

Transcript 2 - Attorney Mark Osterman

[3/15/06 Phone call with MR. OSTERMAN]

MR. OSTERMAN: I went through all the information that you provided me I read it through very thoroughly -uh- I - I - first of all I gotta ask the questions if you've been to the top 10 criminal defense attorneys in the State which basically is what it looks like. I mean you've been to Weidner, Robinson, Sid Billingsley, --um- -um- Cole, the other guys name escapes me right now. You've been to all these guys why are you picking on me?

MR. HAEG: I didn't think I was picking on you.

MR. OSTERMAN: Well who - well how'd you pick me then?

MR. HAEG: -Um- I am in a position that I feel I have proof that the kind of the top attorneys were -you know- I just - I think that Brent Cole did me a big disservice by -you know- by having me give the State everything that I had to give and not - then not

MR. OSTERMAN: I cannot believe any defense attorney in the world would do that and particularly any defense in the world would do that with Scot Leaders.

MR. HAEG: Well that's what happened and then -you know- I hired Chuck Robinson who he's been a friend of mine since I was a kid and he never even brought out that I could have utilized Ineffective Assistance of Counsel and I - he actually started

defending -uh- Brent -you know- and I - I tried to get the best help I could because my whole livelihood is on the line and I actually started out with -uh- Jim McComas.

MR. OSTERMAN: Yeah I saw the little routine with Jim. He doesn't impress me much. Jim's a lawyer's lawyer.

MR. HAEG: Ok.

MR. OSTERMAN: Ok? And he's - he's a - you pay him a hell of a lot of money and you get a hell of a lot of consequences. And Weidner is the same Weidner. --You know- Weidner place a little fast and loose, ok?

MR. HAEG: Yep.

MR. OSTERMAN: And -uh- that's what people like about him. I particularly have been on the end of fast and loose with him and I don't care for it.

MR. HAEG: Yep. Well I guess where I'm at is I'm ...

MR. OSTERMAN: You've got an appeal due on April the 3<sup>rd</sup> on points of appeal that Chuck Robinson filed because obligated to under the Court rules and the rules of ethics and I don't necessarily agree with the points on appeal that he's [Robinson] got. The points on appeal can be amended until a day before the brief is submitted.

MR. HAEG: Ok.

MR. OSTERMAN: So there's not a big deal there. Here's the situation though is I don't have access to the trial and you didn't mention how many days was the trial?

MR. HAEG: I think it was - how was the trial Jackie like 6 days - 5 days? Something like that were we've been trying to get the tapes and we've been transcribing them -um- we don't have all the tapes cause they don't even have high speed dubbing which they do one tape a day which is - cause they're only in the office 4 hours a day in Aniak. But -you know- I guess what I'm looking at is I would rather go -you know- I - I've - I guess I've been studying enough that I'm - I know enough about the law to I guess be dangerous. Where I'm not - do you understand what I'm saying? Is I think I know more than I probably do and I know that I don't have the skills to be a lawyer but I - I have a pretty good knowledge of what went on in my case and virtually everybody I talked to said that I need to go with a post conviction relief because of Ineffective Assistance of Counsel of Brent Cole.

MR. OSTERMAN: Well I - I think you got a PCR -uh- case the trouble is - is that PCR is down the road. PCR is a stop get measure after appeal fails. You have a right to an appeal and ineffective assistance is a right issue to bring to them cause the standards change in Post Conviction Relief cases.

MR. HAEG: Ok.

MR. OSTERMAN: First of all Habeas Corpus is no longer really available or much available in the State or the Federal Government. The State's version of PCR sucks. I do those cases.

MR. HAEG: Ok.

MR. OSTERMAN: Ok? I'm - I used to work for CJA and we would bleed one out of every 200 cases might bleed into the Federal System -uh- for -um- what's called a 2254 -uh- State Habeas Relief. So you're looking at the State weeding it out. The level of winning Post Conviction Relief is much harder than winning in the appeal and that's why you've got till April the 3<sup>rd</sup> to come up with a brief and I'm sorry it took me so long but I read just a massive amount of material I spend every waking minute. I was in Borough meeting last night reading emails from clients that I had printed and carried with me. I mean it's - it's a ...

MR. HAEG: I mean I understand I'm not blaming you for anything like that ...

MR. OSTERMAN: I'm sorry I'm so late getting back to you cause we basically got 2 weeks to get this thing done for you.

MR. HAEG: Well and but I - I also understand that -um- -you know- Chuck Robinson asked to withdraw, the Court of appeals denied his -um- his request and I think they just didn't want to leave me without an attorney but if I got an attorney we can ask for an extension and Chuck told me that they it's almost guaranteed that you would get an ex - we could get an extension - if I got a new attorney we could get an extension and that's where -you know- that's what I would like to do because there's no way you could look at all the elements and things. One thing

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-you know- and I and this is where I'm dangerous and I hope you just bear with me here.

MR. OSTERMAN: I will.

MR. HAEG: -Um- I looked at the - the Alaska Rules of Criminal Procedure and it's says that you can - there's nothing there that says you can't file a Post Conviction Relief even with an appeal going and I ran that by Chuck Robinson and showed him and he said that absolutely you can. That Post Conviction Relief is something that can be done. -You know- and at that time I wasn't really trusting of Chuck and I -you know- I guess my big fear with you or any new attorney -you know- I'm not - I'm not out to bust your chops it's just when I pay you like I paid Robinson \$30,000.00 and I paid Brent Cole \$15,000.00 when I pay you that kind of money I want you in my corner and not -you know- someone else's.

MR. OSTERMAN: I'm not goanna be with somebody else and then I'll be real honest with you. -Uh- I'm not real happy with Chuck's position not to go after Cole.

MR. HAEG: Well I wasn't happy about it either. Especially when he started defending what Brent did and saying that lying to me about the law was not necessarily Ineffective Assistance of Counsel and I mean it may not be but it should have been brought out and then I guess really hurt me the most is at sentencing - you know- I wanted - I actually had Chuck subpoena Brent to my

sentencing because I wanted Brent to explain that I had this Rule 11 Agreement that the State broke.

MR. OSTERMAN: And he didn't show up.

MR. HAEG: And he never showed up and there was a call I got billed for that went to Chuck's office the day before he was supposed to show up and they - they "conferred". I mean it says, "conferred" for a half hour. And I'm like I demanded he be there, I paid for the subpoena, and I have a Constitutional Right to guarantee that witnesses show up and he didn't show. That -you know-

MR. OSTERMAN: Burns your - yeah.

MR. HAEG: It - it - I mean -you know- and if - if -you know- if it seems like I have a hard time with attorneys I think I have cause

MR. OSTERMAN: I don't think - I - I don't - I don't begrudge you that.

MR. HAEG: And I'm not and if I ever start.

MR. OSTERMAN: I looked at this and it was a disaster in it and what Chuck did was wrong - what Cole did was wrong. There's no two ways about it.

MR. HAEG: And is there - do you have any compunction against utilizing that for me?

MR. OSTERMAN: No.

MR. HAEG: Well that's what I want to hear.

MR. OSTERMAN: I hate - I - I don't like doing it - I'll tell you - I - I don't like doing it but I don't like - I don't like - I don't like washing dishes and I don't like sweeping the floor too.

MR. HAEG: But I need - I need somebody that's willing to do it -you know- and I don't like scrubbing toilets so ...

MR. OSTERMAN: Yeah and there's a lot of things in this world I don't like doing but I find necessary.

MR. HAEG: Yep.

MR. OSTERMAN: Ok? So the - the issue is there's a necessity to it and there's a distaste that goes along with it.

MR. HAEG: Yep.

MR. OSTERMAN: Ok? And the other problem that I've got is that of course every attorney that falling - fall in under your sites has taken a hit. -You know- that - that always is a concern of mine. -Uh- we have what we call the top ten lists of clients you don't take.

MR. HAEG: And I'm probably at the top of it.

MR. OSTERMAN: Well no you're actually toward the bottom. But -you know- you never take a case form a client who can't get along with his last half dozen lawyers that's - that's the way we word it but -you know- the sincerity being is if you're having trouble with a lawyer you're probably goanna have trouble with every lawyer you get at some point in time.

MR. HAEG: Do you understand why I had a problem with Weidner who was the last lawyer I dealt with? Before I left his office on my initial visit he had called - he said Chuck called him - well then I - I asked Chuck about it. Chuck said he called Chuck and started making copies of my material and then refused to represent me and told me he was sending the copies he made of what I had that Chuck did wrong that he was goanna send them to Chuck. He wouldn't even represent me and - and -uh- -you know- maybe it was just me being overly suspicious but -uh- I had my wife there and 2 very good friends of mine and they all cannot believe what happened -you know- so it isn't just me and I'm beat. ---

MR. OSTERMAN: What's your current sentence? I saw it in there did you get -uh- - you lost your license for 5 years right?

MR. HAEG: And we had already given up our license voluntarily for the first - for a year. So I actually got 6 years. The Judge didn't even look at that. -You know- and that's just is insane and I - they forfeited my airplane, got a almost a 20,000 dollar fine with all but 6,000.00 suspended, got 2 years in jail with all but 2 months suspended. And the guy that was actually was pulling the trigger now believe this got 6 months on his guide license and he was a registered guide just like me, he got 6 months, I got 6 year, he got a thousand dollar fine, I got 6 thousand, he forfeited nothing, and I forfeited over a 100 thousand dollars, and he got 12 days in home confinement and I

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got over 2 months. Now and I didn't pull a trigger no does that sound like equal ...

MR. OSTERMAN: See that's part of the argument for vindictiveness on behalf of the District Attorney and that's also part of the argument for vindictiveness of the Judge. If you didn't catch the overbearing attitude of Murphy then you - she must have been wearing a different perfume.

MR. HAEG: Well I have her - I actually have her changing decisions 180 degrees on tape to favor to go with - with - with -um- Scot Leaders and that's call Perjury by Inconsistent Statements and I'm filing that to the Alaska Council of Judicial Conduct.

MR. OSTERMAN: You should. One of the things you should know about Murphy she's never been in private practice ...

MR. HAEG: She was in the army I believe wasn't she?

MR. OSTERMAN: Being in the army is so what she's still a government job. She's never - never run her own shop and she's never defended anyone. She's always been a prosecutor, she's always been a government wacky and she has to have the government job to survive. Cause she'd never make it in the real world not with her attitude.

MR. HAEG: Yep well and yeah I understand and there's some other stuff that she did. We proved to her and when I say proved I mean absolute proof that a Trooper perjured himself at my sentencing and we gave her the proof of the CD that had his

voice on it that proved it and she didn't lift a finger and I don't know if she's suppose to but my complaint. I field a felony complaint against that Trooper went to the whole Trooper kingdom. I went form the Sergeant, to the Lieutenant, to the Captain, to the Colonel and to the Commissioner and to the Attorney General and -you know- what they did with my complaint?

MR. OSTERMAN: Huh -uh-.

MR. HAEG: They sent it to and Assistant Attorney General and he said "oh well I don't think anything really happened". And do -you know- who that Assistant Attorney General was?

MR. OSTERMAN: Who?

MR. HAEG: Roger Rom and do -you know- whose representing the State against me in my appeal? Roger Rom. I filed a complaint with the Ombudsman's Office, I talked to the Bar Counsel they said that is the most egregious thing they've heard. They're now doing another review of it but I sent letters to the Governor and I now have about 50 or 60 good friends and I mean people that own like Alaska Road Builders, Alaska West Air, there all these letters going to the Governor and Lieutenant Governor because I had proof that this Trooper perjured himself so I would get a longer sentence and then the - the Department of Law covered it up and they covered it up so good that when you file a complaint - I don't know if you understand that when you file a complaint that a copy has to go to what is called a Personnel Board. You ever heard of that?

MR. OSTERMAN: No.

MR. HAEG: You file a complaint against any State employee it goes to the Attorney General, and then just so the Attorney General does his job it goes to the Personnel Board and it's a member - it's 3 member board appointed by the Governor, confirmed by the Legislature that can't have anything to do with State Government. They are just regular Joe Blows. Do -you know- that my complaint - the 6 that I sent out not one of copies of it made it to the Personnel Board.

MR. OSTERMAN: Ok.

MR. HAEG: I found out about that and I just raised holy hell. The dismissal of my complaint. The dismissals suppose to go to the personnel Board also. Guess what? Never happened. -Um- I have found conspiracy; to I mean I've found corruption and conspiracy in the cops between Scot Leaders and Roger Rom and the Troopers. Got it all documented - every call that I normally make I tape. Have it all on tape every letter that we send out is return receipt, I've got witness for all this stuff, I have probably - if I had a good attorney and things went right I could probably sue the State of Alaska for millions for depriving me of my rights to a fair trial and then I think that Brent Cole I actually have him up on charges before the Bar Association. The hearings start the begin - the 10<sup>th</sup> 11<sup>th</sup> & 12<sup>th</sup> of next month. Do -you know- Steve Van Goor?

MR. OSTERMAN: Yes.

MR. HAEG: Well I'm on a first name basis with him. He - he when I first contacted him he like well you just - you're not an attorney and you're whatever. I said do -you know- I've been wronged and I know it and - and this is all goanna come out and I have yet to go to the papers or anything else but I have John Davis that owns KSRM Radio do -you know- him?

MR. OSTERMAN: Yes.

MR. HAEG: He's been a friend of mine. Me and his son Jeremy grew up together, learned together, and he said when it's time for all this to come out it's goanna freaking hit this State like a - like you never seen what. And I - -you know- I may sound like a radical but I have all the proof and the reason why I sound like a radical is I've been under the stress for two years and I've almost broke. I mean for several months after this happened I slept under my desk and if something's that bad that I sleep under my desk it's bad. But now I've finally figured out what happened. The whole system ganged up on me and I have the proof and I would like to have someone like yourself willing to help guide me through this because I think you could make a great deal of money on it, I could get my life back, and the system would maybe be cleaned up a little bit. No -you know- maybe it sounds like I'm jousting at windmills but I don't really think so because -um- I just - I gave you a taste of what I have in proof what - what I sent you is just a small little portion because I didn't want to overwhelm you right off the bat

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and maybe I am right now but I'm - I'm willing to fight like you have never seen anyone ever fight in your life but I'm ignorant to the law to a large degree and that's a handicap that I'm afraid of but if I - I don't have an attorney that's willing to back me up I'll do it on my own because at least I know that - that I'm not being sabotaged. And do you - do - you know ...

MR. OSTERMAN: I understand. First of all you've got hearings set which means that apparently the Board of Governors has accepted the complaint -um- the initial investigation revealed a wrong doing and they've brought charges against Cole?

MR. HAEG: Yes.

MR. OSTERMAN: Ok? And so he's now facing these charges in front of a board unless he confesses or admit[s] to them.

MR. HAEG: Yep and I asked for his license to be revoked for life.

MR. OSTERMAN: Well they're not goanna do that.

MR. HAEG: Well they're - they're goanna ...

MR. OSTERMAN: I think they're probably hit him with a 6 month to 1 year unless they've had a lot prior problems.

MR. HAEG: They've had no prior - there's no - I've went - I did my homework - there's been no public prior complaints. They said there maybe ones that they kept -um- and the first - this first thing is to get my money back it's for the -uh- I don't know 13 or 14 thousand dollars. The other one has been accepted for the grievance - the first one is for the fee arbitration.

But -um- when I talked to Steve Van Goor he said that -you know- my packet that came in was just about bullet proof. I mean I have - I had so many exhibits in his own handwriting and stuff.

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MR. OSTERMAN: Well it's extremely thorough but let me explain to you that there's something really important in all this and that is that you need to have him nailed if the - if the attorney grievance says - State Bars says this guy committed a grievable act for which they punish him ...

MR. HAEG: Ok.

MR. OSTERMAN: You got an automatic Ineffective Assistance claim - automatic.

MR. HAEG: Can you help me make sure that happens?

MR. OSTERMAN: Well in order to do that your goanna have to kick out your trial brief date, ok?

MR. HAEG: Oh you mean my appeal brief?

MR. OSTERMAN: Yeah cause you're - you're due on the 14<sup>th</sup> 15<sup>th</sup> 16<sup>th</sup> of next month and you won't even be through with the brief.

MR. HAEG: Well it's the 10<sup>th</sup> 11<sup>th</sup> 12<sup>th</sup> yep. I know my brief is do so I guess in the - in the best world I would - I would - - you know- Chuck Robinson wants to withdraw and I don't want him because he just -you know- I have - I mean I could let you listen to tapes of our conversations and it's downright ugly. I've made that black man turn white -um- because I had 2 tape recorders, I had witnesses, and I asked him questions that are

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unbelievable. I mean the way he answered them - I mean I let other attorneys listen and they're like Holy Jesus Christ. I've never heard of anything like it ever before in my whole career. Coming out of an attorney's mouth to his own client. -um- so I guess what I'd do is get rid of Chuck we would substitute counsel for you, we would make application to the Court of Appeals to extend out my -uh- brief due date and... ---

MR. OSTERMAN: No let me explain to you how the - the Grievance Commission is - there - there function is to protect the attorney.

MR. HAEG: And not me?

MR. OSTERMAN: Not you - you're not a foreseeable problem to them. -Um-

MR. HAEG: I think that they may be changing that opinion of me.

MR. OSTERMAN: Well maybe but bear with me for a second.

MR. HAEG: Ok.

MR. OSTERMAN: I want to explain this process to you. The complaint is given an initial investigation. It's not officially a complaint yet. It is a request to investigate. A investigator goes out - now if the investigator say yeah this is an ineffective assistance claim, this is a malpractice claim, - you know- the issue is - is did he violate any specific notable outright rule of ethics ok? -Uh- the answer is we don't think

so and so therefore want to decline for further investigation.  
Ok?

MR. HAEG: Ok.

MR. OSTERMAN: They might also say we - we agree with you - there's been a problem we've issued an unpublished letter of censure. Normally an unpublished letter of censure goes out to a lawyer on a first offense.

MR. HAEG: Well and I think this may be his first offense.

MR. OSTERMAN: If so then an unpublished letter of censure is not gonna be adequate enough to nail him on Ineffective Assistance.

MR. HAEG: Ok.

MR. OSTERMAN: Ok? -Um- Ineffective Assistance you've used the term - but see the definition of Ineffective Assistance of Counsel -uh- if a lawyer takes some action on behalf of the client it can never be said to be ineffective - bec - I tell I've got these - I've got Court appointed clients for the - for an opal contract that I have and they yell and scream at me why did you file that motion I can never be found ineffective for filing a motion on behalf of a client.

MR. HAEG: What about ...

MR. OSTERMAN: As long as I'm taking an affirmative step on behalf of the client.

MR. HAEG: Ok what about not sticking up for a Rule 11 Agreement you told your client to give up a whole years of his income for and -uh- a 5 hour confession.

MR. OSTERMAN: I think that that's a real big malpractice issue but is it an ethics issue?

MR. HAEG: Is it Ineffective Assistance of Counsel though?

MR. OSTERMAN: Well but see Ineffective Assistance is that you committed that the attorney by his failure to act could be...

MR. HAEG: He failed to act to stand up for my deal.

MR. OSTERMAN: But then that's malpractice - it's not ineffective assistance. He may have seen some -uh- advantage who knows what the hell that advantage is. I'm arguing the devils advocate on (*undecipherable*) because I could tell you that only 1 in a thousand Ineffective Assistance of Counsel claim lands.

MR. HAEG: Well I've been told that it's 1 out of a hundred but I've been through 500 Ineffective Assistance of Counsels and I have more dirt on Mr. Cole than any of them that I've seen.

MR. OSTERMAN: Ok - I mean you have the dirt I don't - I'm simply saying Ineffective Assistance is literally the hardest thing in the law to prove.

MR. HAEG: It may be hard but it happens, correct?

MR. OSTERMAN: Huh?

MR. HAEG: It may be hard but it happens, correct?

MR. OSTERMAN: Yeah it may be hard but it happens I mean I - I can tell you I had a rookie lawyer doing a cocaine case in

Federal Court, he thought he knew what the hell he was doing, he screwed the thing up, he never summoned the witnesses the client wanted, he never did this, never did that. We went all the way to the 9<sup>th</sup> Circuit Court of Appeals, they laughed at us it was Ineffective Assistance they said.

MR. HAEG: Yep.

MR. OSTERMAN: Ok? So again -you know- these - these are situations where witnesses weren't called, evidence wasn't presented, issues weren't raised, -you know- nobody took fingerprints, nobody did this, nobody did that -you know- and of course they're saying well -you know- he didn't take fingerprints and then Judges say well fingerprints don't prove anything in fact most fingerprint evidence is not admissible. Most fingerprints never taken never show anything -you know- so why would fingerprints be an important issue well at least he did something.

MR. HAEG: Yep.

MR. OSTERMAN: Somebody else's fingerprints showed up on this gun then it sure wasn't his.

MR. HAEG: Yeah.

MR. OSTERMAN: See what I mean.

MR. HAEG: I see but I have to make the attempt because I have - I'm too far down the road to not make the attempt and I know that if -um- we do it if Brent Cole is found Ineffective Assistance or -you know- even Chuck - and I - I actually - -you

know- I have a business attorney Dale Dolifka. I don't know if -you know- him or -uh-?

MR. OSTERMAN: I do know Dale.

MR. HAEG: -Um- and may shouldn't even bring him up but he's kind of looked at what's going on and he used to be a criminal attorney he's like David you - you have solid basis for bad news for these attorneys.

MR. OSTERMAN: Well you do have bad news as I said the problem is you got a great malpractice.

MR. HAEG: But you can't - you cannot have a malpractice suit unless you're found innocent or not innocent or unless your conviction is overturned - Chuck Robinson told me that.

MR. OSTERMAN: No Chuck's wrong, ok? He obviously was the malpractice of one attorney that put you in this bind. Cole has a malpractice problem a big malpractice problem.

MR. HAEG: Well what Chuck said is that if my conviction stands he's - he was goanna show me the case in Alaska that said that you can't go after attorney on a criminal conviction - if in a criminal trial your conviction is not overturned because of the ineffectiveness of the attorney you can't go after him for malpractice. They said that the precursor ...

MR. OSTERMAN: Well there is a (*sic*) out there that says that - I'll grant you but I don't think that that's -uh- I don't think that's the end of the statement. Because see it's not Chuck Robinson I would be focusing on. I would be focusing on Cole  
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because Cole set up a by his conduct absolutely malpractice. You gave the evidence to the District Attorney to use against you because of Cole's conduct.

MR. HAEG: Yep. ---

MR. OSTERMAN: Well you're goanna have to raise the issue to the Court of Appeals -you know- that's one of the things that's goanna happen which is while that I look at the -you know- like I said the issues on appeal that you've got don't really seem to cover the issue on appeal.

MR. HAEG: I know they don't. When I looked at it and I was like Chuck -you know- none of these are goanna win and he's like well -you know...---

MR. HAEG: Ok. Well one thing -you know- you had asked me why I'm picking on you and I told you that I'm not - I like having an attorney that I can go visit. You because I have a tremendous amount of material that we've done and if -you know- Dale Dolifka actually said I needed a big firm in Washington State and we looked for that and he said you need one criminal, one civil to come up and clean up what's going on. Well we tried to look for but -you know- that would be horribly expensive we're now financially were getting \*\*\*\*\* down to -you know- and I'm goanna be honest I'll pay whatever we need to but we're - I mean we've paid almost \$50,000.00 to attorneys and haven't guided for - haven't brought in any money for -you know- a year and lost my plane and other things so we're - we've been hurt

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grievously by this but I'm willing to keep spending money if it's - if it's - if it's money that's goanna help me and -you know- that's I guess I just beg you that if we do this just please be in my corner, -you know-.

MR. OSTERMAN: First of -you know- what I'm goanna be in your corner, #2 I am goanna be available you can't just walk in on me cause we got too much business here for that.

MR. HAEG: Yeah I understand.

MR. OSTERMAN: Ok -um- but you certainly can make appointments in the understanding that appointments and time you spend we need to make as valuable as possible because you're spending for that time to be here. I'm very conservative about my client and client billings. I don't want my clients spending a tremendous sum of money to get a little bit of nothing.

MR. HAEG: Yep.

MR. OSTERMAN: I prefer they get something substantial out of what were goanna do. Ok? And so from that angle -uh- you'd have -uh- you'd basically have an attorney's full attention.

MR. HAEG: Yep.

MR. OSTERMAN: The whole goal would be #1 to stay forfeiture of the airplane and make sure all the other stays are in place with regard to the case, #2 would be to get caught up on the trial transcripts. Steve could probably do one thing I couldn't - he could hear your trial in a week.

MR. HAEG: Ok.

MR. OSTERMAN: -Uh- #3 he could sit down and come up with what's goanna be the most affective. Now in the meantime I don't mind going after Mr. Cole, ok? But I think that Mr. Cole ought to wait until after we've gotten our feet into the first round of appeals and feel comfortable about the issues we're briefing out.

MR. HAEG: Yep ok.

MR. OSTERMAN: Then we can pursue Mr. Cole. We actually have 2 years from the date of malpractice, which is ...

MR. HAEG: Ok and that - that is one concern I hired - when did I hire Brent Cole wasn't it - we hired him like April 1<sup>st</sup> but I actually talked to Chuck about that. Chuck thinks the date of malpractice would have been when he didn't stand up for my Rule 11 agreement.

MR. OSTERMAN: Well actually its when you fired him. It's probably goanna be the date that you realized his malpractice occurred. But even if it wasn't the date we've got 2 years from that date to do something.

MR. HAEG: Ok so ...

MR. OSTERMAN: Now the first thing we probably aught to do which I think you could do on your own is to write a letter to him informing him that you're making a claim for your attorneys fees plus the losses you had sustained as a result of his misconduct. That's a hundred thousand dollar airplane, attorney fees, and at least a year of guiding, ok?

MR. HAEG: Yep.

MR. OSTERMAN: and that you expect his insurance company to get in touch with you immediately with regard to this cause see by law he has to have insurance. And if not he has to inform you he doesn't have any.

MR. HAEG: Well he never - I understand that - he never did inform me that so he has insurance so

MR. OSTERMAN: So right so by that now he's forced to go to his insurance company and make a claim and now a claims agent gets you on the phone to talk to you about what's happening. Ok? So in the meantime we can always - we can always say at some point in time we're getting ready to prepare a case for litigation but the insurance company is talking to you at your satisfaction. When you're not getting anywhere with them you're goanna drop them in on me.

MR. HAEG: Ok.

MR. OSTERMAN: Ok and then we're goanna file a complaint for malpractice against Cole.

MR. HAEG: Ok I like that - I like you a whole lot more here - - um-

MR. OSTERMAN: I don't like doing it but I can say I don't like cleaning toilets, and sweeping, and washing dishes either.

MR. HAEG: Ok. Well the letter for his fees that's coming up on the fee arbitration so can I ask for that in addition or not - or does that...

MR. OSTERMAN: No you tell him you want your airplane and you want a years guide out of his malpractice.

MR. HAEG: Ok so I don't - I don't put in there that I want my attorneys fees because the Bar Association is handling that?

MR. OSTERMAN: Well yeah I mean the Bar Association's Ruling is goanna be a final word on the fee arbitration.

MR. HAEG: Ok so - ok and if they rule will that come out of his insurance then?

MR. OSTERMAN: No it will come out of his pocket cause he won't want his insurance company to know about it.

MR. HAEG: Ok so why don't we ask his insurance company for it also?

MR. OSTERMAN: You would have to withdrawal from the fee arbitration cause you can't collect from both.

MR. HAEG: Ok.

MR. OSTERMAN: Follow me?

MR. HAEG: Ok I understand. But I was just - I thought it might be a tactic to...

MR. OSTERMAN: Nope it's not - it's not goanna be a bad. The first move you paid him for his labor.

MR. HAEG: Yep.

MR. OSTERMAN: Every labor's worthy of his hire. Ok? So you've paid him for him for his - for your labor but you never expected nor anticipated in the labor aspect that you would lose your airplane or a years guiding.

MR. HAEG: Exactly yep.

MR. OSTERMAN: Ok? So those two things are beyond the scope of what you hired him for. Cause when you hired him you had an expectation of criminal sanctions and you were taking the dice and rolling it in the crap shoot ok and you did not realize he was goanna set it up so that their dang dice was always loaded.

MR. HAEG: Ok I understand that.

MR. OSTERMAN: They were always goanna win.

MR. HAEG: And you don't think I could go after more than a year because I got sentenced to five years plus the year that I already ...

MR. OSTERMAN: No cause that was at the hand to Chuck Robinson so they're goanna attribute that to Chuck not to Cole.

MR. HAEG: Ok.

MR. OSTERMAN: Although you can say -you know- I'm simply saying he's - lets face it he might - might have a quarter of a million dollars insurance ok. But more than likely he's a 100 300 kind of guide of guy, ok?

MR. HAEG: Well they.

MR. OSTERMAN: Your airplane aint a 100 thousand dollars or is it?

MR. HAEG: It's close.

MR. OSTERMAN: a hundred thousand dollars it's goanna wipe out all the malpractice.

MR. HAEG: Ok.

MR. OSTERMAN: Ok all that - all that's available under the malpractice policy.

MR. HAEG: Well Dale Dolifka thought that they would have more than that. He said that most criminal - I actually asked him about him about it - he said that he would be surprised if they didn't have a million dollar limit or more. But that was what Dale said.

MR. OSTERMAN: I doubt it very seriously I mean - I'm a criminal malpractice guy and we carry a half million tops.

MR. HAEG: Ok.

MR. OSTERMAN: A half million - one million.

MR. HAEG: Ok.

MR. OSTERMAN: And the only reason that we do is because -you know- we're looking at peoples salaries we - we handle white collar so a guy loses a years worth of work and sues us is a half million dollars.

MR. HAEG: Ok. Well I understand so you want me to write this letter right now and send it to Brent?

MR. OSTERMAN: Well I - I think I would send it after you've convened the board - you've gotta tell me what's the statute of limitations on his malpractice?

MR. HAEG: Well see I hired him April 1<sup>st</sup> of 2004.

MR. OSTERMAN: Ok so April 1<sup>st</sup> 2006 is his two years -

MR. HAEG: that's when I hired him - I thought you said when I fired him is when it would toll?

MR. OSTERMAN: Well you got - you got a in between here - your April 1<sup>st</sup> to when you - when he committed the malpractice act which was selling the farm and then the fact that you fired him so we got three contingent dates. And my gut reaction is we shoot to the middle date. The date that he actually committed the malpractice. So we got the start up date of when you hired him. He didn't commit malpractice on that day.

MR. HAEG: Ok.

MR. OSTERMAN: Ok?

MR. HAEG: Can you get a timeline Jackie quick?

MR. OSTERMAN: I've got the timeline I handed out to my secretary I'd go get it myself. But anyway this - here's the situation is that you can do this on your own if you want. If you don't get any satisfaction with his insurance company then you drop it in my lap...

MR. HAEG: Ok.

MR. OSTERMAN: then I call him on the phone, say hey I'm here what's the policy limits? You now and I'm goanna hold them by the nose and kick them in the ass for a while. And we'll bring suit and go after all we can get on the insurance and then anything else above that.

MR. HAEG: Ok and you don't - you don't think that there's any problem with me being convicted with bringing that like what Chuck Robinson said - do I just do it and just start right off.

.

MR. OSTERMAN: See what the insurance company says. The insurance company says oh screw you - you got nothing, ok?

MR. HAEG: Ok.

MR. OSTERMAN: We're goanna be tied up for 6 to 8 months in the Court of Appeals.

MR. HAEG: Yep.

MR. OSTERMAN: The Statute of Limitations is goanna run.

MR. HAEG: I - yeah I understand.

MR. OSTERMAN: We need to get a claim in whether they pay us or not.

MR. HAEG: Well that's what I was afraid of and I've been asking attorneys and nobodies been really been willing to tell me. Although Chuck - Chuck said well you should have up until the day that he didn't honor or - make the - have the State honor your rule 11 agreement. And that was - when was that Jackie, the Rule 11 Agreement? That was June or August?

MR. OSTERMAN: I'm thinking it was August.

MR. HAEG: I'm thinking it was August 8<sup>th</sup> and 9<sup>th</sup>.

MR. OSTERMAN: Ok.

MR. HAEG: -Um- so that would be what you call the middle date and then I think I fired him about a month after that.

**Jackie:** November 9<sup>th</sup>.

MR. HAEG: November 8<sup>th</sup>.

MR. OSTERMAN: Ok here's what I need - here's what I'm goanna need from you to consider this appeal.

MR. HAEG: Ok.

MR. OSTERMAN: Ok? I'm goanna need 12,000.00.

MR. HAEG: Really?

MR. OSTERMAN: Yes sir.

MR. HAEG: You're not cheap.

MR. OSTERMAN: No sir. If you call any - any attorney in town who does appeals and anybody in Anchorage that does appeals they will tell you it's 3 to 5 thousand dollars an issue. Ok? -Uh- I've had experience - the case I took into the Alaska Supreme Court should have been an open and shut case but we prepared huge briefs and huge transcripts and spent thousands of hours and that case was about \$22,000.00, ok? I'm assuming because #1 we're in the Court of Appeals and things are goanna move a little faster which I hope is a good thing, second we're goanna have to get on this thing with a big stick. I mean there's no 2 ways about it. The other case dragged on forever we had to get this from Phoenix; we had that from there. You've got most of the stuff, you've got a good synopsis so I figure we're goanna cut a good \$10,000.00 off of what I charged this last case by having the availability of this stuff in short notice.

MR. HAEG: Yep.

MR. OSTERMAN: Ok?

MR. HAEG: Well and -you know- I and I don't have -you know- I guess I shouldn't say it my wife kind of rolled her eyes she heard but it -you know- I'm in so deep -you know- I - I need to

go forward and I appreciate -you know- and I'm willing to -you know- to give you the money I mean I don't - do you need it all at one time?

MR. OSTERMAN: Yeah I do. I'm goanna put it in my trust account and have it available to spend. Cause I don't want to get a phone call from you half way through the appeal that we're out of money Mark and I can't help you. That's goanna mean that I've gotta continue appeal for free and I don't like that.

MR. HAEG: Ok I understand me.

MR. OSTERMAN: That irritates me.

MR. HAEG: I don't have a problem with that -um- and -uh- I guess oh one other thing is. Does it -uh- -you know- I've put my heart and sole into this and I would like to stay involved just for my own ...

MR. OSTERMAN: I want you involved.

MR. HAEG: piece of mind and also just so that I can make sure that I don't kind of get screwed again and I'm not saying that you're goanna I just - I've been screwed to the tune of \$50,000.00 by attorneys and that's small change compared to the damage that they've done to me.

MR. OSTERMAN: Ok.

MR. HAEG: And I'm -you know- so I don't have a problem I just - you know- and I - I have a lot of what I feel are good ideas and you may shoot them down but I'm a extremely intelligent person although hey I'm here defending myself against a criminal case

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so I'm not smart and I understand that but I learn from my mistakes and I guess I just don't want you to discount...

MR. OSTERMAN: I'm not going to...

MR. HAEG: what I have available in my brain and what - I have - I have a law library here in my office that will match yours.

MR. OSTERMAN: Ok.

MR. HAEG: And -um- so anyway what so we go dig up money and then what?

MR. OSTERMAN: Then were goanna - were goanna have to start amassing documents, getting a substitution on file, a motion to continue for 60 days on the appellate brief, I got to get a guy on top of going through the transcripts that will be Steve listening the to trial and getting things prepped up for all of the motions. We're goanna sit down and say these are our issues, these are our amended points on appeal, we're goanna get your approval on those, we're goanna proceed to brief those ...

MR. HAEG: Ok and is there anyway I've heard from I think it was Weidner said that we should file immediately for a stay of my appeal and go for a post conviction relief. That was his tactic right off the bat until he started figuring out that I was not happy with Robinson but is that an option?

MR. OSTERMAN: -Uh- well -you know- you're speaking of post conviction relief ahead of appeal. Normally PCR trails appeal ok? I'm goanna have to go find some case law that suggests that we can do a PCR.

MR. HAEG: Well both Robinson and -um-

MR. OSTERMAN: I don't give a damn what those guys say.

MR. HAEG: I know but

MR. OSTERMAN: You're - you're not happy with them and they've already screwed up your case bad enough.

MR. HAEG: I understand but...

MR. OSTERMAN: I got to satisfy myself.

MR. HAEG: Yep but I guess this is where -you know- just bear with me and I'm not trying to run your - how you do things but from everything I've seen there's more traction from what didn't come into the trial then what there is in the trial. Robinson - you know- I hate to say it was very careful to leave - to kind of leave the trial itself as clean and free of errors as possible and the major ones that I found out later were never in trial so they can't be brought up on appeal. And do you kind of see what I'm at there -uh- he kept out any complaint that I had against Brent Cole and he just - he'd say well oh you bring up that complaint it will ruin your chances for appeal and like well how can that be when Scot Leaders brings in that we had this deal that was broken all the time but you won't let me say it. And he like well this is why -you know- and so I think part of it should be brought it -you know- about Brent Cole's essential malpractice and Ineffective Assistance of Counsel but that's something that you'll have to look at and. What we'll do

is I'll - we'll start raising money I mean how do you want money just a check, cashiers check, cash?

MR. OSTERMAN: Check is fine, check is fine.

MR. HAEG: Credit card?

MR. OSTERMAN: I don't care. I mean you can bring it in \$6,000.00 today and \$6,000.00 tomorrow so we're out of the happy shooting gallery of the IRS demanding to know how we got this money without filing a form.

MR. HAEG: Well that was one thing that Weidner did. I said I have \$10,000.00 I can give you cash.

MR. OSTERMAN: Well Weidner's probably in trouble with the IRS and I'm not. (laughs)

MR. HAEG: Well he says I can't take case and I got it on tape. Well I'm - I mean I just - he.

MR. OSTERMAN: If you bring a personal check I don't have to file and X form.

MR. HAEG: Ok well we'll - do you actually take credit cards?

MR. OSTERMAN: We only take it through Paypal but -um- we usually do that for processing out stuff ...

MR. HAEG: And then you lose a few percent too.

MR. OSTERMAN: If you give me the credit card I've gotta go file that IRS form and I hate filing that IRS form.

MR. HAEG: Ok. Well I'll ...

MR. OSTERMAN: I would prefer that you just give me a personal check.

MR. HAEG: And are you - I mean is there sometime when I can come meet with you here in the near future and do that?

MR. OSTERMAN: You can - yeah but I got to turn you over to Brandy see my entire staff is gone. I'm supposed to be at the gym working out. I'm goanna have my wife goanna be here in a little bit and be beating me over the head with a ball bat for not being at the gym working out. So -uh- you best bet is to call back after one and talk to Joyce.

MR. HAEG: Ok.

MR. OSTERMAN: Joyce is my major domo. And Joyce sets the appointment and God waits, ok? So -um-

MR. HAEG: I mean I understand that - I just - I don't have a problem with it. Just I don't...

MR. OSTERMAN: I don't set up appointments. The minute I do I screw up Joyce and she's really mad and she's worth every penny I pay her so I'm not goanna make her mad.

MR. HAEG: Ok well I'll do that and we'll hopefully see you here in the next day or so then.

MR. OSTERMAN: Ok.

MR. HAEG: Well thank you very much I mean you've been -um- -you know- -uh- a relief to talk to so.

MR. OSTERMAN: All right take care now.

MR. HAEG: Ok well thanks again bye.

MR. OSTERMAN: Bye bye.



[3/20/06 Meeting in MR. OSTERMAN's office]

MR. OSTERMAN: ...the big one the big give away the ineffective assistance by your first attorney. No doubt about it. ... are we likely to get a reversal by the Court of Appeals? And I think the likelihood is yes. I think when the Court of Appeals sees the sell out...

MR. HAEG: Ok.

MR. OSTERMAN: ...that happened here. That your attorney told you to talk and you talked to a huge detriment.

MR. HAEG: Yep.

MR. OSTERMAN: And why in the world this guy never got any kind of a deal in writing (indecipherable) ... You haven't answered the question. You've walked all around - you've never answered it.

MR. HAEG: Are you on my side - when I give you money?

MR. OSTERMAN: No I - I asked you the question. How'd you get to me?

MR. HAEG: Phone book.

MR. OSTERMAN: Who told you...

MR. HAEG: Phone book

JACKIE HAEG: Phone book. ...

MR. OSTERMAN: It's one thing to hold somebody back. It's another thing to get them down on the ground and stomp on their head with boots. Ok?

MR. HAEG: Yep.

MR. OSTERMAN: And what Scot Leaders did was stomped on your head with boots.

MR. HAEG: Mm hmm.

MR. OSTERMAN: He went way, way, way to far - ok?

MR. HAEG: Yep.

MR. OSTERMAN: And he violated all the rules that would normally apply in these kinds of cases and your attorney allowed him, at that time, to commit these violations. ... the attorney didn't just open the door - ok - he blew the side of the house off, with his conduct. So what I'm saying is I'm not going to move to have you declared as the most innocent man in the world but I am goanna move to have this thing taken down and that you should've received a sentence and a plea similar to that - that your compatriot received.

MR. HAEG: Ok.

MR. OSTERMAN: Ok so that's where I'm at.

MR. HAEG: well I'm not happy with that. And this is why. Because we can prove that the trooper committed perjury to get the search warrants that started this whole thing. Now if we can prove that doesn't that make - doesn't that go beyond whatever happened?

MR. OSTERMAN: Not - I want you to see things in a timeline. Ok?

MR. HAEG: Ok.

MR. OSTERMAN: In the timeline of events.

MR. HAEG: That's the first.

MR. OSTERMAN: That's the first incident but the timeline of events that we are goanna be able to put our finger in and press the button if we can get - number 1 Is the Court of Appeals going to be willing to completely reverse and send you back for a new trial? Number 1. Number 2 are we going to have - be able to re-litigate and revisit those issues that predate your confession? In the timeline of things I think the Court of Appeals is goanna be willing to back up to when your attorney committed malpractice.

MR. HAEG: Ok.

MR. OSTERMAN: Ok? I don't think the search warrant issues are goanna be necessarily covered and I don't think I can - I can get you to escape the complete and total liability - I don't think the Court of Appeals would be willing to do that.

MR. HAEG: Well when I can show that the search warrants - see I've been doing my research - when the search warrants bad it's called the poisonous tree.

MR. OSTERMAN: Fruit of the poisonous tree. But here's the situation. The Court of Appeals is only going to go back to what they can clearly identify as being the wrong feature in your case that produced all the wrong results.

MR. HAEG: Well wasn't that one of them?

MR. OSTERMAN: No.

MR. HAEG: Why not?

MR. OSTERMAN: Because the - the real problem occurred for you when you made all these confessions and handed them -uh- the keys to the crime, ok? And the search warrant was before that.

MR. HAEG: Ok but doesn't - I mean so what your saying is once - but this - hey ...

MR. OSTERMAN: The fruit of the poisonous tree applies...

MR. HAEG: Ok just hang on

MR. OSTERMAN: Ok.

MR. HAEG: If Brent Cole did this ineffective assistance of counsel by having me do that confession it goes back to there - the confession never happened.

MR. OSTERMAN: Right but it's my understanding the search warrant was issued before the confession or am I wrong on the timeline?

MR. HAEG: No that's - that's - you're correct but why can't you - if - if people committed perjury and other things that you could have used at your trial or defenses - we pointed out to Brent Cole that - that the search warrants were wrong over and over again. He didn't use that isn't that - isn't that [ineff] - would a normal attorney...

MR. OSTERMAN: Would it be ineffective assistance of counsel for the attorney to know that the warrant was defective and failed to challenge it? It depends on the - now you - here you got the Court of Appeals thinking.

MR. HAEG: Yeah.

MR. OSTERMAN: Depends upon the strategy - did the strategy of the search warrant (indecipherable) that the challenge could be made effectively that in such a way or is the - the lack of this evidence goanna cause you any greater problems in the long run. I can't answer that question until we get there.

MR. HAEG: Ok.

MR. OSTERMAN: What I can tell you is that it's my reaction having read hundreds if not thousands of court of appeals opinions over the years here and in other jurisdictions is when they take it back they're goanna take it back to a well known and established point. We may be able to challenge the warrants at that time but the Court of Appeals themselves will not deal with those warrants, in my opinion. Ok?

MR. HAEG: Ok well I want to try to get them to deal with it and if they won't I want to go back and...

MR. OSTERMAN: The answer of the Court of Appeals is not to solve a problem. But to simply say that from this point to this point what the court did was wrong and therefore go back and do it again.

MR. HAEG: And so it's just the court or it aint it's the attorneys - is it just the court or is it the attorneys?

MR. OSTERMAN: What do you mean?

MR. HAEG: You said that they'll solve a problem in a court and that's what I thought - that's why I thought an appeal is only based only on from when the court starts to when the court ends.

If your attorney was before the court ever got a hold of it I didn't think that the Court of Appeals could go back and address the attorney I thought that was post conviction relief?

MR. OSTERMAN: No they can go back and address it even before the attorney.

MR. HAEG: Ok.

MR. OSTERMAN: Because lets face it the evidence arising out of the ineffective assistance of counsel...

MR. HAEG: Ok.

MR. OSTERMAN... is fueling all of the complaints from that point on ...

MR. HAEG: Ok yep I agree

MR. OSTERMAN: The Court of Appeals can go back to that point.

MR. HAEG: Ok I didn't - I was never told that. Because I don't know what I was told that was lies and what was true. Now...

MR. OSTERMAN: There's a lot of dickering going on I mean I did not make any phone calls to Chuck.

MR. HAEG: Ok.

MR. OSTERMAN: I did not identify Chuck as a being a problem.

MR. HAEG: He's a big problem - he's a major problem.

MR. OSTERMAN: Ok well - I mean I didn't identify Chuck as being a problem to the people that I've talked to. They don't know who the attorneys are in this case.

MR. HAEG: So who'd you talk to?

MR. OSTERMAN: The attorneys that I've talked to - I've talked to some sources.

MR. HAEG: Whose that?

MR. OSTERMAN: I aint goanna tell you (laughs). The people that I've talked to deal with appeals, ok? The people who do things on appellate basis. The reason I'm not goanna tell you is because if I did...

MR. HAEG: Ok. Like Susan Orlansky and people like that?

MR. OSTERMAN: No.

MR. HAEG: Feldman

MR. OSTERMAN: No. These people work in the court appointed circles with (indecipherable) appeal. Ok and a...

MR. HAEG: Ok and is anything we're doing by attacking these troopers and get them put behind bars is that goanna help any?

MR. OSTERMAN: Well I'm goanna stop you for a second.

MR. HAEG: Ok.

MR. OSTERMAN: Putting troopers behind bars is not goanna be a solution to your problem.

MR. HAEG: Well if they - if they perjury themselves during my during - to help convict me and I prove that's perjury and they go behind bars isn't that a pretty good

MR. OSTERMAN: Sure if you prove it's perjury. But now bear with me for a second ...

MR. HAEG: Ok well I'm - it's goanna be proven.

MR. OSTERMAN: Ok one way or the other I'll show you how here in a second here. The whole issue though is that in dealing with this guy that I've talked to - who perfects and works on appeals - most of these guys are ghostwriters. One of the guys a disbarred attorney who works for appellate attorneys all across the State.

MR. HAEG: Ok.

MR. OSTERMAN: He writes stuff for the Court of Appeals. He's disbarred he can't represent himself. I asked him I said "what's the advantage for PCR over a claim of appeal" and he said "I don't know - except I would - I would be inclined to believe that if we do a PCR we may be giving away part of the farm by not pursuing the appeal. Because the P[b] the -uh-

MR. HAEG: Ok now -uh- ok

MR. OSTERMAN: The PCR won't let us deal with some of the other stuff ...

MR. HAEG: Ok let me - let me hang on - let me - yeah and I agree because I talked to Phil Weidner at some length and actually I got - you might as well know a bar complaint - pretty nasty one you know about him cause I taped him and I'm pretty angry about what he did. He called Chuck and alerted Chuck and then Chuck tries dropping me -um- (Greg laughs) I'm - he was there it was pretty ugly.

MR. STOU MBAUGH: Yeah he said go to dinner and come back half hour 45 minutes. Send us out, called Chuck on the phone, got strategy going with Chuck, we came back and he...

MR. HAEG: Made copies of all my stuff, refused to give me my copies, never took me, said signora ...

MR. STOU MBAUGH: Yeah he said I'm your attorney, I'm your attorney, we're goanna work on this, were goanna work on this, and he let the timeline run out and said I'm not your attorney.

MR. HAEG: Yep went up to within 24 hours of my brief due - made me a little - said start selling stuff. I said I got ten thousand dollars to give you. Oh that's - I don't know that's not enough - keep selling stuff and get back to me.

MR. OSTERMAN: Let me a story that Weidner wanted to get rid of one of his [cases] and he asked me stop in and take a look at the paperwork and picked up 4 bankers boxes full of paperwork. Brought it back here to my office and the next day the Court of Appeals - the United States Federal Court - District Court called me on the phone and he said Mr. Weidner says you're taking over this case. I said what? Well yeah he's got you down here - in fact he filed (indecipherable) with my name on it. I had only promised to look at the case, I didn't promise to take the case. The next thing I know I'm in the middle of this case - I got two very angry people wanting to know what the hell I'm goanna do for them. I haven't looked at the banker

boxes yet - I'm in the middle of this case. You know I don't trust Phil Weidner any better than I can throw him.

MR. HAEG: -Um- Ok but he did bring up one point that I think maybe - maybe very, very, very important and it rang true that it may be - you can do both at the same time. We actually have the paperwork to file our own PCR. Your appeal can just be running along and you - you actually go to Aniak where my trial was and you get the paperwork and you fill out what you think was wrong and it goes back and you can do both at once. I found that out - that's ab[s] and Chuck Robinson backed it up and I don't trust Chuck as far as I can throw him but Chuck Robinson's a brilliant attorney

MR. OSTERMAN: Mm hmm...

MR. HAEG: I mean he's brilliant - but he aint - old Dave - I'm patting myself on the back again. I mean I found out kind of what was going on cause I was in a hole. I actually slept under my desk for a while.

MR. OSTERMAN: Which I think you've got 2 years for a PCR.

MR. HAEG: But what he...

MR. OSTERMAN: My thing is what strategically time it's in.

MR. HAEG: Yeah but what he - what Phil Weidner said is that you can actually request from the Court of Appeals a stay on your appeal so that you don't - you're not fighting two battles at once. You can file for a stay - and this is what happened when we first went in there, before he talked to Chuck, he says man

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this is what you have to do. He said you file in the Court of Appeals a stay pending the outcome of your post conviction relief. And he says that way you go back in and try to fix your problem at post conviction relief but then the judge is just - I mean you - she's

MR. OSTERMAN: (indecipherable)

MR. HAEG: But see then you can pull in that stuff and put it back into the Court of Appeals before they look at it. Because right now the Court of Appeals doesn't have the - the really bad stuff because Chuck Robinson kept it out of the trial. He fought tooth and nail like Brent Cole - he told me David don't you dare bring up that you had a Rule 11 Agreement and - and Brent Cole and - and -uh- Scot Leaders screwed you out of it. He said don't bring it up. I said why? He said it'll hurt - hurt my deal that you're goanna win on appeal. We might have to appeal all the way to the US Supreme Court and that's the information Scot Leaders filed wasn't sworn to. Well the last time that was upheld was 1906.

MR. OSTERMAN: Over a whiskey bottle.

MR. HAEG: Over a whisky bottle now when I'm betting my life and the way I put food in my family's mouth and I went ...How much paperwork did I read and you print on Chuck's thing? I'm talking stacks like that. And I came to him and I said, "Do you mean you're - you're goanna run me to the US Supreme Court and the last time it was won was in 1906?" And he's like "well we may

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win". I'm like - this is why I started getting scared of old Chuck Robinson. Cause whatever you do I'm goanna do my homework to just - not to - not to second guess you but just to make our case as good as it can be.

MR. OSTERMAN: Under 2254 of post conviction relief you can't stay the appellate court you have to exhaust all appellate remedies before you can file it

MR. HAEG: So it would have been better not to even appeal, right?

MR. OSTERMAN: Well the - well depends on how you look at it. Number 1 I haven't seen your case to know whether there are appellate issues - clean cut straightforward appellate issues.

MR. HAEG: Ok.

MR. OSTERMAN: You're telling me that these police officers committed perjury. If we can convince the Court of Appeals that they did - certainly the Court of Appeals will look back at that situation. It's normally called a collateral attack of the sworn testimony. As far as the Court of Appeals is concerned the testimony in the court was properly sworn to and is for all purposes truthful information. The Court of Appeals can't vary about whether we believe a police officer or not believe a police officer.

MR. HAEG: If I get the police officers charged and convicted in a different court...

MR. OSTERMAN: You get them charged that'll - that'll be a big - a great big ribbon in your hair but you got to remember something, ok?

MR. HAEG: I'm pretty...

MR. OSTERMAN: Don't bet on it. I got a case right now...

MR. HAEG: Ok.

MR. OSTERMAN: where the police officer testified 4 times, falsely to the grand jury, and 6 times falsely to the petit jury, for a total of 10 times. I brought it up in the jury trial aint nobody jumping all over themselves to prove this police officer lied to anybody. In fact we tried to sue the police officer and just got a letter from the Attorney General saying it was permissible for the police officer to lie in front of the jury. Ok?

MR. HAEG: I know.

MR. OSTERMAN: There's no wrong doing in that.

MR. HAEG: So are you goanna watch when they stomp my head in also?

MR. OSTERMAN: No. I don't watch.

MR. HAEG: Ok that's a good thing. ... I- you know there's - see what kind of makes me nervous too is there's a lot of stuff that your guy will not know has gone horribly wrong but I do because of my conversations with my own attorneys.

MR. OSTERMAN: Ok.

MR. HAEG: and you see how they kept that out?

MR. OSTERMAN: Mm hmm.

MR. HAEG: You look at the whole trial you would never know that I had a Rule 11 Agreement other than during sentencing Scot Leaders says "Dave broke the Rule 11 Agreement so since he's that bad a person lets add on another couple years on his license suspension."

MR. OSTERMAN: See the - the Rule 11 Agreement by - by rules of - of evidence is inadmissible. Ok. Any offer or attempt to settle a case is absolutely inadmissible to a jury under any circumstances.

MR. HAEG: Not when I followed through and gave them payment then they broke it then it aint. It's absolutely admissible.

MR. OSTERMAN: No it's not admissible to this jury. It may be admissible for the purposes of any civil litigation that may arise out of. The court of - the Rules of Evidence are very, very clear.

MR. HAEG: Oh I see - before the jury. But what I'm saying is for the case somebody in the case could have looked at it. The judge - if we would have brought it up for the judge she would have had to have a (no) evidentiary hearing to see if there was a - if there was a deal or not and if she thought there was a deal she would have had to give it to us. Well Chuck's like "oh there was not deal - there was no deal" and I'm like "Chuck how can I have all these emails that there was a deal?" "Well Brent says that there wasn't - that he doesn't really know if there

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was a deal." I'm like "well how come I got all this stuff from Brent saying there was a deal then, and why'd I give up guiding for a year, and why'd I give them you know this confession, why'd I do all this stuff?"

JACKIE HAEG: Well even Chuck's ...

MR. HAEG: and then the investigator - do you know Joe Malatesta by chance?

MR. OSTERMAN:(indecipherable) I don't get along with him very well.

MR. HAEG: Ok well he does a good job. You don't get along with Joe?

MR. OSTERMAN: Yeah.

MR. HAEG: Ok. Well I - I sat there and he - yeah Joe's got kind of an obnoxious personality - kind of like mine probably but - um-

MR. OSTERMAN: That's why I don't get along with him.

MR. HAEG: Ok well I know he has a kind of weird personality but Joe - when all this happened I said "man we got to go in and toast Brent Cole." So Joe does it, for me. Chuck's "no - no - no - no." I eventually kind of hire Joe on the side and Joe does it. Joe did some digging for me. He got - it's pretty interesting isn't it?

MR. STOUMBAUGH: Yeah if somebody seen it - really interesting.

MR. HAEG: Then and then - well then I bring it in and show it to Chuck and Chuck's like "It do[n't] - I don't re - I had my  
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investigator". See I now I'm saying, "well you never even looked at what Joe did." Well "Oh yeah I did. To me it appeared there was no deal." Yet over and over Joe says, "there was a deal wasn't there and Leaders broke it" and finally Brent - Brent's trying to weasel out of it oh yeah there was a Rule 11 Agreement and Leaders broke it. He got him pinned down but Chuck now is saying that he never got that information from his investigator and I was there when we gave it to him and he read it. He's - he's trying to keep Brent Cole's law firm from taking a hit.

MR. OSTERMAN: Yeah. I can't figure out why Chuck's protecting him. He screwed up - he screwed up that's the bottom line.

MR. HAEG: That's the bottom line and Chuck by protecting Brent has done what? Screwed up.

JACKIE HAEG: Joe even wrote in his findings to Chuck he said. .

MR. HAEG: To file a motion.

JACKIE HAEG: ... to do the motion against the Rule 11 Agreement

MR. HAEG: Yep...

JACKIE HAEG: and then Chuck said they never found anything out.

MR. HAEG: Ok now. ... what's on the tapes. See what hap - this is - this is my dilemma. My dilemma is I think back they kept it pretty freaking clean. I screamed and yelled and whatever. They kept it reasonably clean. Although the - both perjuries - on perjury was pointed out - on...

MR. OSTERMAN: Mm hmm.

MR. HAEG: ... during trial

MR. OSTERMAN: Mm hmm.

MR. HAEG: The other perjury of the other trooper was pointed out during sentencing so that's in there -um- the search warrant thing it never came up, during trial. Or no it does because during trial when the guy perjures himself it would've - when he perjures himself it's the units - they said - I have a lodge in Unit 19C.

MR. OSTERMAN: Mm hmm.

MR. HAEG: The trooper said it was 19C. Well during our interviews you know way, way, way before trial we said "hey on your search warrant you said that all these wolves were in 19D - or 19C where our lodge is. They weren't they were all in 19D and we can prove it". He's like "well I - I haven't read the regulation book." Come on the guy who polices the area he doesn't know where he's at?

MR. OSTERMAN: Mm hmm.

MR. HAEG: He knew but what he knew is it'd be more likely to get a search warrant if he said the wolves were in...

MR. OSTERMAN: The area of your lodge.

MR. HAEG: the area of my lodge. So he falsified that. Tony, the guy that was shooting the wolves, told him they were in 19D not 19C, I told him and then we have that on tape - us telling him that it was in 19D. So - so if it came out that the wolves we shot were in 19D which is where the program was going on it

would kind of be a violation of the permit and not violation as a big game guide guiding. Because the permit had violations and this is goanna be big one for your appeal.

MR. OSTERMAN: Mm hmm.

**[3/22/06 Phone Call with Mr. Osterman]**

MR. OSTERMAN: Fayette - Fayette is there to investigate this perjury this allegation ...

MR. HAEG: Ok.

MR. OSTERMAN: ... ok and -um-

MR. HAEG: And I guess we're in - I guess ...

MR. OSTERMAN: ... here's the old phrase from Shakespeare "me thinkest thou protest's to much"

MR. HAEG: Ok.

MR. OSTERMAN: Ok.

MR. HAEG: And I agree but where I'm getting at is his underling just not too long ago made a decision "oh he didn't do anything wrong" and how - how unbiased is Fayette goanna be where if he makes a decision contradictory to that I think that that means his - his underling -uh- is probably guilty of obstruction of justice.

MR. OSTERMAN: Well not necessarily you know understand something he's giving an opinion ...

MR. HAEG: Ok.

MR. OSTERMAN: He's - he's giving an opinion and his opinion could be in fact wrong, it could be tainted by his familiarity

with the officers, his position of his office. I mean let's face it we've got special prosecutions and appeals looking at a case -um- involving an allegation that a Trooper lied on the witness under oath and the victim of the case is not you - the victim of the case is the Courts of Alaska that -uh- that heard a false statement, ok.

MR. HAEG: Ok. Yep.

MR. OSTERMAN: And -uh- so understandably -um- but...

MR. HAEG: But I took the brunt of that also.

MR. OSTERMAN: Yes you did and - and -uh- the - and it had a substantial impact on you when the officer lied. Now they're goanna go in and say - remember what I told you?

MR. HAEG: Yeah.

MR. OSTERMAN: I said they're goanna say "ah he was just mistaken, he didn't have his notes with him, -uh- he testified to something" ... but if he testified to it so positively you know and I pointed this out to Fayette when I was talking with him this morning and he said "now what's your position on this?" - I said, "listen I don't have a position on this, this is in addition to the appeal, I've heard about it, I've got some information about it, but I haven't really had the chance to go focus on it cause I'm focusing on an appeal in 60 days and that's where I've got to get moving" ...

MR. HAEG: Yep.

MR. OSTERMAN: ... and he said "ok I understand" and I said "but being my understanding is the officer testified and the officer said words to this affect ok 'I would never say such a thing' and I said "that means somebody said I said it they are lying" and he said "basically" and I said, "the fact is the officer did in fact say what he claims he never would have" and I said "he's too damned positive about something that happened for my client not to say 'well hold on a minute here' ...

MR. HAEG: Yep.

MR. OSTERMAN: ok and - and I said, "That's the bottom line" . .

MR. HAEG: Yep.

MR. OSTERMAN: ...so here's what I want you to do...

MR. HAEG: Ok.

MR. OSTERMAN: ... ok is that - that Haeg doesn't want to be called by you - he wants - or not Haeg, I'm sorry ...

MR. HAEG: Fayette.

MR. OSTERMAN: -uh- Fayette doesn't want to be called be you, he doesn't want to be pressured by you in anyway shape or form but he will accept documents that you want to send him. But my thing is - is he's got to perform an investigation. Let him perform his investigation, we both know what the answers goanna be, so why make it worse, why give him a reason to turn it down?

MR. HAEG: Ok.

MR. OSTERMAN: Ok. Why not let him shoot his own foot off rather than you giving him ammunition to shoot yours off?

MR. HAEG: Ok and I - I do understand that you know when you put it clearly like that. It just - I guess my hope is - is that if I just let him know that I - it aint goanna be the end of it when he exonerates Doerr, that he may end up doing the right thing. But I guess what you're saying is no matter what I do he's still going to exonerate Doerr?

MR. OSTERMAN: I - I you know I - I don' t think there's goanna be another choice that he's goanna just exonerate Doerr ok ...

MR. HAEG: Yep.

MR. OSTERMAN: For the shits and giggles that are involved and well you know we're Special Prosecutions, we're pro police, this guy came up through the prosecutorial rank to get where he's at ok.

MR. HAEG: Yep.

MR. OSTERMAN: You don't turn on police officers.

MR. HAEG: Yep.

MR. OSTERMAN: These are not skeptical people these are people that are saying "well if the police officer did it he was probably mistaken".

MR. HAEG: So where - ok... So if I'm not supposed to turn my efforts and time on him where do I turn them?

MR. OSTERMAN: You turn them into the written word. Ok.

MR. HAEG: Well is there - are there other people or should I keep getting ... should I keep spreading out what Doerr did. .

MR. OSTERMAN: When Fayette...

MR. HAEG: ...and getting people to look at it - normal people and writing the Governor, does that help?

MR. OSTERMAN: Well bear with me for a second. When Fayette drops the ball and says there's nothing to the investigation and sends you back the letter ok then you're goanna crawl right over the top of his head with the very same information and say "You know Fayette was Rom's supervisor, Rom's in the middle of an appeal, no -uh- nobody - none of these folks are goanna look at this with a jaundice eye, you put the political pressure in place.

MR. HAEG: Ok.

MR. OSTERMAN: Ok. Let things do their course now, give - give the people that you do trust the opportunity to be trusted.

MR. HAEG: Ok.

MR. OSTERMAN: Ok?

MR. HAEG: Ok well I'm you know I'm doing my best ...

MR. OSTERMAN: It's hard to say - it's hard to say...

MR. HAEG: you know.

MR. OSTERMAN: ... you got to sit down and wait and watch cause you've got everything in place. So my thing is sit, wait, and watch. Now's the time to go back out you know put - put your head down and shoulder and go find someplace to spend your energy rather than sitting at home thinking on this and brooding over it. Because my thing is - is when I get - when I get like you're at right now, and I do get there, ok ...

MR. HAEG: Yeah. ---

MR. OSTERMAN: I mean the first thing you want is you want a new trial, ok. --- They will send it back for a new trial, which is in essence a nullification. ---

MR. HAEG: Well or why can't you I mean -um- I keep coming back to -uh- I don't know my business attorney and you'll probably find out sooner or later is...

MR. OSTERMAN: Dale Dolifka.

MR. HAEG: Dale Dolifka and he when I had brought up some of this stuff -um- he said you go back to the main - to a major thing as early as possible and everything - and you know back then I haven't - I think I did mention to him about the search warrant and he said that is what you harp on. The earliest thing that happened that is major and he said everything from then is - is gone.

MR. OSTERMAN: Right and remember one of the things we're looking at and we're still dealing with until we get a better idea of what other issues may be out there. We know Ineffective Assistance is there. Ineffective assistance though if we play that card right now could hurt us. ---

MR. HAEG: Well or why can't you I mean -um- I keep coming back to -uh- I don't know my business attorney and you'll probably find out sooner or later is...

MR. OSTERMAN: Dale Dolifka.

MR. HAEG: Dale Dolifka and he when I had brought up some of this stuff -um- he said you go back to the main - to a major thing as early as possible and everything - and you know back then I haven't - I think I did mention to him about the search warrant and he said that is what you harp on. The earliest thing that happened that is major and he said everything from then is - is gone.

MR. OSTERMAN: Right and remember one of the things we're looking at and we're still dealing with until we get a better idea of what other issues may be out there. We know Ineffective Assistance is there. Ineffective assistance though if we play that card right now could hurt us. But in a post-conviction relief scenario in front of a Federal judge could turn things around. The ultimate issue is whether there's a plea agreement there or not and of course we're goanna look and explore that particular issue as a part for this appeal.

MR. HAEG: Well I don't want - you know like I said...

MR. OSTERMAN: You don't want to wait 2 years. I understand that.

MR. HAEG: ... the plea - the plea - the plea agreement I don't like because I think like Chuck Robinson said I can't sue my attorneys. I'm back to you know I'm broke - I mean my life is gone. I need to be able to sue these attorneys that - that put me here to be able to get - do you realize that -um- we're down by almost a million at this time - do you realize that?

MR. OSTERMAN: I understand...

MR. HAEG: Ok.

MR. OSTERMAN: ... but you got to remember something ok.

MR. HAEG: Yeah.

MR. OSTERMAN: there's a cause and effect and the cause was because moo - because wolves were hunted in the wrong spot. That's the initial cause that brings this thing together. The effect is so tainted by a magnifier sitting in the middle and the magnifier is a part of it. You got to remember my goal...

MR. HAEG: But couldn't you - couldn't you say that also that the - the lying on the affidavit and it was a sworn statement on that affidavit ...

MR. OSTERMAN: Sure that'll be one of the issues that we harp on...

MR. HAEG: That's - that's perjury right there...

MR. OSTERMAN: ... exactly...

MR. HAEG: Huh?

MR. OSTERMAN: That will be one of the issues that we harp on. But as I said we've not made a tactical decision until we know the basis of this entire appeal. Once we know that basis ...

MR. HAEG: Yep.

MR. OSTERMAN: ... then we can start making decisions about what's goanna be the way to attack this, what's the clearest most advantageous route into the Court of Appeals to get them to reverse the case.

MR. HAEG: Yep.

MR. OSTERMAN: Reversal is only the step and bear with me for a second everybody goes "well I see the pot of gold at the end of the rainbow" ok?

MR. HAEG: Yep.

MR. OSTERMAN: You got to get to the rainbow first...

MR. HAEG: Yep well I understand that...

MR. OSTERMAN: You gotta - you gotta travel the rainbow to find the pot of gold.

MR. HAEG: Yep.

MR. OSTERMAN: And our job is to get to the rainbow first.

MR. HAEG: Yep but what I'm saying is you know you keep kind of bringing up this Rule 11 Agreement it wasn't in the trial so to get to the Rule 11 Agreement you might as well go back to the search warrants not being correct. Do you understand is - is during the trial what you could appeal on the trial the Rule 11 Agreement wasn't part of that anyway so you know if - if you're goanna go to the Rule try to say "oh well they broke this agreement" you might as well go all the way back and use everything that wasn't in the trial and I think the more I look at the law and everything on and how sticky they are for search warrants. Search warrants are a very - very - very tightly regulated thing and when - when a trooper lies on it that's a horrendous mistake. ---

MR. OSTERMAN: It - it - no - no doubt about it - it is. But as I said one of the key issues is we're focusing on here is to make the strategic move -uh- ...

MR. HAEG: Yep well and that's where I'm naive you know and that's why I gave you \$12,000.00 is I know what is wrong, I don't know how to utilize it, and I am doing the shotgun affect. When you said that I'm out there just blazing away well when you're - when you're surrounded by Indians and they're all enemies and they're on all sides of you and you just start firing you're not goanna hit yourself because you're the one pulling the trigger but you're - anything you do hit's goanna be good for you and that's where I'm at. I mean I'm just - I'm - and you know now I have a friend in you and I guess what you're saying is you don't want to be damaged by what I do because you're on my side. Now I got me an ally and now I can't do the total shotgun affect and I'll you know I appreciate that and I don't want my \$12,000.00 dollars to be wasted and for me to shoot you in the foot while you're trying to help me but neither am I goanna quit shooting either.

MR. OSTERMAN: I'm not - I don't want you to quit shooting...

MR. HAEG: So...

MR. OSTERMAN: ... you know in fact what you just heard from me is to say you know what was -uh- to hear me say "hey -uh- you know try to take a different route ...

MR. HAEG: Ok.

MR. OSTERMAN: ... cause you're obviously creating a problem".  
Ok and if - if I were trying to settle a case and I had this  
client...

MR. HAEG: Well it just did...

MR. OSTERMAN: ... (inaudible) I would tell you you're being  
very effective but I'm not trying to settle a case I'm trying to  
get them to do something and what's happening is they're shoving  
resisting - which means they're not goanna do what we expect.  
The resistance is too great. The momentum is against you not  
for you.

MR. HAEG: Well I'm trying to change that momentum and I'll  
tell you what I have - there's a lot crap headed for the  
Governor's office and the Lieutenant Governor's and when I say a  
lot of crap I mean - I mean ...

MR. OSTERMAN: Yeah.

MR. HAEG: ... I've got US Senators that's goanna be sending  
return receipt certified letters to the Governor and Lieutenant  
Governor from all across the US and I mean when all them start  
coming in and roosting on the desk of the Governor and  
Lieutenant Governor I think they're goanna start going "you know  
maybe - maybe you know Doerr did do something wrong" because  
that's where I'm at. I mean I just - I took the evidence I have  
on Doerr and I published it to everybody and I have pretty  
doggone powerful friends out there in the world which I'm  
luckier than hell to have and boy am I glad I have them and I'm  
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goanna utilize everything I have and you know I remember you saying if I could get one Trooper charged even that could make a huge difference. Well...

MR. OSTERMAN: It sure could.

MR. HAEG: ... and so that's kind of where I'm at is I'm not an attorney but I've done well my whole life in everything that I've done. I used to be the highest paid herring spotter and do you know what the most competitive businesses in the world is? It's called herring fishing. They have a 20-minute opener and sometimes 50 million dollars are made in 20 minutes by a hundred boats. And most of the time 10% of the boats makes 90% of the money and I mean I've had days where I've made \$60,000.00 in a day was my share because I - I had ideas and stuff and I kind of always thinking out of the box ...

**[5/19/06 Phone Call with Mr. Osterman]**

MR. HAEG: I told you what Chuck Robinson and Brent Cole had done and you had agreed totally with it, said it was a big disaster, and you couldn't believe Chuck Robinson didn't go right after Cole, and what Cole did with lying to me and all that stuff, and now none of that's in the brief and you know like I told you I'm kind of suspicious about it. To me it seems like you had good

intentions to begin with and then as time went on you switched focus and ...

MR. OSTERMAN: Ok.

MR. HAEG: so

MR. OSTERMAN: Dave can I call you back in a few minutes I got my orthopedic surgeon on the line I got to get to him?

MR. HAEG: Ok that'll work. Bye. (Osterman calls back)

MR. OSTERMAN: You're concerned that I'm just not spitting fire like I was the first couple of times we met?

MR. HAEG: Well and you know part of it is I've been burned before and I'd rather just go on my own then to be worried about whose with me is you know protecting the other attorneys. We went you know I just - that brief that you have is absolutely useless and when I first talked to you - you were like "the sell out that happened was just horrendous. The Court of Appeals is just goanna just freak out" and then you write this brief and you even said that Chuck Robinson's statements were or his points of appeal were no good and you didn't like them. Well here your brief comes and it has nothing but Chuck Robinson's things that I showed you are worthless and told you and sent you all the stuff. And then ineffectiveness thing about Brent has one very weak point that probably isn't goanna be upheld and has nothing in there about him lying to me, about not sticking up for the Rule 11 Agreement, none of that, none of the year I gave

up, none of the important stuff's in there. What would you think?

MR. OSTERMAN: Well hang on a second now

MR. HAEG: What would you think?

MR. OSTERMAN: Well hang on a second, Dave.

MR. HAEG: Yeah I mean just tell me what you would think.

MR. OSTERMAN: Before you work yourself up into frenzy - what I think ...

MR. HAEG: No I'm not working - I'm totally calm, cool, and collected.

MR. OSTERMAN: Ok. So what I think is not important. What's at issue here is what is the Court of Appeals going to think. That's the issue.

MR. HAEG: You don't think - you don't think that you prove that your attorneys lying to you is important?

MR. OSTERMAN: Well bear with me for a second. You just twisted that handle. Don't do that.

MR. HAEG: What do you mean twisted that handle?

MR. OSTERMAN: Well you just - you just had twisted the entire argument. You said, "I gave up a year of being a guide don't you think that that's important?" Well (inaudible-talking over each other)

MR. HAEG: No I said that and the other stuff is important.

MR. OSTERMAN: They could give a shit less. Ok?

MR. HAEG: Really you think so huh?

MR. OSTERMAN: This is not an equity argument, this is a legal argument. You're looking at binding legal president.

MR. HAEG: Yep ...

MR. OSTERMAN: (inaudible-talking over each other) problem here.

MR. HAEG: You ever heard of a thing called Detrimental Reliance?

MR. OSTERMAN: No, Detrimental Reliance occurs in contracts.

MR. HAEG: Do you know that when you put Detrimental Reliance on a criminal plea Rule 11 Agreement it must be upheld?

MR. OSTERMAN: No kidding. That's exactly correct Dave. You're absolutely right.

MR. HAEG: Why isn't there anything like that in your brief?

MR. OSTERMAN: Primarily because as I said before we were giving you a draft to see how these issues were goanna work with you. Remember?

MR. HAEG: What if I didn't have the time to be sheep herding you along, what would have happened?

MR. OSTERMAN: Dave you haven't shepherded me along.

MR. HAEG: I know you haven't allowed it, that's correct.

MR. OSTERMAN: That's absolutely correct.

MR. HAEG: Yep and I sent you all the information that we had and you had read it the first time you came out of the gate all fat and sassy and telling me what I wanted to hear and then as time went on you ended up in a position ...

MR. OSTERMAN: Are you accusing me Dave - are you accusing me of - of -um- protecting other attorneys and not doing the job for you, is that what your accusing me of?

MR. HAEG: It sure looks like it.

MR. OSTERMAN: Ok now you gotta tell me what action it is that you think I've taken that has caused that.

MR. HAEG: Well telling me all the things that I had found and that you agreed with me right off the bat, were all excited about it - I mean you were just - you were just freaked - you were like "I can't believe that Brent Cole sold you out and Chuck Robinson didn't do anything about it - it's unbelievable". Those -

MR. OSTERMAN: Right.

MR. HAEG: those are pretty close to your words. Well where is that in my brief?

MR. OSTERMAN: Well hang on a second now. That's right but I had not ...

MR. HAEG: Where is that?

MR. OSTERMAN: Hold on a second Dave ...

MR. HAEG: Where'd it go?

MR. OSTERMAN: Wow Dave it didn't get in there did it?

MR. HAEG: It sure didn't.

MR. OSTERMAN: Well why do you think that is?

MR. HAEG: Cause I think if it was in there old Brent Cole and Chuck Robinson they'd be -uh- flipping hamburgers after they got out of the \*\*\*\*\* Federal pen.

MR. OSTERMAN: Well I got news for you that aint goanna happen here, you're not goanna get that to happen here, and I'm not goanna get that to happen here. ...\_MR. OSTERMAN: Oh but that isn't that, ok? I've got all this time and practicing in addition to it and you're not listening to me to understand what's going on here.

MR. HAEG: Ok tell me.

MR. OSTERMAN: If - if the things you had told me had been true, ok? Or that I could sufficiently document to raise as an issue we would do so. But a lot of the things that you neglected to tell me, including the fact that you testified at trial and confessed to an awful lot of the criminal activity, ok is a serious problem here. We did go back in and we did find that there may be a reference to a ca[se]- to a -um- the -uh- Courts advisement of your rights that may becoming a big issue and I'm - I'm trying to find that issue. We're also missing I think a tape and we need to verify that missing tape with you because there is an important Appellate issue were the Courts required to advise you that you have a right to testify or not to testify and that the entire right is yours and I can't make you, and defense attorneys can't make you, and prosecutors can't make

you, and judges cannot make you testify. And that rule must be read or the case is automatically reversible.

MR. HAEG: you know I remember the Judge telling me that.

MR. OSTERMAN: Well you didn't the other day in here. You remember - now I can tell you that the Judge said she was goanna talk to you later in the case and we've found a vague reference to something...

MR. HAEG: Well it don't matter I think - you know it you know now old Weidner saying the same shit as you and Chuck Robinson had me testify because he said "Brent Cole \*\*\*\*\* you when you went in and talked about it". Nobody told me they could have kept all that out. Chucks like you're \*\*\*\*\* screwed get up there and testify you piece of shit. And I went up and testified -a- nobody told me about Evidence Rule 410.

MR. OSTERMAN: Now I know...

MR. HAEG: They all hid that shit from me - so are you.

MR. OSTERMAN: Well no I'm not.

MR. HAEG: I'm \*\*\*\*\* pissed.

MR. OSTERMAN: Now you're telling - now get - bear with me for second, ok?

MR. HAEG: You have no idea what I'm capable of.

MR. OSTERMAN: I apparently don't and the one thing you're not capable of sir is answering questions. That's obvious.

MR. HAEG: Put them to me buddy.

MR. OSTERMAN: Now see you're getting all ramped up again.

MR. HAEG: Yeah well when you been through what I've been through Mark Osterman you couldn't hack what I've been through.

MR. OSTERMAN: Ok. Fair enough I can't hack it so lets get back to the issue at hand. The problem that got you also is I can't get out of this case with out the approval of the Court of Appeals.

MR. HAEG: Want to bet?

MR. OSTERMAN: Ok how do you propose to get me out of this case without the Court of Appeals?

MR. HAEG: I fire your ass and I say you're \*\*\*\*\* done.

MR. OSTERMAN: Ok then your goanna be the one that's goanna tell the Court of Appeals that I've been fired?

MR. HAEG: Oh yeah.

MR. OSTERMAN: Well see the Court of Appeals has the authority to say "no he's not-he's in a (inaudible-talking over each other)".

MR. HAEG: I have a Constitutional Right to go pro se. Do you know what those two words mean?

MR. OSTERMAN: Yep (exhales).

MR. HAEG: Do you think that the Court of Appeals are goanna tell me I don't have my Constitutional Rights?

MR. OSTERMAN: I'm not goanna tell you that.

MR. HAEG: Well I'm glad you're not.

MR. OSTERMAN: I'm - I'm goanna tell you that the Court of Appeals is goanna say "he's in the case - he's in the case"

because they're not goanna give you anymore time to file a brief. ...

MR. HAEG: And I've had people in - you've noticed that every time I come in I have people there to listen so that I'm going ...

MR. OSTERMAN: You have a tape recorder in your pocket.

MR. HAEG: They all - they all say the same thing - we go back through and I said what's going here - what's going on? And everybody - because I've been through this shit enough now. And it just keeps - and even you admitted you said, "I'm goanna go after these attorneys but I sure don't like it - I don't like going after attorneys". Well wouldn't it be better to have somebody "boy I like going after attorneys", if that's what needed to be done? If you hired me to take you hunting which is what I used to do wouldn't you like somebody that likes to go hunting? Would you - would you hire me if I said, "you know what I really hate hunting. I'll do it if I absolutely have too". Is that who you'd hire?

MR. OSTERMAN: Hunting what - hunting people or hunting bears? Taking away and depriving people of their livelihoods is that what you enjoy? Are you so crass that that's what you believe? That's what you're asking me in essence to do is you're asking me to go on and interfere with another mans livelihood so I hesitate, I don't think it's the same as hunting a deer out in the woods.

MR. HAEG: Mark Osterman what

MR. OSTERMAN: Come to think it's a (inaudible-talking over each other)

MR. HAEG: what has all - all them attorneys that I showed you what they did what have they been doing to me? They've been hunting me. Exactly ...

MR. OSTERMAN: No they have not been hunting you.

MR. HAEG: Want to bet?

MR. OSTERMAN: By some act of negligence or carelessness they've caused you harm. And granted they should pay for the act of carelessness or negligence but those people are not out there with a gun trying to shoot you like you're trying to shoot them. As I said before ...

MR. HAEG: No they've only put so much pressure on me that my wife takes tranquilizers and for every tranquilizer she takes I'll put a bullet in them not through the law but with the Law.

MR. OSTERMAN: Bear with me for a second. That is going to make me hesitate when I do that - hesitate yes, hesitate to be reflected yes ...

MR. HAEG: Does your wife take tranquilizers because of the pressure put on them by some crooked attorneys?

MR. OSTERMAN: I don't know that the pressures put on her by crooked attorneys, Dave.

MR. HAEG: Oh you think it's me?

MR. OSTERMAN: Well I think that they're not the ones in the house yelling and screaming and carrying on from time to time, I'll bet.

MR. HAEG: Oh yeah.

MR. OSTERMAN: And that's not a statement - I've seen you go off in my office and you wonder why I'm giving you the passive message? Well I seem to recall you coming into my office and going off on me ...

MR. HAEG: See I remember you in the first conversation when I sent you the stuff. You were just as radical as I am right now. And now I see you going "oh I don't want to mess with people's lives".

MR. OSTERMAN: I told you that this draft - I told you that this draft was for you to review and get back with me so that we could make adjustments to this brief as necessary. And that's exactly what we're trying to do.

MR. HAEG: How do you fix something that is useless?

MR. OSTERMAN: Ok so now you know the position that I'm in - I keep telling you that - the trouble is sir is that you haven't listened to me about much of anything. You want to tell me how smart you are. I've got news sir I'm not the one seeking a criminal appeal. So don't hand me how smart you are. Hand me how good you and I can cooperate and work together. That is a smart thing to do. That will be to your benefit. But firing me is not goanna be to your benefit. You're goanna be written off

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as some kind of weirdo kook - you think about that one for a minute and if you don't think it's true I can cite you chapter and verse on that issue out of the Court of Appeals and the Supreme Court. Pro se's don't survive - pro se's seldom win.

MR. HAEG: Well I'd rather go in on my own without thinking that people are out to get me and maybe I'm suspicious but do you know what - I've been the most successful person at anything that I put my mind to then anybody in the State of Alaska.

MR. OSTERMAN: (exhales)

MR. HAEG: Now take and think about that for a little bit. I used to be a herring spotter

MR. OSTERMAN: I won't think about it - you're dead wrong.

MR. HAEG: Huh?

MR. OSTERMAN: You're dead wrong. I've met people 10 times smarter or better than you that persevered under the worst of conditions.

MR. HAEG: Ok. That's good.

MR. OSTERMAN: No sir the fact of the matter is - is that - that is just the opposite is true. You're not being very intelligent.

MR. HAEG: Ok.

MR. OSTERMAN: When the paranoia that you're experiencing can be solved with medication. You think ...

MR. HAEG: Is that what you suggest - do you think I should be on ...

MR. OSTERMAN: (inaudible-talking over each other) I've got news for you

MR. HAEG: hey

MR. OSTERMAN: there's nobody out to get you.

MR. HAEG: Why did you say that they were, at the beginning then?

MR. OSTERMAN: Your attorneys committed - I did not say they were out to get you - I said they screwed you. There's a difference. You think these people are hiding in dark corners ...

MR. HAEG: Then why is none of that in my brief now?

MR. OSTERMAN: You think these people are hiding in dark corners to do you harm.

MR. HAEG: Did you even - did - I sent you all the stuff from Phil Weidner, didn't I? Do you think what he did was correct?

MR. OSTERMAN: I never even read the crap from Phil Weidner. I could care less about it cause it has no impact on the Court of Appeals case that I'm dealing with.

MR. HAEG: Well if you think I'm so suspicious why would - when I was in there before I ever left why'd he call Chuck Robinson, copied my file, and said he was - when I called him on it he said he was sending my copies to Chuck Robinson? Can you believe that shit?

MR. OSTERMAN: I can believe it.

MR. HAEG: Well wouldn't that \*\*\*\*\* make you suspicious?

MR. OSTERMAN: Well you're not dealing with what I consider to be the highest intelligence level in the Universe.

MR. HAEG: Wouldn't anybody intelligent make that - wouldn't that make them suspicious?

MR. OSTERMAN: Well it ought to make everybody in the world suspicious but as I said you got under(stand) you know

MR. HAEG: So your - you think I'm a kook?

MR. OSTERMAN: No I'm telling you everybody else is goanna think you're one.

MR. HAEG: Well I guess I'd rather go out a kook when I go to US Supreme Court and show them that Brent Cole did nothing but sabotage my whole case and then Chuck Robinson jumped in and was goanna do a valiant effort. Well it's hard to do a valiant effort when your fighter, your man your advocating for they chopped both his legs off already. It's hard for him to win.

MR. OSTERMAN: I understand.

MR. HAEG: Well you don't understand. Do you know that in the US Supreme Court they said that it's supposed to be a fight not maybe equal but neither is it the sacrifice of unarmed prisoners to gladiators and what the \*\*\*\* happened to me? They took every defense; they took all my money; they took all my weapons - and I'm goanna go - Brent Cole said that false information on a search warrant didn't matter, Brent Cole says give them a 5-hour

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interview nothing in writing-nothing, give up a whole year of your life, wipe out your kids college funds and everything, fly in everybody for this moose thing, oh they - they've changed the charges, used all your - your statement against you to file all these charges, oh it don't matter, you go to trial now that you're \*\*\*\*\* screwed, defenseless, and penniless. That is not Constitutionally Right. You know it, I know it, and I don't care what the \*\*\*\* you say that you know it's going in there. I thought you were my man, in my corner, when I called you and you said, "oh man it's so bad the sell out" - you said the sell out is the worse thing you'd ever seen. Well then you pick out one little portion of what the sellout was and water it down and put it in there at the last. -Do you know that I've got -uh- you still there?

MR. OSTERMAN: Yeah.

MR. HAEG: Do you know that we've actually got West Law, we signed up to West Law. Now that's pretty dedicated. Do you think that was a smart move?

MR. OSTERMAN: I don't - I don't necessarily - I think there are better services then West Law, for the price.

MR. HAEG: No but you wouldn't - you wouldn't sign up for anything you'd just trust attorneys at this point, right?

MR. OSTERMAN: No I sign up with Lexis.

MR. HAEG: Ok well so anyway. We print off how to write a brief. You say "oh we want to hide your main issue until the  
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reply brief". It tells us that you - first impressions are the utmost importance, utmost - do you know what that word means - utmost?

MR. OSTERMAN: Yes.

MR. HAEG: Well it says how to write a good brief the utmost importance is first impressions. Do you throw in there what you have first in the brief that's absolutely useless - that the subject matter jurisdiction? We even looked up subject matter jurisdiction. You guys are blowing so much smoke it's not even funny. You're goanna go in there, the Court of Appeals would look at it and they'd go oh this guys \*\*\*\*\*. They won't even get to the Ineffective Assistance of Counsel because that's - they've already got their impressions made. I'm goanna go in there and you said to write a brief that grabs them by the balls. Well when they get this brief they're goanna look at it and you know what I don't even really care if they throw it out because it will be on the record and when I get to the US Supreme Court they're goanna \*\*\*\*\* sit up and go holy \*\*\*\* what are these attorneys doing to citizens that don't know the law in Alaska? They're goanna \*\*\*\*\* freak, they're goanna send up the aircraft carriers, the destroyers, the tanks, and clean out this nest of \*\*\*\*\* lawyers and Department of Law. They are \*\*\*\*\* breaking the goddamn citizens Constitutional Rights for Effective Assistance of Counsel and for a fair trial because you know it, I know it with Murphy and Leaders and my own \*\*\*\*\*

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attorneys working against me how do you get a fair trial? You don't. You end up getting screwed. What happened to me? I got screwed. I'm smart, I'm tough, if it could \*\*\*\*\* happen to me Mark Osterman it would have happened to virtually everybody. No one would come out of it like I did and persevere and figure out the law like I did, but I did. My whole - my whole life I grew up on correspondence, I graduated with a 4.0 grade average, standing scholarships to Stanford, Harvard, and Yale. I can \*\*\*\*\* get the letters for you if you want. I'm not smart - I aint been to college but I \*\*\*\*\* read and I understand what I read and that's all you goddamn need. I don't care what you guys interpret. I'm \*\*\*\*\* pissed. You guys water everything down and I'll tell you what - you guys better be \*\*\*\*\* scared man because when this shit \*\*\*\*\* hits the fan there's goanna be some shit \*\*\*\*\* flying I'll tell you what so - anyway I'll talk to you Monday and go from there and thank you very much. Bye.

**[5/22/06 Phone Call with MR. OSTERMAN]**

MR. HAEG: Ok well I don't ...

MR. OSTERMAN: I'm the person you deal with

MR. HAEG: ... know how you can have that responsibility when you told me you have a conflict of interest in representing my interests.

MR. OSTERMAN: I have no conflict of interest with your interests.

MR. HAEG: Yeah you did.

MR. OSTERMAN: Do not.

MR. HAEG: You said that you're not willing to interfere with other peoples livelihoods on my behalf even though they committed - what'd you say like -uh- -uh- I don't know what you - they committed horrendous and unbelievable acts.

MR. OSTERMAN: Are you there?

MR. HAEG: Yep yeah can you hang on one second here - hang on just one minute.

MR. OSTERMAN: You bet.

MR. HAEG: -Uh- back again.

MR. OSTERMAN: Ok.

MR. HAEG: -Um- anyway -uh- I just don't feel comfortable you doing that because you told me in no uncertain terms that - that these attorneys - I mean is that true that these attorneys did stuff that weren't in my best interest is that true?

MR. OSTERMAN: David I'm not going to play 30 questions for your tape recorder.

MR. HAEG: Ok.

MR. OSTERMAN: You want me to make a statement here's the statement.

MR. HAEG: Ok.

MR. OSTERMAN: What I believe and what I am capable of doing in Court sometimes be an inconsistency and appear to be an inconsistency for somebody like you.

MR. HAEG: Ok.

MR. OSTERMAN: As Joel pointed out to you in his conversation with you that there are a lot of conversations that you had off the record about effective assistance of counsel we can't bring up in this case. Now effective assistance of counsel is an issue in your case and I even sent you an article over the weekend concerning effective assistance of counsel so that you would understand that the Strickland test has to apply every time. If it doesn't apply we can't win an ineffective claim. Now ...

MR. HAEG: And how do you bring - now this is one thing that really - really gets me. How can you bring up stuff that's not on the record for the ineffective assistance of counsel claim in what you put in there and not bring up the rest of it?

MR. OSTERMAN: Because the Ineffective Assistance claim goes to the ability of the clients per - I'm sorry - the attorneys performance on behalf of the client in the courtroom. That's the Strickland criteria. The Strickland criteria isn't whether he called you a dunce outside a courtroom or thought you were stupid. That's not Ineffective Assistance.

MR. HAEG: So when on the - the issue that you did bring up how was that in the courtroom? Tell - just explain that one to me.

MR. OSTERMAN: Well - well it relates to substantial rights that you have since you have a 4<sup>th</sup> and a 5<sup>th</sup> amendment right those

rights are substantial rights and he violated those particular rights on your behalf in judicial matters. In matters before the Court. In the matters before the Court were plea agreements because plea agreements are judicial matter. Don't believe me look up Rule 11 in the criminal rules. It deals with the conduct of plea agreements.

MR. HAEG: And how come none of the stuff of him not -uh- saying that at my arraignment is in there? Because that was on the record?

MR. OSTERMAN: Well things that were on the record are certainly part of it. Bear with me for a second. You...

MR. HAEG: They weren't anywhere to be seen in the brief.

MR. OSTERMAN: Listen - listen to me. You're the one that came to me and hounded me for a draft and I told you I wasn't happy about shipping you out a draft but I would see to it that you got one. Well you got the draft that came back to me from Joel Rothburg, that outlined the issues that were goanna be discussed in your case. Now you got all bent out of shape about what the orders goanna be, and what does this mean, and what does that mean, and I don't like this, and I don't like that, and I don't know what this word means, or that word means. I got news for you. The brief isn't written. You haven't seen the final product. You only saw the document provided to me by a person I retained on my behalf to help me with writing your brief.

MR. HAEG: No because you told me that you told him about the ineffective assistance of counsel stuff and none of that was in any of the materials I sent you. So you were a part of that brief. That's what you told me ...

MR. OSTERMAN: That's right.

MR. HAEG: So you telling me now that you weren't?

MR. OSTERMAN: Oh no I - I did very - had very little writing - in fact -uh- probably if you take - if you took a look at the ineffective assistance portion of that - that was my draft of that particular issue. Joel never wrote that I did.

MR. HAEG: Hmm.

MR. OSTERMAN: Ok?

MR. HAEG: Well anyway ...

MR. OSTERMAN: That particular issue was put in by me ...

MR. HAEG: Yep.

MR. OSTERMAN: -uh- dealing with that particular issue ...

MR. HAEG: So ...

MR. OSTERMAN: ... because it was an important issue.

MR. HAEG: Ok. Just lets get back to this. Are you allowed to represent me when you have a conflict of interest?

MR. OSTERMAN: Bullshit. You want an answer turn your tape recorder off.

MR. HAEG: I'm not turning it off. You can. You can turn yours off.

MR. OSTERMAN: I don't have mine on.

MR. HAEG: Why not?

MR. OSTERMAN: I have no need to tape record you Dave. Everybody in the world knows about your hypertensitvity to -uh- hypersensitivity to all these things and knows you're running around with a cor - with a tape recorder trying to prove that all us lawyers are bad people. But see ...

MR. HAEG: I wouldn't say all of you are.

MR. OSTERMAN: Oh.

MR. HAEG: I'd say that Dale Dolifka's one of the finest attorneys on planet earth.

MR. OSTERMAN: But he hasn't written your brief for you has he?

MR. HAEG: No he hasn't.

MR. OSTERMAN: And he won't write - brief for you will he?

MR. HAEG: No but I'll write my own so ...

MR. OSTERMAN: Ok.

MR. HAEG: ... anyway you told me you have a conflict of interest -

MR. OSTERMAN: I do not have a conflict of interest

MR. HAEG: I don't want you as my attorney anymore. I'm goanna send you a letter, you're fired. You touch any of my stuff, do anymore, like you said you need something in writing it's coming. So as far as you, as far as of this moment right now you are no longer my attorney. Ok is that clear?

MR. OSTERMAN: -Uh- it's clear I understand it - I will continue until I get a written verification from you - you no  
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longer want it and then I will make application to the Court of Appeals. Now you have to understand that whatever you send me in writing I'm goanna forward to the Court of Appeals.

MR. HAEG: Very good I like that.

MR. OSTERMAN: Ok. And I got to tell you that if it's derogatory I also have the right to file a affidavit with the Court concerning your conduct.

MR. HAEG: I like that even better.

MR. OSTERMAN: Ok. So I - I would be very careful sir about what you do because all you need to say is that you no longer have any faith and in trust and confidence in me. But if you go into grave detail about what's goanna happen, or what you think happened, or what I said, or what ...

MR. HAEG: No what I have proof

MR. OSTERMAN: Or what I did

MR. HAEG: - no it's what I have proof of happening. That's what I have. I have proof. I have you telling me when you took my money that Brent Cole and Chuck Robinson committed unbelievable acts against me. Unbelievable ...

MR. OSTERMAN: Right.

MR. HAEG: and now I have you saying that oh you don't want to deprive people of their livelihoods. Well what happened to me?

MR. OSTERMAN: No I told you that before ...

MR. HAEG: What happened to me?

MR. OSTERMAN: I told you before I go in to do something like that I'm very - very careful. I'm very cautious. I don't go storming in, screaming and waving guns, and shooting my mouth off. Cause that only makes things a lot worse when you may be wrong. I told you - I tried to explain that to you but you got all worked up about that. Oh my god if you think that's a conflict of interest sir I - I disagree with you. That is not a conflict of interest. The only conflict of interest going on here - right here and right now is the fact that I told you that you would not abuse my employees and you did. You didn't listen to me.

MR. HAEG: I don't but - so Joel tell - told you I abused him?

MR. OSTERMAN: No you called him at home. That was the abuse.

MR. HAEG: Well I couldn't get a hold of him any other way.

MR. OSTERMAN: You called him at home ...

MR. HAEG: And I - I think I have a right to talk to the people that I spent ...

MR. OSTERMAN: You don't have a right to call him on a Sunday.

MR. HAEG: a bunch of money on. Why not?

MR. OSTERMAN: And you didn't spend a dime on Joel Rothburg.

MR. HAEG: Oh I didn't huh?

MR. OSTERMAN: No. Joel Rothburg's an employee of mine, sir, not yours. You didn't see him, you didn't retain him, and his name is not on anything. He prepared documents on my behalf and this office as an assistant attorney.

MR. HAEG: And you told me he had no card. What does no card mean?

MR. OSTERMAN: No card - no business card? Cards haven't been printed for him.

MR. HAEG: No what?

MR. OSTERMAN: No card - he has no business cards.

MR. HAEG: Ok. Well I didn't understand why you said that ...

MR. OSTERMAN: He's a licensed attorney in the State of Alaska.

MR. HAEG: Huh?

MR. OSTERMAN: He's a licensed attorney in the State of Alaska. He's been licensed here for 30 years.

MR. HAEG: Yep. Well in talking to him I guess I understand that but when you have shit happen to me that has happened you start wondering what the hells going on.

MR. OSTERMAN: The stuff that's happened to you is nothing sir - absolutely nothing that you didn't bring on yourself. But the things that happened to you should have not have occurred to you in ought to be rectified. But it's time you realize that - that while this might be a life changing event for you it's not the end of your world. And to treat it as such I think is a very dangerous situation for you. But you certainly should not be running around making threats about harming other people. You've done that all along. So before you start spouting off to people like you know the Court of Appeals or others about my conduct, or his conduct, or anybodies conduct you got to

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remember that the - that the - the issue of what you have on tape is what you have on the whole tape not just part of the tape.

MR. HAEG: Yeah and what - what ...

MR. OSTERMAN: And I never gave you permission to tape record me. In fact I'm prohibited by the rules of ethics to tape record you and I'm not.

MR. HAEG: I'm glad that - glad that you attorneys have some sort of ethics there. So but I'll tell you what I don't have any obligation not to tape you and when I'm paying you 200 bucks an hour I'm thinking that I should have 3 or 4 tape recorders running because then I can get my moneys worth. You agree?

MR. OSTERMAN: No I don't.

MR. HAEG: And why wouldn't you?

MR. OSTERMAN: Because I told you I could do the job, I'm still standing ready to complete and finish this particular job, and you preventing me from it.

MR. HAEG: Well I'll guarantee you ...

MR. OSTERMAN: You can have all the tape recorders ...

MR. HAEG: If you were in my shoes you'd be - you'd be ...

MR. OSTERMAN: You can have all the tapes recorders in the world ...

MR. HAEG: ... freaking out

MR. OSTERMAN: You running - you're running around - I - I know that you scripted out your little meeting with Joel yesterday,  
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to tape record him, so that you can say this is what Joel said and this is what Mark said and the two of them don't agree and therefore one of them is lying to me. And therefore I have the right to say yada yada yada. As I said before I still remain willing to work for you. I still remain willing to put out a good document ...

MR. HAEG: And do you know why ...

MR. OSTERMAN: ... that raises the issues ...

MR. HAEG: ... you want - now it's as obvious ---

MR. OSTERMAN: that ought to get your case reversed

MR. HAEG: its as obvious as the nose on your face that the reason why you want to continue working for me is so that you can control the situation and keep two attorneys from paying the piper for their malpractice in representing me.

MR. OSTERMAN: I'm not out for malpractice. Told you that. We're not doing a malpractice case. We're doing an Ineffective Assistance of Counsel claim.

MR. HAEG: The two are one in the same.

MR. OSTERMAN: No they're not.

MR. HAEG: How come ...

MR. OSTERMAN: I'm not here ...

MR. HAEG: ... when the Shaw case where the

MR. OSTERMAN: ... I'm not here for a civil case ...

MR. HAEG: ... Alaska Supreme Court says that they are two in the - one in the same? I said you don't do two of - you don't

do a malpractice case at the same time there's an Ineffective Assistance of Counsel because if you prove Ineffective Assistance of Counsel malpractice is virtually guaranteed.

MR. OSTERMAN: To some extent, yeah.

MR. HAEG: Well now I start wondering ...

MR. OSTERMAN: But I'm not doing a civil case.

MR. HAEG: Now I start wondering ...

MR. OSTERMAN: My focus is not civil.

MR. HAEG: I start wondering Mark now if they're essentially one in the same and you don't want to harm these other attorneys and -uh- d - take away their livelihoods yet ineffective assistance which is my strongest claim if - I guess you wouldn't quit have to be a lawyer to understand that if I go after them and I win on Ineffective Assistance of Counsel I am effecting their livelihoods, correct?

MR. OSTERMAN: Listen there's nothing in ...

MR. HAEG: Now - now it doesn't take a ...

MR. OSTERMAN: ... nothing in Chuck ...

MR. HAEG: ... it doesn't take a law school graduate to figure that one out. I mean wow old Dave he's smart enough to figure that one out ...

MR. OSTERMAN: I guess - I guess Dave maybe you have all of these very negative and bad motives when you go to work for people like you exhibited with Fish and Game when they gave you a permit to go shoot wolves within an area and you decided you

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were smarter than the people that gave you the permit. The whole situation here is that I'm not trying to protect Chuck Robinson nor am I trying to protect Mr. Cole. I'm trying to achieve one thing and that is to seek the reversal in the Court of Appeals for your case on issues because the reversal of that case is what you hired me to do. If you hired me to pursue Chuck Cole and - I'm sorry - Chuck and Mr. Cole I would not have been retained by you. And I told you at the outset. I told you I'm not interested in pursuing a legal malpractice claim against anybody else out there. But effective assistance of counsel is an issue that I can handle. And I will take an effective assistance of counsel claim. Now that doesn't mean that I'm gonna go out and be revengeful, and nasty, and mean on your behalf because that's what you like. I'm telling you I'm gonna go out and do the job for you to get the reversal that you need in your case so that we can get the right plea agreement in place, at the right time, or whatever, or get your sentencing modified to adjust it more like the co-defendant, and possibly not lose the airplane which I think is probably the most grievous factor here. That your guide license ...

MR. HAEG: Well don't you - don't you agree that - that Tony Zellers attorney - Tony got screwed too - Tony's looked at what I've said he says "I got screwed too".

MR. OSTERMAN: (exhales)

MR. HAEG: My attorney never stood up for keeping my statements out of my thing either. Well what the hell ...

MR. OSTERMAN: Well I don't disagree with you ...

MR. HAEG: ... is going on with these sons of bitches, man?

MR. OSTERMAN: Well I - but see I'm telling you right now ...

MR. HAEG: What the hell is going on?

MR. OSTERMAN: ... these sons of bitches have been in this particular area of practice for so long they've been schmoozing so many people that when they hit Scot Leaders the new kid on the block they had no idea what was goanna happen. And it happened to them.

MR. HAEG: Well wasn't it there duty to say "hey Scot Leaders broke the law"?

MR. OSTERMAN: Well damn straight they should have said ...

MR. HAEG: Well why didn't they?

MR. OSTERMAN: ... no - no Scot didn't break the law.

MR. HAEG: Yeah he did ...

MR. OSTERMAN: Well he broke a rule ...

MR. HAEG: ... he broke the law

MR. OSTERMAN: ... he broke a rule - he broke a rule of evidence

MR. HAEG: ... attorney fights it?

MR. OSTERMAN: No he broke a rule of evidence damn it. It's not a law.

MR. HAEG: Well or whatever. He - he - he broke the evidence rule to harm me and my co-defendant, correct?

MR. OSTERMAN: Absolutely I don't disagree with you. Ok. But how do I get to him? The only lawful to get to him is to go in and upset the case in the Court of Appeals. But you're tying my hands behind my back and decided you could do a better job and I've t - I've told you that going out there with a flame thrower to melt people down in the Court of Appeals is not going to work effectively. The Court of Appeals is not going to listen to those kinds of arguments ...

MR. HAEG: Oh they'll ---

MR. OSTERMAN: They'll throw you out

MR. HAEG: ... they'll listen to this - they'll listen to this subject matter jurisdiction more so huh that last was upheld in 1909?

MR. OSTERMAN: You asked Joel about it yesterday and he gave you the answer what subject matter jurisdiction is.

MR. HAEG: Yeah.

MR. OSTERMAN: You talked about the fact ...

MR. HAEG: Yep.

MR. OSTERMAN: ... that before the matter can before the Court the Court has to have subject matter jurisdiction. It has to have jurisdiction over the thing and how does it get jurisdiction? It gets jurisdiction two ways. By the filing of an information or the filing of a complaint otherwise it can't get subject matter jurisdiction. Then they have to serve you - that's personal jurisdiction. Now they've got the person and

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the subject matter combined but I know, damn you read an article on West Law. I got news for you we lawyers sat through an entire semester 3-hour course in law school on - on knowing the difference between subject matter personam, add persodum, and in ram jurisdiction. It's not a very easy concept. In personal jurisdiction from a statutory angle looks even stranger so you go back and read your article in Westlaw. Ok? And don't worry a thing about it. Because we've raised this issue. This was an issue by the way that your attorney before - Chuck raised before in front of the Court and that's one of the issues that ought to be taken up on appeal. Oh granted we've looked at what Chuck said as far as the points on appeal. And why would we? Because Chuck being a lawyer, operating in good faith, knew the issues coming -

MR. HAEG: He wasn't operating in good faith.

MR. OSTERMAN: ...out of his case that should have been - that should have been raised.

MR. HAEG: See that's the - that's the thing you - you don't understand is he was not operating in good faith.

MR. OSTERMAN: I - I know you - your claim is that he hated your guts the whole time but I can tell you when I look at the record Chuck's performance as an attorney was exemplary. He worked hard for you. Ok? From an attorney angle he worked hard for you. Yes he screwed up; yes he should have shoved that damn plea agreement down Scot Leader's throat. Ok? And maybe, just  
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maybe he got suckered in to going to trial on the issue of fact of whether it should be under permit or your guide license. Ok? And maybe, just maybe that was a suckering device by Scot Leaders that kind of suckered Chuck in and pissed him off. Cause it's certainly worthy of an issue on appeal. I'm saying of all the things in the world to look at I don't care what Chuck told you off to the side - like I'm talking to you right now. I have to have a personal relationship with my clients whether it's good or bad or indifferent and that's the reasons that these communications that you and I have are privileged communications. The reason being we don't want this stuff being aired out in courtrooms about whether we've disagreed or not disagreed on a particular subject matter. That's not an issue for the Court or the opposing parties to understand. And see what happens is with those tape recordings that you've got is that your goanna air this kind of stuff cause you claim that it's very important information concerning the propriety of your case. I'm telling you it's not. I'm telling you the propriety of your case hangs on what Cole did to you and perhaps on the fact that Robinson failed to - to back it up. But at the same time I'm also telling you that when it comes to effective assistance of counsel as determined by that little short 2 page article with footnotes for the third page. Ok? If you read that, if you comprehend what effective and ineffective assistance are and measure it by the Strickland test I can't get

to Chuck. Can't do anything with Chuck. Maybe something could be done ethically with Chuck. Ok? Through the attorney grievance commission for his conduct for not seeking to back it up. I don't know. I don't know that his - that his decision - I couldn't find anything in any of my research anywhere that said that his failure to shove that plea agreement down their throats was ineffective assistance. Ok? I couldn't find anything. And I couldn't find any indication or any other indicia that lead me to conclude that. So why do I want to run around and stick a finger in somebody's eye when I may be wrong? And it may not help you in the process. That's what this is all about David. Now you can say, "oh well you got a conflict of interest because you said you'd be cautious". I got news for you I hope whoever listens to this tape, whoever listens to you, if you decide to file some kind of a ridiculous lawsuit cause it will be ridiculous listens to all of this tape and listens to why I made that statement. Cause I made that statement to you - I just don't feel like I - that's it's my responsibility to run around and destroy people's livelihoods. And I don't give a damn if they're fishermen, or bankers, or whoever they are. If I've got clear cut evidence that somebody screwed up they're goanna hang. Mr. Cole I've got clear-cut evidence of, Chuck Robinson I - it's not so clear. Not so obvious.

MR. HAEG: Well what's the clear cut evidence of Brent Cole?

MR. OSTERMAN: Brent Cole obviously failed to appraise you, that statements made in a plea agreement could possibly come back on you in some fashion. And the fact of the matter is - is that he failed to secure the plea agreement. That is the - the - the - the qualifier. He \*\*\*\*\* up. He \*\*\*\*\* up royally. He \*\*\*\*\* up cause you've been ...

MR. HAEG: That's all he did?

MR. OSTERMAN: Well bear with me for a second he's been out there doing these damn game cases for so long that he - that he thought he was dealing with somebody else not with Scot Leaders. That's what I think was his \*\*\*\* up was his judgment but he hung you out to dry. His bad judgment should not be affecting your life. Ok?

MR. HAEG: And isn't there - isn't there anymore proof like you said - you told me that -uh- Ineffective Assistance of Counsel was a cumulative thing. Is that correct?

MR. OSTERMAN: It is a cumulative thing cause it looks at and determines the entire performance. You have - you have objective and subjective criteria in the you - you - you look at that article and it will give you the answers.

MR. HAEG: Wouldn't - wouldn't a wise attorney put in every thing that - that showed ...

MR. OSTERMAN: Listen

MR. HAEG: ... the ineffectiveness?

MR. OSTERMAN: But well - not - bear with me for a second.  
Perhaps ...

MR. HAEG: Or - or is that attacking the attorney too much?

MR. OSTERMAN: Well first of all bear with me for a second.  
How's the Attorney General in response to your motion on appeal  
going to claim that Cole's process was not ineffective? He's  
goanna have to go to the Strickland test and say, "Strickland  
doesn't apply". Ok?

MR. HAEG: Why's that?

MR. OSTERMAN: Well bear with me for a second. Strickland is  
the only measure of Ineffective Assistance of Counsel. The  
Strickland test coming out of the Strickland vs. US case. Ok?  
If Strick - if the Strickland criteria is there - the State can  
go spit in the wind. Once you've established that criteria. If  
I go into the ad homonym attack. Well he did this, knowing  
that, and he did this knowing that, I give them fuel to say this  
is all bullshit judge and you ought to - you ought to just not  
even consider it. Because see all the emotional baggage in  
there causes damage to the claim. We want to - we want to face  
the claim in cold steel eyes and say here it is. In fact  
slightly understated makes the Court of Appeals understand the  
nature of the claim. If you go in and say "That no good bastard  
he did this, and he did that, and his claim was this, and his  
claim was that, and you know yada yada yada" and on and on and  
on - on issues that cannot be supported independently of the  
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record. Ok? Then the Court of Appeals is goanna say "pff who cares. Fly this is a - this is a distraction, this is a red herring" whatever you want to call it.

MR. HAEG: Yep.

MR. OSTERMAN: Ok? This is dragging bate across the trail.

MR. HAEG: Yep.

MR. OSTERMAN: Which is goanna lead us off into the bushes and we're not goanna go this, we're just goanna disregard the claim. But if the claim is on all fours, focusing on Strickland, which is why I sent you that case very early on. That case is on all fours. That case says "failing to advise a client of the 5<sup>th</sup> amendment repercussions of making statements during plea - during -uh- plea negations is ineffective assistance." Boom that's it. But if I got that on all fours why do I need to elaborate? Why do I have to go beyond?

MR. HAEG: I thought you said it was cumulative.

MR. OSTERMAN: It is cumulative but bear with me for a second.

MR. HAEG: What does cumulative mean?

MR. OSTERMAN: What else did he do? He failed - he failed to get the agreement in, he failed honor rule 412 ok, he failed at a couple other issues ...

MR. HAEG: I thought it was 410.

MR. OSTERMAN: But hey what he said to Dave is that important?  
No.

MR. HAEG: Oh so him telling me that I couldn't seek enforcement of the Rule 11 Agreement that's - that's not important?

MR. OSTERMAN: Oh ok so what - what happens if you put that in? Do you know what's goanna happen?

MR. HAEG: What?

MR. OSTERMAN: They're goanna ask him, Cole, for an affidavit about whether he said it.

MR. HAEG: And what's he goanna say?

MR. OSTERMAN: Well he might - he might swear back an affidavit that at the time that was not a part of de - the overall discussion - in according to his recollection. Then you're goanna wheeled out this tape see and then your goanna have all kinds of problems.

MR. HAEG: And that's when they're goanna throw my case out.

MR. OSTERMAN: Well that - in my opinion that's when it's goanna get nasty and as I said before nasty is not what they want. This - look - look this Court of Appeals is a panel of 5 judges and 3 sit here and 3 sit there so there's always a guy moving around. I think Mannheimer's the swingman right now. And Mannheimer's a freaking Nazi. Mannheimer is also a - one of the best and most talented writers I have ever seen. Ok? Mannheimer...'

MR. HAEG: I thought the Court of Appeals was only 3 judges.

MR. OSTERMAN: It's 3 judges but there's 5 of them and they impanel themselves 3 at a time. You follow me?

MR. HAEG: So who all - who are all 5?

MR. OSTERMAN: Huh?

MR. HAEG: Whose the 5 judges?

MR. OSTERMAN: I can't tell you off the top of my head who all 5 are. I know Manheimer's there and I think Coats is the other one, -uh-

MR. HAEG: Stewart?

MR. OSTERMAN: and there's another one but see there's - there's also I believe there's a panel out of Juneau, if I'm not mistaken. Anyway bear with me for a second the - the current - the situation involving this panel - as - as I said - I have only appeared twice in front of the Court of Appeals. And that was years ago. That was -uh- lets see probably 6 years ago. -- Uh- or thereabouts. The -um- the - the situation with the Court of Appeals is if we've got Manheimer on there that's all these guys do day in and day out is listen to tapes and look at briefs, listen to tapes and look at briefs. They each have two - two -um- law clerks. A pro clerk and a con clerk, ok? The con clerk - his job is to write the opinion - the negative opinion about the matter. The pro clerks job is to write a pro opinion about the matter. Then the two of them come in after oral argument and they make an appe - they appear before the Court of Appeals justice and make an argument about the matter.

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Ok? That's the bottom line. And then the judge looks at it. Then the panel themselves sit down and resolve the matter a final time after oral argument to determine whether or not what the decisions goanna be. And of course the law clerks are all working together in the background. A lot of this stuff depends upon the law clerks that we have to reach. The law clerks do not get excited about this stuff. This is mundane day in and day out stuff. We want to - we don't want to write -uh- to enflame them. We want to write to get their attention. There's a big difference. A big - big difference.

MR. HAEG: Yep well I thought you said you went to a course on how to write briefs and you want to get their attention, you want to enflame them, you want to get them interested.

MR. OSTERMAN: I don't want to get them enflamed. I want to get their interests, yes.

MR. HAEG: But what enflames them? --- MR. HAEG: But what enflames them?

MR. OSTERMAN: Yes we have attended those courses.

MR. HAEG: I guess -

MR. OSTERMAN: We continue to attend those courses every - every year.

MR. HAEG: And - and you said that anytime you don't ever want to put in that an attorney screwed up, huh?

MR. OSTERMAN: Well ...

MR. HAEG: Do you - do you -

MR. OSTERMAN: ... you don't want to say

MR. HAEG: in your opinion do you think I've screwed up in my life?

MR. OSTERMAN: Look we don't ...

MR. HAEG: Ok just tell me yes or no.

MR. OSTERMAN: I don't care about your life.

MR. HAEG: Ok well you've told me over and over that what I've done something that I shouldn't of ...

MR. OSTERMAN: What I care about is the attorney - the attorney screw up ...

MR. HAEG: Who - who - who enflamed that? Was there anybody enflamed about my screw up?

MR. OSTERMAN: You.

MR. HAEG: Tell me - tell me if there was - when the - when it went out on the AP network around the world was somebody enflamed about my conduct.

MR. OSTERMAN: Yeah the general public.

MR. HAEG: And -uh- you don't think Scot Leaders was?

MR. OSTERMAN: Oh Scot Leaders ...

MR. HAEG: Or Brent Cole?

MR. OSTERMAN: Scot Leaders ...

MR. HAEG: And how did all that play out in front of ...

MR. OSTERMAN: ... could give a shit less as long as he gets you behind bars

MR. HAEG: and how did all that play out in front of Magistrate Murphy?

MR. OSTERMAN: Oh.

MR. HAEG: It pretty much said - they pretty much said it's time to fire up old sparky for Dave, didn't they?

MR. OSTERMAN: Nah.

MR. HAEG: Oh - I - oh - so ...

MR. OSTERMAN: They're not goanna treat you any

MR. HAEG: Lets send him to a retirement home in Kobo Son Lucas is that what they said?

MR. OSTERMAN: No.

MR. HAEG: Oh.

MR. OSTERMAN: They're not goanna fire up old sparkey for you either. They did not - you know you think you've been the only one that had losses in fish and game cases. I suggest you go back and look at the newspaper articles and read them. There are a lot of people who suffer major forfeitures ...

MR. HAEG: Well ...

MR. OSTERMAN: for violations of fish and game.

MR. HAEG: Hey. Hey Mark you know what I figured out how they do it. Isn't that something? I think that when I figure out how they do it illegally that I think the public should know about that.

MR. OSTERMAN: Do what illegally?

MR. HAEG: Huh?

MR. OSTERMAN: Do what illegally?

MR. HAEG: How the State utilizes your own attorney as a prosecutor in disguise. Because if you look at Brent Cole what did Brent Cole do that would [have]...

MR. OSTERMAN: I told you before what ...

MR. HAEG: been any different then what he would've done if he was a prosecutor in disguise? Now let that sink into your brain for just a minute. Prosecutor in disguise - that means that although I pay him he's working for the State. Now just - let - think - think about that for a minute. What would be a prosecutors in disguise actions for his client? What would he - what would be the first thing that you would say if you were a prosecutor in disguise?

MR. OSTERMAN: I'm not goanna - I'm not goanna go there. I - I ...

MR. HAEG: Well I thought about it for a long time. The first thing I would do is I'd say "man you are screwed", ok? "All that evidence of the falsification of the search warrant that don't matter your screwed. Hey come on in and give the prosecutor - he's goanna be - the prosecutor's goanna be \*\*\*\*\* nice to you man. Come on in and give him a 5 hour interview because that's gee - gee wiz Dave - I mean I'm advocating for you, boy I'm pulling hard for you, come on in buddy. Ok. Oh next -uh- I guess it's time for you to give up your livelihood cause the prosecutor wants it. He's got to have it. Cancel all

your income for a whole year and your wife's income for a whole year, because I'm advocating for you buddy. I'm - I'm behind you. Me I'm fighting Scot Leaders. Shit the last time Scot Leaders left the room I - he's not goanna walk for a month I'm fighting for you so hard. So you roll along and I'm advocating for you boy I'm in your corner. That \*\*\*\*\* Scot Leaders I'm \*\*\*\*\* him up. He's - he's got broken legs - he's got - it's goanna be months before he comes out of the hospital because I hit him so hard with that you given up your livelihood for a whole year. Ok now - now he's got to - he wants to talk about this moose case and hey if you talk about it at your sentencing it might make the State look bad. You talk - oh man Dave now that - that gave Scot Leaders another broken arm. Having him be able to bring in that moose thing to -uh- - to -uh- enhance your sentence. Enhancing your sentence makes it better for you Dave. Enhancement of a sentence that's good. You like that yeah bring that in. Ok Dave we're coming along oh we got the deal of the century now Dave. For that thing fly in everybody from Illinois and from the bush and bring them on in so that your sentence can be enhanced. Yeah come on up we got a pre-sentence meeting here 5 business hours before your suppose to do it. Oh the deals changed. Old Scot needs some more stuff Dave. Throw in your plane. Scot wants to learn how to fly before your sentencing so he knows that - that plane is one of the best in the world for bush flying but man that's goanna break another one of Scot's

arms by signing it over to him Dave. Yeah I'm advocating for you Dave. Oh boy I'm a working hard for you Dave. Oh - oh Dave - oh you don't want to give him the plane? Well you got to Dave. That's the way the games played Dave. I'm advocating for you Dave come on now. Scot that - your plane is such a badass plane that when he jumps in it - it'll break his arm. The torque of that engine's so powerful it will break his arm. I'm advocating for you Dave. Oh come oh ...

MR. OSTERMAN: Dave are you done?

MR. HAEG: I didn't mention that I knew this 5 days before that he was goanna break the deal Dave but all that money that you spent I'm advocating for you Dave man I'm in your corner man. I'm in your corner."

MR. OSTERMAN: Dave.

MR. HAEG: Now tell boy he was a good advo - now what would he have done differently if he would not - if he would've been a prosecutor in disguise what would he have done differently? Answer me that one question, please.

MR. OSTERMAN: I - I - I can't tell you I don't know.

MR. HAEG: Because you agreed that if Scot Leaders had an evil twin and he somehow convinced me he was goanna be my lawyer he would have made the same exact plays, wouldn't he?

MR. OSTERMAN: I don't think so, no.

MR. HAEG: Well - ok what do you think would have been different? They would have just said you're - they would've got the firing squad out or what?

MR. OSTERMAN: I just - I just don't share your ideal that everybody is behind the tree right here trying to gun you down.

MR. HAEG: Well Brent Cole never - Brent Cole - ok admit this. -Um- I'm on a - a runaway freight train, right, heading for disaster. And Scot Leaders is trying to make the hill - the hill steeper and to keep us off the break, right? Now is it my attorney's job to step on the break?

MR. OSTERMAN: No.

MR. HAEG: Oh it's to accelerate off the cliff is it?

MR. OSTERMAN: No you're already off the cliff - your job is to - the - the - your - what's happening is your attorney is trying to make appear there was a (inaudible)

MR. HAEG: Ok now your off the cliff - ok I'll agree with you I'm off the cliff. Is he supposed to try to cushion the impact?

MR. OSTERMAN: Not necessarily but he certainly try - you got to do something about this collision. You bet.

MR. HAEG: Well not necessarily but he still - how is - why's that two conflicting things you just said?

MR. OSTERMAN: Because ...

MR. HAEG: He's supposed to soften the impact any way he legally can for me.

MR. OSTERMAN: No cause the accident already happened. ---

MR. HAEG: So - so I'm just suppose to - my attorneys suppose to help make the punish - the impact greater?

MR. OSTERMAN: No he's suppose to - he supposed to convince the State that it's not as bad as they say it is.

MR. HAEG: Well what did Brent do that - that in anyway did that?

MR. OSTERMAN: Well

MR. HAEG: Where?

MR. OSTERMAN: the - the thing is I can't tell you what Brent Cole ever did ...

MR. HAEG: Brent Cole actually committed crimes ...

MR. OSTERMAN: You're asking me ...

MR. HAEG: actually lied to me

MR. OSTERMAN: You're asking me ...

MR. HAEG: to protect what the State was doing. He actually lied to me in front of a whole pile of people to protect what the State was doing. Is that advocating for your, tell me?

MR. OSTERMAN: No he wasn't advocating - he - his mistake was in talking you into that plea agreement among many other mistakes that you may claim.

MR. HAEG: That I may claim?

MR. OSTERMAN: That is the significant one.

MR. HAEG: Where does that hor - happy horse shit come up?

MR. OSTERMAN: Well you're - you're - you know - you've made several statements about the things that he said off the record to you.

MR. HAEG: Oh and then another thing that interests me is you said that I lied to you. What have I lied to you about?

MR. OSTERMAN: You lied to me about not being - about not - (exhales) when did I say you lied to me?

MR. HAEG: You said you have lied to me.

MR. OSTERMAN: When? Today?

MR. HAEG: A conversation - no. I think it was on the 19<sup>th</sup> of this month. Three days ago you said you have lied to me, you have neglected to tell me stuff, and that's why you're in deep shit.

MR. OSTERMAN: I don't recall ever saying that to you.

MR. HAEG: Well you know I tape everything so you want me to play the tape?

MR. OSTERMAN: Well I know you tape everything - well I don't give a damn if you do or you don't.

MR. HAEG: So what did I lie to you about?

MR. OSTERMAN: Well it's not the issue here. The issues lets go back. Do you understand ...

MR. HAEG: No this is an issue I want to know why my attorney that I paid \$12,000 dollars to tells me I'm lying to him. I want to know what I'm lying to him about.

MR. OSTERMAN: I don't recall that I said that you lied to me.

MR. HAEG: I'll get a copy of the tape and give it to you and then you can tell me.

MR. OSTERMAN: I appreciate it. In the mean time do you understand the requirements necessary to establish Ineffective Assistance of Counsel in an appeal?

MR. HAEG: I understand that it's cumulative and I also understand ...

MR. OSTERMAN: Do you understand what case...

MR. HAEG: I also understand this too Mark that everywhere it comes up it says because Ineffective Assistance of Counsel will rarely be on the record we will utilize - we will - we will grant great discretion in what the defendant wants to bring in to establish that because no attorney is going to jump up on the record and say "I'm a dumb ass I committed malpractice over and over" that comes out because if your attorney screws up he's going to hide it because like anybody he protects his own first.

MR. OSTERMAN: No I don't agree with that.

MR. HAEG: Well it's human nature.

MR. OSTERMAN: I'm really tired hearing about the shark swimming in the water and too much sand and all that bullshit.

MR. HAEG: I would do it.

MR. OSTERMAN: It is not human nature.

MR. HAEG: Huh?

MR. OSTERMAN: It is not human nature. Maybe it is in your business but it's not in mine.

MR. HAEG: So you don't think Brent Cole tried to hide the fact that he ...

MR. OSTERMAN: That's not the question ...

MR. HAEG: Yeah it is.

MR. OSTERMAN: and not the statement that you made. No it is not.

MR. HAEG: Yeah it is. I said that isn't it ...

MR. OSTERMAN: You said as a generality lawyers try to hide their own and that is a false statement.

MR. HAEG: I tried to - I said that the courts have said that as a general rule ...

MR. OSTERMAN: That is not the general rule that is a case - a completely different case than the standards I've told you about. I've told you to focus on Strickland. If you're goanna write your own appeal Dave you'd better go back and look at Strickland and understand what the criteria is.

MR. HAEG: I can damn near quote it to you verbatim.

MR. OSTERMAN: Then lets hear it.

MR. HAEG: It says that there's two prongs. First prong is that you have to prove that there was actions of your attorney that would not be taken by a reasonably diligent attorney acting in a conscientious behalf on his client and it must be just you know that - essentially what they're saying is an average - a normal attorney would not commit the action. And then the second prong is that action had to have an adverse effect on

your case. An adverse effect is there's a reasonable probability that the outcome would have been different. Well Brent Cole by having him do all this shit, and lying to me about not being able to keep the Rule 11 in place, so I ended up going to trial, and Chuck Robinson lying to me about me not being able to enforce the Rule 11 Agreement and whatever, I ended up with a 6 year license suspension. That will cost me close to 5 million dollars when it's borne out. Now the deal that I had was a 1 to 3 year license revocation dependent on my culpability in a moose hunt.

MR. OSTERMAN: Mm hmm.

MR. HAEG: Well the old moose hunt came out and holy shit there's really nothing wrong so that would lead to tell me that it would have probably had the same outcome during that so I'd of had a 1 year license loss rather than 6 years. Now -um- Mark what other jobs do you have other than practicing law? Can I ask - and you don't even need to answer - you can say that that's none of my business. But I'll just assume that practicing law brings in most of the bacon for you.

MR. OSTERMAN: It does.

MR. HAEG: Now - now if you were bringing in the bacon mostly from your law practice would a 1 year suspension of your practice affect you less than 6 years? I'm saying that by gum I think Mark might be going a little - maybe not totally not hungry for 6 years but there'd be a pretty big strain as you

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went back to school for some other thing you could do or maybe you just wanted to tool into McDonalds and start flipping burgers. Now I'm thinking that that would be a pretty big difference in your case. And along with -um- oh by gum at your sentencing none of this stuff came up about the deal, what you already did on your own, which the judge in sentencing Tony Zellers says is - is -uh- evidence of -uh- of your - your willingness to accept responsibility and proof - proof of your rehabilitation. Well none of that came up yet I did all that before Tony Zellers. Don't you think by gum the judge might - if that would've been brought out don't you think she would've might have had something along the same lines to say to me?

MR. OSTERMAN: Which is - which is one of the issues we raised on appeal is that the - it may not be there -uh- per say but I think that it - that - that we - I know we discussed it with Joel and I thought that I saw some suggestion of it there but one of the issues ...

MR. HAEG: Well none of that's in there.

MR. OSTERMAN: One of the issues

MR. HAEG: None of it's there ...

MR. OSTERMAN: ... that I've raised. Pardon?

MR. HAEG: And another thing is you say that "oh we want to spring all this good stuff on them on the reply brief". Well I - I found an interesting thing. It says that anything that's

not in your main brief can't even be brought up in your reply brief.

MR. OSTERMAN: (exhales)

MR. HAEG: How do you bring up the stuff that you're goanna hide?

MR. OSTERMAN: We're not hiding anything.

MR. HAEG: Well you said ...

MR. OSTERMAN: The issue - the issue is we're talking about the Ineffective Assistance of Counsel claim. That's the focus of the claim. The ineffective assistance claim we're goanna go bare bones and let them come in and argue that it's not Strickland. That once we've made the argument there - the issue is there then we can certainly heap on any evidence that we may have to add to - to strike home the point.

MR. HAEG: Well if it's your main issue

MR. OSTERMAN: So if we don't raise the ...

MR. HAEG: if it's your main issue why's

MR. OSTERMAN: The other issue that I raised - the other issue that I raised with you and still contend ought to be a part of the brief is the issue that the courts -uh- number 1 the courts should not do a 2 am sentencing, number 2 that the Court sentencing was as you put it in her statement at the very end - end there that she thought that -uh- your unwillingness to accept responsibility. That's - that's an undertone for the statement that you accepted your right to a trial by jury and

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therefore the judge is punishing you for having undertaken that particular right. And that is an un - that is a violation of the judges ability to sentence. And I believe that ...

MR. HAEG: So how come none of that's in there?

MR. OSTERMAN: issue ought to be raised. Well I think that issue ought to be raised. Our problem is we've again - I told you before - we needed to see if these issues were goanna be effective with you. I intended to strike one or two of these particular or at least narrow them. I've already rewritten the facts - we're down to about 7 pages on the facts now that we can footnote out and get moving, ok giving us more space ...

MR. HAEG: Well like I told you - you don't need to do any of that stuff.

MR. OSTERMAN: Well I understand that ...

MR. HAEG: Well if you understand it why you doing it?

MR. OSTERMAN: Oh I - I've - hey you may have fired me - I told you before you gotta do it in writing.

MR. HAEG: Ok we'll fax something over to you right when we get off the phone here but anyway ...

MR. OSTERMAN: I don't - you don't need to waste anymore of my time ...

MR. HAEG: Yeah there's just well you know I'm just trying to highlight why I am so upset and why I think that this whole process has disenchanting me that I mean the whole process has broken down for me. From my attorneys, to the prosecutor, to Osterman Transcripts

judge and to the troopers. It's not just anyone thing. It's cumulative over and over and over and many times ...

MR. OSTERMAN: David if - if you acted like you have with me with your attorneys I'm surprised things didn't go worse for you. Ok?

MR. HAEG: Well do you know what - do you know

MR. OSTERMAN: and I'm surprised of that because ...

MR. HAEG: do you know you can ask Brent Cole this. Do you know when I - you pro - I gave you the transcripts you should have read what - how - how gentlemanly like I was with him, how respectful, how honest, and when he told me "I can't piss Leaders off because I have to work with him in the future". When I asked how we could make my Rule 11 Agreement stand do you see how my attitude may change?

MR. OSTERMAN: (sighs) I do.

MR. HAEG: Right.

MR. OSTERMAN: And - and I also - and I also

MR. HAEG: Ok.

MR. OSTERMAN: see how you carried that very same attitude when you left Cole with you to Robinson. And I've seen that very same attitude ...

MR. HAEG: No - no when I left him to - don't you ever do that to me Mark Osterman. When I walked into Chuck Robinson's office I had known him from a child. I have pictures of him where I flew him across the Inlet, I had his life in my hands

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when I was 16 years old in my plane. I took him halibut fishing and I filleted his halibut to him - for him. When I hired him I was so relieved and so glad and so grateful I would have got down on my knees -- and I went - he put me through \*\*\*\*\* hell and I did everything that man asked, and I \*\*\*\*\* did it on bended knee, and in grateful eye. When I found out he \*\*\*\*\* me and my family I'm goanna come back like an avenging angle on that black \*\*\*\* because he was my friend and he utilized that against me. I \*\*\*\*\* came in with my hat in hand begging and pleading and I paid that man \$40,000 dollars and he \*\*\*\*\* me and my family. Do you see how my attitude changed, Mark Osterman?

MR. OSTERMAN: I do.

MR. HAEG: Do you want to see the pictures ...

MR. OSTERMAN: Thanks Dave

MR. HAEG: ... that I had of that man?

MR. OSTERMAN: Thanks Dave I'll talk to you later.

MR. HAEG: Ok bye.

MR. OSTERMAN: Bye.