

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

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SUBJECT: SAHO-10-64 C1

DATE: August 27, 2010

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

DAVID HAEG,

Applicant,

STATE OF ALASKA,

Respondent.

POST-CONVICTION RELIEF
Case No. 3HO-10-00064CI

(Trial Case No. 4MC-04-00024CR)

CONFIDENTIAL ORDER:

- (1) SUPPLEMENTING ORDER GRANTING REQUEST FOR DISQUALIFICATION;
- (2) WITHDRAWING JULY 28, 2010 ORDER FOR INFORMATION FROM JUDICIAL CONDUCT COMMISSION; AND
- (3) REFERRING AFFIDAVITS TO COMMISSION FOR ITS CONSIDERATION

This confidential order supplements the August 25, 2010 Order Granting Request for Disqualification on appearance grounds. It is confidential because it addresses the proceedings of the Alaska Commission on Judicial Conduct.¹

This court was only tasked with resolving David Haeg's disqualification request. It is not privy to the Commission investigation and the statements made by the witnesses, Judge Murphy, or Trooper Gibbens. Therefore, it takes no position on the materials submitted herein. In addition, this order does not resolve any allegations

¹ AS 22.30.060 (providing for confidentiality of all commission "proceedings, records, files, and reports"). Notwithstanding the confidentiality of the proceedings before

of impropriety. Therefore, the attached materials are being submitted to the Judicial Conduct Commission for its consideration.

Mr. Haeg alleges that during his trial in the remote community of McGrath, Judge Murphy accepted rides from Trooper Gibbens. Mr. Haeg filed a complaint with the Alaska Commission on Judicial Conduct alleging impropriety based upon Judge Murphy's use of Trooper Gibbens for transportation during the trial. The Commission sent Mr. Haeg a letter stating that the rural setting "led to more contact with the community members than usual" but concluded "there were no improper contacts."²

In support of his concerns that (1) Judge Murphy and Trooper Gibbens did not provide the Commission accurate information about this issue and (2) the Commission did not adequately investigate their failure to provide full disclosure, Mr. Haeg submitted various witness affidavits³ and a recording of two phone

the Judicial Conduct Commission, both Judge Murphy and Mr. Haeg reference in their pleadings the referral and result of the investigation.

² Confidential letter from the Alaska Commission on Judicial Conduct to Mr. Haeg dated January 12, 2007 and confidential letter from the Alaska Commission on Judicial Conduct to Mr. Haeg dated January 25, 2007.

³ The supplied affidavits are attached, as Attachments C-H.

Attach. C: Affidavit of former Alaska State Trooper Wendell Jones

Attach. D: Affidavit of retired Air Force Captain Tony Zellers

Attach. E: Affidavit of Tom Stepnosky

Attach. F: Affidavit of Drew Hilterbrand

Attach. G: Affidavit of Greg Pearson

Attach. H: Affidavit of Jackie Haeg

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conversations between himself and Commission Executive Director Marla Greenstein.⁴

The basis of Mr. Haeg's concerns is best addressed in four parts. First, in a phone conversation on or about January 12, 2007, Mr. Haeg claims that Ms. Greenstein stated that Judge Murphy and Trooper Gibbens "didn't share any meals together and the rides were provided by somebody else . . . that's what everyone I interviewed said."⁵ In contrast, a July 21, 2010 notarized affidavit from trial witness Tony Zellers asserts that on July 28, 2005 (day three of Haeg's four-day trial), "I personally observed Judge Margaret Murphy being shuttled in a white Trooper pickup truck driven by Trooper Brett Gibbens; leave and return with Trooper Gibbens in the same truck during breaks, lunch, and dinner, and leave with Trooper Gibbens when court was finished for the day."⁶ Jackie Haeg, Mr. Haeg's wife, asserted the same in her own affidavit.⁷

Second, Mr. Haeg claims that in that same telephone conversation with Ms. Greenstein, he was told that "after the completion of the sentencing hearing—um—Trooper Gibbens did give—uh—Magistrate Murphy a ride to the hotel. But that was

⁴ Mr. Haeg provided both a digital recording of and a substantially accurate transcript of the phone conversations. The transcripts are attached, as Attachments A and B, with chambers' law clerk's notations regarding minor discrepancies between the audio file and the transcript. Copies of the audio file shall be provided upon request.

⁵ Attach. A at 1; *see also id.* at 7 ("[speaking to Haeg's wife] I talked to the people that your husband gave me the list of. . . they did see—um—a trooper giving her rides and—but they—they couldn't identify which—who the trooper was"). Ms. Greenstein asserted, "It was VPSO Parker who provided the rides." *Id.* at 3, 7.

⁶ Attach. D.

after the sentencing hearing.⁷ A transcript of the sentencing hearing was provided by the Aniak District Court.⁸ The transcript reflects that Judge Murphy raised the issue of obtaining a ride from Trooper Gibbens during the sentencing hearing.⁹ A review of the log notes reveals that this statement was approximately five hours before the end of the hearing. In addition, Mr. Haeg provides four affidavits stating that on the date of the sentencing hearing, September 29, 2005, the affiant "personally observed" Judge Margaret Murphy taking rides from Trooper Gibbens throughout the day of the sentencing hearing.¹⁰

Third, Mr. Haeg claims that the Ms. Greenstein stated that she talked to the people that Mr. Haeg identified in a list he provided to the Commission.¹¹ Mr. Haeg claims that he provided a list of four people and that the affidavits of these four individuals state that they were not contacted regarding this matter.¹²

Finally, in addition to his concerns regarding the alleged impropriety of Judge Murphy receiving rides from Trooper Gibbens, Mr. Haeg also explains that based upon his understanding of Judge Murphy's and Trooper Gibbens' representations to the Commission, he feels that they were not truthful about their contacts during the trial. Therefore, Mr. Haeg is concerned over Ms. Greenstein's assertion that "even if

⁷ Attach. H

⁸ Attach. I

⁹ *Id.* at 1262.

¹⁰ Attach. C, D, E, F.

¹¹ Attach. A at 1, 7.

everything you say is true it wouldn't be that significant --um-- a thing. It would be the kind of thing where we would just caution the judge to --um-- to try to make other arrangements in small communities in the future. That's all we would do."¹³

In light of this court's ruling granting the disqualification request, the July 28, 2010 Order for Information from Judicial Conduct Commission is hereby
WITHDRAWN.

DONE this 27th day of August 2010 at Anchorage, Alaska.


STEPHANIE E. JOANNIDES
Superior Court Judge

¹² Attach. C, D, E, F. One affiant, Tom Stepnosky, stated that "[o]n or about 2006 I contacted . . . Marla Greenstein by phone and told her I had personally seen Trooper Gibbens give Judge Murphy rides before David Haeg was sentenced." Attach. E.

¹³ Attach. A. at 9.

Transcribed Phone Call between
Alaska Commission on Judicial Council (Marla Greenstein) and
David Haeg on or about January 12, 2007

- 1 HAEG: Hey I was wondering whatever became of the investigation into Judge Murphy?
- 2 GREENSTEIN: Yeah we're sending you a letter today. We have a meeting coming up
3 on January 22nd. Where -um- they'll consider my report and the judge's response
4 But - but it sounds like everything was -um- was ok. It sounds like -um- there was no
5 communication about the case and they didn't share any meals together and the rides
6 were provided by somebody else - not Trooper Gibbens.
- 7 HAEG: They said the rides were provided by somebody other...
- 8 GREENSTEIN: Yes...
- 9 HAEG: ... then Trooper Gibbens?
- 10 GREENSTEIN: Yes
- 11 HAEG: Well that's the biggest pile of shit I've ever heard in my life.
- 12 GREENSTEIN: -Um- that's what - that's what everyone I interviewed said.
- 13 HAEG: And who did you interview - may I ask?
- 14 GREENSTEIN: Well in addition to the names you gave me I talked to Trooper Gibbens,
15 and the Judge, and there was one other law enforcement person there
- 16 HAEG: Ok well I'm goanna fly out to McGrath -uh- Marla and I'm goanna get tape
17 recordings of everybody - every juror that was there, all the people in McGrath -
18 cause there was 300 of them - and I'm goanna walk into your office and I'm goanna
19 hand you the tape. Ok?
- 20 GREENSTEIN: I'm just - it's - we don't .
- 21 HAEG: Will that be clear enough for you Marla?

22 **GREENSTEIN:** No. And it's not that serious a thing anyway - even if it did happen
23 Which we don't have any evidence that it did. They..

24 **HAEG:** Wasn't that serious?

25 **GREENSTEIN:** No...

26 **HAEG:** Do you know - you guys wouldn't accept the other stuff that happened in my
27 case? Because 'oh...

28 **GREENSTEIN:** Yeah ..

29 **HAEG:** ...we can't do whatever' . She was changing her decisions 180 degrees to
30 accommodate Trooper Gibbens. Ok?

31 **GREENSTEIN:** Well I understand that's your perception but the...

32 **HAEG:** Well...

33 **GREENSTEIN:** I mean the other people ..

34 **HAEG:** Yeah my perception Marla...

35 **GREENSTEIN:** Mmm hmm...

36 **HAEG:** -Um- if I were you I would look at the Anchorage Daily News back whenever
37 they arrested -uh- Anderson and start looking at what's going on in this state. I'd start
38 opening my - my - my views should start expanding a little bit. You - and - I need a
39 copy - can I have a copy of Trooper Gibbens saying he never gave Judge Murphy a
40 ride - ever?

41 **GREENSTEIN:** He didn't say never ever. It was during that week when you were
42 down there.

43 **HAEG:** During the week, when we were down there, he never gave her a ride?

44 **GREENSTEIN:** No.

45 **HAEG:** Ok and the Judge said that also?

46 **GREENSTEIN:** Umm hmm...

47 **HAEG:** -Um- I have to have copies of that. You tell me how - what I need to do to get

48 copies of that? (talking over GREENSTEIN) And I will be there - in your office as fast

49 as you could say...

50 **GREENSTEIN:** Yeah I understand you want .

51 **HAEG:** ...get here.

52 **GREENSTEIN:** ...the copies. But they're confidential documents so we can't give them

53 to you. But it wasn't like they . Let me pull it up Let me see if I could see the exact ..

54 I can tell you what - what's there -- hold on... (1 minute passes)

55 **HAEG:** You believe this shit Jackie?

56 **JACKIE HAEG:** (Background) No I sure can't.

57 **HAEG:** Can you believe this?

58 **JACKIE HAEG:** (Background) She interviewed 2 people and that's just as far as she

59 got?

60 **GREENSTEIN:** -Um- it was VPSO Parker who provided the rides...

61 **JACKIE HAEG:** (Background) She interviewed Tom?

62 **HAEG:** Ok. VPSO Parker...

63 **GREENSTEIN:** Yeah .

64 **HAEG:** ...ok

65 **GREENSTEIN:** ...and -um- and after

66 **HAEG:** And did you interview – did you interview Mr. Parker?

67 **GREENSTEIN:** -Um- I don't remember. And then after ..

68 **HAEG:** Don't remember...Just hang on.. Don't remember

69 **GREENSTEIN:** And then after the completion of the sentencing hearing -um- Trooper

70 Gibbens did give -uh- Magistrate Murphy a ride to the hotel. But that was after the

71 sentencing hearing.

72 **HAEG:** Ok just – after sentencing – was it. Ok mmm hmm. Do you read the papers

73 Marla?

74 **GREENSTEIN:** Yeah of course – yes

75 **HAEG:** Do you watch TV?

76 **GREENSTEIN:** No.

77 **HAEG:** Ok. -Um- how long have you been in your post?

78 **GREENSTEIN:** -Um- since 1989.

79 **HAEG:** Nineteen eighty-nine. So a good long time. Ok. Do you get many people like

80 me calling you and issuing complaints like this?

81 **GREENSTEIN:** -Um- we – we average about 3 complaints – 2 - 2 to 3 complaints a

82 month that we investigate.

83 **HAEG:** Ok. Investigate – ok. And when it was determined that there should be further

84 investigation were you the only one that investigated?

85 **GREENSTEIN:** I'm the staff investigator – yes.

86 **HAEG:** Ok are there any other investigators?

87 **GREENSTEIN:** No.

88 HAEG: Ok so it's just you. Comes in you decide what's going on and that's it?

89 GREENSTEIN: No the Commission reviews everything.

90 HAEG: Ok and do I get a chance to appeal that decision?

91 GREENSTEIN: No.

92 HAEG: Ok - no appeal.

93 GREENSTEIN: You can - I mean there might be some - there might be a way to have

94 the Supreme Court...

95 HAEG: Oh - that's good..

96 GREENSTEIN: Do.

97 HAEG: Cause I already got - I already got two things heading their way already.

98 GREENSTEIN: Ok

99 HAEG: Ok - Supreme Court may review - and that would be a - probably a Petition for

100 Review?

101 GREENSTEIN: No it's called an Original Application.

102 HAEG: Ok an Original Application.

103 GREENSTEIN: ^{Totally (PS)} ~~That's~~ discretionary on the part of the court

104 HAEG: Ok - Original Application. Not the Petition for Review (Writing notes)

105 GREENSTEIN: .. (indecipherable) out of court...

106 HAEG: Ok. -Um- (laughs) and what level of liability do Trooper Gibbens and Judge

107 Murphy have when they were talking to you? Did you have them under oath? Or was

108 it just .

109 GREENSTEIN: No it was an informal interview.

110 **HAEG:** Ok – informal. -Um- if you found out that they lied to you -un- is there any
111 liability?

112 **GREENSTEIN:** -Um- if he -um- well not for -- not for just a witness but if a -- if a judge
113 wasn't telling us the truth we -- we could review that as a complaint. But the -- you
114 know there's -- it would have to be a -- a deliberate kind of thing

115 **HAEG:** Deliberate? -Um- let me just put my wife on for just one second. Jackie come
116 here. Ok I want you to tell this lady that under the penalty of perjury you are goanna
117 tell her how many times Trooper Gibbens drove Judge Murphy back and forth to the
118 courthouse ..

119 **GREENSTEIN:** I - I have...

120 **HAEG:** During my trial and sentencing

121 **GREENSTEIN:** I have your wife's statement in writing -- I have your wife's statement in
122 writing. She doesn't need to tell me.

123 **JACKIE HAEG:** Hello.

124 **GREENSTEIN:** Hi. I have your statement in writing. That's fine.

125 **JACKIE HAEG:** Ok.

126 **GREENSTEIN:** You know I don't need you to tell me again cause I have your letter
127 that you faxed us.

128 **JACKIE HAEG:** Ok well we did see her every single time that you know she was out of
129 court and riding around to go to the store to get her pop or whatever and he was the
130 one driving her everywhere. Back and forth from the hotel.

131 **GREENSTEIN:** Well he. . .

132 **JACKIE HAEG:** ...to eat...

133 **GREENSTEIN:** Well both he and the judge say that they weren't the people doing it...

134 **JACKIE HAEG:** Wow...

135 **GREENSTEIN:** ...It was VPSO Parker who provided the rides

136 **HAEG:** (In background) tell her...

137 **JACKIE HAEG:** Well they're well he's - Dave's pretty upset cause they are both lying

138 - I - you know there were - everybody else that was there with us saw it too and they

139 were all - you know and all the jurors So - well I don't know what to tell ...

140 **GREENSTEIN:** Ok.

141 **JACKIE HAEG:** ... you probably need to ask some more people besides those two.

142 **GREENSTEIN:** No I talked to the people that your husband gave me the list of I've

143 spoke to them as well

144 **JACKIE HAEG:** And what did they tell you?

145 **GREENSTEIN:** -Um- they said they - that they did see -um- a trooper giving her rides

146 and - but they - they couldn't identify which - who the trooper was.

147 **JACKIE HAEG:** Hmm... Well I'll let you talk to David again

148 **GREENSTEIN:** Ok - thank you.

149 **HAEG:** Hi. (8M39S).

150 **GREENSTEIN:** Ok - well I think I gave you all the information that I can - so -um-

151 you'll get a letter after our Commission meeting on the 22nd to let you know exactly

152 what the Commission did

153 HAEG: Ok and when does the Commission meet the next time – where I can talk to
154 them?
155 GREENSTEIN: You already had an opportunity to talk to them
156 HAEG: I want another opportunity.
157 GREENSTEIN: We only give the public one – one opportunity to talk to...
158 HAEG: Ok – my wife wants an opportunity
159 GREENSTEIN: No we give each complainant one opportunity.
160 HAEG: She's a different complainant – she's pretty pissed
161 GREENSTEIN: No it's the same complaint. She could've appeared when you did as
162 well.
163 HAEG: Oh really...
164 GREENSTEIN: Yeah.
165 HAEG: Oh.
166 GREENSTEIN: No.
167 HAEG: It's too bad you didn't..
168 GREENSTEIN: ... it's the same...
169 HAEG: ...tell us that.
170 GREENSTEIN: ... complaint.
171 HAEG: Ok. -Um- (exhales)
172 GREENSTEIN: So...
173 HAEG: You understand what's going on here?

174 **GREENSTEIN** Well I – I'm telling you even if everything you say is true it wouldn't be
175 that significant -um- a thing. It would be the kind of thing where we would just caution
176 the judge to -um- to try to make other arrangements in small communities in the
177 future. That's all we would do.

178 **HAEG:** Well if I just made a small little thing if you were in court and just you know -
179 um- see I've been reading about how important all this stuff is and why people do what
180 they do. And when she's hanging out with Trooper Gibbens the whole time – he's the
181 one – he actually perjured his search warrant affidavits to start my whole case and I
182 mean you - I know that you're just saying I'm convicted and I have sour grapes. And I
183 understand that and that's a good position to take because it's probably the logical
184 position. But when she was involved over the entire course of my case and every
185 decision that she was free to make sided with Trooper Gibbens and then she's riding
186 around with him all the time and my jury is watching that each and every day. She
187 leaves with Trooper Gibbens and she arrives with Trooper Gibbens. What they say is
188 that a jury when they see that they say 'that trooper is credible .

189 **GREENSTEIN:** Did you have a lawyer?

190 **HAEG:** ... because he has the trust of the judge'.

191 **GREENSTEIN:** You have a lawyer?

192 **HAEG** Huh?

193 **GREENSTEIN.** Did you have a lawyer?

194 **HAEG:** Yeah and I can prove my lawyer was lying to me throughout the whole trial and
195 I know that's another fantastic idea.

196 GREENSTEIN: Right no I mean if you're telling me everybody is lying including your
197 lawyer you know I'm...

198 HAEG: Then - then I'm not credible I understand that.

199 GREENSTEIN: Right.

200 HAEG: Ok look at Trooper or I mean not .. Legislator Anderson and I know that I'm
201 kind of harping on this a little bit But would you believe one of our legislators was
202 extorting money from somebody?

203 GREENSTEIN: Well you would be the first to say that somebody ~~excused~~ ^{accused} should not
204 be assumed guilty? Right?

205 HAEG: No what I'm saying and I - I understand entirely what you're saying - that you
206 can't judge people before they're found guilty

207 GREENSTEIN: Right.

208 HAEG: And that's what you're saying I'm doing. But what everybody's saying to me is
209 since I've already been found guilty that my word is no longer any good.

210 GREENSTEIN: That's kind of how the system works.

211 HAEG: ^{well} My wife just told you what happened and she hasn't been found guilty of
212 anything. And I will go get every jurors -um- affidavit.

213 GREENSTEIN: Well I'm just saying even if what you tell me is true it's a very minor
214 thing from our perspective on what we address

215 HAEG: Ok if it was so minor a thing in your perspective...

216 GREENSTEIN: Right.

217 HAEG: ...why do you even do it?

218 **GREENSTEIN:** Because then we could give a cautionary letter to judge -um- warning
219 them that -um- they should make other arrangements if they're in a small community
220 without public transportation.
221 **HAEG:** Ok now this is the real question. Why do you think Trooper Gibbens and
222 Judge Murphy lied?
223 **GREENSTEIN:** I - I don't believe they lied. I understand you do. But I don't believe
224 they did. If - if your memories differ on those things...
225 **HAEG:** If my memories different...
226 **GREENSTEIN:** Mm hmm.
227 **HAEG:** You know how many times I've been told that? -um- and you know I'll have you
228 know that I'm taping this conversation as I tape all my conversations, And you know
229 these allegations that I made about my - my -uh- lawyers they were all on tape.
230 **GREENSTEIN:** Mm hmm...
231 **HAEG:** And my first lawyer cause the one that went through trial was the second one
232 My first one I had before the Alaska Bar Association and as he lied I think it was
233 somewhere over 20 times. Actually he was under oath so it was perjury. We played
234 the - actually didn't play the tape he agreed that the transcriptions my wife made of
235 the secretly recorded conversations were true and correct and as he read them he
236 started shaking like a leaf. And you know there aint - there probably isn't gonna be
237 much done to him because of people like yourself that when they're faced with the
238 obvious they don't want to do anything. But I mean I have this - I have - I mean...
239 **GREENSTEIN:** Well let me.

240 HAEG my
241 GREENSTEIN: Let me just reflect back to you.
242 HAEG: Ok.
243 GREENSTEIN: I think what you really want to - is a new trial or a retrial or to have
244 everything done over again
245 HAEG: Exactly.
246 GREENSTEIN: I don't have the power - our agency doesn't have the power to do that.
247 So I'm saying even if you know we found everything that you want us to find all we
248 would do is a cautionary letter to the judge. It won't help you.
249 HAEG: And did she get a cautionary letter?
250 GREENSTEIN: No. She hasn't yet..
251 HAEG: So she didn't even get that?
252 GREENSTEIN: Well until you
253 HAEG: Didn't even ..
254 GREENSTEIN: ... our Commission ..
255 HAEG: ...freaking get that?
256 GREENSTEIN: ...I told you our Commission...
257 HAEG: I cannot believe that Maria,
258 GREENSTEIN: I told you our Commission hasn't finished with it yet. Didn't I just tell
259 you that we are goanna address it at our January 22nd meeting?
260 HAEG: I thought you said it's over and that ..
261 GREENSTEIN: I said.

262 HAEG: ...you said -um- ...
263 GREENSTEIN: ...January 22nd meeting...
264 HAEG: ...everything - I wrote down -um- everything I wrote down everything was ok. .
265 GREENSTEIN: Yeah from my investigation but I told you that we're meeting on
266 January 22nd.
267 HAEG: Ok January 22nd. Do you have a call in number for that date?
268 GREENSTEIN: I told you you already had your opportunity to address the
269 Commission
270 HAEG: No there's other people that want their opportunity.
271 GREENSTEIN: You're the only – we only allow the complainant to talk about their
272 complaint. And we'll give the opportunity one time.
273 HAEG: Hmm...How convenient -Um- And who's your boss in the big scheme of
274 things here?
275 GREENSTEIN: I work for the Commission.
276 HAEG: Ok Commission. And whose the – is there a president or...
277 GREENSTEIN: There's a Chair
278 HAEG: Ok who's the Chair?
279 GREENSTEIN: Judge Ben Esch.
280 HAEG: Judge – what's the last name again?
281 GREENSTEIN: Esch. E-S-C-H.
282 HAEG: S-C-H?
283 GREENSTEIN: E-S-C-H.

284 HAEG: Ok and how do you pronounce that?

285 GREENSTEIN: Esch.

286 HAEG: Esch? Ok -um- ok well I guess and I probably am not allowed to talk to her or
287 him or.. Is it a him or a her?

288 GREENSTEIN: Him.

289 HAEG: Him

290 GREENSTEIN: Yes Mr Ben Esch.

291 HAEG: -Um- is there any way I can communicate with him?

292 GREENSTEIN: -Um- you can send a letter.

293 HAEG: Ok do you have an address?

294 GREENSTEIN: -Um- He's at the Nome court. Do you have access to the internet?

295 HAEG: Yep. Nome court?

296 GREENSTEIN: -Uh- huh.

297 HAEG: Ok we can probably manage that one. -Um- -uh- well actually this is kind of
298 good. And if I wanted those records Cause this is goar na be good. Cause I'm going
299 to have Trooper Gibbens and Judge Murphy under oath again ^{during} ^{PS} ~~at~~ my Post Conviction
300 Relief. And this will be a joy a true joy.

301 GREENSTEIN: Our -- our records are confidential ..

302 HAEG: I can -- I can subpoena those records, correct?

303 GREENSTEIN: No. Our -- our records are confidential by State statute

304 HAEG: Ok and there's no -- absolutely no court record -- no way of getting those?

305 GREENSTEIN: No.

306 HAEG: Not even through the Supreme Court?

307 GREENSTEIN: -Um- if the...

308 HAEG: Supreme Court? I - I...

309 GREENSTEIN: If the Supreme Court..

310 HAEG: ...I walk into your office with an SCO and I can't have it?

311 GREENSTEIN: I mean if the Supreme Court ordered it they would get it under seal but

312 you probably wouldn't have access to it.

313 HAEG: Ok. Well I'll guarantee you those records are goanna be -um- looked at by

314 somebody -um- cause I'm actually starting to enjoy this. This is kind of like -- I used to

315 be a trapper and a hunter but this is far more fun. -Urn- because it's the most

316 ridiculous thing that's ever happened. This state is so crooked you couldn't get a fair

317 trial here if you tried your hardest - like I did. It's unbelievable -Um- but anyway you

318 probably heard that before. -Um- and as I said I'm guilty so you don't have to listen to

319 me -Um- and on I guess I've taken up enough of your time Maria.

320 GREENSTEIN: Ok.

321 HAEG: Thank you very much

322 GREENSTEIN: You're welcome.

323 HAEG: Bye.

324 GREENSTEIN: Bye.

Transcribed Phone Call between
Alaska Commission on Judicial Council (Marla Greenstein) and
David Haeg on or about September 23, 2009

- 1 HAEG: Yep.
- 2 GREENSTEIN: Marla Greenstein.
- 3 HAEG: Hey how yah doing?
- 4 GREENSTEIN: I'm doing fine
- 5 HAEG: -Um- hey I have a couple questions for you. I don't know if you remember me
- 6 but I had a .
- 7 GREENSTEIN: I do
- 8 HAEG: -Uh-
- 9 GREENSTEIN: I do it was a hunting thing
- 10 HAEG: Yep and I'd - I'd filed a complaint I think it was against Judge Murphy ...
- 11 GREENSTEIN: Right
- 12 HAEG: -um- and -un- what I was wondering is at the time you had said that -uh- -um-
- 13 you had interviewed I think Judge Murphy and some of the people that I had...
- 14 GREENSTEIN: Right the trooper and some of those other people
- 15 HAEG: Yep. And you had said that they -um- denied that the trooper had ever given
- 16 Judge Murphy rides until I think you said - I'd wrote down some notes until like after I
- 17 was sentenced. And I was wondering if you -um- I guess have any documentation on
- 18 what they said or if you could give me some on what they said?
- 19 GREENSTEIN: I can't share that with anybody. I do the documentation but that -
- 20 that's confidential within our office
- 21 HAEG: Ok and is there anyway to make it non confidential?
- 22 GREENSTEIN: No there is not

23 **HAEG:** Not even a -- I ke a court proceeding or anything?

24 **GREENSTEIN:** No our files are confidential by statute.

25 **HAEG:** Ok and so when you like if I claim what you had told me -- I can't even do that

26 either then?

27 **GREENSTEIN:** What I said to you? If you -- I mean you should have a letter from me

28 that probably set out the reasons we dismissed the complaint. That's the only thing. If

29 you don't have that letter we can you another copy of that letter.

30 **HAEG:** Ok.

31 **GREENSTEIN:** That's the only thing that you can refer to.

32 **HAEG:** Ok. Well what -- what my problem is is you had said that they -- you had

33 questioned them and they both denied that the trooper had given the judge rides. Ok?

34 And I -- I you know I wrote down -um- all the stuff that you had said because you had --

35 you actually called me. I don't know if you remember that or not?

36 **GREENSTEIN:** Let me see. I think have the note - an advisory opinion that wrote as a

37 result of that I can read. Let me just look it up. I think we wrote a summary of the

38 opinion that public...

39 **HAEG:** And what -- so this actually went further than what...

40 **GREENSTEIN:** No -- no.

41 **HAEG:** ... just your investigation?

42 **GREENSTEIN:** No we did a formal opinion. They just - we write opinions to give

43 judges guidance at times. -Um-

44 **HAEG:** Well why would there be any guidance if there were never any rides given?

45 **GREENSTEIN:** No there was. (time passes while looking through her stuff) ...just
46 trying to help you. Just want to see if there's more information I can give you
47 **HAEG:** Ok.
48 **GREENSTEIN:** No he did give them rides. It was a question of when the rides were
49 given. So I can give you this opinion. Their opinion 'the judicial officer accepted rides
50 from law enforcement while on duty in small village without any form of public
51 transportation did not violate the Code of Judicial Conduct where no ex parte
52 communication concerning the pending criminal matter occurred. The circumstances
53 in rural Alaska often create a need for accommodations that would not be suitable if
54 there were other alternatives. Where these accommodations include assistance by
55 law enforcement officers, great care should be given to avoid any discussion of official
56 matters while outside the courtroom. The best practice would be to disclose the
57 special needs and accommodations on the record at the beginning of the court
58 proceeding to avoid appearance of impropriety questions.
59 **HAEG:** Well if...
60 **GREENSTEIN:** So that - that was our findings. I can mail that to you if you'd like?
61 **HAEG:** Ok well that would be great but what my question is - is you had said that you
62 investigated .
63 **GREENSTEIN:** Mm.hmm.
64 **HAEG:** And you had called me and said that the trooper and the judge denied that any
65 rides ever took place. Is that correct?
66 **GREENSTEIN:** No - until after sentencing

67 HAEG: Ok until after sentencing?

68 GREENSTEIN: Right.

69 HAEG: Ok. Ok the problem I have Marla is I was there with I believe like 7 witnesses

70 and an attorney and - and...

71 GREENSTEIN: I talked to everybody.

72 HAEG: Ok.

73 GREENSTEIN: I talked to the attorneys I talked to everybody. I talked to people in the

74 courtroom. I talked to a bunch of people. And they view things differently than you.

75 HAEG: Wow...

76 GREENSTEIN: Mm hmm.

77 HAEG: That's unbelievable isn't it? Because ..

78 GREENSTEIN: I talked even to the people in Texas, - or whoever they were. I made a

79 lot of phone calls.

80 HAEG: Ok.

81 GREENSTEIN: That's why I remember it so well

82 HAEG: And you got no indication from anybody that they ever got - ever - the judge

83 ever took a ride with the trooper during my trial or sentencing, correct?

84 GREENSTEIN: Correct.

85 HAEG: Ok but I have a note here that says you talked VPSO Parker. He doesn't

86 remember. That you never talked to any of the witnesses..

87 GREENSTEIN: Listen are - are you goanna argue with me? I just told you I

88 interviewed a lot of the people. I talked to them...

89 HAEG: Well the problem – ok I'm not argu.. I'm not try – I don't mean to argue with
90 you Ok? The problem is – is over this case...

91 GREENSTEIN: Mm hmm...

92 HAEG: ... I lost everything I had built for my family from. .

93 GREENSTEIN: I understand that .

94 HAEG: ... when I was age 18.

95 GREENSTEIN. Nothing we do is going to change that.

96 HAEG: Ok Correct absolutely. But what I'm saying is when the judge rode in every
97 morning, every noon to lunch, and it's even on the record. This is what really pisses
98 me off. Is that they - the State transcribed the record of the case and it has Judge
99 Murphy 'I'm going to commandeer you again Trooper Gibbens and we're goanna into
100 to town and get some stuff and blah blah blah'. And then when you tell me that – and
101 ever day this nappened. And it was like I think a 5-day trial and 2 day sentencing.
102 And when that trooper was the main witness against me and it was proven he'd
103 committed perjury and the judge overlooked it and they're riding around together the
104 appearance – how that you are saying that the appearance of bias isn't right - we seen
105 actual bias because we proved the trooper was lying about where the evidence was
106 found. They claimed it was found where I guide and so I should be charged as a big
107 game guide. And so it has to do with real things in life rather than protecting a couple
108 people that did something they shouldn't be doing and are now denying it. And -um-
109 you know and I don't mean to jump down your throat Maria but it's now five and a half
110 years of my life as I know it ending. And I know that – that probably doesn't mean

111 anything to you. You get a paycheck and you go home at night and your jobs secure
112 but me and my family have a hard time putting – having enough money to put food in
113 our children's mouths anymore - over this. And Maria do you understand the
114 determination when you make a claim like I did – and I didn't even know it was that big
115 of deal but when they claimed it never happened. The judge lied to you and the
116 trooper lied to you and if I were you I would take that very seriously. And apparently
117 from what you're saying everybody agrees in fact you said no witnesses said it ever
118 happened. Didn't I tell you it happened?

119 **GREENSTEIN.** You - you did but nobody else.

120 **HAEG:** Nobody else told you it happened?

121 **GREENSTEIN** Right

122 **HAEG:** Did you ever talk to my jurors?

123 **GREENSTEIN** No.

124 **HAEG:** Did I ask that you do?

125 **GREENSTEIN:** Listen you're arguing with me again so I'm goanna hang up. This has
126 been over for several years and I was trying to give you additional information. I'm
127 sorry but there's nothing more I can do...(click)

David S. Haeg
P O Box 123
Soldona, AK 99669
(907) 262-9249

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

DAVID HAEG)	
Applicant,)	
vs.)	
STATE OF ALASKA,)	Case No : <u>3HO-10-00064CI</u>
Respondent.)	
)	
)	

AFFIDAVIT

1. My name is Wendell Jones and I am a former Alaska State Trooper.

2. I attended David Haeg's sentencing in McGrath on 9-29-05 and 9-30-05.

On these days I was present at the courthouse every hour David Haeg's court was in session. On 9-29-05 sentencing testimony and arguments started at 1 PM and continued straight through the night until the early morning of 9-30-05. David Haeg was finally sentenced at nearly 1 AM on 9-30-05.

3. On 9-29-05 I personally observed Judge Margaret Murphy arrive at court in a white Trooper pickup truck driven by Trooper Brett Gibbens; leave and return with Trooper Gibbens in the same truck during breaks and dinner, and leave with Trooper Gibbens when court was finished on 9-30-05. Nearly all the rides I witnessed Trooper Gibbens give Judge Murphy happened before David Haeg was sentenced.

ATTACHMENT C

Page 1 of 2

4. Trooper Gibbens was the primary witness against David Haeg at sentencing and I believe during his trial.

5. During David Haeg's proceedings I never saw Judge Murphy arrive or depart the courthouse alone or with anyone other than Trooper Gibbens.

6. Other than David Haeg himself I was never contacted by anyone investigating whether or not Trooper Gibbens gave Judge Murphy rides.

AFFIDAVIT SWORN TO UNDER PENALTY OF PERJURY

I, WENDELL JONES, swear under penalty of perjury that the statements above and information included are true to the best of my knowledge

Wendell Jones

Wendell Jones

SUBSCRIBED AND SWORN to before me this 26th day of July, 2010.

Cheryl Warden

Notary Public in and for Alaska

My Commission Expires: 2-6-14



Exhibit #6

David S. Haeg
P.O. Box 123
Soldotna, AK 99569
(907) 262-9249

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

DAVID HAEG)	
Applicant,)	
vs.)	
)	
STATE OF ALASKA,)	Case No.: <u>3HC-10-00064CI</u>
Respondent.)	
)	
)	

AFFIDAVIT

1. My name is Tony Zellers and I am a retired Air Force Captain.
2. I was a state witness at David Haeg's trial in McGrath on 7-28-05. I also attended the sentencing in McGrath on 9-29-05 and 9-30-05. On these days I was present at the courthouse while David Haeg's court was in session. On 9-29-05 sentencing testimony and arguments started at 1 PM and continued through the night until the early morning of 9-30-05. David Haeg was finally sentenced at nearly 1 AM on 9-30-05.
3. On 7-28-05 and 9-29-05 I personally observed Judge Margaret Murphy being shuffled in a white Trooper pickup truck driven by Trooper Brett Gibbens; leave and return with Trooper Gibbens in the same truck during breaks, lunch, and dinner; and leave with Trooper Gibbens when court was finished for the day. Nearly all the rides I witnessed Trooper Gibbens give Judge Murphy happened before David Haeg was sentenced.

ATTACHMENT D

4. Trooper Gibbens was the primary witness against David Haeg at trial and sentencing.

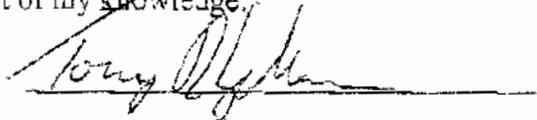
5. During David Haeg's proceedings I never saw Judge Murphy arrive or depart the courthouse alone or with anyone other than Trooper Gibbens.

6. Since 1994 to present my phone number has been 907-596-2319.

7. Other than David Haeg himself I was never contacted by anyone investigating whether or not Trooper Gibbens gave Judge Murphy rides.

AFFIDAVIT SWORN TO UNDER PENALTY OF PERJURY

I, TONY ZELLERS, swear under penalty of perjury that the statements above and information included are true to the best of my knowledge.



Tony Zellers
9420 Swan Circle
Eagle River, AK 99577
907-696-2319

SUBSCRIBED AND SWORN to before me this 21 day of July, 2010.



Dianne Cornelison

Notary Public

and for Mat Su Bus Stop Alaska

My Commission Expires:

April 5, 2014

Exhibit #6

David S. Haeg
P.O. Box 123
Soldotna, AK 99669
(907) 262-9249

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

DAVID HAEG)	
Applicant,)	
vs.)	
STATE OF ALASKA,)	Case No.: <u>3HQ-10-00064CT</u>
Respondent.)	
)	
)	

AFFIDAVIT

1. My name is Tom Stepnosky and I am retired Vietnam Veteran.
2. I attended David Haeg's sentencing in McGrath on 9-29-05 and 9-30-05. On these days I was present at the courthouse every hour David Haeg's court was in session. On 9-29-05 sentencing testimony and arguments started at 1 PM and continued through the night until the early morning of 9-30-05. David Haeg was finally sentenced at nearly 1 AM on 9-30-05.
3. On 9-29-05 I personally observed Judge Margaret Murphy arrive at court in a white Trooper pickup truck driven by Trooper Bret Gibbens; leave and return with Trooper Gibbens in the same truck during breaks and dinner; and then leave with Trooper Gibbens when sentencing was finished on 9-30-05. Nearly all the rides I witnessed Trooper Gibbens give Judge Murphy happened before David Haeg was sentenced.
4. Trooper Gibbens was the primary witness against David Haeg at sentencing and I believe during his trial.

ATTACHMENT E

5 During David Haeg's proceedings I never saw Judge Murphy arrive or
depart the courthouse alone or with anyone other than Trooper Gibbens.

6 Since 2005 to present my phone number has been 570-727-3130.

7 Other than David Haeg himself I was never contacted by anyone
investigating whether or not Trooper Gibbens gave Judge Murphy rides.

8 On or about 2006 I contacted Alaska Commission on Judicial Conduct
investigator Marla Greenstein by phone and told her I had personally seen Trooper
Gibbens give Judge Murphy rides before David Haeg was sentenced.

AFFIDAVIT SWORN TO UNDER PENALTY OF PERJURY

I, TOM STEP NOSKY, SR., swear under penalty of perjury that the statements above
and information included are true to the best of my knowledge.

Thomas J. Stepnosky, Sr.

Tom Stepnosky, Sr.
PO Box 205
Thompson, PA 18465
570-727-3130

SUBSCRIBED AND SWORN to before me this 16th day of July, 2010.

Nina A. Bills

Notary Public in and for _____

My Commission Expires: COMMONWEALTH OF PENNSYLVANIA

Notary Seal
Nina A. Bills, Notary Public
Susquehanna Depot Berco, Susquehanna County
My Commission Expires Jan. 10, 2011

Exhibit #6

David S Haeg
P.O. Box 123
Soldotna, AK 99669
(907) 262-9249

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

DAVID HAEG)	
Applicant,)	
vs.)	
)	
STATE OF ALASKA,)	Case No.: <u>3HO-10-00064C1</u>
Respondent.)	
)	
)	

AFFIDAVIT

My name is Drew Hiltbrand.

I attended David Haeg's sentencing in McGrath on 9-29-05 and 9-30-05. On these days I was present at the courthouse every hour David Haeg's court was in session. On 9-29-05 sentencing testimony and arguments started at 1 PM and continued through the night until the early morning of 9-30-05. David Haeg was finally sentenced at nearly 1 AM on 9-30-05.

On 9-29-05 I personally observed Judge Margaret Murphy arrive at court in a white Trooper pickup truck driven by Trooper Brett Gibbens; leave and return with Trooper Gibbens in the same truck during breaks and dinner; and leave with Trooper Gibbens when court was finished on 9-30-05. Nearly all the rides I

witnessed Trooper Gibbens give Judge Murphy happened before David Haeg was sentenced.

Trooper Gibbens was the primary witness against David Haeg at sentencing and I believe during his trial.

During David Haeg's proceedings I never saw Judge Murphy arrive or depart the courthouse alone or with anyone other than Trooper Gibbens.

From about 2004 to present my phone number has been 907-252-4090.

Other than David Haeg himself I have never been contacted by anyone investigating whether or not Trooper Gibbens gave Judge Murphy rides.

AFFIDAVIT SWORN TO UNDER PENALTY OF PERJURY

I declare under penalty of perjury the forgoing is true and correct. Executed on July 19th 2010. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.



Drew Hilterbrand
PO Box 1038
Soldotna, AK 99669
907-252-4090

Exhibit #6

David S. Haeg
P.O. Box 123
Soldotna, AK 99669
(907) 262-9249

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

DAVID HAEG)	
Applicant,)	
vs.)	
STATE OF ALASKA,)	Case No.: <u>3HO-10-00064CI</u>
Respondent.)	
)	
)	

AFFIDAVIT

1. My name is Greg Pearson; I am a husband and father of two.
2. I attended all of David Haeg's 12-hour self-representation hearing that was conducted in McGrath on 8-15-06. The hearing lasted until about 11 PM.
3. During David Haeg's self-representation hearing I heard Magistrate David Woodmancy ask Trooper Brett Gibbens for a ride and Trooper Gibbens responded that he could not give Magistrate Woodmancy a ride because of all the trouble he (Gibbens) got into by doing this the last time.

I declare under penalty of perjury the forgoing is true and correct. Executed on

7-25-2010 A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09 63.020.

Greg Pearson
Greg Pearson
PO Box 1456
Soldotna, Alaska 99669 (907) 262-3935

Exhibit # 6

David S. Haeg
P.O. Box 123
Soldotna, AK, 99569
(907) 262-9249

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

DAVID HAEG)	
Applicant,)	
vs.)	
STATE OF ALASKA,)	Case No.: <u>3HO-10-00064CI</u>
Respondent.)	
)	
)	

AFFIDAVIT

1. My name is Jackie Haeg. I work for the Kenai Peninsula Borough School District, am married, and mother of two.
2. I attended David Haeg's trial in McGrath on 5-17-05, 5-18-05, 7-25-05, 7-26-05, 7-27-05, 7-28-05, and 7-29-05. Trial went till 11.29 PM some days and I was present at the courthouse every hour of trial.
3. Every day of David Haeg's trial I personally observed Judge Margaret Murphy arrive at court in a white Trooper pickup truck driven by Trooper Brett Gibbens; leave and return with Trooper Gibbens in the same truck during breaks, lunch, and dinner; and leave with Trooper Gibbens when court was done for the day. All the rides I witnessed Trooper Gibbens give Judge Murphy happened before David Haeg was sentenced.
4. Trooper Gibbens was the primary witness against David Haeg at trial.

5. During David Haeg's trial I never saw Judge Murphy arrive or depart the courthouse alone or with anyone other than Trooper Gibbens.
6. Since about 1990 to present my phone number has been 907-262-9249.
7. Other than David Haeg himself I have never been contacted by anyone investigating whether or not Trooper Gibbens gave Judge Murphy rides.
8. I was the one who found David Haeg's 17-page letter (evidencing that the State had told and induced David Haeg to do what the State later charged him with doing) had been removed out of the official court record while proof it had been admitted remained in the official court record
9. I attended all of David Haeg's 12-hour self-representation hearing that was conducted in McGrath on 8-15-06 before Magistrate David Woodmancy
10. During David Haeg's self-representation hearing I heard Magistrate Woodmancy ask Trooper Brett Gibbens for a ride and Trooper Gibbens responded that he could not give Magistrate Woodmancy a ride because of all the trouble he (Gibbens) got into by doing this the last time

I declare under penalty of perjury the forgoing is true and correct. Executed on

July 23, 2010. A notary public or other official empowered to administer oaths is unavailable and thus I am certifying this document in accordance with AS 09.63.020.


Jackie Haeg
PO Box 123
Soldotna, Alaska 99669
(907) 262-9249

Alaska Court System
 P O. Box 147
 Aniak, AK 99557-0147
 Phone: (907) 675-4325
 Fax: (907) 675-4278

ANIAK DISTRICT COURT

Fax

To: Judge Joanides	From: Jean Ekemo/Clerk of Court
Fax: 907-254-0518	Pages: 5 w/cover
Phone:	Date: 8/6/10
Re: David Haeg - 4MC-04-24CR selected transcripts	CC:

*** Comments:**

Following this cover you should find
 1 page) a copy of the cover of "Transcript of Proceeding" Volume III
 3 pages) Pages 1257-1268 (4 pages per 8x11 page so actually (3) 8x11 size pages)

ATTACHMENT I

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FILED
STATE OF ALASKA
IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

2001 NOV 14 AM 11:16
CLERK, APPELLATE COURTS
BY _____
DEPUTY CLERK

STATE OF ALASKA,

Plaintiff,

vs.

DAVID HAEG,

Defendant.

A09455

Case No. 4MC-04-24 CR

VOLUME III

TRANSCRIPT OF PROCEEDINGS

September 29, 2005 - Page 1037 through Page 1454

DISCLAIMER

Transcripts prepared for the Alaska Court System

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

AURORA COURT REPORTING

A I never -- I never saw that moose.

Q Okay. That's the one you told Mr. Haeg that had been chased off or whatever, right?

THE COURT: That was on the 5th.

MR. LEADERS: Okay. Apologize, that's the 5th, okay.

Q But you don't note that anywhere?

A No.

Q The -- is it possible you -- the days may have somehow gotten mixed up or confused in any way during your hunt?

A No.

Q All right. The -- Mr. Jayo's moose was taken fairly early in the morning?

A Yes, as -- as I stated, around 7:30 that morning.

Q Okay. Shortly after light then?

A Yes.

Q You guys had to hike how far?

A We hiked approximately two and a half miles. We started about 5:00 o'clock in the morning. At that time of year about 5:30 is when it starts getting twilight out, and by 6:00 o'clock you've got enough -- plenty of light to -- to hunt. 7:00 o'clock the -- the sun wasn't up over the -- the Revelation Mountains yet.

Q So it took you almost a couple hours to get down to this location?

A Yes.

Q Roughly, I guess, we heard the pace is about a mile an hour earlier?

A Roughly -- roughly, yeah.

Q That's pretty accurate?

A Yes. Uh-huh (Affirmative).

Q The -- were you -- I guess I was a little but unclear on some of this. Someone -- you climbed a tree for observation once you crossed the river and that's where you first see the cows?

A No.

Q Oh, okay.

A We did not see any moose from -- from the tree.

Q From the tree, I see, okay.

Q When we came down and I decided to take Doug a little further down the ridge so I could see a little further down river, that the river bend made a shallow bend to the left and then it came back hard to the right, down by the sandbar that Dave landed on, later, and that's where I saw the -- the two cows along the river.

Q And that's where you then called -- from that location is where you called the bull to?

A Correct, I went down maybe 20 yards near a big rock or a husgik(ph) for Doug to have a laying down steady rest.

Q Okay. And it was two shots ultimately to kill this moose?

A Two shots, yes.

Q The initial?

A One from the.....

Q To take it down?

A One from -- one from my rifle a .375, and one from Doug Jayo's rifle which is I believe he was shooting .330.

Q Okay. They were spaced approximately 15, 20 minutes apart or so?

A Correct.

Q And then there was a lot of flying activity after that?

A Yes.

Q Mr. Haeg's plane?

A Correct.

Q He hadn't -- you hadn't noticed any other planes in that area flying during the few days that you -- the couple days you were hunting that specific area?

A No, I did not. I've heard other planes but I did not observe them with my eyes. Maybe not fly up into that valley.

Q So you heard them in the distance type thing?

A Correct.

Q I mean you can hear planes off for miles away at times (indiscernible)?

A At times, yeah, you can hear them a long ways.

Q Okay.

A The weather wasn't conducive to -- to seeing a lot of them.

MR. LEADERS: I have no further questions.

TONY ZELLERS

testified as follows on:

REDIRECT EXAMINATION

BY MR. ROBINSON:

Q Mr. Zellers, you entered a plea of, I think, no-contest to your charges in this wolf case, right?

A That's correct.

Q And you were required to come to court and testify truthfully were you not?

A Correct.

Q And in your opinion when you came to testify at the trial did you give truthful testimony?

A Yes, I did.

Q And anything you said today, was it truthful testimony?

A Yes, it was.

Q Particularly with your diary concerning when you noted the day that Mr. Jayo shot this moose, is there anything untruthful about that?

A No, there isn't.

Q Is there anything untruthful about the fact that before Mr. Jayo took that moose on the morning of September 7th that Mr. Haeg was not flying around, was not using any

kind of communications from the airplane to direct that hunt for Mr. Jayo?

A No, he wasn't.

Q And that's truthful?

A That's truthful.

Q As truthful as you testified about matters at trial here?

A Yes, it is.

MR. ROBINSON: I don't have anything further.

TONY ZELLERS

testified as follows on:

RE CROSS EXAMINATION

BY MR. LEADERS:

Q The -- let me ask you. In your mind, your perception of the wolf charges which you pled to and that now Mr. Haeg's -- do you consider those less serious based on the nature that they were wolves taken than you do what we're discussing here, whether or not a moose, a game animal was taken from the -- with the use of an airplane?

A No, it's the same charge. Same day -- same day airborne, so.

Q So you don't see -- okay, you don't perceive any difference between the wolves or the moose or anything like that? As to the way they should be treated?

A No, I've got probably -- I don't like the wolves any more than anybody else out in this area.

Q Right.

A But -- because I mean if I look at this charge versus this charge they're the same charge, so.

Q Shouldn't be treated any differently in your mind?

A No.

MR. LEADERS: Nothing further.

THE COURT: Anything else?

MR. ROBINSON: No.

THE COURT: Okay. Thank you, Mr. Zellers, you can go back.

MR. ROBINSON: Before we get going again I think we're going to need about a 10 minute break.

THE COURT: At least. I have to get to the store because I need to get some.....

MR. ROBINSON: So why don't we take long enough to go to the store and.....

THE COURT: Get some diet Coke. And I'm going to commandeer Trooper Gibbens and his vehicle to take me because I don't have any transportation.

MR. ROBINSON: All right.

THE COURT: All right, Trooper Gibbens?

TROOPER GIBBENS: Well, yeah.

MR. ROBINSON: You've been commandeered.

MR. LEADERS: As long as there's no issue of.....

MR. ROBINSON: Oh, no, no, I don't have any problem.....

THE COURT: Yeah, I'm just telling you that I -- I can tell you I'm not going to talk about the case.....

MR. ROBINSON: You've been commandeered.

THE COURT: He's just going to drive me over there to get some diet Coke and we'll be back.

MR. ROBINSON: All right.

THE COURT: Why don't we start back up at like 10 after.

MR. ROBINSON: Okay.

THE COURT: Okay?

(Whispered conversation)

THE COURT: Off record.

(Off record)

THE COURT: Okay. We're back on record. Who did you want to call, Mr. Leaders? Or Mr. Robinson, I'm sorry.

MR. ROBINSON: Mr. Wendell Jones.

THE COURT: Okay.

(Whispered conversation)

THE COURT: Mr. Jones, if you'd raise your right hand.

(Oath administered)

MR. JONES: I do.

THE COURT: Okay. Please be seated.

MR. JONES: Thank you.

WENDELL L. JONES

called as a witness on behalf of the defendant, testified as follows on:

DIRECT EXAMINATION

THE COURT: Spell your first and last name for the record, please.

A Wendell L. Jones, W-e-n-d-e-l-l L. J-o-n-e-s.

THE COURT: Okay. Thank you, sir.

BY MR. ROBINSON:

Q Good evening, Mr. Jones. Where do you live?

A I live in Cordova, Alaska.

Q And how long have you lived there?

A Well, I first moved there in '76 and I moved to Soldotna in about '84.
Moved back to Cordova about '94.

Q And what is your occupation?

A I'm sorry?

Q What is your occupation?

A I'm a commercial fisherman.

Q (Coughing) Excuse me. How long have you been a commercial
fisherman?

A Since 1978.

Q What kind of commercial fisherman? (Indiscernible).

A I purseine, I gill net and I used to spot herring when we had herring.

Q So when you were a purseiner or gill netter was that in the salmon
fisheries? Was that for salmon?

A Salmon. Salmon. I'm sorry, I don't hear well.

Q Okay. And that was in the salmon fisheries?

A Yes.

Q And where in the state did you do your salmon fishing?

A In Prince William Sound, and on the Copper River Delta.

Q Other than being a commercial fisherman have you had any other occupations?

A Yes. I was a fish and wildlife protection officer for five years and prior to that I was a commercial pilot, prior to that I was an A&P mechanic. And prior to that I was a kid.

Q What years were you a fish and wildlife enforcement officer?

A From '73 to '78.

Q And where was that at?

A In Ketchikan and then in Cordova.

Q Are you still fishing commercially?

A Yes, I am.

Q Do you know the defendant in this case, David Haeg?

A Very well.

Q And how do you know him?

A Let's see. He was about 19, maybe 20 when he wanted Dan France to build an airplane for him and Dan was busy so Dan referred David to -- referred me to David (indiscernible) to me. So he came and talked to me

about this airplane that he wanted to build, and wanted to know if I'd work with him on it. We made an agreement and we went to work in the winter time. He was commercial fishing during the summer and so was I, so it was -- it took us a couple years to finish -- couple winters to finish it. And so I got to know him very well.

Q All right. What kind of plane was this?

A This was the Batcub, the PA-12.

Q The PA-12, the airplane that we've all come to call in this proceeding the Batman plane?

A Well, it's been redone since he and I did it, but, yes, it's the same design, yes.

Q So how long has he had this plane?

A Since he was 20 years old, something like that. Well, it took two years to build it, so -- let's see, so 22 and he's 38 now, aren't you, Dave?
MR. HAEG: (Indiscernible).

Q All right. So he's had it for quite some time?

A Oh, yeah.

Q Tell us the kind of -- other than the contacts you had with him in building the plane, what other kind of contacts have you had with David over the years?

A Well, in herring spotting he -- I took him over to the Sound. He flew back seat for me for part of a season

and then there was a fatality in the herring fishery and David took over that position, and was very successful. He's good at whatever he does.

Q Okay. Over the years, Mr. Jones, have you developed an opinion about Mr. -- about David's character since you've known him?

A Without a doubt.

Q And what is that opinion?

A I wouldn't be surprised if he couldn't walk on water. No. I think he's -- he's -- well, I love him like he's my son. He -- I think he's just a wonderful person, he's got a beautiful family.

Q Now you know that he was convicted in this case of several fishing -- I mean hunting violations?

A That's true, I know.....

Q And several counts of.....

A Concerning the wolves, yes.

Q Concerning hunting wolves, same day airborne, unlawful possession of game, making a false statement regarding the taking of game. Also hunting wolverine out of season -- trapping out of season. Despite your knowledge of these convictions what do you think of Mr. Haeg?

A Well, I wasn't familiar with wolverine, I don't understand that charge, but the wolves -- first off, you

have to look at David's life. He was raised in Chinitna Bay in the wilderness. His dog -- his folks dog was killed by wolves. Then you have to look at what's going on. We all know that there's mismanagement by our fish and game that we're not -- we aren't doing the charge that we have as far as managing our resources on a sustained yield basis. And we all sitting here know that they -- that the influence of the Sierra Club and -- and all the Walt Disney lovers that are influencing our state government to where they're not allowing management by fish and game of the wolves. We used to have poison programs and all kinds of programs to keep them in balance with our other game that we used. They -- they are a predator and the other ones are -- are game that we harvest and we don't harvest the wolves for -- as consumption. So -- but we aren't managing them as a predator so that we can maintain the moose in a balanced situation. And -- so it's -- it's hap -- it's gone on for so long that the frustration level is very high. I don't -- I admit that what David has done, the way he handled the situation is wrong. He'll admit it's wrong to me, but -- but the frustration of it -- have you read -- well, I shouldn't ask you the questions, I'm sorry. But if you've read Harrower's letters to Governor Knowles. The -- the frustration level has been

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1 A I never -- I never saw that moose
 2 Q Okay That's the one you told Mr Haeg that had been
 3 chased off of whatever, right?
 4 THE COURT: That was on the 5th
 5 MR LEADERS Okay Apologies, that's the 5th, okay.
 6 Q But you don't note that anywhere?
 7 A No
 8 Q The -- is it possible you -- the dogs may have somehow
 9 gotten mixed up or confused in any way during your hunt?
 10 A No
 11 Q All right The -- Mr Jayo's moose was taken fairly
 12 early in the morning?
 13 A Yes, as -- as I stated, around 7:30 that morning.
 14 Q Okay Shortly after light then?
 15 A Yes
 16 Q You guys had to hike how far?
 17 A We hiked approximately two and a half miles We started
 18 about 5:00 o'clock in the morning At that time of year
 19 about 5:30 is when it starts getting bright out, and
 20 by 6:00 o'clock you've got enough -- plenty of light to
 21 -- to hunt 7:00 o'clock one -- the sun wasn't up over
 22 the -- the Revelation Mountain yet
 23 Q So it took you almost a couple hours to get down to this
 24 location?
 25 A Yes

- 1257 -

1 A Two shots, yes
 2 Q The initial
 3 A One from the
 4 Q To take it down?
 5 A One from -- one from my rifle a 375 and one from Doug
 6 Jayo's rifle which is I believe he was sporting 330
 7 Q Okay They were spaced approximately 15, 20 minutes
 8 apart or so?
 9 A Correct
 10 Q And then there was a lot of flying activity after that?
 11 A Yes.
 12 Q Mr Haeg's plane?
 13 A Correct
 14 Q He hadn't -- you hadn't noticed any other planes in that
 15 area flying during the few days that you -- the couple
 16 days you were hunting that specific area?
 17 A No, I did not I've heard other planes but I did not
 18 observe them with my eyes Maybe not fly up into that
 19 valley
 20 Q So you heard them in the distance type thing?
 21 A Correct
 22 Q I mean you can hear planes off for miles away at times
 23 (indecipherable)?
 24 A At times, yeah, you can hear them a long ways
 25 Q Okay

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1 Q Roughly, I guess, we heard the plane about a mile or
 2 how earlier?
 3 A Roughly -- roughly, yeah.
 4 Q That's pretty accurate?
 5 A Yes. Uh-huh (Affirmative)
 6 Q The -- were you -- I guess I was a little bit unclear on
 7 some of this Someone -- you climbed a tree for
 8 observation once you crossed the river and that's where
 9 you first see the cows?
 10 A No
 11 Q Oh, okay
 12 A We did not see any moose from -- from the tree
 13 Q From the tree, I see, okay
 14 Q When we came down and I decided to take Doug a little
 15 further down the ridge so I could see a little further
 16 down river, that the river bend made a shallow bend to
 17 the left and then it came back hard to the right, down
 18 by the sandbar that Dave landed on, later, and that's
 19 where I saw the -- the two cows along the river.
 20 Q And that's where you then called -- from that location
 21 is where you called the bull to?
 22 A Correct, I went down maybe 20 yards near a big rock or a
 23 hushik(ah) for Doug to have a laying down steady rest
 24 Q Okay, and it was two shots ultimately to kill this
 25 moose?

- 1258 -

1 A The weather wasn't conducive to -- to seeing a lot of
 2 them
 3 MR LEADERS: I have no further questions
 4 TONY ZELLERS
 5 testified as follows on:
 6 REDIRECT EXAMINATION
 7 BY MR. ROBINSON
 8 Q Mr Zellers, you entered a plea of, I think, no-contest
 9 to your charges in this wolf case, right?
 10 A That's correct
 11 Q And you were required to come to court and testify
 12 truthfully were you not?
 13 A Correct
 14 Q And in your opinion when you came to testify at the
 15 trial did you give truthful testimony?
 16 A Yes, I did
 17 Q And anything you said today, was it truthful testimony?
 18 A Yes, it was
 19 Q Particularly with your diary concerning when you noted
 20 the day that Mr Jayo shot this moose, is there anything
 21 untruthful about that?
 22 A No, there isn't
 23 Q Is there anything untruthful about the fact that before
 24 Mr Jayo took that moose on the morning of September 7th
 25 that Mr Haeg was not flying around, was not using any

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Aurora Court Reporting

1 kind of communications from the airplane to direct that
2 hunt for Mr. Jyo?
3 A No, he wasn't
4 Q And that's truthful?
5 A That's truthful
6 Q As truthful as you testified about, manners or what
7 here?
8 A Yes, it is
9 MR ROBINSON: I don't have anything further.

TONY ZELLERS

10 testified as follows on:

11 RE-CROSS EXAMINATION

12 BY MR. LEADERS:

13 Q The -- let me ask you. In your mind, your perception of
14 the wolf charges which you pled to and that now Mr
15 Haeg's -- do you consider those less serious based on
16 the nature that they were wolves taken than you do what
17 we're discussing here, whether or not a moose, a game
18 animal was taken from the -- with the use of an
19 airplane?
20 A No, it's the same charge. Same day -- same day
21 airborne, so
22 Q So you don't see -- okay, you don't perceive any
23 difference between the wolves or the moose or anything
24 like that? As to the way they should be treated?

- 1261 -

1 MR LEADERS: As long as there's no issue of...
2 MR ROBINSON: Oh, no, no, I don't have any problem.
3 THE COURT: Yeah, I'm just telling you that I -- I can
4 see you're not going to talk about the case.
5 MR ROBINSON: You've been commandeered.
6 THE COURT: He's just going to drive me over there to get
7 some diet Coke and we'll be back.
8 MR ROBINSON: All right.
9 THE COURT: Why don't we start back up at like 10 after?
10 MR ROBINSON: Okay.
11 THE COURT: Okay?
12 (Whispered conversation)
13 THE COURT: Off record.
14 (Off record)
15 THE COURT: Okay. We're back on record. Who did you
16 want to call, Mr. Leaders? Or Mr. Robinson, I'm sorry.
17 MR ROBINSON: Mr. Wendell Jones.
18 THE COURT: Okay.
19 (Whispered conversation)
20 THE COURT: Mr. Jones, if you'd raise your right hand.
21 (Oath administered)
22 MR JONES: I do.
23 THE COURT: Okay. Please be seated.
24 MR JONES: Thank you.

WENDELL L. JONES

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1 A No, I've got probably -- I don't like the wolves any
2 more than anybody else out in this area.
3 Q Right.
4 A But -- because I mean if I look at this charge versus
5 this charge they're the same charge, so.
6 Q Shouldn't be treated any differently in your mind?
7 A No.
8 MR LEADERS: Nothing further.
9 THE COURT: Anything else?
10 MR ROBINSON: No.
11 THE COURT: Okay. Thank you, Mr. Zellers, you can go
12 back.
13 MR ROBINSON: Before we get going again I think we're
14 going to need about a 10 minute break.
15 THE COURT: At least I have to get to the store because
16 I need to get some.
17 MR ROBINSON: So why don't we take long enough to go to
18 the store and...
19 THE COURT: Get some diet Coke. And I'm going to
20 commandeer Trooper Gibbens and his vehicle to take me because
21 I don't have any transportation.
22 MR ROBINSON: All right.
23 THE COURT: All right, Trooper Gibbens?
24 TROOPER GIBBENS: Well, yeah.
25 MR ROBINSON: You've been commandeered.

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1 called as a witness on behalf of the defendant, testified as
2 follows on:
3 DIRECT EXAMINATION
4 THE COURT: Spell your first and last name for the
5 record, please.
6 A Wendell L. Jones, W-e-n-d-e-l-l L. J-o-n-e-s.
7 THE COURT: Okay. Thank you, sir.
8 BY MR. ROBINSON:
9 Q Good evening, Mr. Jones. Where do you live?
10 A I live in Cordova, Alaska.
11 Q And how long have you lived there?
12 A Well, I first moved there in '76 and I moved to Soldotna
13 in about '84. Moved back to Cordova about '94.
14 Q And what is your occupation?
15 A I'm sorry?
16 Q What is your occupation?
17 A I'm a commercial fisherman.
18 Q (Coughing) Excuse me. How long have you been a
19 commercial fisherman?
20 A Since 1978.
21 Q What kind of commercial fisherman? (Indiscernible).
22 A I put seine, I gill net and I used to spot herring when
23 we had herring.
24 Q So when you were a pursiner or gill netter was that in
25 the salmon fisheries? Was that for salmon?

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1 A Salmon. Salmon. I'm sorry, I don't hear well.
 2 Q Okay. And that was in the salmon fisheries?
 3 A Yes.
 4 Q And where in the state did you do your salmon fishing?
 5 A In Prince William Sound, and on the Copper River Delta.
 6 Q Other than being a commercial fisherman have you had any
 7 other occupations?
 8 A Yes. I was a fish and wildlife protection officer for
 9 five years and prior to that I was a commercial pilot,
 10 prior to that I was an A&P mechanic. And prior to that
 11 I was a kid.
 12 Q What years were you a fish and wildlife enforcement
 13 officer?
 14 A From '73 to '78.
 15 Q And where was that at?
 16 A In Ketchikan and then in Cordova.
 17 Q Are you still fishing commercially?
 18 A Yes, I am.
 19 Q Do you know the defendant in this case, David Haeg?
 20 A Very well.
 21 Q And how do you know him?
 22 A Let's see. He was about 19, maybe 20 when he wanted Dan
 23 France to build an airplane for him and Dan was busy so
 24 Dan referred David to -- referred me to David
 25 (Indiscernible) to me. So he came and talked to me.

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 2 David took over that position, and was very successful.
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