask to
14 investigate Your Honor, because they're afraid of
15 retaliation, do we live in a free country or do we
16 live in a police state?

17 Can you answer that?

18 THE COURT: Can you wrap up, please.

19 MR. HAEG: One -- where is it? There's
20 one item that I want to -- right here. There's
21 actually two more.

22 One is, long time after my conviction, we
23 got another tape recording. The -- the tape from
24 the state is hashtag 4MC-304-24. And it was a
25 tape recording of Trooper Gibbens and one of the

1 witnesses on the witness list in my trial. And it
2 captures Troop- -- Trooper Gibbens talking to him.
3 Trooper Gibbens states --

4 MR. PETERSON: Objection; hearsay.

5 THE COURT: What -- I'm sorry, what is
6 this?

7 MR. HAEG: It's a tape that the state
8 provided us, of Trooper Gibbens interviewing a
9 witness.

10 THE COURT: Prior to trial?

11 MR. HAEG: I believe -- yes, I believe so.
12 Can I read it?

13 THE COURT: Why?

14 MR. HAEG: Huh?

15 THE COURT: Go ahead and read it.

16 MR. HAEG: Okay.

17 (Whereupon a portion of a transcription
18 was read as follows:)

19 Trooper Gibbens states: What are your
20 concerns with regards to people who are issued
21 predator control permits to participate in this
22 wolf control prog- -- pro- -- project and they
23 kill wolves outside the wolf control area? What
24 are your thoughts about that and what might --
25 what effects it could have on the project?

1 And Mr. Egrass (PH) replies: I was told
2 by, you know, yourself, Officer Gibbens, the
3 sensitivity, you know, of -- you know, this goes
4 all the way up to the governor. The governor's
5 putting himself on the line, politically.

6 And then Trooper Gibbens: Yeah. I would
7 hate to see any ammunition given to the animal
8 rights groups that could potentially be used in
9 the fight to get these programs shut down.

10 (Whereupon the reading of a portion of a
11 transcription was concluded)

12 And so I believe the motive behind the
13 state to do all this to me was to cover up that a
14 state official told me to shoot wolves outside of
15 the open area and claim they were killed on the
16 inside. And I had to do that to artificially show
17 that it was effective. The program was -- the
18 animal rights activists were trying to shut the
19 program down as ineffective. And so what the
20 state wanted to do is make it seem effective, by
21 killing wolves elsewhere, but claiming they were
22 in the program. And that was -- and --

23 VOIR DIRE BY THE COURT:

24 Q. And you went along with that?

25 A. Yes. They told me what they wanted, and I

1 did what I was asked.

2 Q. And what does that suggest to you?

3 A. What was that? I missed that.

4 Q. What does that suggest to you about your
5 integrity?

6 A. Because they said, we need this program to
7 be successful so that ungulates -- and ungulates
8 are moose and caribou --

9 Q. I know what they are.

10 A. -- levels can be high enough to provide
11 for the nutritional needs of remote villages, you
12 need to do this. And so my integrity was, is I
13 was --

14 Q. To lie.

15 A. -- doing this so that people who needed
16 the meat would have it.

17 Q. All right. But you lied in order to gain
18 that goal; correct?

19 A. Correct. Yeah.

20 Q. And now you're upset that other people are
21 lying to obtain other goals?

22 A. I had a valid belief that what I was told
23 by the state was right to do.

24 Q. And you think that --

25 A. And --

1 Q. -- that gave you permission to lie?

2 A. I was told to lie, by the state.

3 Q. And you went --

4 A. And when the --

5 Q. -- along with that.

6 A. -- state tells you to --

7 Q. You could have --

8 A. -- do it --

9 Q. -- said, no thank you. You could have
10 said no; I'm an honest man; I will not lie. But
11 you said no --

12 A. Okay. You're right.

13 Q. -- I will lie.

14 A. Guilty as charged, Your Honor.

15 DIRECT TESTIMONY CONTINUED

16 MR. HAEG: I want Scot Leaders to come up
17 and say, guilty as charged on a felony of
18 tampering with evidence to --

19 THE COURT: Wrap up --

20 MR. HAEG: -- frame me --

21 THE COURT: Wrap up.

22 MR. HAEG: -- for -- okay.

23 One other thing is, the -- the state told
24 me long time ago, 6 -- 6-5-12. They said: The
25 state has also identified one of the witnesses --

1 MR. PETERSON: Who?

2 MR. HAEG: -- not previously --

3 MR. PETERSON: Who's "the state"?

4 MR. HAEG: -- identified.

5 THE COURT: What is this?

6 MR. PETERSON: Who?

7 MR. HAEG: Huh?

8 MR. PETERSON: Who?

9 THE COURT: What is this?

10 MR. HAEG: It was a state --

11 MR. PETERSON: All -- every person --

12 MR. HAEG: -- attorney.

13 MR. PETERSON: -- in the State of Alaska?

14 MR. HAEG: Respondent state of Alaska --

15 THE COURT: (Indiscernible).

16 MR. HAEG: -- by and through its

17 counsel --

18 THE COURT: What -- slow down.

19 MR. HAEG: -- Assistant Attorney General

20 Andrew Peterson.

21 THE COURT: Mr. Haeg, slow down.

22 Mr. Peterson, I'm not sure that you get to
23 ask him questions in this context. All right?

24 Mr. Haeg, could you explain to me what it
25 is you're talking about? What is this document?

1 MR. HAEG: It is a -- I had asked for a
2 discovery request of what the state was going
3 to -- what witnesses and evidence --

4 THE COURT: I understand discovery.

5 MR. HAEG: -- they were going to put on.
6 What is it that you've got in your hand?

7 MR. HAEG: It is a trans- -- it is a copy
8 of the state's filing, is a copy of their response
9 to my 6/5/12 interrogatory discovery request.

10 THE COURT: Okay. Thank you.

11 MR. HAEG: Okay.

12 (Whereupon a portion of a response to June
13 5, 2012, interrogatory discovery request was read
14 as follows:)

15 And so in it, the state says: The state
16 has also identified one new witness not previously
17 identified prior to trial, that the state intends
18 to call if an evidentiary hearing is conducted in
19 this matter -- matter.

20 (Interjecting) And I think this is an
21 evidentiary hearing conducted in this matter.

22 (End of interjection)

23 The witness's name is Bobby Fithian.
24 Mr. Fithian is currently writing a letter to the
25 state, outlining the testimony he will give if

1 called in an evidentiary hearing. The state
2 anticipates that Mr. Fithian will testify that he
3 spoke with Haeg prior to Haeg taking wolves
4 outside the predator control area and warned Haeg
5 that he should not fly outside the area to kill
6 wolves, but that it was Haeg's intent to kill
7 wolves outside the control boundary.

8 (Whereupon a portion of a response to
9 interrogatory discovery request was concluded)

10 Well, after I got this from the state, I
11 got on the phone with Mr. Fithian, and I
12 tape-recorded the call. Mr. -- and I says,
13 Mr. Fithian, the state has falsified direct
14 evidence and -- and testimony, to convict me of
15 killing wolves in my guide area. And I asked him,
16 why would you be willing to lie under oath during
17 this evidentiary hearing? And I assume that was
18 -- I -- I was looking for Mr. Fithian here,
19 because they said they were going to bring him in
20 here.

21 Mr. Fithian said, I am willing to lie
22 under oath, because the state put too much time
23 and effort into the wolf control program to see
24 your case end it.

25 MR. PETERSON: Objection; hearsay.

1 MR. HAEG: Well, that's exactly what you
2 guys did here --

3 THE COURT: Mr. Haeg.

4 MR. HAEG: -- isn't it? -- where you
5 say Mr. Fithian --

6 THE COURT: So, Mr. Haeg, wrap up.

7 MR. HAEG: Okay. Anyway --

8 THE COURT: Your -- in fact, your time is
9 up.

10 MR. HAEG: -- I -- okay.

11 THE COURT: Just sit down for a second.
12 Let's talk about where we go from here. Okay?

13 Do you want some opportunity to
14 cross-examine Mr. Haeg?

15 MR. PETERSON: I could use a couple of
16 minutes.

17 THE COURT: Okay. So let's assume that we
18 do that. Do you want any -- do either of you want
19 some opportunity to file additional briefing based
20 on what the -- you know, based on the two days of
21 testimony?

22 MR. HAEG: Can I have --

23 MR. PETERSON: No.

24 MR. HAEG: -- some time to think about it?
25 My brain's been spinning for the last couple days.

1 THE COURT: Okay. How much time do --

2 MR. HAEG: And a -- well --

3 THE COURT: How much time --

4 MR. HAEG: -- and I would want an
5 opportunity, the tape recordings that you --

6 THE COURT: How much time do you need, to
7 make a decision about what you want to do?

8 MR. HAEG: I would say -- is -- I don't
9 know, is a week appropriate? Or less than that?

10 THE COURT: You tell me how much time it
11 will take you to unwind so that --

12 MR. HAEG: Okay.

13 THE COURT: -- you can make a rational --

14 MR. HAEG: How about a week?

15 THE COURT: -- decision.

16 MR. HAEG: If -- a week.

17 THE COURT: What's today? So today's the
18 29th; a week from now is February 5. So by
19 February 5, each of you tell me what you want to
20 do, if anything, regarding further submissions.
21 I'm not talking about new evidence. I'm talking
22 about dealing with the evidence that's -- that has
23 been developed in the last two days.

24 Okay?

25 MR. HAEG: And you said February 15th?

1 THE COURT: February 5.

2 MR. HAEG: February 5.

3 THE COURT: A week from today.

4 You want to cross now?

5 MR. PETERSON: Yes. I'll keep it brief.

6 And I can also state for the record now that I
7 think the record is clear. I don't think there's
8 any need for any additional briefing from the
9 state.

10 THE COURT: Okay. So you don't have to do
11 that. If you -- if he does something and I allow
12 him, you can reply to it, but you don't have to do
13 anything initially.

14 MR. PETERSON: (Indiscernible).

15 THE COURT: So ask your questions.

16 DAVID HAEG,

17 testified as follows on:

18 CROSS-EXAMINATION

19 BY MR. PETERSON:

20 Q. All right. So, Mr. Haeg, you testified at
21 trial, in your defense; right?

22 A. Yes.

23 Q. And at that trial, you admitted that you
24 killed wolves outside of the wolf control area;
25 right?

1 A. Yes.

2 Q. And you were a registered big game guide
3 at that time; right?

4 A. Yes.

5 Q. And you knew that a guide committing a
6 same-day airborne violation carried a guide
7 license suspension of three years to a permanent
8 revocation; right?

9 Or did you not know that?

10 A. At that time, I did not know that.

11 Q. Okay. You --

12 THE COURT: Well, I'm sorry. "At that
13 time," you're talking about at the time of the
14 wolf kill or --

15 MR. PETERSON: That was the question.

16 THE COURT: Okay. All right. Go ahead.

17 BY MR. PETERSON:

18 Q. At the time that you submitted the
19 coordinates for where the wolves were killed, you
20 gave false coordinates, thereby falsifying the
21 sealing certificates; correct?

22 A. Yes.

23 Q. Okay. You've stated multiple times in
24 open court that you were sentenced to two years in
25 jail and a \$20,000 fine.

1 What was your actual imposed sentence in
2 this case?

3 A. I don't know on the fine. You know, that
4 got stayed.

5 Q. \$6,000. That was what was --

6 A. I don't know.

7 Q. -- imposed.

8 A. There was -- I think it was 19,500.

9 Q. And how much of that was suspended?

10 A. I don't remember.

11 Q. All but 6,000; right?

12 A. I don't remember.

13 Q. Okay. And you got 35 days to serve;
14 right?

15 A. I believe so. It was over --

16 Q. Where did you --

17 A. -- a month.

18 Q. -- serve that?

19 A. Huh?

20 Q. Where did you serve that?

21 A. In-home confinement.

22 Q. Okay. So you served it on ankle monitor?

23 A. Yes.

24 Q. Not two years in jail and \$20,000 fine.
25 You had to sit at home for a month and got a

1 \$6,000 fine. That was your sentence; right?

2 A. I was sentenced to nearly two years in
3 jail and a \$19,000 --

4 Q. And --

5 A. -- \$19,500 --

6 Q. -- all but 35 --

7 A. -- fine.

8 Q. -- days were suspend; right? You never --

9 A. Huh?

10 Q. How much time did you serve on home
11 confinement?

12 A. The whole time.

13 Q. Thirty-five days; right?

14 A. I believe that's accurate, yes.

15 Q. Not two years; right?

16 A. (No audible response).

17 Q. So when you stand up in open court and say
18 that you went to jail for two years, is that
19 accurate?

20 A. I said I was sentenced to two years in
21 jail.

22 Q. Okay. I'm sorry. When you stand up in
23 open court and say you were sentenced to two years
24 in jail, is that accurate?

25 A. Yes.

1 Q. It is?

2 A. Very nearly two years in jail, yes.

3 Q. Even though you only did 35 days on home
4 confinement?

5 A. The sentence says --

6 Q. It does. It says --

7 A. Okay.

8 Q. -- two years with all but 35 days
9 suspended, which would only be imposed if you
10 violated your probation conditions; right?

11 A. I believe that's probably what it says,
12 yes.

13 Q. Okay. All right. Your guide license was
14 revoked for five years at sentencing; right?

15 A. Yes.

16 Q. And the range was three years to a
17 permanent revocation; right?

18 A. I believe that is so, yes.

19 Q. So what you were actually sentenced to was
20 at the extreme low end of the potential sentence,
21 as far as the guide license suspension goes;
22 right?

23 A. Well, wouldn't you say three years would
24 be less than the five?

25 Q. It would be less. I didn't say, the least

1 available. I said, at the extreme low end.

2 A. That's true.

3 Q. Okay.

4 A. I would like to --

5 Q. When did you get your guide license back?

6 A. I'd also like to add --

7 Q. When did you get your guide license back?

8 THE COURT: Answer his question.

9 MR. HAEG: Can I -- huh?

10 THE COURT: Answer his question.

11 A. It was like -- and I'm not positive on
12 this, but a year to two years after my suspension
13 was over. Because the State of Alaska told me
14 after the suspension was over that they would
15 never give my guide license back.

16 Q. You got it back in 2011; right?

17 A. I don't know.

18 Q. Around 2011?

19 A. It could be.

20 Q. So it wasn't revoked for life; you were
21 able to guide; is that right?

22 A. Yeah. I --

23 Q. So if you --

24 A. -- did get --

25 Q. -- were to --

1 A. I ended up --

2 Q. -- say that --

3 A. -- I ended up getting my guide license
4 back, yes.

5 Q. Okay.

6 MR. HAEG: I would like it on the --

7 MR. PETERSON: Nothing further.

8 MR. HAEG: -- record, however, that after
9 my five-year suspension was over, Your Honor, the
10 state refused to give me my guide license back.
11 And in my --

12 VOIR DIRE BY THE COURT:

13 Q. When did you get it back?

14 A. I don't know the exact year.

15 Q. Best --

16 A. All's I know is --

17 Q. Best recollection. Help me out. What's
18 your best recollection?

19 A. Well, if it was 2005, it would have been
20 five years on top of that, so it would be 2010.
21 And then when they didn't give it back in 2010, I
22 had to fight for another couple years, so it was
23 like 2012.

24 Q. But any idea when? Spring? Fall?

25 A. I don't -- you know, and I could find that

1 out, if it's important.

2 Q. If you don't remember, you don't remember.

3 A. Yeah.

4 Q. But sometime in 2012 is when you think
5 you --

6 A. Yeah.

7 Q. -- came back?

8 A. And what -- and what -- I guess --

9 Q. Just answer my question.

10 A. Yeah.

11 Q. Sometime, basically, in 2012 is your best
12 recollection?

13 A. Uh-huh (affirmative).

14 Q. Okay.

15 THE COURT: Go ahead. Your next -- you
16 have further questions?

17 MR. PETERSON: No, Your Honor.

18 THE COURT: Okay. All right. So you
19 submit your thing in -- February 5, about what you
20 want to do.

21 Okay?

22 MR. HAEG: Okay.

23 THE COURT: And these various documents,
24 the ones that are admitted as exhibits and the
25 others that are just marked for identification,

1 will be part of the court file. All right. We'll
2 be in recess.

3 THE CLERK: Please rise. Court is
4 adjourned.

5 1:37:54 PM

6 END OF RECORDING

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TRANSCRIBER'S CERTIFICATE

I, Britney E. Dudley hereby certify that the foregoing pages numbered 3 through 575 are a true, accurate, and complete transcript of proceedings in 3KN-10-01295CI, David Haeg vs. State of Alaska, transcribed by me, or at my direction, from a copy of the electronic sound recording to the best of my knowledge and ability.

October 14, 2019

Britney E. Dudley, Transcriber