

ARIZONA GAME AND FISH DEPARTMENT
5000 WEST CAREFREE HIGHWAY
PHOENIX, ARIZONA 85086

TRANSCRIPT OF INTERVIEW
JULY 8, 2009
KIRBY BRISTOW

Individuals present at the Interview on 7-8-09:

Gary R. Hovatter, Arizona Game and Fish Department, Deputy
Director, Interviewer
Marty Fabritz, Arizona Game and Fish Department,
Ombudsman, Interviewer
Craig McMullen, Arizona Game and Fish Department, Wildlife
Manager, Interviewer
Kirby Bristow

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1 MR. HOVATTER: The executive staff management
2 team battle, or not battle but the stuff we went through
3 immediately following the recapture and euthanization of
4 the Macho B. But because of how that works and some of
5 the things that came from outside the department, some
6 allegations were made from outside of the Department after
7 that, there were reports that the Arizona Daily Star used,
8 we went from being very confident that we knew exactly
9 what had happened to feeling that we needed to request an
10 outside investigation. Because there was no way we
11 believed that we were going to be able to investigate
12 ourselves and have that have any credibility with the
13 folks we were going to deal with.

14 When we did that, and we got to that like
15 within two days of that -- this young lady's allegations
16 that she popped up, we made a commitment to Fish and
17 Wildlife Service that we won't generate any cross talk.
18 We won't do our own internal review so that we don't
19 generate a lot of conversation where it kind of taints the
20 interviews that Fish and Wildlife Service might be
21 having to have. So because of that we never did get into
22 the weeds and get down into the details of what we thought
23 really happened.

24 MR. BRISTOW: Okay.

25 MR. HOVATTER: We started down that path. We did

1 kind of an initial after action look at things but that
2 almost didn't get much traction before we then ended up
3 muzzling ourselves. So we have not had an opportunity to
4 dig into this.

5 Now what changed was the Center for
6 Biological Diversity, what's changed our approach,
7 because, of course, the Feds are still doing their
8 investigation. They are still not -- still haven't
9 completed it. And theirs is a criminal investigation.
10 What we decided we needed to do was an administrative
11 investigation under Garrity Rules so that what we could do
12 is get at what we thought happened to prepare for this
13 possibility that the Center for Biological Diversity will,
14 in fact, go through with their notice of intent to sue.
15 That 60-day window, we waited about as long as we could
16 not knowing when the Feds were going to get done but that
17 window ends this Friday.

18 MR. BRISTOW: Okay.

19 MR. HOVATTER: So on one hand we know we're not
20 going to be in court the day after that, we do have to,
21 within a certain number of days after they decide to sue,
22 if they do, we do have to make a court filing saying here
23 is why we believe this is the (indiscernible). We have a
24 filing prepped but because we have not done this we don't
25 know enough to know whether we can make that filling more

1 powerful. We think we probably can when we discover
2 everything there is to discover about this, you know, to
3 speak with more authority. As it is we are a little bit
4 more ambiguous in some of the language we use because we
5 don't know what we don't know.

6 So Larry and we sat down and decided, you
7 know, we really had to try and get at this. We
8 coordinated with the Feds from the standpoint of telling
9 them we were going to do this. We have not asked for any
10 cross talk information. They haven't provided us anything
11 that they got. We haven't provided them anything that
12 we've got, although we have told them who we're
13 interviewing and what we're doing.

14 So I wanted you to know that that's the
15 background for what we're doing. We're issuing the
16 Garrity Warning on this because it does protect the rights
17 of the folks we're dealing with. It makes it clear that
18 this is an administrative investigation as opposed to a
19 criminal one. But we also realize that we may, in fact,
20 discover something that, while we don't expect it because
21 we're entering this the same way we believe that
22 everything we know about this indicates that within the
23 Department this was, in fact, done appropriately, but we
24 also recognize because of the -- if we were absolutely
25 certain of that we wouldn't have requested an outside

1 investigation. So because since there is the potential
2 that there might be something we discover that we don't,
3 while we don't expect it, it could be there, we decided
4 the Garrity Warning again is the right way to protect our
5 folks rights while still recognizing that we may discover
6 something that may cause us to have to revisit what action
7 we decide to take in the future.

8 So that's how we got to where we're at and
9 why we're doing this this week and we will probably go
10 into -- we will probably go into next week on some of this
11 but what I was going to do now is I'm going to read you
12 the Garrity Warning. We're taping all of the stuff we're
13 doing. And so this is what our human resources and legal
14 staff came up with because they thought this was the best
15 way to word this.

16 Employee is Kirby Bristow. Date is 7-8-09.
17 Interviewer is Gary Hovatter, Marty Fabritz, and Craig
18 McMullen. We are conducting an internal investigation
19 involving matters that will be discussed shortly. This is
20 an administrative investigation. You do not have the
21 right to have legal counsel present during the interview
22 nor will you be advised of constitutional rights. You are
23 ordered to cooperate fully with this investigation. You
24 are ordered to respond completely and truthfully to all
25 questions posed to you during the investigation. Failure

1 to respond completely and truthfully to all questions will
2 be considered misconduct.

3 As set forth in Garrity versus New Jersey,
4 385 US 493, and the line of cases which follow, any
5 responses given during this administrative investigation
6 cannot be used against you in a subsequent criminal
7 investigation. You are instructed not to discuss your
8 interview or this investigation with any Arizona Game and
9 Fish Department employees while the investigation is
10 pending.

11 And the statement you're going to sign
12 reads, "I have read the above statements and I understand
13 the orders given to me about this investigation. I
14 understand my obligation to cooperate fully with the
15 investigation. I understand my obligation to completely
16 and truthfully answer every question. I further
17 understand that I have been ordered not to discuss this
18 investigation with any Arizona Game and Fish Department
19 employees while this investigation is pending." And we
20 will make a copy for your records too of this --

21 MR. BRISTOW: Okay.

22 MR. HOVATTER: -- after you sign. Do you have
23 any questions about any of that?

24 MR. BRISTOW: No.

25 MR. HOVATTER: Okay. There you go, sir.

1

KIRBY BRISTOW,

2

pursuant to Garrity Warning, was examined and testified as

3

follows:

4

5

EXAMINATION

6

BY MR. HOVATTER:

7

Q. One of the things it's difficult for all of us in

8

this is we got all this hindsight now.

9

A. Uh-huh.

10

Q. So factoring that in on all of these questions,

11

the first one really kind of, going to the nub of a lot of

12

this is, from your perspective, did the Department have

13

the current and applicable permits required for the

14

incident -- intentional or incidental take of a jaguar?

15

A. From my perspective, yes, we did.

16

Q. And, you know, based on what you know now, do you

17

think that that capture was, in fact, incidental or was it

18

intentional?

19

A. That's a complicated question that seems simple

20

but --

21

Q. It seems a lot more complicated to us now than it

22

did when we first wrote it.

23

A. You're talking about -- it depends on what

24

parties you're talking about. Now given what I have heard

25

in hindsight it would have seemed intentional assuming --

1 I can't remember the young lady's name that made the
2 allegations, assuming that that is true it would certainly
3 seem intentional. And also in hindsight looking at the
4 fact that we actually caught something and that we had a
5 jaguar collar in hand, we were up to date on all the
6 latest jaguar protocol, that also makes it look as if it
7 was intentional.

8 But the intent of trapping that we were
9 doing down there was to catch mountain lions and, in fact,
10 we were trying to replace a collar in an area where we
11 captured an animal -- the whole intent of our study down
12 there was to look at factors that may influence movements
13 of both jaguar -- both mountain lions and black bears
14 among mountain ranges. And one of the biggest factors
15 that is going on right now is the border fence
16 construction and the activity of border patrol in that
17 area.

18 So we were selecting sites to trap based on
19 the potential for a border fence and/or high levels of
20 border patrol activity. And we were trying to get animals
21 close to the border that would cross the border so that we
22 may some day, assuming a fence is built there, show some
23 differences, sort of a before after kind of thing. So
24 that's why we were down in that area. But this is a
25 complicated answer.

1 Q. No. No. The thing is, though, I mean it makes
2 sense in the context of what we have already done on this,
3 Kirby. I mean, I think we -- you know, because of the way
4 we kind of start at the macro and kind of working our way
5 closer and closer to the actual site of where this
6 occurred, it does kind of -- it does fit. We can
7 understand the complexity of this as you described it.

8 A. And we had had an animal that we captured down
9 there that was, actually the first lion that we caught on
10 the study, and it was in that same vicinity and it had
11 subsequently been killed by hunter and the collar was
12 turned in. And it was legally taken, and the collar was
13 turned in and so we had gone back to that site because we
14 knew, A, good lion density; B, it has contiguous habitat
15 that goes across the border so the potential that the
16 animals will move across the border was good; and C, we
17 previously had a lion there that did indeed move across
18 the border and was what we were after. So that's why we
19 were in that area.

20 And, you know, in hindsight with what
21 happened it was, you know, that looks suspicious like we
22 were intentionally trying to catch the jaguar that was in
23 the area. The latest information that I had on the
24 whereabouts of Macho B was from a photograph in August
25 that Emil McCain had on one of his remote cameras. He

1 didn't tell me exactly where it was but he did tell me it
2 was his impression in the past when he had gotten
3 photographs of that jaguar in that area he wouldn't see it
4 for several months to a year after that. So in my mind,
5 the probability that we were going to catch a lion, or a
6 jaguar, I'm sorry, was extremely low.

7 Q. And that brings a question on when he related to
8 you about that photograph in August, do you have any
9 memory of when that was?

10 A. When?

11 Q. About when he told you about or what the context
12 of that conversation was?

13 A. It would have been in October. See, he didn't
14 check -- he wasn't out checking cameras every single day.
15 And I didn't even meet Emil until September. And then
16 between September and November was the most dealings I had
17 with Emil. So it would have probably been in October. I
18 couldn't tell you the exact date, but I know that it was
19 soon after he had gotten that that -- soon after he
20 checked that camera and gotten the picture, but he said
21 the picture was from August.

22 Q. Because he had some photos -- photos like July 29
23 and then 2 or 3 August of the jaguar and that. So, I
24 mean, yeah, that fits with what we understand.

25 A. And so that was -- I mean it -- it had been a

1 while before then that -- it had been a long time since he
2 had a picture so it was big news, you know, when he got
3 that photo. But that would have been -- he would have
4 been telling me that in October sometime, and I can't
5 recall the exact date.

6 We were -- when he started trapping the
7 lions for us, he was down in Padagonia, and he lives in
8 Padagonia, rents a house there. And we kind of used his
9 house as a field station because it was convenient to keep
10 equipment there and stuff. So I spent time, I dropped by
11 his house to drop off stuff. I mean he was trapping lions
12 for us, and so I was dropping off capture equipment and/or
13 picking up stuff when I was going to be checking the
14 traps. So anyhow, that would have been when I discussed
15 that with him.

16 Q. Let me ask, what was your sense of him? Because
17 I've heard different things about him as a lion trapper.
18 What was your sense of him?

19 A. I think he was pretty efficient. He caught three
20 lions for us within probably -- probably two months time.

21 Q. Was that that October November time frame when he
22 was trapping?

23 A. Yeah. By Thanksgiving we had -- he had caught
24 the third one, and the first one, like I said, was caught
25 in that Bear Valley area.

1 Q. If my understanding is correct that it was the
2 same snare set. He did set -- the snare that caught the
3 jaguar later on, it was the same snare set that had caught
4 that Mountain Lion Number 1?

5 A. I couldn't tell you that because I never ran
6 those lines. I know it was on the same snare line. I can
7 say that exactly.

8 Q. How many snares were set on that snare line?

9 A. Again, I didn't run those snares. I think -- I'm
10 not certain, but I think it was somewhere around six or
11 eight.

12 Q. Was there is a snare location criteria, I mean,
13 or was that left to the discretion of the trapper?

14 A. That was left to the discretion of the trapper,
15 and the primary trappers were Emil and Thorry. And that,
16 you know, it was based on their knowledge. I have worked
17 on lion projects in the past but I don't have any
18 experience trapping lions. So I was deferring that
19 decision to them.

20 Q. The -- what's your memory of how Emil came
21 to -- now we know there was a Clark's Guide Service
22 contract we had.

23 A. Clark Richens, yeah, we had a contract with Clark
24 Richens.

25 Q. And it was my understanding that Emil was

1 subcontracted under that?

2 A. Yeah.

3 Q. And how did -- well, I guess part of this is, why
4 him and not one of our folks, and what's your memory of
5 how he got involved in that project back in October,
6 November '08?

7 A. Well, in the -- in the summer of '08 when I was
8 having a little bit of trouble catching bears and I was
9 relating this to Ron Thompson.

10 Q. That's because they were all in Sierra Vista and
11 Tucson.

12 A. I was relating this to Ron Thompson. And he was
13 telling me, I know somebody who's got -- who's got good
14 information on locations of bears and lions. And so he
15 was talking about Emil. And then I met Emil just at the
16 gas station down there one day. He just came up and
17 introduced himself. Saw me in a Game and Fish truck. I
18 was at the Sonoyta gas station. And that's when we got to
19 talking.

20 And I knew him -- I knew of him. I didn't
21 know who he was. I never met him. But I knew there was a
22 jaguar detection project and there was a guy that had a
23 lot of remote camera data from the border region. And Ron
24 had talked about him that, you know, he would be a good
25 resource because he knows the whereabouts of a lot of

1 lions and black bears. So that's how it got started.

2 And then once I talked to him we talked
3 about sharing his data and we could actually use his
4 remote camera data as a means of getting population
5 estimates on lions and black bears in the vicinity. So we
6 had kind of talked that it would be a good idea for him to
7 cooperate on this research study in addition to helping us
8 out with lion trapping.

9 Q. Now was that just preliminary or was that as a
10 part -- would he have already been asked to, in fact, come
11 on the payroll?

12 A. That was preliminary before we asked him. And
13 then -- then subsequent to that was when -- I mean, I
14 started asking him more pointedly exactly where should we
15 set traps, that kind of stuff, and we sort of started down
16 the line of using his information to guide where we placed
17 snares before we actually contracted with him.

18 And then it was shortly after that that he was --
19 also, you know, it was clear that the money on the jaguar
20 detection project was running out, and he was needing
21 something to pay the rent. And so he and Ron, I believe,
22 got to talking about setting up the contract. And I think
23 Ron was the one that actually set the contract.

24 Q. In any of those conversations, since you're
25 talking about, you know, you're having kind of a

1 professional conversation about what might or might not
2 come to pass and all that originally. Clearly, you know,
3 he's -- he has worked jaguar, clearly also there is --
4 those cameras take a lot more pictures of things that
5 aren't jaguar than they do, the satellite utility. Did
6 the subject of the possibility that if we were going to be
7 snaring down there, be it him or somebody else, the idea
8 that we might come across a jaguar or have that become a
9 part of that come up? Did you have a conversation about
10 that?

11 A. Yeah. It must have. I can't recall exactly what
12 the context was but I'm sure it came up, and I'm sure --
13 my impression from him was he thought that that would be
14 the greatest thing in the world. I had made it known from
15 the beginning -- I knew that it was a controversial issue
16 because both within the Department I know that there is,
17 you know, there is some, I don't know, some argument about
18 jurisdictional, you know, it's technically a nongame
19 species so maybe it shouldn't be under the auspices of,
20 you know, we shouldn't have research people doing it,
21 working on jaguars when it's actually a nongame issue. So
22 I thought that that was the entire issue that -- you know,
23 the reason that it was controversial, I should say, is
24 that -- that mainly lied in that relationship within the
25 Department.

1 But, yeah, I think the subject, you know, it
2 had to come up. He works for the jaguar detection
3 program.

4 Q. But did you feel then that had -- do you have a
5 sense from other than that September '08 conversation that
6 you were having preliminary?

7 A. Yeah. Yeah.

8 Q. But do you have a sense then that in that
9 conversation that you did have some -- some thought about
10 that, that catching a jaguar might have been a potential
11 part of what could happen in that?

12 A. Yeah.

13 Q. Or how would you characterize it? I don't want
14 to put words in your mouth. But I find that interesting.
15 I don't find it surprising because he is about jaguars
16 most of his career you look at that he would be
17 enthusiastic about the possibility but that's kind of
18 interesting to know.

19 A. Yeah. It was -- I can't recall him actually
20 saying that, wouldn't it be great to catch a jaguar, but I
21 know that that was his feelings at the time, as well as
22 others.

23 Q. And catch a jaguar just in general or catch a
24 jaguar in the context of that -- potentially of that
25 project?

1 A. Actually catch a jaguar and put a radio collar on
2 it, put a satellite transmitting collar on it.

3 Q. And be it through that project or something else
4 or --

5 A. Yeah. It was my impression that he had -- and I
6 wasn't aware of all of the details of the jaguar
7 conservation team and jaguar recovery -- what is it
8 conservation?

9 Q. Conservation team.

10 A. Yeah. I wasn't aware of the details of -- I am
11 subsequently aware of what's gone on now, and you know,
12 originally there was decisions -- there was intent to
13 catch a jaguar. I knew about that because I had worked
14 for research down in that vicinity, you know, Region 5 for
15 a long time. So I knew they were trying to catch a jaguar
16 once upon a time, and then they stopped. I didn't know
17 why. I didn't know what the context was.

18 The day that I met or shortly after meeting
19 Emil I was aware that he had a collar to be put on a
20 jaguar. And I wasn't -- I wasn't certain whether that
21 meant that he was trying to catch a jaguar on his own,
22 whether he was intending to at some point get
23 authorization from the conservation team to catch a
24 jaguar. That was kind of the impression I had.

25 So, you know, what you said about putting

1 words in my mouth, I knew he had a desire to catch a
2 jaguar and put a satellite collar on it. Whether or not
3 he had that desire to do that as part of the study we were
4 hiring him for, I didn't get that impression.

5 Q. Once he did get hired did that, your -- did that
6 old conversation that you had previous to him actually
7 coming on the payroll, did that generate any conversation
8 with him about your expectations about that study and the
9 possibility of an accidental jaguar capture?

10 A. Again, I can't recall specifically that we said
11 anything to that effect. You know it was -- it was in our
12 minds because we were talking about, you know, making
13 certain that we were -- well, the subject of whether we
14 caught or -- whether there was a potential to catch a
15 jaguar, yeah, that came up and was talked about.

16 Q. In the context of hiring him for that study?

17 A. I suppose, yeah. I mean he -- not to the extent
18 of we're hiring you with the hopes that you are going to
19 help us catch a jaguar.

20 Q. Oh, no. And that's not what I'm taking. I'm
21 just thinking -- I guess where I'm going, Kirby, and I
22 didn't take it that way. What I'm really going at is is
23 that, you know, knowing what the purpose of this study
24 was, knowing that he had that jaguar background and had
25 that collar, I'm just wondering if -- if in the course of

1 bringing him on board, understanding that a catch is a
2 catch, you set out a snare, you can't set up a snare and
3 say only lions can step in it, did that generate any
4 discussion between you, as essentially kind of his
5 supervisor at that point, and him about your expectations
6 or what expectations you might have --

7 A. Yeah.

8 Q. -- about a jaguar becoming inadvertently and
9 unintentionally a part of that study?

10 A. Yeah. Well, when I -- when he came on board it
11 was -- it wasn't more of a -- it wasn't a welcome aboard
12 you're finally hired kind of thing. It was, you know, he
13 had been helping us and then finally we got the contract
14 so we could pay him for his efforts is the way it kind of
15 worked out. He had started out really as a volunteer.

16 But at no point did I say to him, you know,
17 we're hiring you to catch lions and you better not catch a
18 jaguar kind of thing. But, at the same time, every
19 meeting I had, and he attended some of these meetings that
20 we had, cooperators meetings, because of the controversial
21 issue of the jaguar I pointed it out every time that this
22 is a lion black bear study not a jaguar study. You know,
23 so I think that he was aware that I did not -- did not
24 want to make this a jaguar study. But I can't recall
25 actually saying to him, let's keep the jaguars out of our

1 snares.

2 Q. Those cooperator meetings, was that -- now that
3 was cooperators specific to the bear and lion study?

4 A. Yeah. Yeah. And that would have been -- the
5 first one that I recall that Emil was at would have been
6 at Region 5 office and we had people from Wildlife
7 Conservation Society, the NGO that was in cooperation with
8 us. And mostly just regional people, but we also had Ron
9 was -- Ron Thompson was there on speaker phone as well as
10 Todd Atwood who was the biologist that was -- the research
11 biologist originally on this study.

12 Q. I was going to -- when did Todd actually finally
13 leave the Department?

14 A. It would have been in May of '08 or maybe early
15 June.

16 Q. So it was he still -- now these cooperating
17 meetings, when did those start?

18 A. That would have been -- I think that was in
19 December maybe.

20 Q. Of '07 or '08?

21 A. '08.

22 Q. So -- and -- because -- so Todd was no longer
23 part of the Department at the time of those meetings?

24 A. Right.

25 Q. So he was -- what hat was he wearing then? Who

1 was he working for?

2 A. He works for National Wildlife Research Center.

3 Q. So he was involved wearing that hat?

4 A. Yeah. He was a cooperator from that end. And
5 Stewart Breck is another person from that agency that's
6 also a cooperator on that project.

7 Q. The -- at the time of the capture of Macho B, how
8 many lions, collared lions did we have running around in
9 that study, do you remember?

10 A. At that time we should have had two, which we
11 still have, by the way.

12 MR. MCMULLEN: The hunters haven't been quite as
13 successful.

14 Q. BY MR. HOVATTER: Did you know that, at any time
15 in the part of this process or at least leading up to
16 that, were you aware that Emil apparently had quite a bit
17 of experience with Macho B in that Manzanita Mountain,
18 Atascosa Canyon area?

19 A. I'm not even certain where Manzanita Mountain
20 is.

21 Q. Well, Manzanita is where he got recaptured, was
22 down here. And then it was up in here was
23 understanding -- do you have enough of a memory to be able
24 to maybe better pinpoint where that snare was?

25 A. No. I never walked the snare. I rode with the

1 lion hunter in there once and then I've -- yeah.
2 (indiscernible) Bunch down in here and up in here. But
3 I -- the only time that I came down to that snare was when
4 Michelle Crabb came on board and I just drove her out and
5 we met at -- what do you call it?

6 Q. Bear -- Ruby?

7 A. We went up to Ruby and that's when she started
8 helping -- that's when she started helping Emil on that
9 hitch. And so that was the only time that I was out in
10 the field on that snare line, and I didn't even -- I
11 just -- we just showed up at Ruby, and yeah, I didn't walk
12 the snares. So I didn't know exactly where they were. I
13 knew approximately where they were because --

14 Q. But you had no, then, specific knowledge, though,
15 about that McCain had some fairly good history about
16 working Macho B in that area?

17 A. No. I knew that he had photos in the area, but I
18 couldn't say, you know, specifically which canyons, what
19 area.

20 MR. MCMULLEN: I wanted to see -- around the
21 early February time frame Emil started sending, he, Emil
22 started sending e-mails that showed some documentation
23 that he got pictures of the jaguar in Atascosas, north
24 side of the Pajarita Wilderness and stuff like that in
25 January of '09. He sent them to Terry Johnson, Bill Van

1 Pelt, a few of the guys with Fish and Wildlife. Did any
2 of those e-mails ever catch its way up to you?

3 THE WITNESS: No. I saw those pictures, and the
4 first time I saw them was when Fish and Wildlife
5 investigators were interviewing me.

6 MR. MCMULLEN: Did -- were you off hurt then?

7 THE WITNESS: I did hurt myself in February.

8 MR. MCMULLEN: So that early February string of
9 e-mails didn't catch up to you?

10 THE WITNESS: No. But they would -- had my name
11 been on the list, I would have got them because I was
12 right there at the house healing, but, yeah, I didn't get
13 those.

14 Q. BY MR. HOVATTER: You didn't mess your leg up out
15 there, did you?

16 A. I did.

17 Q. This place took -- it took a real toll on the
18 Department physically between you and Bill and at least a
19 couple others. It dinged up a lot of guys.

20 MR. FABRITZ: It sounds like rough country.

21 THE WITNESS: I wasn't working up there. I was
22 Mearns' quail hunting but like I said that's one of my
23 favorite spots to Mearns' quail hunt and I sprained my
24 ankle sliding down a canyon.

25 Q. BY MR. HOVATTER: I was asking -- you know, the

1 subject of the idea of lions and bears as a surrogate, I
2 saw some of the paperwork that was being run for potential
3 grant monies, and of course, jaguars isn't mentioned in
4 there because it was a large carnivore habitat
5 conductivity study. But the idea of bears and lions as a
6 surrogate for jaguar, and this is really more a curiosity
7 question than anything else, but I presume on the one hand
8 logically you would think big cats is kind of big cats in
9 the way that they would tend to use behavior, but by the
10 same token that usually is not enough to pass muster in
11 the way we want to do science. Does this idea of
12 surrogate studies, is there other studies we're aware of,
13 was there any literature that had showed us doing or other
14 researchers taking a surrogate approach to something like
15 this?

16 A. I'm sure there is literature out there. I can't
17 recall a specific example right now, but I knew that
18 from -- that was the essence of the controversy that I,
19 the way I saw it from the beginning was that there were
20 people in the Department that were concerned that if we --
21 if we proposed this study where we're studying lions as a
22 surrogate for jaguars that that would divert funding away
23 from actual jaguar money. So that was the controversy
24 that I was trying to avoid when I explained to everybody
25 on several occasions that this is a lion study, it's not a

1 jaguar study. And -- but, you know, I had heard -- this
2 was just based on what I heard from within the Department
3 that, you know, nongame didn't want potential money for
4 jaguar being diverted to research.

5 Q. And I can see that with the terms jaguar and some
6 of that language.

7 A. In fact, if you look at those --

8 Q. It's a fairly -- it's not a huge pool of money
9 that's available for folks that have enthusiasm for this.

10 A. Yeah. If you look at the -- I don't know if you
11 got the various versions of the proposal.

12 Q. Yeah. I saw five of them.

13 A. The later versions I pulled jaguar out of there.

14 Q. And that was because?

15 A. That was because of that -- because I didn't want
16 to ruffle feathers of nongame people.

17 Q. Now was that because of input from Terry or Bill
18 or something?

19 A. It was not directly, but, yeah. Input from
20 people who had talked to Terry.

21 Q. Let me -- what direction or general guidance had
22 you been given for what to do in case there was an
23 incidental capture of a jaguar despite the fact that this
24 was not about a jaguar study?

25 A. The -- as far as being compliant with the latest

1 protocol, I was assured by Ron Thompson that Thorry was up
2 to date on this. And since Thorry was my primarily lion
3 capture guy, I figured that -- and Ron, I knew Ron was on
4 the jaguar conservation team, I figured that our bases
5 were covered on this.

6 Q. So when do we migrate from Emil to Thorry
7 time wise?

8 A. Well, time wise they both came on at about the
9 same time, but we didn't -- it wasn't Emil to Thorry. It
10 was -- it was we had Emil and Thorry both working at the
11 same time and that way we were running -- because really
12 to catch lions, to catch big predators, it's not about
13 putting the snares in exactly the right place, although
14 that's important, it's about having them out there for
15 long enough time and something is going to stagger into
16 them. So in order to do that, you have to run your traps
17 constantly. So that was -- it wasn't that we had Emil and
18 then got rid of him and pulled Thorry on board. It was we
19 had Emil and Thorry and me and Michelle and one or all of
20 us or both of us, we usually had two people at a time
21 checking the traps and that way we could keep at least two
22 teams of people checking traps and we could keep traps
23 open.

24 Q. So you had a lot of overlap?

25 A. Yeah. Yeah.

1 Q. When did Emil come out?

2 A. Emil left because he went, in late January, early
3 February somewhere in there, is when he went to Spain.

4 Q. Okay. So he was -- was he still on payroll in
5 January then?

6 A. Technically he was -- he was contracted and we
7 paid him by the, by the day so, you know, he was still
8 under contract I should say. He wasn't actually doing
9 work but he was still under contract.

10 Q. So in January he was still under contract,
11 potentially he was still available, but he was not
12 actually in the field?

13 A. Yeah. And I can't remember exactly what day, it
14 would have been late January, early February that he went
15 to -- because I remember him saying -- by the time we got
16 the collar back from the hunter and we were also waiting
17 on replacement collars from North Star because we had
18 collar failures, he had -- you know, we had had good luck
19 with Emil when he caught three lions for us in the fall up
20 until November. And then we had the month of December we
21 didn't have any collars available. And then just about
22 the time we got collars available was when Emil was
23 leaving on vacation.

24 Q. So we weren't trapping in December since we
25 didn't have collars?

1 A. Right.

2 Q. Did -- do you know, to the best of your
3 knowledge, did Thorry -- so Thorry and Emil and you and
4 Michelle all kind of overlapped for a part of that time,
5 probably that October, November time frame?

6 A. Yeah. Mostly it was October, November, and
7 then -- yeah, and then when we put out the third collar
8 then Thorry went back to working on -- oh, he went to work
9 with Dave Grandmaisson. Dave Grandmaisson was catching
10 lions out here in the White Tanks.

11 Q. And do you know, did Thorry and Emil ever run
12 that snare line that Macho B was caught in back in that
13 October, November time frame? Did they work together to
14 the best of your knowledge on that snare line?

15 A. I think that -- I know that that one lion that we
16 caught over there, Michelle was with Emil. I don't know
17 if Thorry ran that snare line then. I don't believe he
18 did. But Thorry was running the snare lines when we were
19 snaring in the Padagonias and Canilla Hills area.

20 Q. And you wouldn't want to pile everybody on, if
21 you have people who could operate independently you cover
22 more ground and put more snares out for longer period of
23 time.

24 A. Yeah. We also have a limited number of snares,
25 so we pretty much ran the snares in one mountain range and

1 then we would move it.

2 MR. MCMULLEN: I just -- I wanted to just do a
3 quick follow up back to something that Gary had asked and
4 that was, he asked if I think -- I think he was trying to
5 figure out kind of what the general orders were in case
6 you caught a jaguar. Sounds like all of you were --
7 incidentally, you know. It sounds like all of you were
8 checking the traps. What was the general feeling -- well,
9 I wanted to ask two things. What was the direction you
10 had received from your chain of command in case a jaguar
11 was captured incidentally, and then kind of what was the
12 mind set of the people who were busy checking those snares
13 on a daily basis is you, Emil, Thorry, and Michelle from
14 what we understand, on what would we do if we walked up
15 one day and there was a jaguar in a snare before it was
16 captured?

17 THE WITNESS: The -- every time that I was
18 checking snares I was with Emil. And I knew that he had
19 the latest jaguar protocol and I knew that he had that
20 North Star collar.

21 Q. BY MR. HOVATTER: Did he regularly carry that
22 with him to the best of your knowledge?

23 A. Yeah, to the best of my knowledge.

24 Q. Doesn't do a lot of good if he doesn't --

25 A. Yeah. In fact, you know, it was -- like I said,

1 it was -- we used his house as a sort of a field station
2 where we would drop of equipment. So whenever somebody
3 would be on their way down to check traps they would drop
4 by his house to specifically pick up that collar as well
5 as what other equipment we had but I mean that was kind
6 of --

7 MR. MCMULLEN: So you guys were all carrying the
8 collar with you if you were checking traps?

9 THE WITNESS: Yeah.

10 MR. MCMULLEN: So what direction had you received
11 from the chain of command in terms of what you were
12 supposed to do if you accidently caught one?

13 THE WITNESS: The specific -- the specific, like
14 what type of drug, what type of --

15 MR. MCMULLEN: No. What were your instructions?

16 THE WITNESS: Instructions you mean generally --
17 oh, the instructions were to place the collar on it.
18 Place the collar that Emil had on the jaguar if you caught
19 a jaguar.

20 MR. MCMULLEN: And where did those instructions
21 come from, do you know?

22 THE WITNESS: I can't say that I specifically --
23 I think I heard that from Chasa at one point but I can't
24 recall the specific conversation. I had also heard from
25 Ron Thompson. I also had been back -- to be honest, in

1 the back of my mind I considered it such an infinitely
2 small probability that I really didn't give it much
3 thought, so that has a lot to do with why I don't recall
4 exactly.

5 Q. BY MR. HOVATTER: Kirby, do you have any
6 knowledge of the use of jaguar scat for either the use in
7 snare as a snare lure or as a camera set lure?

8 A. Not until that newspaper article came out. In
9 fact, I had specifically asked Emil one time about -- I
10 remember seeing pictures of lions that he showed me and
11 asked him what he used to get them to pose so nice, you
12 know, because a lot of trail camera-type pictures you just
13 get the ass end of something.

14 Q. Yeah.

15 A. But he said he would use just any scent bait, I
16 should say, any scent bait that he had available. He said
17 it was enough to make them stop so they would get their
18 picture taken. But nowhere had I ever heard anything
19 about scat being used.

20 Q. What -- do you know -- I think we may already
21 know the answer to this, Janay Brun was somebody who
22 worked for Emil in some context. Did you ever run across
23 her in this?

24 A. No. I never met her. I've never met her.

25 Q. Now so in the fall of '08, Emil McCain was

1 working under the direction and authority of us?

2 A. Yeah.

3 Q. On that snare setting?

4 A. Uh-huh.

5 Q. Okay. And then in early February -- you know,
6 now in early February he worked with Thorry for a brief
7 period of time for getting that snare line --

8 A. Yeah.

9 Q. -- back into operation for catching mountain
10 lion -- or capturing of a replacement for Mountain Lion 1?

11 A. Right.

12 Q. Was he on our payroll when he was doing that, do
13 you know? Was he getting -- our payroll -- was he getting
14 any money at that point from us?

15 A. At that point the contract had to be written.
16 See, originally he was subcontracted under Clark, and when
17 he was under Clark Richens he was being paid a daily rate,
18 I believe. And then when we -- I think after he caught
19 the last lion in November, then during that December time
20 frame, December, January time frame when we had no collars
21 and he wasn't trapping for us, that was when Ron rewrote
22 his contract or actually got him on as an independent
23 contractor. And when he did that he set him up to be paid
24 on a per animal basis. Because I remember Emil coming to
25 me and saying, you know, that's not real fair because it's

1 not always the guy that is checking the trap that is
2 really responsible for getting -- for catching that
3 animal.

4 Q. You need to put a lot of days in before you
5 get --

6 A. Yeah. And he was saying, how are we going to
7 address that? And I said, I don't know. I said, don't
8 worry about it. We're not going to leave you hanging, but
9 as it turns out it wasn't an issue. So technically, he
10 wasn't, no. Had he caught a lion, technically if he would
11 have been there when we caught a lion, he would have
12 been --

13 Q. He would have caught it.

14 A. And he would have been paid for it.

15 Q. Yeah.

16 MR. MCMULLEN: Back to the general orders kind of
17 thing, do you remember sometime maybe somewhere in the
18 hallway or a department school or anything else ever
19 asking Chasa, maybe at the very beginning of the project,
20 hey, what if we do? I think it was probably shortly after
21 you got assigned to it when Todd Atwood left or something,
22 may have been the summer of '08, ever asking Chasa, hey,
23 Chasa, what do we do if we capture a jaguar during this
24 project? Do you remember that?

25 THE WITNESS: I don't remember it specifically.

1 I do kind of remember -- well, by specifically I couldn't
2 put a date on it.

3 MR. MCMULLEN: Yeah.

4 THE WITNESS: I do recall Chasa saying that we
5 would collar it according to the protocol of jaguar
6 conservation team, which was if we inadvertently catch a
7 jaguar we would put the satellite transmitter collar on it
8 that we had available.

9 MR. MCMULLEN: And that was shortly after, at
10 least to the extent that you can recall, shortly after you
11 got assigned to the project?

12 THE WITNESS: Yeah. Yeah. I mean there was --
13 when I first started on the project I wasn't even thinking
14 cats at all. I was just catching bears. So for the first
15 couple of months the jaguar issue didn't even occur to
16 me. So it would have probably been maybe by August or
17 something like that, in that time line.

18 Q. BY MR. HOVATTER: And so the thing is we didn't
19 have a jaguar collar. So would your sense be that would
20 have been then -- that conversation was in the context of
21 that would be -- if it was going to get collared that way,
22 that that would be research branch act or that would be a
23 jaguar conservation team act?

24 A. Well, I think specifically, you know, when I
25 asked her about -- I keep saying this like I specifically

1 asked her that. I mean, I think I asked her about that
2 after I was aware that Emil had a collar.

3 Q. Hey --

4 A. And from the day that we caught the thing, it was
5 not a research branch, and from the day I started it was
6 not a jaguar project. So, you know, once the animal was
7 caught, it wasn't -- I wasn't directing any activity of
8 any field personnel.

9 Q. Given the potential, because I've seen Jack
10 Childs book on that photo project on the borderline
11 jaguar detection project and, of course, it shows a lot of
12 photos of lions and a lot of -- you mentioned -- you had
13 mentioned the idea that those photo sets also were
14 potentially not a bad source of data on lions, lion
15 activity, lion numbers and all. Was -- was Emil allowed
16 or was it a part of that that he included checking
17 those -- continuing to check those cameras as a part of
18 the bear and lion study?

19 A. No. We weren't paying him to check cameras.

20 Q. Okay.

21 A. In fact, when he was -- in fact, some of the
22 times that he was unable to check the snare line was
23 because he had to go check his cameras. So he wasn't
24 being paid by us for that.

25 Q. So we -- because there is a lot of -- it's clear

1 from the history of the jaguar program and the border over
2 the last decade plus that there is a lot of cooperative
3 and voluntarily cooperative activity that goes on out
4 there. Nobody is doing anything unless they are paid for
5 it. In the context of the camera activities was, sounds
6 like it was more of a voluntary act on his part to say,
7 well, if I got lion information potentially you could
8 share that information about that?

9 A. Yeah. Yeah. Exactly. When we hire any
10 contractor we're hiring them for their expert knowledge of
11 the area, especially when you're talking about contractors
12 that are assisting wildlife captures. You're not going to
13 hire a lion trapper from -- from Flagstaff if you want to
14 catch lions in Huachucas. So you hire them for their
15 localized knowledge. And that was the understanding that
16 we had. And it was never, you know, discussed. It was
17 just the understanding that, you know, we weren't paying
18 him. Jack Childs pays him to check cameras. We pay him
19 to catch lions.

20 Q. Did you by chance ever have an opportunity to,
21 you know -- it strikes me that as many cameras as they
22 have out there and the number of snares that it would be
23 not unusual for you to walk past cameras and all as you
24 were doing part of your operation. Was that -- is that,
25 in fact, the case?

1 A. I wasn't aware of where any of his cameras were
2 exactly. Again, I never walked the snare line in the
3 Atascosas. The only snare line I was working on was in
4 the Padagonias.

5 Q. What I want, and part of what I'm wondering is I
6 know that reading Jack Childs books and lot of their
7 cameras, at least earlier on and that, were film cameras.
8 And I was just wondering if you had any, understanding
9 that you didn't run camera lines or run that snare line,
10 if you had the knowledge just in passing in talking with
11 him about what kind of cameras he was using? Did he have
12 the ability to check photos on the trial, or was he still
13 having to collect chips or collect film?

14 A. Yeah. It was my impression that he would have
15 had to have had a laptop with him. But he told me he used
16 Cuddeback cameras. I mean I've used remote cameras in my
17 research so the topic of what kind of cameras do you use
18 came up.

19 Q. A little trade talk.

20 A. Yeah. And he talked about Cuddeback and I know
21 they were digital cameras so I assume that he had a -- had
22 a card and he would have had to have a laptop and a card
23 reader, although some of them do have --

24 MR. MCMULLEN: You can get a reader where you can
25 view it.

1 THE WITNESS: Yeah. So he may have had one of
2 those but I don't recall him ever showing it to me or
3 talking about it.

4 Q. BY MR. HOVATTER: Well, your knowledge,
5 remembrance is that he was using digital cameras by that
6 time?

7 A. Yeah. Yeah. By that point.

8 MR. MCMULLEN: Gary?

9 MR. HOVATTER: Yeah. Go ahead.

10 MR. MCMULLEN: Now we understand that you guys
11 had just a few sets of snares so you would go and snare
12 lions in one mountain range and then to another?

13 THE WITNESS: Uh-huh.

14 MR. MCMULLEN: Or back and forth depending on
15 whether -- probably whether you needed to catch a bear or
16 a lion would be my guess.

17 THE WITNESS: Yes.

18 MR. MCMULLEN: Do you remember when -- where the
19 snare line was before it moved to the Atascosas, and if
20 so, when the snare line was relocated to the Atascosas?

21 THE WITNESS: Yeah. We had it in the Padagonia
22 Mountain and we started that snare line in October. And
23 in October we caught two bears on that snare line and that
24 was in essentially a lion set because bears and lions
25 happen to be using trail scents.

1 Normally when we are trying -- when we were
2 trapping bears you can bait bears in. Lions you can't
3 bait them in as easily. So when we were trying to trap
4 bears, we were trying to do it before the monsoons when
5 there wasn't as much food out there. They had just come
6 out of the dens in the spring. They are real hungry.
7 They move around a lot and they eat a lot of carrion at
8 that time so it's easier to bait them in.

9 So anyhow, after that window of time was
10 gone, then we switched to lions. We just happened to
11 catch two bears on the trail sets that we had set for
12 lions and that was in the Padagonia Mountains. One of
13 those bears -- Thorry caught them both. In fact, he
14 caught them both in one day and he had a bear collar and a
15 lion collar in his bag. And he went ahead and made a lion
16 collar fit on a bear and subsequently that bear slipped
17 that collar. So anyway, then -- what was the question
18 again?

19 MR. MCMULLEN: That was the first half, and then
20 the other half was when did it relocate?

21 THE WITNESS: When did we move it? It was
22 after -- it was after -- well, we first -- yeah. Thorry
23 caught those two bears in October. And then in November
24 we moved to it the Atascosas. That's when Michelle came
25 on board. She and Emil caught that first lion. Then we

1 moved it back to the Padagonias again, partly because we
2 had a bear in the -- we were trying to spread the collars
3 out.

4 MR. MCMULLEN: Yeah.

5 THE WITNESS: We had a lion in the Atascosas. So
6 now we wanted to catch one in the Padagonias, and Emil had
7 said we missed a couple or he had seen signs that he knew
8 he could catch some so we moved back to the Padagonias.
9 Over the next month he caught two more lions.

10 MR. MCMULLEN: In the Padagonias?

11 THE WITNESS: In the Padagonias. By December 1
12 we were out of collars so it was right in late January,
13 early February when we finally got collars back on board
14 that Emil and Thorry then moved the snare line back to the
15 Atascosas because we no longer had a lion over there.

16 Q. BY MR. HOVATTER: Kirby, how were you made aware
17 of the capture of Macho B?

18 A. Thorry called me on the cell phone and it was
19 6:00 p.m., about 6:00 p.m. on that day.

20 Q. On the day of the capture?

21 A. Yeah. The 18th, I think.

22 Q. After he called you, what did you with the
23 information?

24 A. I called -- well, he had told me that he had
25 talked to Ron Thompson so I knew that it had gone up the

1 chain of command and that the proper authorities like Fish
2 and Wildlife Service had been, or I assumed had been
3 alerted, and so I just called Chasa O'Brien.

4 Q. So you called her that night?

5 A. I think I called her the following morning
6 actually. And then it wasn't long after that I realized
7 that indeed the word had gotten out.

8 Q. Just, and I need to ask that, Kirby, obviously,
9 again, this is one of those it's hard to separate out the
10 hindsight. In hindsight this was a much more than
11 normally important animal. Was there -- was there a
12 reason why you didn't -- didn't see the need or have a
13 concern about getting that word up to Chasa that night?

14 A. Yeah. In hindsight, like you say, I probably
15 should have called her that evening. And I wasn't
16 particularly thrilled that it happened. So maybe
17 that -- that clouded my decision, but I don't recall
18 weighing -- weighing the option in my mind of whether I
19 should call her right now or whether I should call her in
20 the morning.

21 Q. It doesn't sound, from what we've talked about
22 earlier, it doesn't sound like you -- I guess maybe a
23 better way to do this, had you received any, as part of
24 the discussions and all the other things that had gone on
25 about the possibility of an incidental take, had there

1 ever been a discussion of should this happen here's how
2 the notification ought to work?

3 A. No. I didn't have any. You know, again, I kind
4 of deferred to Ron that, you know, that we had the latest
5 protocol, and when I had heard that Ron was informed, I
6 just assumed that the proper chain of command had been
7 alerted.

8 Q. Did you -- was there a routine way that you
9 reported, did progress reporting on that large carnivore
10 habitat study? I mean, was there anything sort of regular
11 reports or anything that you bumped up above your level or
12 how did that work?

13 A. There is not really a policy in place in terms
14 of, you know, I keep my supervisors informed as often as I
15 see -- you know, when something interesting happens or
16 when I happen to be at the office and catch them in the
17 office. I mean, if it's an important thing, like a
18 capture of a jaguar, of course I, you know, called her on
19 her cell phone or reached her at home. But otherwise, I
20 just keep my supervisors informed by e-mails and when I
21 bump into them at the office. So there was no -- no
22 policy set in stone.

23 We -- we used to have a 90-day plan that
24 we -- everybody would write up a 90-day plan on their
25 projects. But that has kind of fallen off. We don't do

1 that as often. So I don't recall writing progress
2 reports.

3 Q. You know, we talked quite a bit about
4 conversations you and Emil had because, of course, that's
5 an inability to get inside of somebody that doesn't work
6 for the Department so we don't have the same ability to
7 have the same conversation, but did you -- do you have any
8 memory of discussions or guidance you may have provided to
9 either Thorry or Michelle about okay, this isn't a jaguar
10 study, but if we get a jaguar?

11 A. I never did because I thought it was such an
12 infinitely small probability that I didn't even give it
13 much thought, and I knew that they had been provided with
14 the latest protocol and I just assumed that we would
15 follow that protocol. I couldn't -- I can't even tell you
16 that I was familiar with the specifics of that protocol
17 other than that we would place a satellite telemetry
18 collar on it.

19 Q. And it kind of leads kind of naturally to this
20 too, so you are aware there was a jaguar conservation
21 team. Did you have any -- what was kind of the extent of
22 your knowledge and did you have any interaction with the
23 jaguar conservation --

24 A. No. I never had any interaction.

25 Q. Not just in that time but --

1 A. No. I had secondary interaction with them
2 because I talked with the regional mountain game guy, and
3 that was it. That was all that I knew about it. And then
4 talking with Ron, but I had very limited knowledge.

5 MR. FABRITZ: Who's the regional mountain?

6 A. It's Tim Snow. Originally it was -- oh, what was
7 his name, back when the jaguar issue first came up it was
8 Mike Prus, way back when the original -- back before the
9 jaguar detection program started, project.

10 Q. Okay. Go ahead.

11 MR. MCMULLEN: As things were starting to
12 progress as December turns to January and January turns to
13 February, were you working with Thorry kind of semi
14 regularly or Michelle or Emil, you know, field weekends,
15 field days? What was your work status in February?

16 THE WITNESS: We were, like I said, after
17 Thanksgiving we were -- we didn't have any collars to put
18 out, so really all we were doing field work wise, other
19 than that week that they moved the snare line was --

20 MR. MCMULLEN: And you weren't there when they
21 moved the snare line?

22 THE WITNESS: Hu-huh. But all I was doing with
23 them in terms of field work was we were taking down hair
24 snags. We had hair snags which is a single strand of
25 barbed wire wrapped around a tree for bear genetic stuff.

1 We would run those in the early fall of '08. So we were
2 just pulling barbed wired off of trees for field work.

3 MR. MCMULLEN: And in the course of that time
4 frame, December turns to January, January turns to
5 February, was there any communications between you and the
6 other field folks about recent jaguar sign, recent jaguar
7 track, recent jaguar picture? We already know that the
8 e-mails didn't catch up to you from early February.

9 THE WITNESS: The only -- the only recent jaguar
10 information I had was what I had heard from Emil about the
11 photo that was taken in August.

12 MR. MCMULLEN: Okay.

13 THE WITNESS: And yeah, that's the last time I
14 remember talking about jaguar photos.

15 Q. BY MR. HOVATTER: You know there was some traffic
16 in late January and early February about -- that there
17 were photos -- that there was a January photo somewhere in
18 the vicinity of the study area. Were you -- were you
19 aware of that at the time that that --

20 A. No. I first became aware of that when I was
21 interviewing with the Fish and Wildlife investigators.
22 And I think, if I remember from that interview, they said
23 the photos were take in the Tumacacoris, but I'm not
24 certain. That didn't -- I mean, it seems like that's a
25 long ways from the Atascosas.

1 Q. You know, just, you know, we got a part of this,
2 just overall based on everything, the totality of this
3 whole experience and all, what's your opinion of Emil
4 McCain from the standpoint of his work and his role in all
5 this?

6 A. It all depends how much I believe what's her
7 name?

8 Q. Janel (sic) Brun.

9 MR. MCMULLEN: Janay.

10 A. Janay. You know, you tend to want to give more
11 trust to the people that you know for longer. So in terms
12 of whether Emil had actually put, you know -- if you
13 believe what she said, you would implicate both Emil and
14 Thorry. But like I said, I tend to trust the people that
15 I know longer more than -- just like anybody. So I
16 would -- I wouldn't think that Thorry would deceive me in
17 that way. I would be less -- I would be more likely to
18 believe that perhaps Emil would, and I would be -- and
19 I've got no reason to believe anything that Janay says.

20 In that context I guess I would say I'm --
21 I'm cautiously trusting of Emil. I mean, I knew him well
22 enough that I didn't think that he would deceive me, so I
23 don't think I want to believe that -- that -- that he
24 didn't. But I can't say that I know him -- know him well
25 enough to be certain that he didn't.

1 Q. What would be, Kirby, what would be your
2 assessment from what you saw in the field and all of
3 Thorry's relationship or Emil's relationship with Thorry
4 and with Michelle?

5 A. They seemed to get along okay. I don't know
6 that -- yeah. I think they were -- they were respectful.
7 I don't know what you're looking for here.

8 Q. You know, just your sense. You know, Kirby,
9 you're a pretty experienced field hand, and I mean, you
10 know some field relationships we have professionals that
11 work together and because they are professionals they work
12 together and they get along well, some they work together
13 and they may not particularly care for each other, but
14 just kind of your general sense of how those folks as a
15 field group kind of worked together?

16 A. I think they worked well together. I think they
17 were mutually respectful of each other. I don't think any
18 one of the three was setting themselves up as the boss and
19 you do what I say or anything like that. I think there
20 was a good cooperative relationship among the three of
21 them. And Michelle probably understood that she had the
22 least experience and was just there to help.

23 MR. MCMULLEN: Soak it up.

24 A. Yeah.

25 Q. What role did Julie Young play in this project?

1 A. Julie Young was with Wildlife Conservation
2 Service and so they are cooperators with the whole scope
3 of the project. In fact, they are trying to get a Mexico
4 side of the border, similar study on the Mexico side of
5 the border, and to that extent they have done some genetic
6 work in the Fresno Mountains which are just south of the
7 Huachucas on the Mexican side.

8 She came out and helped with -- with the
9 hair snags that we ran for black bear genetics in the
10 Huachucas. So that was her assistance with field work
11 amounted to just helping build and check hair snags. And
12 that would have been in September, October of '08. And
13 then she was actually with me that day, that day that I
14 met Emil. So, you know, she was there when the first talk
15 of cooperating with the borderline jaguar project first
16 started as far as my conversations about that started.

17 Q. I know from looking at, because the borderline
18 jaguar detection project had to have some permits from the
19 Forest Service to do their work on that. Part of that
20 permit included the authority for them to, should they so
21 desire, set up some scented or scent baited jaguar hair
22 collection stations. Do you know if Emil was running any
23 hair stations for jaguar?

24 A. I didn't hear that.

25 Q. It clearly wouldn't be a part of what you were

1 doing.

2 A. No. I hadn't heard that he had.

3 Q. In December there is some e-mails that pop up and
4 God knows we have got plenty of e-mails, look at all these
5 stacks, that talk about should we do an EA checklist for
6 the bear and lion study because of the possibility of
7 incidental capture of a jaguar. Were you aware of any of
8 that type -- of that conversation?

9 A. Yeah. I was aware of that conversation. It was
10 my understanding that EA checklist -- I mean, I think
11 technically we should be doing them -- well, it depends on
12 who you talk to, we're supposed to be doing them for every
13 research project we do. But I know practically that it
14 puts an undue burden on habitat staff as well as research
15 staff to have to do this for projects that are, you know,
16 that are not going to be -- not going to have any issues.
17 And so for that reason we haven't done them except when we
18 were actually studying endangered species or perhaps if we
19 were -- part of the project involves manipulating habitat
20 or introducing exotics or something, although I can't
21 recall if we have ever had any of those types of
22 projects.

23 Anyway, so for that reason we haven't -- we
24 haven't made it a matter of course to do those, but I do
25 remember that conversation. And the only reason that it

1 specifically came up was because of the potential to catch
2 a jaguar.

3 Q. Do you remember how that conversation got started
4 or where that originated?

5 A. No. I think the first I saw really of it was --
6 it may have been, or my first aware -- first time I became
7 aware of it was in discussing the potential for catching a
8 jaguar and what we should do with Chasa. But I can't
9 recall exactly when that would have been but it would have
10 been probably late summer '08.

11 Q. Do you think -- well, that's a stupid question to
12 ask because hindsight, of course, you would probably do an
13 EA checklist, but it's really kind of hard to say put
14 yourself back in December, January and what did you
15 think -- I'm not even going to ask that. Assume you're
16 back at the summer of 2005, do you think we should
17 have --

18 There is a March 25 e-mail that you send and
19 in there is one quote, I knew I didn't want to be involved
20 with this, in relation to jaguars. What was the context
21 of what you were thinking on that?

22 A. Because it was a controversial issue. Who was
23 that too?

24 Q. I can dig it out. I can't remember because it's
25 obviously after the recapture, after the euthanization.

1 We've started taking our shots and rockets and all.

2 A. Yeah. That was the context of it. In fact, I --
3 I don't particularly want to be the guy studying the big
4 charismatic mega fauna because of the controversy. I kind
5 of wish I was a quail biologist again because nobody
6 cares.

7 Q. You don't see a whole lot of ground swell of
8 public opinion over that damn Mearns' quail capture.

9 A. Yeah. Yeah. When -- as soon as I became the
10 bear guy everybody was either concerned about what I was
11 doing or wanted to help. And so I could just see that the
12 jaguar was going to be that times a hundred.

13 Q. It's going to be the bear on steroid.

14 A. Yeah. Yeah. And everybody wants to be part of a
15 lion or bear project and it's just --

16 Q. You don't have quite as many Chiracaua leopard
17 frog --

18 A. Yeah.

19 Q. As we do have folks lining up to do the bear and
20 the lion.

21 A. Uh-huh.

22 Q. I am going to ask you on this one to see if it --
23 to try to maybe peel back the time to get into that late
24 January, early February time frame, and you know we've
25 had -- going back, you know, in summer of 2008 and we are

1 kind of getting -- kind of getting gemmed up to get that
2 lion and bear trapping part of this down on that -- for
3 that large carnivore habitat conductivity study. You run
4 into Emil. And, you know, you are -- you got that
5 peripheral awareness that he is a part of all those folks
6 who do that work along there, got that somewhat awareness
7 there is a jaguar conservation team. Clearly, there is --
8 has been some jaguar, very rare, but jaguar activity in
9 the area, so we're moving our way forward. Emil is in the
10 mix along with you and the other guys working for a couple
11 of months on snares. The subject of jaguars comes up from
12 time to time just because you, again, are operating that
13 clearly, Emil is mixing both his borderline jaguar
14 detection program work and his -- and the work that he's
15 doing for the Department. He's doing some of that in the
16 same area. Then we get into January there's another photo
17 of Macho B in January and we've discussed that's not
18 something you were aware of at that time. Getting to late
19 January and early February there seems to be a real
20 increase in a lot of chatter on e-mail and other things
21 about, what if we catch a jaguar. What's your memory of
22 that time frame?

23 A. In respect to that chatter?

24 Q. Yeah.

25 A. My memory was that it was about that time then

1 that there was an updated protocol from the jaguar
2 conservation team with respect to how to handle a jaguar
3 and that Ron Thompson assured me that, yeah, Emil and
4 Thorry are going to have that latest updated protocol
5 available to them or they will be aware of it. And that's
6 really the extent of my knowledge of that, you know. I
7 knew that, you know, that there was discussion about that
8 that protocol being changed and updated. And I don't
9 remember the specifics of it. I was under the impression
10 that it had something to do with the drugging techniques
11 or something, but to be honest, I can't tell you exactly
12 what that --

13 Q. Yeah. Were you in any of that discussion
14 about -- you know, some of that was there was e-mail and
15 all to get some -- to make sure that there was the most
16 recent information about the right drugs and the right
17 dosages for dealing with --

18 A. Yeah.

19 Q. -- jaguar?

20 A. Yeah. That was the conversation or the e-mails
21 that I was privy to at that time was about the proper
22 dosages and proper drugs for actually handling a jaguar.

23 Q. And I think you probably answered this, so
24 because, of course, we have kind of the same mix of
25 people, the same kind of trap sets and things back in

1 October, November. Really kind of the same basic
2 situation but we don't seem to see that same kind of level
3 of important discussion and all then, and I'm just kind of
4 wondering why late January to February? Why not October
5 or November or, you know, the other times when, again, you
6 have the same people, kind of the same situation, same
7 traps?

8 A. It was my impression it was because there was
9 new -- there was new information relative to protocol not
10 because there was increased jaguar activity or increased
11 impression that the odds of catching a jaguar had
12 improved. It was more that this is the latest protocol
13 that just came out, let's make sure that we're up to date
14 on that. That was my impression at the time. You know,
15 in hindsight and looking at the recent photographs of
16 Macho B that could have been what generated it more than
17 anything but I wasn't aware of that at the time.

18 Q. Do you have any memory of -- was there any
19 discussion about that collar about -- because part of what
20 was going on too -- there was some of the chatter included
21 making sure that that collar, in fact, worked?

22 A. Yeah.

23 Q. And that we had access to information, the
24 information that would generate if it were to be put into
25 use?

1 A. Yeah. I wasn't aware of that other than the fact
2 that our collars, the first collars that we deployed,
3 which were the same model collars, failed, and so it was
4 my impression that Emil was going to mail his back in to
5 get it refurbished in the same manner that we did ours. I
6 don't know if you are aware of that.

7 Q. Yes. I saw that the bear collars failed. Not
8 waterproofed.

9 A. Yeah.

10 Q. That seems like a real bright idea.

11 A. Yeah. I get the first e-mail and I hear a clap
12 of thunder as I'm reading it. Oh, crap. And it was
13 within two months all of them had failed pretty much, two
14 or three months. So, yeah, that was my impression about
15 the urgency of getting the collar, making sure that the
16 collar worked was that Emil was trying to get his
17 refurbished in the same manner we had.

18 Q. So it was the same model but it was on just,
19 what, on a different --

20 A. It's a different size is the only difference I
21 think.

22 MR. FABRITZ: Is that the same one you guys had
23 been packing around the whole time?

24 THE WITNESS: Yeah.

25 MR. FABRITZ: Or was there another one after

1 that?

2 THE WITNESS: No. It was -- yeah. It was the
3 same one. I can't recall exactly when he got it. I think
4 he had it the first time I met him.

5 MR. FABRITZ: But as far as getting the one
6 refurbished it's the one --

7 THE WITNESS: Yeah.

8 MR. FABRITZ: -- he had when you met?

9 THE WITNESS: Yeah. And that was a window of
10 opportunity when we weren't catching anything so he could
11 mail it back, get it back, and it's, you know, two, three,
12 four week time turn around time by the time you mail it
13 over there.

14 Q. BY MR. HOVATTER: Now apparently we had a collar
15 back in 2000 that was being maintained in the Region 5
16 office?

17 A. In fact, Tim Snow told me about that.

18 Q. It had never had been refurbished and it was
19 going to cost some bucks to get it -- were you aware of
20 that at the time that we were doing this study?

21 A. I had talked to Tim Snow about that at the early
22 part of the study, I mean, early part of my involvement
23 with the study. Actually I should say the early part of
24 my involvement with the lion portion of the study. When I
25 first was aware that, you know, that jaguar -- that there

1 was a jaguar collar available was when I talked to Tim
2 Snow probably, probably in the late summer of '08. And he
3 said, yeah, we got a collar right here. If you guys catch
4 a jaguar, let me know. And I kind of laughed it off as,
5 yeah, the chances of that. I will tell you when we catch
6 a polar bear.

7 Q. That'll teach you.

8 A. I'll call you -- I'll call you when we catch a
9 polar bear.

10 Q. Maybe it's your fault. You tempted God, Kirby.
11 And he said, oh, watch this, bud. Whack.

12 A. Can we take a break real quick?

13 Q. Yeah. Yeah.

14 MR. FABRITZ: Hey, just a heads up, Gary -- it's
15 still on. I don't want to -- we will deal with this
16 later. And I got an update on something else that you
17 need to know about. I'll be right back.

18 MR. HOVATTER: Oh, yeah. Yeah. Well, you know,
19 Terry hit this right on the head. That is what I was
20 telling the boss about this morning.

21 (Indiscernible.)

22 MR. HOVATTER: Yeah, on this other, I was aware
23 of some of this but I wasn't aware of that.

24 MR. FABRITZ: We are breaking --

25 MR. HOVATTER: Thorry. I'm not sure that's --

1 I'm not sure his participation is true and I don't know.
2 I mean, the thing is, and I don't mind this being on the
3 tape either, but Ron went down there strictly on his own
4 time.

5 MR. FABRITZ: Yeah. We don't care.

6 MR. HOVATTER: For no compensation. So there was
7 no secondary employment issue. Part of my answer to them
8 is going to be that I would presume that when people on
9 the Arizona Daily Star staff are doing things on their own
10 time that it's considered not to be Arizona Daily Star's
11 business. We're aware because we heard that and we needed
12 to ask enough to make sure that there had not been
13 potentially an act contrary to Department policy on
14 secondary employment. I'm satisfied that we had addressed
15 the issues. But -- and Carol went down there too working
16 freelance on her own time doing video work. And frankly,
17 most video guys I know, they don't make enough money, so
18 they all do freelance work when they get the opportunity
19 so -- oh, well. Oh, we need more e-mail. This is --

20 (Indiscernible.)

21 MR. HOVATTER: Yeah. I kind of think I am. I
22 just -- pretty clear question and a pretty clear answer on
23 that. I've tried using some of the other questions about
24 the photos, about the hair snag, and it all comes up the
25 same.

1 Q. BY MR. HOVATTER: All right. I think we dealt
2 with that because that was part of that EA checklist
3 conversation with --

4 Once -- once that animal was captured, what
5 did you see your role, not, I mean you're the supervisor
6 for research branch for a bear and lion study. We've got
7 a jaguar. What did you see your role -- but it is
8 involving some of the people that are a part of the bear
9 and lion study. You know Thorry was --

10 A. Uh-huh.

11 Q. What did you see your role and responsibility for
12 dealing with that part of the situation?

13 A. I didn't see I had any responsibility really
14 after that point. I mean, from the beginning, like I
15 said, I made it known that, you know, this wasn't a jaguar
16 study. And Thorry didn't -- technically Thorry -- I'm not
17 Thorry's supervisor but this is another thing that
18 complicates the issues. Thorry's supervisor died.

19 Q. Oh, Ted McKinney.

20 A. Ted McKinney was Thorry's supervisor. So then
21 when Ted died, Bill Persons, who was Ted's supervisor, was
22 then Thorry's supervisor. And the reason that we did that
23 was we were just going to change it because we knew there
24 was this new pay cycle coming into play and so we were
25 just going do it, to make it easy on everybody, do it at

1 the end of the pay cycle, change Thorry over to me, which
2 is right now. And so for that reason Thorry was under
3 Bill at that time.

4 Q. What was Bill's relationship to the study?

5 A. Bill is a fisheries guys. That's why it's
6 complicated. He's the Federal aid equivalent to the
7 fishery side in research. Research we have Federal aid
8 and contracts and fisheries, essentially three programs in
9 research. I work under Federal aid. So does -- Thorry
10 works on Federal aid projects but he also works on
11 contract projects. But anyway, it just so happened that
12 Ted started under Bill because he was doing fisheries work
13 but then he started working on contract projects that had
14 wildlife work. That's how he got Thorry on board. And so
15 technically Bill really had no involvement with the lion
16 bear project other than the fact that Thorry was still
17 under him so --

18 Q. Let me ask you this, day to day how did that
19 work?

20 A. Day to day the only difference was that Bill
21 probably actually signed his time sheets.

22 Q. Were you providing the direction, though --

23 A. To Thorry.

24 Q. -- to Michelle and Thorry?

25 A. Yeah. And Michelle is -- Michelle does work for

1 me. So as far as the jaguar is concerned, Michelle didn't
2 do anything with the jaguar beyond capture. So as far as
3 my involvement with the jaguar, really all I was doing was
4 monitoring what I was hearing back and that was really
5 Emil monitoring the locations through the North Star
6 website relaying that to Bill Van Pelt or Terry Johnson,
7 whoever happened to be there. Because there was a time
8 that they made a switch. And then Bill was putting out a
9 daily update on what was going on with Macho B.

10 But as far as my involvement, I didn't see
11 any involvement other than after I talked to Thorry to
12 ensure in my mind anyway that the protocol was followed,
13 that the jaguar was handled properly and released. Beyond
14 that I didn't see myself as having any involvement with
15 the jaguar.

16 Q. And, Kirby, from the standpoint, because, of
17 course, Thorry is still taking quite a bit of action. Now
18 granted it ended fairly quickly, but he was working, it
19 seemed, pretty exclusively on the jaguar after that
20 capture?

21 A. Yeah.

22 Q. As we got things sorted out, and so who was his
23 supervisor at that point?

24 A. As far as who was -- who was practically his
25 supervisor he was pretty much on his own, but you know,

1 Ron Thompson was more involved with the project. As far
2 as who he might have been receiving actual orders of what
3 to do in the field it would have been Ron Thompson. As
4 far as who was signing his time sheet it would have been
5 Bill, Bill Persons. As far as who was kind of enough to
6 let him work on something else other than the project he
7 should have been working on, it would have been me. That
8 was really my only involvement.

9 Q. Well, did you and Ron have any discussion about
10 how that was going to work so that Thorry didn't
11 potentially get kind of ping ponged in between?

12 A. No. Not really. Like I said, it just seemed
13 like such an infinitely small probability that the thought
14 that we would catch a jaguar seemed so remote. And I had
15 never even gone through what would happen and who would
16 follow up on it or any of that stuff, but when it did
17 happen, it just seemed logical to me that Thorry, Thorry
18 would be the guy on the ground, and so, you know, I
19 didn't --

20 Q. No. I can see the logic of that. I mean, he had
21 background and all for dealing with big cats, you know,
22 you had some confidence that he knew the protocols.

23 A. Yeah. He was there. He was at the capture and
24 he knows the area.

25 Q. The question I have, though, is that you've got

1 one guy signing his time sheet?

2 A. Yeah.

3 Q. You got one guy while not technically his
4 supervisor has been functioning as a supervisor --

5 A. Directing his activities, yes.

6 Q. -- for over several months. Directing his
7 activities. When he moved off in December and part of
8 January to do that other project he was out of your -- he
9 was in somebody else's chain. But I'm just wondering if
10 after the jaguar was caught did you and Ron have any
11 conversations about, okay, how are we going to work --
12 presumably you still had a lion and bear study going on
13 also?

14 A. Well, it was my understanding -- well, I can't
15 say that -- again, it was such an infinitely small chance
16 that we would catch one that it never -- I never thought
17 about it ahead of time as to what we do in that instance.
18 When it did happen, I just -- I just assumed that, you
19 know, assuming things would go well, I didn't think Thorry
20 would even be part of it. But as things turned out, when
21 things turned bad, you know, I could see that Thorry was
22 the logical person to do the job. So we never sat down
23 and said, okay, if we catch a jaguar I'll turn the
24 reigns -- you know, Thorry will be under you now, Ron. It
25 was just, you know, that's kind of the way -- that's the

1 way the pieces fell into place, I guess.

2 Q. And maybe another way to get at this too is that
3 after that jaguar was captured he's running because the
4 information about his movements are coming back through
5 Emil, even though he's out of the country by then. But
6 they are coming because it's by computer, he's checking it
7 that way. What was Thorry -- what did Thorry do for the
8 next several days?

9 A. I don't know that Thorry did anything in the
10 field at that time. I'm assuming that he went
11 back -- went back home, but I don't know, again, I wasn't
12 signing his time sheets so I don't know exactly what point
13 he was in that -- you know, where he was in terms of
14 getting his 40 hours of work in. I don't know if he was
15 at the end of the week or beginning.

16 Q. So when the decision was made -- when the
17 decision is made to go and check that animal out --

18 A. Uh-huh.

19 Q. Clearly information is coming down. Were you a
20 part of the decision or what was your role in making the
21 decision to go back out and to get reinvolved with the
22 animal and what ultimately became the recapture of the
23 animal?

24 A. I wasn't involved in that. I was observing
25 that. I was actually on sick leave at that time,

1 probably. But I certainly wasn't in the field, but I
2 was -- I hadn't been meeting with them and discussing. I
3 don't even -- I can't even recall. I think my
4 first -- the first time I got information on that it was
5 through an e-mail. I don't think I even got a call from
6 Thorry asking me to do that. I think he was just kind of
7 working under Ron, I guess, at the time. Whoever was --

8 Q. Did you -- had you -- did you ever have any
9 conversations with Terry or Bill Van Pelt about any of
10 this in say that December, January, February time frame?
11 Did you and Thorry ever have a conversation about the
12 protocols?

13 A. About the --

14 Q. About the jaguar protocols?

15 A. Other than to say that you're up to date on the
16 latest one, kind of, you know, assuring me that, yeah, we
17 have -- Ron got the latest to me. And I asked him, you
18 know, I think I asked him at the capture how it went. I
19 don't think I specifically asked about protocol but I
20 asked, you know, did it take several darts, you know, the
21 standard questions you have.

22 Q. Yeah. Yeah.

23 A. Did he look injured, all that stuff. I asked him
24 those kinds of things when he called about the actual
25 capture.

1 Q. Okay. I think we answered that one. We actually
2 answered that one. In your interaction with North Star
3 what is your -- I mean granted we weren't happy to have a
4 bunch of those collars fail, but how did they respond to
5 that?

6 A. Well, they replaced all of them and it was --
7 I've had other issues with them so right now I have a -- I
8 haven't had any other major failures, but I had some minor
9 ones. I would -- if I -- if you asked me to start over
10 again I would start with somebody different. We just
11 haven't had good luck with them. But they seem to be
12 willing to make good on their -- on their -- the things --
13 the errors that they have had or the faulty products that
14 they have had.

15 Q. And they can't make up for, okay, go out and
16 recapture that animal. You just put a lot of energy --

17 A. Yeah. In fact, I sent an e-mail back to them on
18 that because they charge you an air time fee for the
19 number of the downloads that you get off of each animal
20 and I told them, you know, that it doesn't seem fair that
21 we should have to pay that fee when all we're doing is
22 monitoring your units going bad. And so they actually
23 said, okay, we will give you half price deal on it.

24 Q. On our failed product.

25 A. Yeah. I think I said, you know, I know we're not

1 going to get the cost of the capturing animal back. You
2 should at least cut us some slack on this, so they did.
3 So I can't say that, you know -- I can't say that I would
4 give them a full endorsement but I can't say that they
5 haven't attempted to make good anyway.

6 Q. Did you ever run across Jack Childs or --

7 A. Yeah. I met Jack Childs at that cooperative
8 meeting that I was talking about at the regional office.
9 And that actually would have been -- that would have been
10 in late December.

11 Q. Of '08?

12 A. Of '08. Yeah. I think so. Yeah. Late of '08.
13 I'm trying to think. The reason I know, actually it would
14 have been about mid December of '08. Because Emil had
15 killed a nice whitetail in 36 C that he brought to that.

16 Q. On that last November hunt?

17 A. Yeah. Which actually bleeds into December, I
18 think. It ends like December 1st, right around --

19 (Indiscernible due to multiple speakers.)

20 A. And that was in 36 C but he didn't tell me where.

21 Q. In the course of your work along that area, there
22 is -- if you had gotten or ran into a rancher or somebody
23 like that who purportedly had jaguar sighting or what they
24 thought might be a possible jaguar depredation, had you
25 received any guidance about how to deal with that

1 information or what would be the appropriate way for us to
2 handle that kind of information?

3 A. I don't recall ever hearing anybody sit down and
4 tell me that. I'm sure I would have had an opinion on it,
5 on what to do. I can't -- can't really recall ever
6 hearing anybody lay that out for me.

7 Q. You know we have pretty well established
8 protocols on reporting lion reports to the database. We
9 don't have anything like that for the jaguar on that.
10 There are some things in the jaguar guidelines for the
11 jaguar conservation team. And I'm trying to get a sense
12 of how that communication for all of that family of folks
13 who worked along that border, how that communication
14 system worked, if it did. You're one -- I've asked
15 everybody we've talked to that same question about that.

16 Another part of what, of course, obviously
17 we really -- we want to know what happened in all of this,
18 Kirby, but beyond that we have to get at where are -- we
19 got to restart what we started to do back then in March
20 which is, what did we learn about this that we think we
21 need to fix. We found that the satellite phones we had
22 didn't work worth a damn. We need to look at a different
23 type of satellite phone. We found other things that we
24 probably look at process and procedures. So that's one I
25 kind of want to get at.

1 We already talked about that. We talked
2 about that. And talked about that. Who -- on the North
3 Star downloads then for the bears and lions you had
4 collared, who actually monitored that website for that
5 location? Was that you or --

6 A. We had several of us. That's kind of humorous
7 story in itself. We -- when I first started on the
8 project, we first started catching bears and putting
9 collars out, that's when it first dawned on me that
10 suddenly that -- your whole data set is available on the
11 Internet. Anybody with your password and user name can
12 access it and they can do with it whatever they want to, I
13 suppose. And I never had a data set so widely available
14 like that. So I was a little worried about it.

15 So I e-mailed the North Star people and I
16 said let's change that user name and password because I'm
17 not certain -- I'm not certain, first, that I was as
18 careful with that information as I should have been and I
19 don't know who Todd told.

20 And so -- just so happens that they changed
21 that. Well, then it was decided -- I ran this past the
22 other cooperators, this is what I'm going to do. You
23 know, what do you think about this idea?

24 MR. MCMULLEN: It's a heads up move.

25 THE WITNESS: Yeah. I don't want you to think

1 that I don't trust you but here's what I'm going to do.
2 And then we all decided, okay, only those that have been
3 identified as cooperators will get that information. And
4 at the time, Emil and the borderline jaguar detection
5 project was a cooperator. So Emil got it. I got it. The
6 WCS people got it. The NWRCS people got it. So a lot of
7 people had it.

8 Q. Thorry.

9 A. Thorry had it.

10 Q. Michelle.

11 A. Michelle would have had it. In fact, I told the
12 regional guys because, you know, if we had a nuisance bear
13 or something, wildlife manager might be able to go online
14 and tell you, you know, if you had a nuisance bear with a
15 radio collar, he might be able to tell you exactly where
16 he went after he robbed the garbage or whatever. So,
17 anyway, I told it to people that I was confident that I
18 could trust. And we had also got together and decided
19 that this is the people that we will tell it to.

20 So then the matter of who was responsible
21 for keeping track of it was just a matter of who happened
22 to have time to check online. But, I mean, I made -- I
23 make a habit of checking it every day that I have -- that
24 I'm able to get online. But occasionally when I would be
25 out in the field, I would get a phone call from somebody

1 saying, hey, did you see what the Lion Number 1 did or
2 something like that.

3 But then as far as the jaguar, I never
4 had -- I never had the user name or password for the
5 jaguar collar.

6 Q. Asking you to, again, try and turn back the clock
7 and try and unremember all the things that we know in the
8 hindsight stuff, get in that January, February time frame,
9 you know, we've discussed why there was the activity on
10 the collar and the -- your understanding of why we had
11 this increase in activity and communication about drug
12 dosages and things. Do you know -- at any time did that
13 feel to you at all like actual preparation to take a
14 jaguar as opposed to just prudent things to do?

15 A. In hindsight it's hard to not feel like we were
16 preparing to catch a jaguar. But at the time I felt we
17 were being prepared in the unlikely event that we did
18 catch a jaguar. But I didn't -- like I said, in hindsight
19 it certainly looks suspicious, like we were intending to
20 catch a jaguar.

21 Q. Let's see, did we have any other snare lines
22 operating at the time that that snare line that they got
23 Macho B was working?

24 A. Not on this project.

25 Q. Let's see. In early Feb, actually Ron Thompson

1 was or Thorry got the Section 6 job statement from Ron
2 Thompson. Were you a part of that information flow on
3 that?

4 A. Hu-huh. Was that -- have something to do with
5 the latest -- protocol.

6 Q. In part it did. So, Kirby, my sense in this is
7 right now are you -- that bear and lion study it's in
8 abeyance. Right now we're not doing any work on that?

9 A. We're doing the genetic work.

10 Q. We're doing the genetic work. That's right.
11 Getting those hair samples. Did we also take the hair
12 snares out -- or the hair stations, hair collection
13 stations, are they still in operation or out of
14 operation?

15 A. We removed all the ones from the Huachucas and
16 now we put them up in the Chiracauas and we're on the
17 second phase of running those. We baited them and checked
18 them just last week.

19 Q. So those are still running?

20 A. Those are still working. And we just put them
21 in -- there was -- the whole study was kind of shut down
22 for a long time. And then we started work on the hair
23 snags in Chiracauas in probably May.

24 Q. On mountain lion, replacing Mountain Lion Number
25 1, how was -- and I think, again, you may have answered

1 all of this. Certainly we discussed significant parts of
2 this. But how was the decision -- how did you make the
3 decision to -- or let me back into this a different way.

4 Was the maximum number of lions I presume
5 that we were going to have in this study at any one time
6 was driven by the number of collars we had? We had three
7 collars?

8 A. Yeah. We were -- by that point we had more than
9 three collars. I'm trying to remember -- I may have it
10 written down right here, but we have subsequently gotten
11 collars back. Originally we got ten collars, seven bear
12 and three lion collars. We put out all the bear collars
13 and they all failed. And then when we -- when we -- when
14 we made that clear to North Star that we wanted collars,
15 you know, the collars replaced at least, since we missed
16 that best window of opportunity to catch bears we said,
17 okay, instead of sending us seven bear collars back, why
18 don't you send us and I'm trying to remember now what we
19 had them send back. I think it was -- I think we had them
20 send us like four bear collars and three lion collars, so
21 that we would have had six bear, six bear collars.

22 MR. MCMULLEN: Was that jaguar, was that new
23 refurbished jaguar collar part of that shipment?

24 THE WITNESS: No. No. That jaguar collar was
25 never, other than the time that I was carrying it in a

1 backpack when I was checking snares, I never had anything
2 to do with it, and neither did anyone else in the
3 Department until they strapped it on a jaguar.

4 Q. BY MR. HOVATTER: So at the time that we
5 reinstated those snares to -- for -- to replace Lion 1
6 we would have had --

7 A. We had one collar from Lion 1.

8 Q. So we had that collar and we had two lions
9 running with the collars on them?

10 A. Yeah. And then we, I think shortly after that,
11 and I can't recall now, I'm trying to check my notes, but
12 I think we then had -- let's see. Yeah. I think -- I
13 think we got four collars, four lion collars back so we
14 would have had five lion collars in hand when we reopened
15 the snares. Now I can't recall the timing on whether we
16 just had one when we first opened them and then got the
17 other four. It was real close. I know it was real
18 close.

19 Q. Well, part of what I was getting at is -- is --
20 is -- or was wondering about is the decision to go back
21 to -- to reopen that snare, and in the sense that if you
22 had like six collars then there were potentially other
23 lions you could have tried, but if you only had the one
24 and that's where you had the hole in your research, then I
25 see -- was that essentially the process?

1 A. That's essentially what it was. We wanted -- we
2 knew we had a lion that crossed the border that we had
3 caught that crossed the border in that area. We wanted to
4 do the same because that was critical to the objectives of
5 the study.

6 The next place we were going to move was,
7 this would have required discussions with Fish and
8 Wildlife Service, but we wanted to go to the Buenos Aires
9 because they have an actual wall in place there, and then
10 the other place would have been farther east in Pajarita
11 Mountains where they have a wall up -- where they have
12 plans for a wall. But it may have changed now that we
13 have got a new administration. I don't know if that is
14 still the plan.

15 So we were going to meetings with DHS,
16 Department of Homeland Security, to get information on
17 exactly where walls and what types of walls were being
18 implemented. So essentially what we would have then in
19 western Nogales was we would have had a lion --
20 assuming -- in my mind this is the way I had it planned, a
21 lion collared in an area where there was a wall in place,
22 a lion collared in an area where there was a wall not in
23 place, and a lion collared in an area where there was a
24 lion to be -- or a wall planned, and that was what my --

25 MR. MCMULLEN: That's a good design.

1 A. That's what my intention was over there. I was
2 hoping to try to do the same thing with other mountain
3 ranges as we moved east but because of just the
4 distribution of habitats where we had -- where we had
5 expertise on how to catch a lion or where to catch a lion
6 and experience, that's kind of what we went with.

7 MR. MCMULLEN: Was that all part of the study
8 plan or what --

9 THE WITNESS: We didn't have a study plan laid
10 out in that great of detail. We had a study plan in terms
11 of we were going to catch lions in -- along the border
12 that may be impacted by fence construction.

13 MR. MCMULLEN: Makes sense.

14 MR. HOVATTER: Got any other questions? Marty?

15 MR. FABRITZ: I don't think so.

16 Q. BY MR. HOVATTER: Kirby, is there anything from
17 your perspective about this that we have not asked about
18 that you think would be useful to discuss?

19 A. No. I really can't think of anything. I mean,
20 again, I kind of -- kind of feel like I should have known
21 more than I did but -- but I was under the impression that
22 it was such a remote probability that I was -- I was not
23 putting as much attention to it, I guess, as I should have
24 in hindsight, of course. I should have known better, I
25 guess.

1 MR. MCMULLEN: Shortly after the -- this jogged a
2 question for me. Shortly after the thing was caught,
3 Michelle and Thorry, and I know Emil was in Spain, was
4 there any sorts of clearances or whatever, any sorts of
5 conversations about how lucky they were to capture it, or
6 how unfortunate they were to capture it, or what was
7 the -- what was the kind of -- who or what was the mind
8 set after that darn jaguar was caught?

9 THE WITNESS: It would depend on who you talk to
10 as far as -- they were both, Michelle and Thorry were both
11 psyched to have been part of it. They were really excited
12 about it. And I was, like all my e-mails indicate, I was
13 not pleased about it. But I was pleased for them. They
14 had a cool experience in the field. But I was shaking my
15 head, and Thorry was too, I think. Because I remember
16 Thorry saying to me before it was caught he was talking
17 about, you know, he was hopeful that we were going to
18 catch something because he had seen signs and then
19 after --

20 MR. MCMULLEN: Catch something meaning, a jaguar?

21 A. No. Catch a lion. Actually, he had told me he
22 had seen signs of at least three different lions and what
23 he thought were two different bears in that area. And
24 that was one of the, in reference to you whether we were
25 woo hooing or -- we were both shaking our heads, what are

1 the odds? You got an extremely rare cat in that area, in
2 an area that is populated by some more --

3 MR. MCMULLEN: Other carnivores.

4 THE WITNESS: More abundant carnivores that you
5 are trying to catch, what are the odds that you catch the
6 cat?

7 Q. BY MR. HOVATTER: So your sense of Thorry after
8 catching it was?

9 A. I think he was excited to be part of the
10 capture.

11 Q. Been a part of it, yeah.

12 A. But astounded at the luck that they had to get
13 it.

14 Q. For good or ill, the luck.

15 A. Yeah. Yeah. I mean, there were people in the
16 Department and elsewhere that were happier about catching
17 a jaguar, that were happy about the fact that we had a
18 jaguar with a collar. I wasn't. I mean, I was -- I think
19 it's great that we get more information on something like
20 that, but I wasn't jumping for joy.

21 MR. FABRITZ: Had you had any conversations at
22 all with Emil after the capture?

23 THE WITNESS: Yeah.

24 MR. FABRITZ: What was his sense?

25 THE WITNESS: I'm trying to think. His sense

1 was -- I didn't have any conversation so much as e-mails
2 from him. And in fact, I don't think -- I don't think I
3 heard from him until after the -- you know, it was such a
4 short period of time. I don't think I heard from him
5 until after the euthanization. And so the only sense I
6 got from him was it was a darn shame, but at least we got
7 whatever bit of information we had out of him and we --
8 you know, we had -- he was lamenting about, you know, he
9 had a several year relationship with the thing, getting
10 pictures of it. But I don't recall -- I don't think I
11 talked to him between the time it was captured and the
12 time it was killed. My feeling was that he would have
13 been pleased, but I didn't -- I can't say that I actually
14 heard that from him specifically.

15 Q. Anything else, guys? Kirby, anything else for us
16 that you think we ought to talk about on this?

17 A. No. I don't think so. I think we pretty much
18 covered it all.

19 MR. MCMULLEN: Thank you for your time.

20 MR. HOVATTER: You know, again, I told everybody
21 we wanted to try to get as much as possible. We would
22 like these to be one shot things because everybody has got
23 so much to do. It may be that we will have some
24 subsequent conversations with some or maybe all of the
25 folks that we've talked with already, but don't know.

1 Won't know until we start sorting everything out but we
2 really appreciate it.

3 THE WITNESS: Oh, yeah. No problem.

4 MR. HOVATTER: Because we really needed to get at
5 this. Thank you, sir.

6 THE WITNESS: Glad to see you, Craig.

7 MR. MCMULLEN: Take care.

8 (Recording ended.)

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CERTIFICATE

I, Karen M. Niemtschk, do hereby certify that the foregoing 80- pages constitute a full, true, and accurate transcript of all recorded proceedings had in the above matter, all done to the best of my skill and ability.

DATED at Phoenix, Arizona, this 5th day of August 2009.

KAREN M. NIEMTSCHK, No. 50447
Certified Court Reporter

ARIZONA GAME AND FISH DEPARTMENT
5000 WEST CAREFREE HIGHWAY
PHOENIX, ARIZONA 85086

TRANSCRIPT OF INTERVIEW
August 10, 2009
KIRBY BRISTOW
VOLUME II

Individuals present at the Interview on 8-10-09:

Gary R. Hovatter, Arizona Game and Fish Department, Deputy
Director, Interviewer
Marty Fabritz, Arizona Game and Fish Department,
Ombudsman, Interviewer
Craig McMullen, Arizona Game and Fish Department, Wildlife
Manager, Interviewer
Kirby Bristow

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Karen M. Niemtschk
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1 KIRBY BRISTOW,
2 pursuant to Garrity Warning, was examined and testified as
3 follows:

4

5 EXAMINATION

6 BY MR. HOVATTER:

7 Q. There they are. Now some of this we've already
8 talked about.

9 A. Okay.

10 Q. And I didn't -- and I know enough now to ask
11 probably better questions on it. You linked up for the
12 first time or first met Emil, was this the gas station
13 meeting?

14 A. Yeah.

15 Q. When you first met him?

16 A. That's how I first met him.

17 Q. Yeah. And had you -- you had heard about him
18 before that or --

19 A. Yeah. I knew of him but I hadn't ever met him.
20 In fact, I don't even know that I had heard his name. I
21 was familiar with his project.

22 Q. Yeah. That may be more to the point because that
23 project, the borderlands jaguar detection project, had
24 been working down there for quite some time.

25 A. Yeah.

1 Q. Here's another question, how did we -- now,
2 because the project that you were -- you were overseeing,
3 the large carnivore habitat connectivity project, that's a
4 fairly wide-ranging project. We had the hair snares for
5 the bears. We had a bunch. How did that specific site,
6 because I think it was Emil who put in the original snares
7 for that?

8 A. Uh-huh.

9 Q. So is that -- is my memory of that correct?

10 A. Yeah. I believe so.

11 Q. And he's -- you're more of a bear guy, and I
12 don't think you're -- and Emil has got quite a reputation,
13 I think well deserved, for being a lion guy.

14 A. Uh-huh.

15 Q. How did the Atascosas get picked as a place to
16 start that for the lions?

17 A. Well, it was sort of mutually agreed on. I
18 didn't -- he didn't come to me telling me that he wanted
19 to look into the Atascosas. I had suggested it because I
20 knew the lion -- the lion density was high there.

21 Q. Okay.

22 A. I also knew that it was -- after we had meetings
23 with DHS where they detailed where they had fences and
24 where they had plans for fences, and so actually that area
25 was an area -- actually that's just a little ways west of

1 where they had plans for fences but they also had fences
2 in place a little ways west of there. But I also knew
3 that it was an area of high border patrol activity. So
4 those were kind of the things that drove that decision.

5 Now when I mentioned it to Emil, he said,
6 yeah, that sounds good because I know there are a lot of
7 lions in there.

8 Q. Good enough. Yeah. And that makes sense. It's
9 obvious the lion trapping is (indiscernible)

10 A. Yeah.

11 Q. Now another question would be, did you -- did he
12 reveal at that time that he had some pretty significant
13 history with that piece of ground?

14 A. Not necessarily at that time but I went through
15 the -- through the subsequent meetings I had with him,
16 yeah. He was familiar with the area.

17 Q. Yeah.

18 A. And I don't think the September meeting was the
19 time that I first suggested the Atascosas but it may well
20 have been but I don't recall if that's when we first
21 talked about moving to the Atascosas.

22 Q. Was that at the gas station meeting?

23 A. Yeah. Yeah. We went from there to a coffee shop
24 if you want to change the name of it to the coffee shop.

25 Q. Coffee shop. Okay. The gas and coffee meeting.

1 A. Yeah. We weren't talking for two hours by the
2 pumps. But as far as the decision on moving to the
3 Atascosas that was -- that was I would say mutually agreed
4 upon. I don't know that he planted the seed in my mind or
5 vise versa.

6 MR. FABRITZ: It was you an Emil, though?

7 THE WITNESS: Yeah. And I had mentioned it with
8 Ron too. And, again, I'm not clear on the timing of when
9 I mentioned all of that stuff. And I talked to Thorry
10 about it as well. I know Thorry had thought, based on his
11 running around, that he thought the Patagonias were better
12 than the Huachucas as far as substrait. And then he
13 hadn't gotten over to the Atascosas yet.

14 Q. BY MR. HOVATTER: Now sort of about mid November,
15 because, of course, Emil's wearing a couple of hats. He's
16 got his borderlands jaguar detection hat.

17 A. Uh-huh.

18 Q. We were paying him by, what, a daily rate?

19 A. A daily rate.

20 Q. For working for us, so some days he would be on
21 and working and other days he would not?

22 A. Uh-huh.

23 Q. How did he work his time issues? How did you
24 guys sort out the time for his pay on that?

25 A. You mean when he would --

1 Q. I mean, did he -- would he call you to let you
2 know he was working that day, or did you call him? How
3 did that work, mechanics of it?

4 A. It was more him and Thorry getting together
5 because they were -- they were the ones that were doing
6 most of the running of the snare line. So I kind of left
7 it up to them and then he submitted at the end of month
8 basically how many days he had worked.

9 Q. So that kind of parsed out amongst themselves,
10 parsed out the work?

11 A. Yeah. Yeah. They split it up so that we could
12 have the traps open as long as possible. And occasionally
13 they would call me to come in, but I don't think I -- I
14 checked them by myself I think two nights, two mornings
15 where I was by myself. I did go out with them whenever I
16 had the opportunity, but yeah, they would -- they would
17 kind of figure that schedule out and then he reported how
18 many days he worked at the end of the -- at the end of the
19 trapping session.

20 Q. Now about mid November Emil is checking his
21 cameras and he finds some photos from the summer. Did
22 you -- did he let you know or tell you about those photos
23 in November?

24 A. Yeah. He had told me that there were -- that he
25 had a picture of a jaguar, of Macho B, I believe, and but

1 he had also told me that it was from August.

2 Q. Yeah.

3 A. He didn't exactly tell me where it was, but it
4 was in an area that he had indicated to me that he thought
5 he would -- it would be awhile before he saw that thing
6 again, awhile meaning like several months.

7 Q. And so he was a bit nebulous about where
8 exactly?

9 A. Yeah. But I had the impression that he wasn't
10 going to see that jaguar again, the way he put it, I can't
11 remember his exact words, but he didn't think he would see
12 it for six months based on, you know, past experience.

13 Q. Now you know we talked previously about, you
14 know, some of the conversations within research branch
15 about the large carnivore study not being -- not becoming
16 a jaguar study.

17 A. Uh-huh.

18 Q. When you found out about those photographs, did
19 you do -- did you do anything with that information as far
20 as talking with Chasa or any of the other folks in
21 research branch about -- about it from the perspective of
22 the study you guys were doing?

23 A. I don't know that I discussed it with reference
24 to how we should change our operation. I'm certain that I
25 mentioned it to Ron. I don't think -- I don't recall

1 specifically mentioning it to Chasa, but I was also -- you
2 know, I knew that Ron was part of the jaguar conservation
3 team, so I figured that he had heard the news anyway. And
4 I didn't really think that it was that unusual. You know,
5 I have known it had been a long time since we had gotten a
6 photograph of that jaguar, but I didn't think it was so
7 unique that I had to go tell my supervisor immediately.

8 Q. And, you know, thinking about this, Kirby, again,
9 hindsight, again, as the saying goes, it's always
10 perfect.

11 A. Yes.

12 Q. In retrospect in looking back at that, is that an
13 opportunity we missed to maybe get -- to get this thing a
14 bit more vetted by other parts of the Department thinking
15 about the jaguar implications?

16 A. Well, obviously in hindsight anything -- anything
17 looked like a missed opportunity but --

18 Q. You know, I can understand. I mean, the way --
19 and that's why I wanted to ask that. The context you
20 provide for that conversation, I mean it makes sense to
21 me. And it's not vital that it does, but it's kind of
22 always useful for me when it does make sense. It lines up
23 about right. So let's see. Okay.

24 A. It was really about that time that I think I was
25 even aware that we had capture protocols, that there were

1 issues in the jaguar conservation team over that capture
2 protocol. Before then I really -- I was really unaware of
3 what was going on.

4 Q. So it was about that time that you became aware
5 of it?

6 A. Yeah. Yeah.

7 Q. What as the context of becoming aware of that?
8 Do you recall how that -- how that came about?

9 A. I'm thinking. Actually one of the conversations
10 was with Dwayne Shroud (phonetic). I had taken him
11 Mearns' quail hunting, and I asked him about it. That
12 would have been later than that, though. That would have
13 been in December probably.

14 Q. Yup.

15 A. And he kind of filled in all the details from his
16 perspective.

17 Q. Well, yeah. And I mean, you know, that --
18 establishing that protocol was a pretty controversial
19 thing I get the impression within the jaguar conservation
20 team because there was clearly an element in there that
21 didn't want anything that was hands on, anything that was
22 intervention or interference.

23 A. Yeah.

24 Q. So did Dwayne have any -- what was his thoughts
25 about it from your memory?

1 A. His thoughts were that he thought that the
2 hands-off approach was not the way to go. That we should,
3 you know, if we catch a jaguar we should put a collar on
4 it.

5 Q. And it seems that we have already got done the
6 hard part, and that's to get the jaguar in the snare.

7 A. Yeah. Yeah. There is no point in -- but -- and
8 I think that was the consensus of everybody in the
9 Department at the time.

10 Q. Yeah.

11 MR. MCMULLEN: That brings up a question that we
12 had on our list for follow up just on process. We know
13 that at some point Chasa gave pretty clear direction in a
14 personal conversation with Thorry that if we catch a
15 jaguar we're not going to collar it. And I'm trying to
16 remember, we may have asked you in a previous interview,
17 were you aware of that guidance from Chasa?

18 THE WITNESS: No. I wasn't aware of that. I was
19 under the impression that it was quite the opposite
20 actually.

21 MR. MCMULLEN: Yeah. And we're just trying --
22 and this is not somebody should have known or anything
23 like that. I'm just trying to figure out, we're all just
24 trying to figure out how -- how the disconnect in the
25 process got from clear direction from the branch chief in

1 research, we're not going to collar it if we capture it,
2 to a general understanding that if the unforeseen happens
3 and a jaguar ends up in a snare we are going to collar
4 it?

5 THE WITNESS: Yeah. See, that's -- to be honest
6 with you, that's the first I heard that Chasa did not want
7 to collar it.

8 MR. MCMULLEN: Can you put meat on those bones in
9 any kind of general way in terms of how -- how did we come
10 to the general understanding that we were going to capture
11 or collar an incidentally captured jaguar?

12 THE WITNESS: I think the direct -- anybody that
13 had said that to me directly would have been Ron
14 Thompson. And so -- and I just assumed that he was
15 speaking for the Department at the time. But I swear that
16 I heard the same thing from Chasa. I can't give you the
17 specific -- the specific time or, you know, it wasn't in
18 an e-mail or a memo or anything written down, but I, like
19 I say, there was the general feeling on my part at least.

20 Q. BY MR. HOVATTER: Well, what's interesting is
21 that it might, you know -- is that, of course, it might be
22 that's the way Thorry heard it. But it did seem to -- it
23 kind of stuck out because it just seemed at odds with
24 everything else we were hearing. And, you know, the other
25 thing -- it's interesting is, you know, Ron because of his

1 background in so much of this stuff and, you know, with
2 cats, the odd thing is he has never been a member of the
3 jaguar conservation team. He used to go to the meetings.
4 But you're not the only person that had that kind of
5 impression.

6 A. I had that impression. Yeah, the -- the -- yeah,
7 the general feel that I had was that we would collar a
8 jaguar if we caught it, but the other general feel that I
9 had was that the probability was so -- so low that that's
10 why a lot of this stuff don't -- these things don't
11 specifically stick out in my mind --

12 Q. Yeah.

13 A. Because I just wasn't predicting that it would
14 happen.

15 Q. Yeah. But you're not -- you were not the Lone
16 Ranger in that regard. Now, in that November time frame
17 then if you had -- I had in here, how you communicate your
18 expectations of Emil during the project. I think you may
19 have answered that.

20 Let me ask you this, I want to fast forward now.
21 We get up to February. Now Emil had been -- he had been,
22 what, in November he was a subcontractor?

23 A. Yeah.

24 Q. On the Richens.

25 A. Yeah. Under Clark Richens' contract.

1 Q. Under Clark Richens' contract. That ended then
2 with -- when we ran out of collars, we ended that. Do you
3 remember about when that was?

4 Just one second. Hey, Pat, can you hear
5 me? Hey, I'm in the middle of an interview and before I
6 for -- and can I call you back here in a bit. I had asked
7 John to get ahold of you and tell you we're not going
8 to -- I think I sorted out as much as I could with John
9 and I had forgotten that you were on that elk trip, or I
10 would have left you alone. Pat, I think I lost you. I
11 think I lost you. I don't hear.

12 Sorry about that. That's a different cat.
13 So about when did we finish -- when did we stop the stuff
14 in November, or was it November or December that we
15 stopped it? I know we started in November.

16 A. If I had my day planner I could tell you the
17 specific date because I've got the capture. In fact, I
18 remember --

19 Q. I tell you, after this would you find that date
20 because I would like to -- or just make a copy of that out
21 of your day planner.

22 A. I know the date because he called -- I was up
23 here for the SCCC trap and skeet shoot, and he called me
24 when he caught that last cat.

25 Q. And that was our last collar.

1 MR. FABRITZ: That was the 24th or something.

2 Q. Yeah. If you would, I would like to get that
3 just because I'm that data anal on these dates and
4 things.

5 A. Okay. I may have it written down here. Let me
6 see. I may have been more vague in this stuff.

7 MR. FABRITZ: Monday.

8 A. I didn't write the date down in here.

9 Q. Okay. If I can pin that down after this.

10 Now we get to February. Is he back on
11 contract working for us, or how does he get back involved
12 with things?

13 A. Yeah. In February, sometime between then,
14 between Thanksgiving and the end of January was when Ron
15 got him set up on a separate contract.

16 Q. Okay.

17 A. On his own contract.

18 Q. So he was set up under his own contract?

19 A. Yeah.

20 Q. Was he actually working for us then when he was
21 out around on that early February or was he working on --
22 or was he just helping out?

23 A. That was when he was -- it depends on how you
24 look at it, I guess. That was where I told you about he
25 and I had a conversation because he was concerned that now

1 he was being paid on a per lion basis and he was concerned
2 that he wouldn't -- you know, not necessarily the guy that
3 happens to be there on the day that the lion gets caught
4 is really the one that caught the lion, and he was
5 expressing that to me.

6 So technically he didn't get paid for any of
7 that time, but in my mind he was working for us.

8 Q. So if he had caught a lion --

9 A. Had he caught a lion --

10 Q. Then he would have been on our nickel, we would
11 have paid on that?

12 A. Right.

13 Q. What was the per lion cost, do you remember?

14 A. I don't remember.

15 Q. Okay. So -- yeah, so that gets -- I can see
16 that's kind of a -- you're working for us without pay if
17 you don't catch a lion; you are working for us and do get
18 paid if you do catch a lion.

19 A. Yeah.

20 Q. I think I know the answer to this but I'm going
21 to ask it anyway. When we got the -- when we got more
22 collars in, that early February you got those collars back
23 or you got some refurbished and the new collars, how did
24 we decide to restart the Atascosas?

25 A. That was based on the fact that we had lost a

1 lion there. The one -- the first lion that we had caught.

2 Q. So that was essentially replacing that --

3 A. And that individual had crossed the border, just
4 information that we were looking for.

5 Q. Yeah. I understand that was -- that one did
6 quite a bit of border crossing on that too. Okay.

7 A. So in my mind we were going to move from there,
8 catch a lion there and then move east or west. I was
9 thinking more east to the Pajaritas because there is --
10 there was a fence project in the planning stages coming
11 out of Nogales.

12 And then perhaps if we could get -- get
13 permission to trap on the Buenos Aires to try and put a
14 collar on a lion over there where the fence was in place
15 already.

16 Q. Okay. In -- so about mid November, about the
17 same time that Emil is -- he is working, trapping, so is
18 Thorry. I think Michelle was back and forth in there.
19 Erin Fernandez sends out an e-mail and she wants to have a
20 carnivore meeting on the 9th of December.

21 A. Uh-huh.

22 Q. And it's the principal of the Mexican borderlands
23 project. One of the things I was wondering about that was
24 bears and lions are resident wildlife. They are not Fish
25 and Wildlife Service responsibility. They are ours. Did

1 that -- do you know why Erin -- what was Erin trying to
2 accomplish with this thing, with this meeting? Do you
3 know the -- what it was about her fired up to --

4 A. She was interested in our project from the
5 beginning. She had e-mailed me pictures of lions, and
6 there was one specific film of a lion trying to make its
7 way across -- across the pedestrian fence along the
8 border. And I think that was on the Buenos Aires. But
9 she had -- she had expressed interest in the project from
10 the beginning, and I just assumed because she was
11 interested in large cats. It seems to be that everybody
12 you talk to that's their favorite. That's what got them
13 into the field.

14 Q. Well, I got to tell you I'm not as big --

15 A. I'm losing enthusiasm.

16 Q. Enthusiastic as a lot of folks are.

17 A. I'm losing it myself.

18 Q. They are not quite as high on my list as they
19 used to be, I'll tell you that. And that was for that --
20 that was in relation to that DHS, those DHS projects?

21 A. Yeah. Yeah. In fact, yeah. She was the one
22 that kind of got or kind of clued me into the money that
23 was available through DHS for that kind of stuff.

24 Q. Now here's part of what I'm wondering, you know,
25 as I go through this, and, you know, it talks about --

1 because I think Todd Adkinson --

2 MR. FABRITZ: Atwood.

3 Q. Atwood, excuse me. Todd Atwood. It was -- you
4 know, as I look at the language that he did back in May of
5 '08 for that -- to get the approval of sort of the work
6 plan from the Commission in that May Commission meeting,
7 while she doesn't specifically say it's -- it looks -- the
8 thing that she sends out in that e-mail looks almost the
9 same as what Atwood had done back then. A little
10 modification, probably a little maturing of thinking on
11 it, and he clearly was a part of that -- that e-mail
12 string.

13 Part of what I'm wondering is, you know, you
14 see from the e-mail string that you kind of try to take
15 charge in making sure the Department kind of got its act
16 together before we participate in that meeting. One of
17 the things I was wondering is, you know, it talks in there
18 about bears and lions so I understand that. What I was
19 wondering why we never got Terry -- I don't find anything
20 in the e-mail record about where we ever wrote Terry
21 and/or Bill into this thing. Do you have -- and again,
22 that's a lot and I have the e-mail here, I mean, if you
23 want to look at it. But I'm just wondering why we didn't?

24 A. Well, I was -- I just knew from the beginning
25 that I didn't want -- I suppose we should have, in

1 hindsight again, we should have involved him, but I was
2 adamant that this wasn't going to be a jaguar study or
3 mountain lion study as a surrogate for jaguars. So I
4 just -- I didn't think that they needed to be there, I
5 guess.

6 MR. MCMULLEN: At that meeting on December 9th
7 meeting, did the jaguar -- did the --

8 THE WITNESS: Well, the jaguar issue came up. In
9 fact, I started the meeting with that and I pointed out
10 that this -- that is where I probably to most people made
11 it clear my stance on the issue, which is, this is not a
12 jaguar study.

13 Q. BY MR. HOVATTER: Either by surrogate or by
14 intent?

15 A. Right. Right.

16 Q. Okay. How was that perceived, do you recall?

17 A. I think everybody was receptive to it. I mean
18 everybody was of the same opinion. Of course, we had
19 people there that were probably, you know, Emil and Jack
20 Childs obviously had a vested interest in jaguars, so they
21 might not have been as happy about it, but they were --
22 they were both, you know, interested in large cats and
23 that.

24 Q. Yeah. There probably would have been a lot more
25 pictures of bears and lions than there were of jaguars.

1 A. Yeah. Yeah.

2 MR. MCMULLEN: Because from a process standpoint
3 as we look from the outside in at that, at the Fish and
4 Wildlife Services inserting themselves into the plan, kind
5 of the planning, you know, hey, what's -- kind of a status
6 check of what we're doing, and it seems from the outside
7 looking in that that is a specific effort by them to do a
8 check on jaguar status. And it wasn't your impression of
9 that?

10 THE WITNESS: No. I don't think so. It was my
11 impression that the Fish and Wildlife, the Erin Fernandez
12 interest in it was more on the border -- border issue
13 because they had other species that they were looking at,
14 and wanting to be helpful and make us aware of what the
15 DHS plans were and also the potential for this funding
16 opportunity through DHS.

17 Q. BY MR. HOVATTER: The other question is,
18 obviously bears and lions are also game species. You
19 know, we didn't invite Brian Wakley into this thing
20 either?

21 A. Yeah.

22 Q. Did that -- did you -- did you ever kind of have
23 that kind of catch in your mind?

24 A. Well, I had the game spec, the regional game spec
25 there.

1 Q. Who was?

2 A. Jim Heffelfiger (phonetic).

3 Q. Okay. So Jim was there for this regional
4 meeting.

5 A. And I've done a lot -- I've worked -- I've worked
6 for research for 15 years and I've worked almost entirely
7 on Federal Aid stuff, so -- and I've worked a good deal of
8 the time -- I've been in Tucson the whole time. Most of
9 my projects have been in Region 5. So I'm always working
10 with the wildlife program people there at Region 5. So
11 that seems natural to invite them. I don't know --

12 Q. Well, you know, part of this was you would think
13 that in some respects that we would, although I guess, you
14 know, Jim would have been a way to get at that too. There
15 might be something that factors into the hunt guidelines
16 or hunt recommendations on bear and lion down there given
17 the -- some of the intensity that we were going to be able
18 put into that and get some better sense of those large
19 carnivores use of that ground.

20 A. Yeah. Yeah. And the other thing was the genetic
21 information too, and that we would be needing their help
22 in gathering that stuff because they would be getting
23 samples from hunter kills and stuff.

24 Q. Do you know if -- do you know if Chasa was aware
25 that that meeting was going to happen? Again, there is a

1 bizillion e-mails but the ones that I've looked through I
2 don't see her name on them. Do you have any memory of her
3 having an awareness of that thing?

4 A. I would -- I'm going to have to guess that I did
5 but since you say you didn't see an e-mail.

6 Q. Kirby, that's not definitive. You know, we've
7 looked through a boat load of e-mails.

8 A. Yeah.

9 Q. And that's not definitive, but I thought I would
10 see if you remember.

11 A. Yeah. I'm pretty sure that she was aware of it.
12 Yeah. At the time she was my only supervisor.

13 Q. Who -- from your perspective on these studies,
14 where in research branch or the Department was the --
15 should the decision have been as to whether an EA
16 checklist should have been done for this overall -- for
17 that large carnivore habitat connectivity project?

18 A. In hindsight, there shouldn't have been a
19 decision there. There should be one done on every one of
20 them. That's what I'm hearing as I'm going --

21 Q. I think there is some (multiple speakers) about
22 that. I mean I think we all -- we got to that pretty
23 early on when we had our first pretty conversation about
24 how useful it might have been. It gets to the bigger --
25 the bigger issue is how do we, and it may have changed

1 since then, how do we make the decision to do an EA
2 checklist? Right now is it left to the project leader
3 from the your experience? Is it -- or to go ahead and
4 make that call, or because, you know, we got -- the EA
5 checklist itself resides in habitat, but they're certainly
6 not going to have visibility on everything.

7 A. Yeah.

8 Q. And then you have all of the kind of the
9 consumers of the EA checklist, a lot of that non-game, a
10 lot in research and some in game branch.

11 A. I think it -- in the past, and I don't know that
12 this is formalized in any way, but in the past it was
13 probably the project biologist who made that
14 determination. I remember going to the EA checklist class
15 that they gave at Department School and coming away, and I
16 think Chasa did as well, I think we independently came
17 away with the opinion that, you know, unless you're
18 dealing directly with an endangered species or something
19 that most definitely impacts endangered species or if
20 you're manipulating habitats, you really don't need to do
21 an EA checklist. And when I've since expressed this to
22 habitat people and they shook their heads and said, boy, I
23 don't know where you came up with that because that's not
24 what we intended you to hear. And yet Chasa and I both
25 came away from that class with that opinion.

1 So anyway, I've also had, throughout my
2 career, I've had the unfortunate situation where I've
3 inherited a lot of projects, like this one, and so I'm
4 coming in one or two biologists into it. So a lot of
5 times some -- a lot of the projects that I have been on I
6 don't know if that decision was made. You know, it's not
7 like they write a note in their files that we decided not
8 to do an EA checklist.

9 Q. Well, how -- how is the -- that brings up another
10 question. Project wise, what was your inheritance of this
11 project? What did it look like? Who was actually first
12 started out? Was it Atwood that first started this?

13 A. Yeah. This project started in a small scale with
14 Todd doing the genetic work in the Huachucas.

15 Q. Hair snares?

16 A. He ran hair snags for bears and I'm trying to
17 remember, and I think it may have been '06 or maybe '07.
18 Anyway, he ran those and then -- and that was the extent
19 of the project. And I sat in on some of the meetings when
20 we were presenting that to the regional people and just
21 because I was a Tucson guy and I might be -- I might be
22 helping out at some point.

23 Q. Yeah. Yeah.

24 A. But then -- then in '08 was the first I really
25 heard that we were going to be collaring bears down

1 there. And then in May of '08 is when I learned that it
2 was -- it was my project now.

3 Q. You know, the -- one of the things I've thought
4 is, because, you know, the EA checklist is our own
5 product. We can make it whatever we want. And part of
6 what I'm thinking is that one of the things that we may
7 have to do is at the very beginning of it we may just have
8 for every project we do, just be kind of an affidavit. It
9 would just be, I determined that there is no need for an
10 EA checklist and here's my reason. And at least we would
11 have that -- at least we would start with that process and
12 there would be at least that beginning.

13 Now we can still get it wrong by making a
14 miss call on that, but at least everybody -- every project
15 would at least include having to confront the question in
16 some formal sense of, do I need an EA checklist or not.
17 And I mean if you really -- if it passes mustard and you
18 really don't think that you do, and you sign off on that
19 and my rationale for not needing it is because of da, da,
20 da, da, it may be that it doesn't pass mustard but at
21 least it has put some thought into doing it or not.

22 A. Yeah. Yeah. To be honest, this is the only time
23 that I've really been faced with -- with doing one.

24 Q. Yeah.

25 A. I mean, all the projects in the past, to my

1 knowledge, we didn't, but again, I inherited -- inherit
2 all these projects secondhand so some of them maybe we had
3 done some.

4 Q. And, you know, at least if we did that and if we
5 were good about how we passed project files, that ought to
6 be at the top of the file where you could at least see
7 it. And you might look at the rationale and say, you
8 know, that rationale doesn't match up anymore. It might
9 be that the rationale was the bear hair study, and it
10 might be in looking at it you say, well, that there is
11 another component to this, maybe we ought to relook at
12 that. But at least it would cause something to happen
13 related to that and then if we got the rest of the
14 document runs right we might end up getting a different, a
15 more reliable outcome. I don't know, I think we'll
16 probably put together some kind of, I would imagine
17 certainly non-game, research, and other folks to take a
18 look at that whole process about how we put that thing
19 together because it probably could work better for us is
20 my impression.

21 A. Yeah. This is my first experience with EA
22 checklist and it doesn't seem to move smoothly.

23 Q. Of course one of the questions -- the problem is
24 that when you look at something like this in hindsight,
25 you've got to look and go, okay, of all the other 89

1 projects that Chasa says they're running in just research
2 branch, are there any other things out there like this
3 that we don't expect, we don't anticipate, this isn't the
4 outcome we sought but this is the outcome we get. You
5 probably put on that -- well, the thing about it is,
6 Kirby, you would be able to look at that and say, you
7 know, I know what you may intend or my think, let me tell
8 you what really, in practice, can happen to you.

9 A. Yeah. Yeah. I'm learning that, unfortunately.

10 Q. Yeah. I wish I could spell that. No. I kind
11 of -- I already know the answer to that. Did Emil have
12 access to our Northstar website?

13 A. Yeah.

14 Q. For the bear and lion info?

15 A. Yeah.

16 Q. Okay.

17 MR. MCMULLEN: Did anyone from our outfit have
18 access to the Northstar website and password for the
19 jaguar collar?

20 THE WITNESS: I don't know if anybody -- I
21 didn't. I know that Emil was relaying those locations to
22 the guys in the field on the second, subsequent capture.
23 So I don't know if that meant that he was the only one
24 that had access or if he was the only one that had
25 Internet access at the time.

1 Q. Did Michelle -- did you and Michelle ever have a
2 conversation, did she ever talk to you about having
3 received a call from -- from Emil?

4 A. I don't specifically remember any.

5 Q. Well, and it would have been a call where Emil
6 talked to her about she and Thorry getting their story
7 straight?

8 A. No. She never mentioned anything like that to
9 me.

10 Q. Okay. Let me ask you, we get into -- this is --
11 this is a bear and lion study. It's not going to be about
12 jaguar. Now we get to, was it the 18 of February, 19th of
13 February? I can never remember right. The 18th. So now
14 we get to the 18th of February and it suddenly is about
15 jaguars all the sudden. So from your standpoint on -- as
16 having project supervision for the bear and lion study,
17 what did that do to your relationship with Thorry over
18 that next 10 or 11 days, you know, between that time and
19 the time we had to go in and recapture, because now some
20 new players start to show up in the mix in all this? How
21 did you see the supervisory change? Did it stay the same
22 in your mind? Did it change? What happened at that
23 point?

24 A. Yeah. It changed. I mean, he wasn't answering
25 to me after that. And I didn't -- you know, I didn't bug

1 him, and I wasn't -- I mean, I'm pretty hands off anyway.
2 I'm trusting them to get their work done, and then, you
3 know, work gets done and then I will just sign off on the
4 time sheets.

5 Q. Who did you see as having the supervisory, main
6 supervisory role at that point?

7 A. At that point I kind of wrote him off as being
8 under Ron Thompson, working for Ron.

9 Q. Now when -- the day we capture, the day after we
10 capture him we convene a meeting up here. You obviously
11 were not there. It's a good meeting not to be at, but we
12 convened a meeting up here. And in that meeting I asked
13 the room, and there was quite a few folks, and I said,
14 okay, who in here is responsible for this jaguar? And
15 nobody raised their hand. So I designated Terry Johnson
16 as having lead.

17 A. Okay.

18 Q. And Bill Van Pelt as his back up.

19 A. Uh-huh.

20 Q. And told everybody in there that all information
21 was to flow up to them. Do you know -- now, again, from
22 your perspective, this -- the supervision of this thing
23 has now changed when that jaguar was caught. Did that
24 ever trans -- did you ever hear, was it ever transmitted
25 to you that lead or ownership for this jaguar project

1 belonged to Terry or Bill?

2 A. Yeah, and actually through the e-mails I heard
3 that. And -- but I really didn't think of -- when I say
4 transferred to Ron, I was thinking more in terms of that
5 follow-up capture because I just knew that Ron would be
6 the in-the-field guy for anything dealing with big cats.

7 Q. So that was the thing to do the recapture?

8 A. Yeah.

9 Q. So before that happened --

10 A. In the interim he was still under me, and as far
11 as the direction that he got from me I think was to pull
12 the traps that we had out there, but I didn't make that
13 decision immediately but just in response -- I think I may
14 have -- I think I may have gotten that from Chasa that we
15 need to pull the rest of those snares out of there.

16 Q. Now was the reason -- did you get a rationale for
17 why we pulled those snares?

18 A. Just because we didn't have permit to capture
19 another jaguar.

20 Q. Yeah. Because we had to do the reporting
21 requirement. We had the reporting requirement before we
22 could do that.

23 A. Yeah.

24 Q. And I suppose part of it we obviously didn't want
25 to recapture it.

1 A. Yeah. That probably wouldn't -- yeah.

2 Q. So in that interim, between that time and then we
3 start getting in, it's four or five days into this thing
4 and we start having some concerns about this -- this
5 animal's health. Were you a part of that flow of that
6 information?

7 A. No. Other than just reading the e-mails, the
8 updates.

9 Q. Okay. So did Thorry do any other bear and lion
10 work in the interim?

11 A. Not -- not any field work other than pull the
12 traps.

13 Q. Pulling the traps?

14 A. Yeah.

15 Q. Okay. After the recapture and the euthanization,
16 okay, now Thorry -- Thorry goes on vacation pretty soon
17 right after that?

18 A. Uh-huh.

19 Q. When he gets back from vacation does he go back
20 to work on that bear and lion study, or is he -- well, of
21 course we stopped all the bear and lion trapping?

22 A. Yeah. Yeah. The field work of that study was
23 done. So I'm trying to remember exactly what he did
24 because -- well, we switched -- well, actually we switched
25 to black bear trap then. We switched to black bear

1 trapping and that was a very narrow window that we were
2 authorized to do that.

3 MR. MCMULLEN: With bucket snares or something?

4 THE WITNESS: Yeah. We had bucket snares and
5 culvert traps. And original -- the original plan was that
6 it wasn't going to be any prohibition of any trapping
7 type. But before we got any traps set we got the word
8 from Chasa that no, bucket snares and culvert traps were
9 the only acceptable. And we trapped for -- we prebaited
10 and trapped maybe for two weeks total before that was shut
11 down, and we actually caught a bear, and that was Michelle
12 and Thorry were there and caught him in a culvert trap.

13 Q. I think the last thing I was going to ask you
14 about, and this kind of fast forwards a lot. You know, we
15 were told -- we finally decided we were completely
16 shutting down all bear and lion trapping along that
17 border, and I know I think you probably already had some
18 conversation about this. We get this -- when we saw the
19 or I saw this grant application we had, the question I
20 have is on the one hand I understand that we don't know --
21 we do want to start that ultimately. We want to restart
22 that, and if we don't compete for money now it's not like
23 we can simply say, okay, it's time to restart and the
24 money appears and I understand that.

25 Did you -- the concern, of course, was that

1 publicly an announcement that we won a grant that includes
2 doing something that we said we're not doing, and of
3 course, we haven't restarted it until we restart it, but
4 given the emotional climate and the media climate we're
5 in, did you give any thought or did that factor into your
6 thinking on how you worked on that project to consider how
7 that might look in the hands of Tony Davis and the Arizona
8 Daily Star and those guys?

9 A. I'm slowly learning that I have to start thinking
10 about how that looks in that light, but yeah, at the time
11 that Julie was constructing that application, I believe
12 when I first looked at it we were still being allowed to
13 trap bears, and so the extent to which the project was
14 truly shut down was -- it was not -- I don't think the
15 intent to sue had been filed by the Center For Biological
16 Diversity yet, so at that time I didn't think that the
17 project was shut down for -- that we were really shut down
18 in terms of capturing.

19 Q. So from the standpoint if, in fact, the director
20 had made that decision and announced that to executive
21 leadership, that may not have filtered down to you guys
22 working the field issue is what it sounds like?

23 A. Well, it depends on the timing, and I'm not
24 certain, but I'm pretty sure that the intent to sue hadn't
25 come along, so the shutting down of all trapping hadn't

1 taken place by the time that I had first looked at that
2 grant application.

3 Q. Do you recall about when that grant application
4 got worked initially, when you started working on that?

5 A. I think the earliest that I saw it or the latest
6 that I saw it I guess I should say would have been in
7 April.

8 Q. Okay. All right. From your -- as you look back
9 in our copious amounts of hindsight we have on this, are
10 there things that you thought of that as you think about
11 them you say, okay, if we did this in the future, here's
12 how we ought to operate in the future so we don't run into
13 something like this again? Have you given any thought to
14 how you might, if you were king for a day how you might
15 work or adjust the way we do business?

16 A. Well, I mean, the first thing is the EA
17 checklist. I mean, that should be -- that should be, like
18 you were describing, some -- at the beginning of every
19 project there should be some effort into at least thinking
20 about whether an EA checklist in some formalized format
21 where you make a statement that yes or no we need an EA
22 checklist and if not here's the reasoning. That would get
23 us started down that path. Because, I mean, the thing is,
24 you know, you look into the potential for problems, and
25 like me, like everybody else I think felt like the

1 probability was so low it wasn't worth worrying about. It
2 turns out it wasn't as low as we thought.

3 Q. Well, at least it wasn't low enough.

4 A. Yeah. It wasn't low enough.

5 Q. You know, I wonder if we couldn't do something
6 like an abbreviated, like just a one-page EA checklist
7 coversheet that you go through, just do a real quick kind
8 of triage of your project against it, and then you sign
9 off saying, yeah, I've gone through, no, no, no, no, no,
10 no. Yup. Okay. I'm good. And you sign off and say,
11 yeah, I've determined an EA checklist is not necessary and
12 here's my rationale or something that you could do a very
13 quick sense. And if any of those, for example, are yes
14 then you say, okay, you probably need to go and look
15 through the whole checklist to make sure that you're good
16 to go. I'm just wondering because it seems like, I have a
17 suspicion that part of the reason why people may shy away
18 from the checklist is because it's a fairly involved
19 process and does add some significant time on the front
20 end of that. What's your sense of that?

21 A. I would agree that that just seems like a -- you
22 would not want to do it just because it's going to add a
23 month or three to your -- to the start up of your
24 project. But if you had like you say a checklist where
25 you say, go talk to non-game and tell them what you're

1 going to do or game and/or habitat, region, check off all
2 those, talk to those people that may know more about the
3 area and/or other species that may be effected than you
4 do.

5 Q. See that might -- you know, that sort of thing --
6 and then if everything seems like a go --

7 A. Yeah.

8 Q. Then you could sign off with some confidence and
9 say, I have -- I've done some checking, looked at this
10 thing. Because right now it's kind of like your one point
11 of failure on this thing and that's one set of eyes at the
12 very beginning of it and if that for some reason doesn't
13 lock on, and there is no reason to believe that anybody in
14 the Department is going to have such a totality of
15 knowledge about what we're doing that they are going to
16 think of all the implications. But, you know, being able
17 to do that kind of conversation, it's almost something you
18 could do telephonically or by e-mail and do that in a
19 matter of, if you're really aggressive and bold and the
20 stars lined up for you, you could almost do it in a day.
21 You know, call somebody up and say, look, I'm looking at
22 working this project.

23 A. Yeah. If you catch them.

24 Q. Are there any issues that I should know about on
25 this thing?

1 MR. MCMULLEN: Definitely talk to the guys on the
2 ground I think.

3 Q. You know you could just have in there, I talked
4 to so-and-so in the region on this date and, you know, I
5 talked to so-and-so in game branch on this -- it's
6 something you could fill out like that and then at the end
7 of that you just say yes or no. I mean it let's you -- it
8 drives you to the right decision.

9 A. So is the responsibility then, if something does
10 happen, does that fall on that one person that signed off
11 on it?

12 MR. MCMULLEN: It shows a train of thought and
13 planning.

14 Q. BY MR. HOVATTER: It shows that we had -- I would
15 not see it as falling on their responsibility because the
16 thing is is there still -- you know, unless we want to
17 pause it that we're going to have every project leader is
18 going to have such a perfect level of knowledge about the
19 habitat, species, and projects of the state of Arizona to
20 be able to make the perfect decision every time, then the
21 only way for us to get a better outcome is to involve more
22 people in the process. Even that, though, is not
23 fail safe. But what it does show, for want of a better
24 term, a due diligence approach that what we have done is
25 try to set people up for success, given them that

1 opportunity.

2 It's not so much -- it's not a shared
3 failure is not the intent and it's not a cover anybody's
4 butt sort of thing. What it is designed to do, though, is
5 to get us to a better outcome and an outcome with some
6 confidence when you say, look, this wasn't the right
7 answer, then there is a bigger issue than simply one
8 person's ignorance about a particular potential aspect of
9 a project. And ignorance isn't a sin. We're all
10 ignorant. It's epitome is harder to deal with. But all
11 of us are ignorant about something. So what it does is it
12 allows to bring more folks into process, part of this
13 process at the very beginning and get those various eyes
14 and ears involved in this thing. And if we still end up
15 with a bad outcome it becomes a way for us to go back and
16 look, okay, so why when we had the right people involved,
17 why did we not get a better outcome? And it allows us to
18 take another look at process wise or we look at, you know,
19 was it just sometimes the Gods don't smile on us?

20 But that would be my thought on this thing.
21 It's not looking for -- although I would expect someone
22 would take the ownership, would have a sense of ownership
23 for having the right -- would have their personal and
24 professional sense of themselves would drive them to want
25 to make sure that they did what they could to not have a

1 bad outcome. But by the same token, people do all the
2 right things and still have bad things happen.

3 MR. FABRITZ: Yeah.

4 Q. But no, it wouldn't be my intent that that become
5 kind of a blame line. Because I just don't think that's
6 rationale -- it's not a rationale approach. And, you
7 know, if we're going to do that then what we do is just
8 say you do an EA checklist on every project.

9 A. Yeah.

10 Q. And what I want us to -- and still have the
11 ability to be able to do a quick triage of a project, but
12 demonstrate that we did -- that we were diligent enough to
13 ask the questions of the folks that should have been able
14 to give us a better -- good information, and the odds are
15 if we had done that on this one --

16 A. We would --

17 Q. We would have probably tumbled to, yeah, we
18 probably do need to do an EA checklist.

19 A. Yeah. Yeah. And that may have altered our
20 methods.

21 Q. Kirby, is there anything else that you've learned
22 about this from your perspective that we haven't talked
23 about that you think would be worth us as Department
24 knowing about?

25 A. I don't know. There is probably issues of

1 ownership among the branches for things like this. The
2 decision not include Terry could have been driven by, you
3 know, some of that animosity over those issues, if you
4 know what I mean.

5 Q. Yeah.

6 A. I don't know how to solve that. I don't know
7 what to do about those. But that's there. I'm just
8 telling you that that is there.

9 Q. Well, yeah. It's not rational for us to wish it
10 were different when it's not.

11 A. Yeah.

12 Q. Okay. Gentleman, anything else?

13 MR. MCMULLEN: Yeah. I've got a few process
14 questions. One of the things, to use terminology that
15 Gary has coined pretty accurately, I think, is there were
16 a lot of points where people brushed up pretty hard,
17 that's the terminology that Gary coined, brushed up hard
18 against this -- these events as they started to develop
19 prior to the capture of Macho B and yet nobody alerted to
20 the fact that there was really, in fact, a much increased
21 likelihood of capturing a jaguar based on everything that
22 we know in hindsight. And it occurs to me, and I just
23 want your perspective on this, also what we've learned is
24 that in the course of people brushing up against this
25 thing it went across at least three branches, if you count

1 Terry as a branch, and also through several different
2 chains of command. And I'm just asking you in terms of
3 developing process and improving process in the future, is
4 it your perspective that a much more rigorous adherence to
5 the chain of command in terms of communicating things
6 might help within research branch, and not just research
7 branch but department wide, but a more rigorous adherence
8 to the chain of command in terms of communicating
9 information up and down might help stave off a similar
10 circumstance in the future?

11 THE WITNESS: I mean, in hindsight you could
12 probably say that, but I don't know -- there are lots of
13 situations where you just can't, where people in the field
14 are forced to make decisions on the spot that they can't
15 run up the chain of command. And I would hate to have
16 that enforced or have that come down as new policy that
17 would be very impractical to follow and, you know, have --
18 have field people feeling obligated to do that and then
19 getting stuck with making no decision and nothing getting
20 done because they can't follow the policy and run it up
21 the chain of command.

22 MR. MCMULLEN: I'm not talking necessarily about
23 vetting every decision that a person is going to make with
24 their -- with their chain, you know, line supervisor.
25 That's not -- I'm not taking about micromanaging. I'm

1 just talking about the general relaying of information.
2 For example, we know that there were times when people who
3 were working under you that had questions about, oh, drug
4 dosages or jaguar protocols or whether or not we did have
5 a permit to capture a jaguar, these sorts of questions
6 were being asked but they didn't come through the chain of
7 command. And my question to you is, in hindsight and also
8 considering your knowledge of how the chain of command
9 works in research branch, do you think that it would have
10 increased our likelihood of alerting to the problems that
11 were arising if we had adhered to the chain of command, if
12 all of those requests had come through you and then up
13 through Chasa and through the chain of command?

14 THE WITNESS: I'm not -- From my perspective, I
15 don't know that they didn't but maybe there was more of
16 that then -- I'm not aware of everything that you guys are
17 aware of.

18 Q. BY MR. HOVATTER: Let me ask you that. I see
19 your point. Let me ask you this, there was -- so late
20 January, very late January, very early February there
21 is -- Thorry is looking for information about jaguar
22 capture protocols. Looks like he went to Ron and then Ron
23 went to Bill Van Pelt. I don't see anything in there
24 about where you were getting included in that. Were you
25 aware that he was looking for that kind of information?

1 A. I was aware -- yeah. I was aware he was looking
2 for the latest protocol, and Ron had assured me that he
3 had the latest protocol. But I didn't get --

4 Q. Did you get any -- about why he was interested in
5 getting that protocol for that?

6 A. No. Just that, and it was my impression that it
7 had come down from Ron to him, that -- to cover our -- to
8 be prepared we had to have the latest.

9 MR. MCMULLEN: See the chain of command nexus
10 here for me is this, Ron didn't know where the snaring was
11 occurring or, in fact, that snaring was going on right at
12 the precise time that Macho B was captured or that the
13 location where the pictures of Macho B had been retrievevd
14 was in the same mountain range where he was eventually
15 captured. Whereas if the communication had gone through
16 you in his chain of command, you were more familiar with
17 what was going on on the ground there, we catch it. Were
18 you aware that your field team was researching drug
19 dosages for immobilizing a jaguar?

20 THE WITNESS: Yeah. I was aware of that. I
21 wasn't aware that -- again, I had -- it was my impression
22 that that was coming down from Ron, that he was ensuring
23 that they were.

24 Q. BY MR. HOVATTER: See, on the drug dosage, Ron
25 wasn't even involved in that. That was a whole separate

1 set of conversations.

2 A. Yeah. But I wasn't aware about the drug dosages,
3 I just heard from Ron that Thorry is going to be up to
4 date on the latest protocol.

5 Q. And you would have presumed that that might
6 include drugs and doses?

7 A. Drug doses and handling.

8 Q. So you were not aware that there was a whole
9 separate set of conversations going to folks in Mexico and
10 other places about --

11 A. About specific drugs?

12 Q. About specific drug doses and updated
13 information?

14 A. No.

15 Q. Were you -- were you aware that they found the
16 track of the jaguar?

17 A. No.

18 Q. On the 5th of February?

19 A. No. In the vicinity of --

20 Q. Yeah. A couple hundred yards from where the
21 jaguar was captured?

22 A. No. I wasn't aware of that. No.

23 Q. Were you aware of them finding a photo of the
24 jaguar a couple miles away the day before that?

25 A. I was aware of a photo in, and I wasn't aware at

1 the time. I was aware -- I was made aware when I was
2 interrogated by the --

3 Q. But you weren't aware that we had -- that the
4 field folks had been made aware of a photo --

5 A. No.

6 Q. -- of that animal from that area --

7 A. No.

8 Q. -- the day or on the 4th of February?

9 A. No. The picture that I was shown by the Feds, I
10 thought they said that was from the Tumacacoris.

11 Q. No. There was another one.

12 A. Oh.

13 MR. MCMULLEN: And then the third one to me, the
14 search for information that I think could have, had it
15 gone through the chain of command, thrown up another red
16 flag was the effort to specifically request an EA
17 checklist for this project with regard to capturing a
18 jaguar incidentally. And I think that request went
19 straight to Ron to Dean to Chasa and not through you. Is
20 that correct?

21 THE WITNESS: I think I saw it at some point.
22 But I think that -- the point about -- the discussions
23 about specific drug dosages and photos that you're talking
24 about, those, had they come through me, I think there
25 would have been a red flag raised.

1 Q. BY MR. HOVATTER: And see, were you aware that he
2 had -- that Thorry jumped in his truck and driven round
3 trip overnight to Flagstaff to get another dart rifle?

4 A. No. I wasn't aware of that.

5 Q. And see, I think that's what you're trying to --
6 is that see if possibly this is, Kirby, you've got a lot
7 of field experience, so if you got a call said, hey, I'm
8 looking for the latest information on jaguar protocols.
9 And that part you became aware of and that worked out and
10 that stuff came in. And then within a day you get a call
11 about, oh, by the way, I'm trying to track down the latest
12 information, this drug -- these protocols are a couple
13 years old I want to find out if there is any newer
14 information about jaguar drugging. And, hey, it's here,
15 it's on the 4th and we just found got a photo a couple
16 miles away from the same drainage where we got this trap
17 line running. And then the next day you get a call
18 saying, we found a jaguar track a couple hundred of yards
19 from where our snare that you ultimately caught this
20 jaguar caught him. And then that night say, hey, I'm
21 going to drive 615 miles round trip to get this new dart
22 rifle because I understand that jaguar sometimes charge if
23 they are caught in the trap. All right. Understanding
24 that, you know, you didn't get all of that, but I mean,
25 how much of that would you have taken on board before you

1 might have fired a few red star clusters?

2 A. Yeah. I think I would have -- I think we would
3 have changed what we were doing in the field because -- at
4 least -- at the very least run it up the chain of command.

5 MR. MCMULLEN: Please understand that this --
6 what I'm trying to get at here is not nobody raised the
7 red flag. It's the process. We didn't adhere rigorously
8 to the chain of command and the questions we were asking.
9 Had we, the person who knew most about department policy
10 who was in the field was you, and also knew most about
11 what was going on the ground, which was you, would have
12 said, okay, something is starting to roll here. Time out.

13 Q. BY MR. HOVATTER: But you never got an
14 opportunity --

15 MR. MCMULLEN: No.

16 Q. -- to intervene on that.

17 MR. MCMULLEN: Exactly. And that was the whole
18 point of building up to this, do you think that a rigorous
19 adherence to the chain of command would have flushed that
20 out in hindsight?

21 THE WITNESS: Yeah. Yeah.

22 MR. MCMULLEN: And there's a difference between
23 micromanaging and adhering to the chain of command in your
24 decision making. There is a big difference there. They
25 don't need to call you to find out whether to give them

1 450 or 350 ccs of Telazol on a lion, but these major
2 things, questions that we're asking that relate to our
3 project, probably could go through a chain of command.

4 THE WITNESS: Yeah. I can see what you're saying
5 on that.

6 MR. MCMULLEN: Then I have a few more. Are we
7 finished with that one?

8 Q. BY MR. HOVATTER: Yeah. I mean, but, and again,
9 I realize that's a -- I knew that you had not been
10 involved in that whole chain and wasn't trying to -- but
11 you kind of -- it's just hard for me to imagine that if
12 you had been made aware of all of that that we would have
13 not had at least some intervention to at least stop and
14 think about where we were going with this thing and where
15 this might have likely ended up. Or at least, if nothing
16 else, you might, I think very likely have raised that
17 further up the chain to say, you know, we got a situation
18 here. How do we want to do this? If you hadn't just
19 decided to say, no, let's stop the snare line right now
20 and let's find out -- let's get a beat on what's going on
21 before we do anything else.

22 MR. MCMULLEN: Yeah. The other thing that seems
23 to me to be another input into the Perfect Storm that is
24 Macho B, was the fact that we didn't have a defined study
25 plan. Under normal protocol and under normal research

1 condition do you want to approach the field with a defined
2 plan of study?

3 THE WITNESS: Ideally, yes. Under practice I
4 don't know that it happens that way all the time.

5 MR. MCMULLEN: And, again, this is about process,
6 but do you think that -- well, for example, we're aware of
7 I think five iterations of project proposals that are
8 different, some of which include the idea of this study
9 serving as a surrogate for jaguars depending on the source
10 of funding, and others completely omitting that.

11 THE WITNESS: Yeah.

12 MR. MCMULLEN: In terms of process, and I'm
13 asking for your perspective as a talented, seasoned
14 research biologist, do you think it would be good practice
15 to just say -- you know, universities do it. They don't
16 go forward on a dissertation or a Master's thesis until
17 they have an approved study plan. Do you think it would
18 be good practice to do that?

19 THE WITNESS: I think it would be. The effect it
20 would have, though, would be a lot of those soft funded
21 projects are, you know, the impression they have is they
22 want you to get stuff on the ground in a hurry, you know.
23 That's what the money is tied to, we want to see people in
24 the field, and I think that's how we end up getting in
25 that boat. But, yeah, I think it would be a much -- it

1 would be a much better way to do science would be to have
2 an approved study plan before you start any field work.

3 MR. MCMULLEN: And I'm perfectly aware that
4 conditions in the field can cause a study to change
5 midstream. For example, the three fire in the middle of a
6 bear study.

7 THE WITNESS: Yeah.

8 MR. MCMULLEN: We've got to change what we're
9 doing from a habit study to a fire response study on
10 bears, or say, for example, a study on the border where
11 you're studying in a certain area and it all the sudden
12 becomes a hot zone for smuggling, for example, you
13 probably have to adjust.

14 But over the course of time it seems like
15 one of the other things that contributed to this is that
16 the project actually evolved. It started out as hair
17 snags and then it became, help me if I'm correct on this
18 and you may not know because you were battling clean up,
19 then it became a bear collaring study to study
20 intermountain movements on black bears. And then at some
21 point the mountain lion was added to it to serve, am I
22 accurate on this, more as a surrogate -- as a surrogate to
23 this --

24 THE WITNESS: The way it evolved -- I think the
25 way that it evolved, and I'm not sure because I wasn't

1 there from the inception, but I think it started at
2 that -- at that level where we were -- it was a concern
3 about bear population levels and movement around the
4 Huachucas area mostly in conjunction with nuisance bear
5 problems and the bear management, population management in
6 that area. But I think what Todd was doing, and I'm not
7 faulting him for this, is he was seeing an opportunity to
8 get some -- to get a project started and then went forward
9 with that and this is what -- half the people from
10 research that are marching up on stage for awards are
11 doing this, they are taking things like that and going out
12 and finding soft money.

13 Q. BY MR. HOVATTER: Seeing another opportunity to
14 expand, build on the project.

15 A. Expand on the research. So that's kind of how it
16 evolved. So it never was sat down and decided that, yeah,
17 we really need to look at all of these components.

18 Q. That's a good insight.

19 MR. FABRITZ: That's probably how a lot of
20 them --

21 MR. MCMULLEN: Are we spending any time in
22 research branch, and, again, this gets to process, because
23 the, you know, three prongs to wildlife conservation are,
24 you know, research, management, and enforcement, you know,
25 generally. And are we spending any time in research in

1 terms of needs assessment with -- with the region saying,
2 okay, from the management perspective, what questions
3 haven't been answered yet that you've got that will help
4 us manage?

5 THE WITNESS: Yeah. We did that two summers ago,
6 I think. You know, a lot of this has changed recently
7 with new people. Jim Devoss had a list of pet projects.
8 And if you could convince Jim Devoss that his pet
9 project -- or your pet project was his pet project then
10 you could study what you want.

11 Q. BY MR. HOVATTER: Makes sense.

12 A. And that's not necessarily a lot -- see, this is
13 we've got two realms, you got the Federal Aid and then you
14 got contracts. So contracts are driven by where the money
15 is really. And Federal Aid is usually, a lot of it -- a
16 lot of the decisions on what we are studying is driven by
17 the Commission or driven by some type of critter
18 groups, like that's why we're studying the Kaibab and we
19 will always be studying the Kaibab.

20 But then there is always -- there is always,
21 you know, not always but oftentimes there is a little bit
22 of leftover there, and what we do with it is we don't have
23 a protocol in place that asks -- goes out and asks the
24 regions what they really want. But last summer, not last
25 summer. I'm off by a couple of summers. Summer after Jim

1 left, Richard Ockenfels did just that. And he went to
2 every region and interviewed and invited people from
3 habitat, non-game, game, fisheries, come in and sit down
4 and we will have a one-day meeting at each region and talk
5 about what the issues are in your region.

6 The other complaint was that some regions
7 are underrepresented in research projects because nobody
8 wants to work in Region 4.

9 Q. BY MR. HOVATTER: I know. That's like all our WM
10 interviews.

11 A. So that's how -- that's kind of what Richard had
12 in mind when he started that process. And what came from
13 that process was Jamie Warrens OHV research that she's
14 working on. So that was the first attempt to do that in
15 my experience. Now I don't know, like I said, in the past
16 I think there were, and there is still going to be
17 projects that are going to be a Commissioner's pet project
18 or pet issue or whatever, but I'm sure that -- I'm hoping
19 in the future that we do more of that. Although --

20 MR. MCMULLEN: It seems to me from the Department
21 perspective it would be better in terms of taking slices
22 out of your decision making, the first slice ought to be
23 what questions does the Department need to have answered
24 in order to move forward best with its management goals,
25 and then get to, okay, what funding sources are out there

1 with what's left.

2 THE WITNESS: Yeah.

3 MR. MCMULLEN: It's just a process thing I had
4 floating around in my mind.

5 THE WITNESS: And Richard started that process
6 and he knew, you know, he had to consider what the regions
7 want but he also had a pool of people, you know, that
8 these are the Federal Aid people that will not have a
9 project coming up and they need something to do and these
10 are their talents. So you got to kind of direct it that
11 direction as well. You can't go studying kinkajous if you
12 have no kinkajou guy, whatever.

13 Q. BY MR. HOVATTER: No. Again, because it does
14 kind of get to the similar question which is, can we be
15 good enough at researching something that's not on the
16 Department's research needs list for informed management.
17 Is that -- I guess put another way, are we ever doing
18 research because -- not because it was so much that we had
19 that question needing to be answered but we were
20 successful in getting the money?

21 A. I would say that some of the contract research is
22 done that way. But I'm not in contracts. In fact, I
23 fought to get out of contracts because there is some
24 uncertainty in it, and I like game.

25 MR. MCMULLEN: You look at FOD, Field Operations

1 Division, and we, right now we're making a very considered
2 effort to read Larry's vision, understand Larry's vision,
3 and march forward in support of Larry's vision. And it
4 seems to me like there is an opportunity in every branch,
5 including research, to read Larry's vision, understand
6 Larry's vision, and shape our research in support of
7 Larry's vision. If we get the whole outfit growing in
8 unison in that direction then we will be cranking. So
9 that's just a thought. Kind of probably more of a
10 comment.

11 THE WITNESS: Well, this would probably be a good
12 opportunity to do that because we have new people at every
13 level in research that may not have been brought up in the
14 old school.

15 Q. BY MR. HOVATTER: Well, we're going to have to
16 translate some of it because, you know, like right now I'm
17 looking at potentially sliding money to someone who's a
18 grad student to do some research on mountain lions, desert
19 mountain lions because they are doing it, and no one else
20 has come forward to try to pursue finding resources to do
21 that. But this guy has. And it's an incredible study and
22 it has the potential to be able to give us visibility on
23 our lion management, you know, same source population
24 stuff.

25 MR. MCMULLEN: The kind of stuff we need to be

1 answering.

2 Q. BY MR. HOVATTER: Just incredible. You know, if
3 we had it now, the battle that we're about to fight over
4 the Kofa would be an entirely different battle.

5 MR. MCMULLEN: And that's what I'm talking about
6 lining up our questions and try to answer research with
7 our needs Department wide.

8 A couple other things, just process stuff.
9 I did -- I did not hear maybe as well as I would liked to
10 have, Gary asked earlier in terms of when we were talking
11 about the grant application that came for the future bear
12 collar study down south that we just completed, starting
13 in April was the latest you had seen it. And he asked if
14 the information had filtered down through your chain of
15 command to you on, this is not something we're doing, and
16 I think we got side tracked. I asked another question or
17 something. Do you remember the answer to that?

18 THE WITNESS: Well, the -- that we were not
19 trapping, I mean, it just incrementally happened over
20 the -- the prohibition on trapping large predators was an
21 incrementally thing. First we weren't trapping in the
22 vicinity of Macho B. Then we weren't trapping large cats
23 with snares but we were still catching bears. Then we
24 weren't catching bears except for in the Huachucas with
25 Culverts. So the timings of all those things, I think --

1 and this all came before, I believe, the intent to sue and
2 before I saw the last of that -- the last time I saw that
3 thing. So I had -- by the time I had kind of looked
4 over -- essentially she just ran it past me, the proposal.

5 Q. BY MR. HOVATTER: Chasa?

6 A. No. Not Chasa. Julie Young who is flying
7 externally. And it's her proposal. She's just running it
8 past me so that I say yeah we're on board with that. By
9 the time she had run it past me I was still under the
10 impression that the project was still going to continue
11 and that we were going to catch big cats and we were going
12 to catch cougars and bears. But I just didn't know when
13 we were going to get -- when we were going to start back
14 with our field work.

15 Q. Well, see, because when we had our meeting after
16 we caught Macho B, I directed that we were out of the bear
17 and lion trapping business in that border area. And the
18 thing was that, you know, seeing how it was executed, now
19 if someone had come back to me and said, all right, do you
20 mean -- how big an area do you mean? That didn't happen.

21 And so one way to have done that was when I
22 said the border region, you know, that area where we
23 caught -- that we're likely to have another jaguar issue
24 would be just to shut it down. Anything that we were
25 doing from the Atascosas to the east, as a minimum. If

1 there was confusion on that, somebody would have -- you
2 know, someone needed to come and say, did you mean. They
3 could have done that in the course of that meeting.
4 But part of it was is that I'm sure that the folks in that
5 meeting were senior enough in the Department where they
6 probably didn't have confidence that they were -- had
7 total visibility of all of the different efforts that were
8 ongoing and they certainly didn't want to shut down
9 something that we didn't have to shut down. But nobody
10 ever came back and said, well, did you mean this? Or
11 here's how we translated it. So if it came through
12 incrementally then that's a problem probably higher up in
13 the organization.

14 MR. MCMULLEN: Yeah. I just wanted to make
15 sure. You had asked that question. I didn't know if you
16 had that.

17 MR. HOVATTER: No. I appreciate you punching
18 that a little harder, but when I heard what you said from
19 the beginning that kind of told me what I needed to know.

20 MR. MCMULLEN: I think I've got a couple other
21 questions that I have occurred to me in process, and
22 again, we're just trying to figure out how we can do
23 business better to prevent another Perfect Storm. On the
24 EA checklist, I believe that the request on whether or not
25 we needed an EA checklist went through Ron. And you were

1 peripherally aware of it later or not?

2 THE WITNESS: I'm not sure of the timing, but
3 yeah. I was aware of it but I don't know whether I was --
4 if I was cc'd on the very first e-mail or not.

5 MR. MCMULLEN: And when -- do you know how -- how
6 it happened that we ended up just not following up with it
7 or nobody said, we don't need to do an EA checklist and
8 this is why? It seems like it's just kind of hanging out
9 there as a dangling participle. It came up, it was
10 addressed briefly, and then it just kind of drops off the
11 radar screen completely.

12 Q. BY MR. HOVATTER: There are a couple of times,
13 about two times in the process over a period of about two
14 months where it sounds like it's just about to happen and
15 then it just never does, and just the trigger never gets
16 pulled on it.

17 MR. MCMULLEN: And so I'm asking if you have any
18 kind of insight as to where did that go? Where -- what
19 happened?

20 THE WITNESS: What had been done on it you mean?

21 MR. MCMULLEN: Yeah.

22 THE WITNESS: I don't -- to be honest, that was
23 the very -- this is the very first EA checklist that I
24 have been directly involved with. So -- so I was
25 completely ignorant of the process, so I was just watching

1 those e-mails probably from the side like you waiting for
2 direction.

3 MR. MCMULLEN: Okay.

4 THE WITNESS: I'm not going to turn the crank
5 until somebody tells me to turn the crank.

6 MR. MCMULLEN: Well, what we're learning through
7 this is that probably, in order for the Department to have
8 its best chance at avoiding situations like this,
9 everybody's got to have their feelers out, their curb
10 feeler out and turn the crank when their gut tells them to
11 turn the crank. It's incumbent upon all of us --

12 Q. BY MR. HOVATTER: Well, it's just that if your --
13 I think the way I've always thought, if your instincts
14 start to tickle the back of your head about something,
15 I've always, whenever I've ignored my instincts I've
16 always tended to be unhappy with the result.

17 MR. MCMULLEN: One last follow up because I -- I
18 don't think I did a good enough job for myself in asking
19 these questions on this. What's the normal protocol on
20 research in terms of having a defined study plan?

21 THE WITNESS: Oh, yeah. That's what I -- I may
22 have glossed over it. I don't think there is -- I mean,
23 we try to do that always. And it's changed over time.
24 And it depends on the biologists that you have. Now we
25 have a -- we have some guys like Steve Rosenstock that are

1 very diligent about doing -- doing correct science and he
2 does -- he probably, I would guess, he probably has a
3 study plan that he's -- that he's fleshed out really well
4 before he ever gets in the field. And then we have other
5 guys that are -- that are less diligent. And I've had the
6 misfortune of inheriting many of those, and so some of
7 them -- are usually -- there almost always is a study
8 plan, whether or not it's -- a lot of them have some
9 pie-in-sky parts of them, and some of them are laid out in
10 great detail and some of them are not.

11 MR. MCMULLEN: I share your interpretation as you
12 referred to -- you said correct -- Steve Rosenstock does
13 correct science in that he has a defined study plan. I
14 share your interpretation of that. My belief is and my
15 training is that if you're going to go forward on a study
16 you ought to have a defined study plan. Do you share
17 that?

18 THE WITNESS: Yeah. I would agree.

19 MR. MCMULLEN: I think most biologist.

20 THE WITNESS: I also know that there are
21 situations where -- and I have, you know, over the -- I
22 can't profess to be a Steve Rosenstock. So I know that I
23 have gone forward without -- there is always a study plan
24 in place but there is -- they're always a work in
25 progress.

1 MR. MCMULLEN: Well, for example, I don't think
2 we had a study plan on this. He had a series of five
3 different project proposals, and I'm not calling anybody
4 out or nobody is, it's just trying to figure out the best
5 way to move forward. And it seems to me like having some
6 sort of -- and we recognize it would slow work down in
7 research in order to do it, but sometimes it's good to
8 take a step back before you take two steps forward and get
9 everything right.

10 Do you think that requiring a study plan in
11 research, and this is just your opinion, although in my
12 opinion you provide a qualified opinion, but do you think
13 that a requirement to have some sort of defined study plan
14 with some things in it to include certain things would
15 unreasonably delay getting work on the ground?

16 THE WITNESS: No. I don't think so. I think,
17 though, I don't know, I don't want be to misinterpreted.
18 I think we have study plans for just about every single
19 project but there is a difference between how well they
20 are thought out, how well they are prepared. So I don't
21 know if you're -- it depends on what level of scrutiny
22 that these study plans would have as to how useful those
23 exercises --

24 Q. BY MR. HOVATTER: I'm wondering if we couldn't
25 arrive at some sort of minimum essential format.

1 A. Yeah.

2 Q. That said that, if you got this, this is, in our
3 minds, adequate to at least address the major issues of
4 concern. You know, to the extent you can find something,
5 a way to streamline something where it's almost easier to
6 do than not do, you have no problem with making it
7 mandatory. Where you have real high risk, you may require
8 things that you don't care how much time it takes because
9 risk of the bad outcome is such that any time spent on the
10 front end will pay off for you if something bad happens.
11 The problem is how do you determine what are your high
12 risk projects and what aren't. And that's always part of
13 the challenge. You know, it's like telling people not to
14 have an accident after they've had one.

15 A. Yeah.

16 Q. If you knew that you were going to have an
17 accident and you went out that day and you did it anyway,
18 we don't call that an accident. That's called insanity.
19 That is called -- so you know, you just wouldn't do that.
20 So it's kind of ridiculous on its face to do that. I
21 think part of what I say this is is the evolution, the
22 evolution that some of these projects go through where you
23 can find yourself in the course of, one, wanting to get
24 something done, being someone who prides themselves on
25 making things happen on the ground, realizing that your

1 ability to make things happen on the ground will
2 contribute towards to future success in pursuing the
3 funding you need to get something done, and waking up a
4 year later and saying, how the hell did we get to this
5 point in this project? You know, I started out snaring
6 bear hair and now I'm doing Chiracaua leopard frogs. And
7 it made perfect sense on the way there but because you
8 never had the opportunity, or we didn't build something
9 into the process that drives the opportunity, you wake up
10 in a place you never imagined.

11 A. There's going to be some latitude, though,
12 because, you know, every research experiment there is some
13 unknown factors that are going to change it, otherwise you
14 wouldn't be doing it, you would have all the answers.

15 Q. Yeah. If everything is because there is a
16 change, because you found that you can't lay that trap
17 line or that transect along that line because you got to
18 lay it over here and now you've got to recock the process,
19 that is something that doesn't make a lot of sense.

20 I think that having said that, we got to
21 figure out how we would avoid this outcome, and it can't
22 just be how do we avoid catching jaguars when we don't
23 intend to, because that's not the issue. You know, if
24 that was it then all we would say is, okay, every project
25 we have that might have a jaguar get involved in it this

1 is what we'll do. But it is really more of a function of
2 figuring out, okay, how do we avoid -- how do we
3 responsibly and appropriately approach a project so that
4 we find the right balance between due diligence to avoid
5 very, potentially very significant negative outcomes and
6 still have folks who are enabled, understanding that they
7 have got to be making decisions on the ground but that
8 they cannot -- there is not an adequate chain to be able
9 to have them ask every question that's going to -- where
10 we are essentially are putting a real burden of
11 responsibility on people to be able to get things done on
12 the ground without a lot of direct supervision. Now how
13 do we find the right balance between all those of things?

14 Because if we don't, though, what the
15 problem is if we don't find a way to do that then what
16 we're saying is that this is the best that we can do, that
17 this jaguar thing that we're probably going to live with
18 in this Department now for years to come, this is the best
19 we could do. And if we say that then, one, you know, GF1
20 will never accepted it. I'll never accept it. Because
21 you can't believe that because otherwise -- that's just
22 using hope as a method. And somewhere between that and so
23 Draconian a system that you are putting ten hours of
24 paperwork to every hour of work on the ground, somewhere
25 between that there is -- and it probably is not going to

1 be a one-size-fits-all approach. It may be with the right
2 check listing approach on the front end that that is where
3 we make that quick triage between just drive on, or no,
4 this one we probably need to stop and dig into in more
5 detail.

6 A. Yeah. One of the things about specific study
7 plans that we used to get into a problem with, we used to
8 have -- Federal Aid used to pass judgment on study plans,
9 and you had to have that up front. But the problem with
10 that was if you -- it was a contractual agreement. If you
11 for some reason down the road decided that that method
12 wasn't necessary, it's already been done or you can do it
13 easier this way, you couldn't make changes. So you were
14 stuck because it was what you said would you would do in
15 the study plan. So then we went from there where now our
16 Federal Aid project is scrutinized at a much coarser
17 scale --

18 Q. That's the work plan?

19 A. Yeah.

20 MR. FABRITZ: That's what Chasa was telling us.

21 Q. BY MR. HOVATTER: See, somewhere, of course, if
22 you look at nongame's work you can see that, in that it is
23 somewhat broad brushed but they have narrowed it down, but
24 then it's sort of broad brushed within each sort of
25 specific job. But within it it's got considerable

1 latitude. What research has done is taken it to the next
2 level where there are no jobs. It's essentially a generic
3 work plan that any research project could fit within, and
4 there are no specifics.

5 MR. MCMULLEN: So that relieved some constraints
6 from the federal funding process?

7 THE WITNESS: Yes.

8 Q. BY MR. HOVATTER: And funds planning, apparently,
9 that's they wanted to go on that.

10 MR. FABRITZ: And you can see why.

11 Q. BY MR. HOVATTER: But the question that gets
12 asked now of funds planning has got to be, okay, when you
13 made that decision were you aware that has an operational
14 impact, or were they doing it strictly from the standpoint
15 of efficiency at moving money. And so if that was the, as
16 I suspect it is, and we will find out for sure, then the
17 question becomes then, who was it incumbent to say, well,
18 there is a potential operational impact to this by not
19 having this degree of detail? You know, did we in fact
20 surrender authority over research branch to funds planning
21 in an inappropriate way? Not an illegal way but a way
22 that got us into trouble.

23 MR. MCMULLEN: Well, even if they didn't go to a
24 more broad brush approach on those work plans they could
25 still have a more defined study plan.

1 Q. BY MR. HOVATTER: Well, the thing is a research
2 approach to that work plan that was done like nongame's
3 would essentially be those 90 projects that Chasa
4 mentioned, you would have a job statement for each of
5 those projects. It would be fairly broad brushed within
6 each one. You wouldn't get down to, you know, you're
7 going to have this many snap traps, you're going to have
8 this many miles of transect you're not in, you're going to
9 have an east-west orientation whenever you step out of
10 your tent in the morning, between that -- it would still
11 be -- it's fairly broad so that it allows you quite a bit
12 of latitude within that. So somewhere in -- you know,
13 it's -- it's kind of interesting to see the variety of
14 products that we have that pass mustard as statements of
15 work for garnering and protecting our funding flow. It's
16 kind of interesting seeing.

17 MR. MCMULLEN: Well, you sure enlightened me.

18 Q. BY MR. HOVATTER: Well, the thing I'm trying very
19 much to avoid is we don't want this to happen again. We
20 also don't want this pendulum to swing so frickin far to
21 the other side of this thing that we just can't get things
22 done. And that would be easy to do. And frankly, the
23 pendulum on this hasn't swung all the way to one side.
24 It's still somewhere back down in this area. We just had
25 this outcome and we had opportunities to avoid this

1 outcome and it's just, again, we brushed hard against them
2 and we just didn't -- didn't quite pull the trigger.

3 MR. MCMULLEN: I don't have anything else.

4 Q. BY MR. HOVATTER: Marty, you got anything?
5 Kirby, thank you. I would like to get that, again, I'm
6 just that anal, I would like to get that date when that
7 last lion got collared for that.

8 A. Yeah. I can get that in five minutes.

9 Q. I appreciate it. Sir, thank you much.

10 A. In fact I'll be --

11 (Tape ended.)

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CERTIFICATE

I, Karen M. Niemtschk, do hereby certify that the foregoing 69 pages constitute a full, true, and accurate transcript of all taped proceedings had in the above matter, all done to the best of my skill and ability.

DATED at Phoenix, Arizona, this 21st day of September 2009.

KAREN M. NIEMTSCHK, No. 50447
Certified Court Reporter

ARIZONA GAME AND FISH DEPARTMENT
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PHOENIX, ARIZONA 85086

TRANSCRIPT OF INTERVIEW
KIRBY BRISTOW
January 6, 2010
October 10, 2009

Individuals present at the Interview on 1-6-2010:

Marty Fabritz, Arizona Game and Fish Department, Ombudsman,
Interviewer
Craig McMullen, Arizona Game and Fish Department, Wildlife
Manager, Interviewer
Kirby Bristow, Employee

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1 before?

2 A. Uh-huh.

3 Q. Would you like me to reread that advisory to you?

4 A. No.

5 Q. You are good with that. Okay. A lot of these

6 questions are ones we have already asked previously.

7 A. Okay.

8 Q. And so I am just -- but they have kind of net down

9 to some of the things that I think are more especially

10 germane.

11 A couple of years before we started in the Large

12 Carnivore Habitat Connectivity Study, I am going to continue

13 to use that Bear and Lion Study shorthand for that.

14 A. Okay.

15 Q. Because LCHC just doesn't roll off the tongue?

16 A. I have moved to have it changed to Large Predator,

17 because bears are truly not carnivores. They are omnivores.

18 Q. Yeah. And, I mean, there are some times of the

19 year -- I know, in the spring when I was living in Alaska,

20 the Inland Grizzlies, over 80 percent of their diet is

21 grass.

22 A. Yes.

23 Q. They are grazers. They are more like cattle than

24 anything else. Cattle with incredibly large teeth. But a

25 couple of -- some years before we started the Bear and Lion

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1 PROCEEDINGS

2 MR. FABRITZ: January 6, Kirby Bristow.

3 KIRBY BRISTOW,

4 pursuant to Garrity Warning, was examined and testified as

5 follows:

6 EXAMINATION

7 BY MR. HOVATTER:

8 Q. Kirby, I am doing -- the purpose of this is, I

9 think in our wildest dreams, we never thought we were going

10 to be eight months down the road still be waiting on the

11 Feds to finish their work?

12 A. Oh, uh-huh.

13 Q. And so every time I go back and dig through the

14 records, there are things that I really want to get back at.

15 So one of them is I am doing some reinterviews with the

16 intent of being able to, at least generate an interim final

17 report, understanding that our investigation will not be

18 completed definitively until the Feds have announced

19 whatever it is their findings are and we get a chance to

20 review what we know against all of the other information

21 they bring from all the sources that are outside the

22 Department.

23 A. Okay.

24 Q. So I wanted to do some reinterviews. We are doing

25 these under the same Garrity Rights advisory that you got

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1 Study, the Department had developed through the Jag

2 Conservation Team process a protocol for deliberate capture

3 of a jaguar. Were you aware of that protocol at the time of

4 all of these -- of the events in late 2008 and up through

5 February 2009?

6 A. I was aware that it existed, but I was not

7 familiar with the specifics of it.

8 Q. Given how long you have been in the Department and

9 how varied your work has been, this is a tough question, I

10 know, but do you have any memory of how you came by that

11 knowledge that such a protocol existed?

12 A. I think it wasn't until I had started on this

13 project, and probably in conversation with Ron Thompson, I

14 would guess.

15 Q. Was that -- in that conversation or those

16 conversations that you may have had with Ron, is your

17 memory, are those something that just came up in the course

18 of pure conversation or was there -- did you initiate a

19 conversation with the intent of getting more information for

20 the study or how did that work?

21 A. If I can recall. It was probably after we had

22 started to trap lions in the area where the subject of the

23 potential to catch a jaguar, and it was after that had

24 begun, and so that's how the subject got brought up.

25 Q. Now, did you initiate that conversation? Is it

1 your memory you initiated it or did Ron give you a call to
 2 talk about it?
 3 A. Just specifically bring up the protocol?
 4 Q. Yeah.
 5 A. Ron would have probably brought up specifically
 6 the protocol to me. Now, it wasn't we need to sit down and
 7 talk about the jaguar protocol. It was just in passing as
 8 we were talking about trapping lions down there. So he
 9 may not have initiated the meeting but the subject.
 10 Q. I mean, you had a lot of different reasons -- I
 11 mean, with Ron's lion expertise and his role in crafting the
 12 Statewide Lion Capture Contract and all --
 13 A. Yeah.
 14 Q. -- you had a lot of reasons to have conversations
 15 with him?
 16 A. I knew he had collars to hang on lions. Ron and
 17 Thorry were the first two people that came to mind.
 18 Q. During the course of those conversations you were
 19 having then, so this would have been probably in that
 20 October/November time frame?
 21 A. Yeah.
 22 Q. Okay. Of '08. When you had those conversations,
 23 did you get into other discussions about the likelihood of
 24 capturing a jaguar as a part of this study?
 25 A. Yeah, I am sure we did. I was under the

1 impression it was -- you know, that there was a jaguar there
 2 that we were getting photos of, but the probability that we
 3 would catch it was slim.
 4 Q. Now, back in that June 2008 when you had the
 5 conversation with Chasa, it was kind of like walking across
 6 the Department School, this was something we talked about at
 7 your first interview.
 8 A. Okay.
 9 Q. And you had had a memory of that. And, frankly,
 10 so does Chasa have a memory of that. The understanding, our
 11 understanding to this point of that conversation has been
 12 that you had brought up the possibility that this work being
 13 planned, because, of course, at that time, we hadn't started
 14 any lion trapping, this work being planned could involve
 15 working jaguar country. And, then, you got -- the
 16 information we got then in those earlier interviews was that
 17 you were told this was not to be a jaguar study?
 18 A. Yeah.
 19 Q. Now, my understanding is, is that there is also
 20 that conversation also included a brief discussion of
 21 collaring a jaguar should one be captured?
 22 A. Yeah, I don't really recall if that was the time
 23 that we had talked about it. But, yeah, I do recall talking
 24 to her about it.
 25 Q. Again, we have talked about this. Well, when we

1 talked about this earlier, the memory you related to us is
 2 that you were told not -- that we were not to capture or
 3 collar a jaguar if one was captured. Does that jive with
 4 your memory at that time or a subsequent conversation you
 5 and Chasa may have had?
 6 A. If that's what I said originally?
 7 Q. Well, I am not trying -- I guess, let me -- in
 8 your memory of this now, and I mean, it is incumbent on me
 9 to reconcile this with your earlier memories, which, of
 10 course, were months closer to the event.
 11 A. Uh-huh.
 12 Q. Do you recall getting guidance on collaring a
 13 jaguar should one be captured?
 14 A. Yeah. In my memory, the guidance was we would
 15 collar a jaguar if we captured one.
 16 Q. And in your memory, that guidance would have come
 17 from whom?
 18 A. I can't honestly say that Chasa told me that,
 19 which is where it should have come from, I guess. But that
 20 was the -- that was the impression that I had.
 21 Q. Could it have come from conversation with Ron?
 22 A. It could have, yeah. In fact, that would have
 23 been the most likely.
 24 MR. MCMULLEN: Did you ever have any conversations
 25 with Terry or Bill Van Pelt?

1 THE WITNESS: No.
 2 Q. BY MR. HOVATTER: Well, let me -- were you aware
 3 that the Jag Conservation Team had come to a decision about
 4 collaring any jaguar that might be accidentally or
 5 incidentally captured?
 6 A. I was aware of that, yeah, but not at the time. I
 7 mean, I am aware of it now, I guess.
 8 Q. You are aware of it now, but you weren't aware at
 9 the time that they had made a recommendation on that?
 10 A. No.
 11 Q. Okay. All right. So at the time that Macho B --
 12 well, no, I will work my way to that. Were you aware the
 13 Department had stored a jaguar collar in Region 5's
 14 Headquarters in Tucson?
 15 A. Yeah.
 16 Q. Were you aware at the time of this work?
 17 A. I was aware that Tim had a collar.
 18 Q. Okay.
 19 A. It was shortly after -- I mean, shortly after I
 20 had -- I had talked about the project with Tim and other
 21 Region 5 people, and that was -- Tim was the one that told
 22 me that.
 23 Q. When was that conversation with the Region 5
 24 folks?
 25 A. That probably would have been around that summer

1 of '08. It probably would have been later in the summer
2 would be my guess, but I can't put a date on it.

3 Q. So you had talked to Tim and others about getting
4 started with the Bear and Lion Study?

5 A. Yeah. Yeah.

6 Q. And Tim told you that we had that collar -- that
7 they had that collar?

8 A. Yeah.

9 Q. That seems to imply that the possibility of jaguar
10 becoming involved in that study must have come up during
11 that conversation?

12 A. Yeah.

13 Q. What is your memory of that -- yeah, what is your
14 memory of how that conversation went?

15 A. The conversation with Tim?

16 Q. Uh-huh.

17 A. I think I had just talked about the fact that we
18 were going to be catching lions on the border. And, then,
19 he had just mentioned, well, if you accidentally catch a
20 jaguar, we have a collar to put on it.

21 Q. Okay.

22 A. But I don't recall.

23 Q. Did that generate any discussion about permitting
24 requirements or anything like that for the jaguar?

25 A. No, and it probably should have, but yeah.

1 Q. Have you had any ESA training? I mean, I am sure
2 you have had training that has discussed ESA.

3 A. Yeah.

4 Q. But have you ever had any training that is
5 actually ESA specific?

6 A. Probably not, no.

7 Q. During the May 2008 Commission briefing on the
8 Bear and Lion Study, that was the briefing where we were
9 briefing the three Federal Aid Projects and the Commission
10 approved those. Chasa was asked by one of the Commissioners
11 to describe how we would develop the study plan. It was a
12 pretty detailed description of how the process she had used
13 to develop the study plan for the Kaibab Study.

14 At that time in your -- in your memory, did we in
15 Research Branch have an established in any way formal or
16 written describing writing study plan development process?

17 A. I don't know -- no, we didn't have a -- we didn't
18 have a process in place, any formally written process. I
19 think it was a pretty standard process that everybody went
20 through, it was pretty similar, but I don't think it was
21 formally written, no.

22 Q. Let me show you this. This is the transcript of
23 what Chasa told the Commissioners back in May.

24 A. Yeah.

25 Q. I mean, now, again, we didn't have a formal

1 process, but does that describe what seems to you to be a
2 fairly logical process for giving that study plan?

3 A. Yeah. I mean, this seems to be more the process
4 of how we decide on --

5 Q. Doing a study?

6 A. -- doing a study, yeah, more than actually coming
7 up with the study plan itself.

8 Q. Well, here, and the question comes, now, Todd
9 Atwood had been writing a lot of proposals that ultimately
10 led to or evolved into this Bear and Lion Study?

11 A. Uh-huh.

12 Q. You then inherited that thing pretty quickly in
13 that April/May time frame. The question becomes -- the only
14 study plan we ultimately ended up with by the time that
15 Macho B was captured was essentially the material from the
16 presentation to the Commission, that language in there.

17 In your mind looking back at that, is that -- was
18 that sufficient to -- was that a sufficient description of
19 the project to qualify as an adequate study plan for this
20 project?

21 A. Well, Todd had written a study plan, and he had a
22 detailed -- more detailed than what you are describing for
23 the Commission. But I would have to recall now what Todd's
24 study plan said, but I think it was sufficient. I mean, in
25 hindsight, there was some glaring omissions, but I think it

1 was sufficient to continue with the study. Inevitably, and
2 because I am in the unique situation of having inherited a
3 lot of studies, inevitably, what you end up with at the end
4 isn't exactly what you said you would do in the beginning.
5 Things pop up.

6 Q. That is kind of how you manage the approach to
7 research?

8 A. Yeah. Yeah. And so I have always, on the rare
9 occasion when I do get to write a study plan because I am
10 not inheriting somebody else's study, I have tried to not be
11 too overly detailed in the study plan. I don't want to
12 paint myself into a corner. Some things that look good on
13 paper that will work, that you think are going to work,
14 don't work, and you have to adapt your plan.

15 Q. By painting yourself into a corner, is that
16 reflective then of -- what kind of corners do you paint
17 yourself into by being overly detailed?

18 A. It is not as big of a danger as it used to be with
19 Federal aid. When we used to get each individual project
20 authorized through Albuquerque, then you could be very well
21 stuck with those exact methods. Now, it is not as big a
22 deal.

23 Q. You know, because we have had some conversations
24 and other opinions about if you said you were going to
25 capture five bears --

1 A. Yeah.

2 Q. -- and all you could capture was four --

3 A. Yeah.

4 Q. -- then you were going to have a problem?

5 A. Yeah, because you would spend more effort than --

6 Q. Yeah, where it was not probably as especially

7 germane to the quality of the study and the output you were

8 going to get, but still because of that level of detail.

9 A. Yeah.

10 Q. Now, I have seen a lot of the things that Todd

11 authored. The thing is that while some of them are a bit

12 longer than the language in the Federal aid, it still seemed

13 to me that, in general, they were a little thin on

14 methodology. They were not -- usually were not reflective

15 of looking for ways that that research project might rub up

16 against other projects or species, as is the case in this,

17 that could have some influence on the way we executed it.

18 A. Uh-huh.

19 Q. Were you aware at the time that we were going

20 through this work, through February of '08 or February of

21 '09 that jaguars were an endangered species?

22 A. Yeah.

23 Q. And, again, factoring in that you have not had

24 formal ESA training, were you aware of the permit

25 requirements to work with endangered species if there was

1 any expectation that there might be a take of that animal

2 either incidental or deliberate?

3 A. I was aware that there was -- there would be a

4 permit required. I was not aware exactly the details of

5 those permit requirements.

6 Q. In the course of some of those conversations you

7 had with Ron and with others where the subject of jaguar

8 came up, did you -- did you ever ask about or consider

9 requesting, finding out whether or not -- did it come to you

10 that you should know in trying to execute that project what

11 our status was for a permit?

12 A. No, I never -- in hindsight, that was not the

13 smartest thing to do. I just didn't. I weighed it against

14 the probability of catching one and thought that it was

15 never going to happen.

16 Q. Well, that is probably the answer, because, you

17 know, asking you to look back based on what you know now,

18 because most of these questions, we try very, very, probably

19 unfairly to ask to put yourself back eight, nine, ten

20 months, a year and a half ago, into where you were and what

21 you knew at the time. That is tough. I know that.

22 But, I mean, looking back with what you know now,

23 as you look at that, what would you do different today if,

24 you know, looking at that? I mean, since then, have you had

25 any ESA since then?

1 A. Not formal ESA training. I mean, I have gone to a

2 Department School class or two, but no, we haven't -- well,

3 what I would do differently is I would have been involved

4 with the EA checklist. You know, in the past, we have done

5 an EA checklist, but it was a little bit less formalized,

6 I think, than what we have instituted since the jaguar

7 capture. So I think that would be an important step right

8 there. Otherwise, I would, you know, in hindsight, I would

9 have been more aware of where we stood relative to

10 permitting.

11 Q. Yeah.

12 A. Obviously, in hindsight, I would have been a

13 little more careful about who I signed on as a contractor

14 perhaps.

15 Q. Let me ask you this. When you assigned or when

16 you were -- let me -- how did -- you had the oversight of

17 that Bear and Lion Study. I know that at the time, Research

18 Branch was short some supervisors and all. There were some

19 other issues involved in that. But when -- how, in fact,

20 did Michelle and Thorry come to be working under your

21 supervision in the field? Were they assigned to you? Did

22 you reach out? How did that process of getting those

23 individuals working on the ground on that study actually

24 work? I am thinking the mechanics here.

25 A. Michelle was -- I had hired Michelle in 2005 as an

1 assistant to work on a Bighorn Sheep project up near

2 Kingman. That project ended in -- well, the field work in

3 that project ended in like February of '08. And, then,

4 she -- at the time, I didn't have any projects that had

5 field work components. So she went to work for

6 Grandmaisson, but she was technically still assigned to me.

7 I was still her direct supervisor.

8 So she stayed as my direct report through that

9 time, and then when I suddenly had a project that had a

10 field component, then she came back to work for me when her

11 field season on the Tortoise Project under Dave Grandmaisson

12 ended.

13 Q. Yeah.

14 A. So that is how Michelle ended up working for me.

15 Thorry was just assigned to that project because he was the

16 research technician that had all the lion experience. And

17 his project, which was -- they were going to be planning to

18 start a project in the Kofas got postponed after Ted

19 McKinney died. So it was a matter of he was free and he had

20 the expertise.

21 Q. Now, when you got those folks, you know, tasked to

22 work on that, did you have the opportunity or make an

23 opportunity to sit down with them and discuss what you

24 wanted to accomplish and how you needed them to operate and

25 any concerns you might have?

1 A. I can't say that I did with them together in the
2 same room, but I know I have had conversations with them
3 individually.

4 Q. Individually. Did the subject of the possibility
5 of a jaguar becoming a part of that study, regardless of the
6 plan, come up as part of your conversation?

7 A. Yeah, it probably did. And probably,
8 individually, I told them that, you know, if we caught a
9 jaguar, we would -- we would put the collar on it that had
10 been assigned to Region 5. But I also thought, you know,
11 and I told them the chances are infinitely small that it
12 will happen. I didn't even -- you know, it came up. It was
13 bound to come up when you are down in that country, but I
14 had just considered it such a small probability that I
15 didn't give it a whole lot of thought.

16 Q. Let me, as you thought that through, and you
17 thought through in your mind, I mean, any kind of war game
18 in your mind. Okay, if we do?

19 A. Yeah.

20 Q. Lightning strikes. We catch a jaguar. The
21 mechanics of how you were going to get the collar to the
22 animal and such things as is the drug that we use for bears
23 and lions the right drug for a jaguar?

24 A. Well, the collar became -- I mean, it was part of
25 our equipment then after we, you know, discussed it with Ron

1 and Emil.

2 Q. That was Emil's collar?

3 A. Yeah. Well, it was -- I thought it was the same
4 collar from Region 5 that got handed over to Emil.

5 Q. Uh-huh.

6 A. And, yeah, so it was -- it was a part of our
7 capture packet.

8 MR. MCMULLEN: Are you aware that the collar that
9 went on the jaguar was different from the collar in Region
10 5?

11 THE WITNESS: No, I thought that was --

12 MR. FABRITZ: You always thought that was the
13 Region 5 collar?

14 THE WITNESS: I thought that was the same collar.

15 Q. BY MR. HOVATTER: That was Emil's collar.

16 A. Okay. I thought Emil's collar was the same
17 collar. I thought that was one collar.

18 Q. He was donated that collar by North Star --

19 A. Oh, yeah, yeah, yeah.

20 Q. -- for the Borderland's Jaguar Protection Project.
21 So until today, you didn't know that that was a different
22 collar?

23 A. No, I didn't know that those were separate
24 collars.

25 Q. Because I had understood that that collar had

1 become a part of the capture package that you guys had?

2 A. Yeah.

3 Q. Okay.

4 MR. MCMULLEN: That explains that.

5 THE WITNESS: I was assured by Ron that we were up
6 to date on the capture protocol, not the capture protocol
7 referring -- the part of it in terms of proper drugs to use.

8 Q. BY MR. HOVATTER: Okay. So when you, and I want
9 to make sure, because we have used -- I know what I mean
10 when I call -- talk about the capture protocol for the jags.
11 Define for me what you mean by protocol.

12 A. I was thinking more in terms of the protocol of
13 the actual handling of a jaguar once you have got one in a
14 trap.

15 Q. As opposed to a permit?

16 A. Yeah. Yeah. Yeah.

17 MR. MCMULLEN: Or a document of that name from an
18 external organization?

19 THE WITNESS: Yes.

20 MR. MCMULLEN: Are you aware that they have jaguar
21 protocol from the Jag Conservation Team?

22 THE WITNESS: Yeah, I just assumed that that was
23 the protocol for handling.

24 MR. MCMULLEN: For handling. Okay.

25 Q. BY MR. HOVATTER: And that conversation with Ron,

1 that was from the October/November time frame?

2 A. About, yeah.

3 Q. Yeah. Okay. So you knew, then, that the collar
4 that you were carrying and you had some conversation about
5 there was an existing protocol, did you review that protocol
6 yourself?

7 A. No, I never looked at it.

8 Q. How did you intend that protocol then -- having
9 the protocol, of course, absent looking at that thing to,
10 you know, for example, the protocol specified that there
11 should be a particular type of drug?

12 A. Uh-huh.

13 Q. How had you intended to invoke that or use that
14 protocol if we had had that inadvertent capture?

15 A. Well, that was where Ron had talked to me about --
16 he assured me, oh, don't worry about it. Thorry is up to
17 date on all that, on all the latest protocol.

18 Q. Okay.

19 A. Then since it was in my mind what to do, how to
20 handle -- how to handle a jaguar if we catch one.

21 Q. Well, you went out sometimes individually to the
22 snares; correct?

23 A. Uh-huh.

24 Q. If you had found the jaguar in the snare, what
25 would you have done?

1 A. Yeah, that's -- I would have -- I would have
2 probably -- again, I never thought it out because I thought
3 it was an extremely remote chance, but I would have handled
4 it with Medetomidine, and I forgot the name of the other
5 drug.

6 Q. There's lot of them. They all have a lot of
7 "means" in them.

8 A. The same cocktail we had worked up for lions, that
9 is what I would have done, and put a collar on him, put that
10 collar on him, because we had that collar with our capture
11 package.

12 Q. When you had that collar, did you have any
13 discussion about once you put that collar on, who was going
14 to then be responsible for tracking the data from it and
15 all?

16 A. No, I never --

17 Q. Who for the lions you captured, who actually
18 pulled down the data and compiled for those lions that got
19 caught?

20 A. I have been in charge of all that data. That
21 collar I never had the user name and the password to look at
22 that data. So even after that collar was deployed, I never
23 was able to go on-line.

24 Q. Did you have any assumptions or how did you factor
25 in --

1 A. I had one assumption. It was never going to
2 happen.

3 Q. Yeah.

4 A. So I didn't really give it a thought. When it
5 happened, Emil was the one that was following it.

6 MR. MCMULLEN: Can I ask one follow-up?

7 MR. HOVATTER: Oh, yeah. Sure.

8 MR. MCMULLEN: Was it your understanding that
9 these collars came with VHF and GPS capability?

10 THE WITNESS: Yes.

11 MR. MCMULLEN: Are you aware with the collar that
12 went on the jaguar, are you aware it still had the --

13 THE WITNESS: Yeah, I was aware. Thorry told me
14 that he took the VHF off.

15 MR. MCMULLEN: Before or after he applied it?

16 THE WITNESS: I think he took it off -- I don't
17 know whether it was actually on -- it would make sense that
18 he would have taken it off before he put it on the jaguar.

19 MR. MCMULLEN: When did you --

20 THE WITNESS: I think the decision to take the VHF
21 off was made when he had jaguar in hand.

22 MR. MCMULLEN: So you did not discover that the
23 VHF had been removed from the jaguar collar until after the
24 collar was on the jaguar?

25 THE WITNESS: Right.

1 MR. MCMULLEN: Got it.

2 Q. BY MR. HOVATTER: How did you keep Chasa up to
3 date on the progress of that study?

4 A. Most often, it was just when I was in Phoenix and
5 had been by. I would send her e-mails if something or call
6 her on the cell phone if something very interesting
7 happened, like catching a jaguar. I called her on that one,
8 but most of the time, it was just, you know, I was in the
9 office every week, every two weeks. It is kind of in
10 passing I would mention it to her.

11 Q. When we restarted the study, when we came by --
12 expecting to have new collars by the end of January, early
13 February, so we could get restarted on that --

14 A. Uh-huh.

15 Q. -- it has been my impression it was your decision
16 to restart where that lion had been removed by that sport
17 lion?

18 A. Uh-huh.

19 Q. That was your decision?

20 A. It was a bit of a group decision, but yeah, I was
21 in charge, so --

22 Q. Do you have any memory that you can reach back to
23 of how that decision, that group decision was arrived at?

24 A. I don't recall us sitting down and talking about
25 it.

1 Q. Who did that include?

2 A. It would have been me and Thorry and Emil
3 probably.

4 Q. Now, Emil wasn't on our payroll anymore at that
5 time. So including him was based on what?

6 A. Just his knowledge.

7 Q. His knowledge of the area and expertise?

8 A. Yeah.

9 Q. Do you have any memory of who -- whose -- I mean,
10 you have already said that you were the supervisor, so the
11 decision to restart in the Atascosas was yours then?

12 A. Uh-huh.

13 Q. Do you have any memory of who first said let's go
14 to the Atascosas?

15 A. No, it may have been mine. I really don't. I
16 mean, it just seemed like a logical point to go to since we
17 had a lion captured there that had indeed crossed the border
18 like we were hoping to have.

19 Q. And that lion had been going across the border?

20 A. Yeah.

21 Q. Well, it is logical. I mean, I can see the logic
22 of it. Because it seemed like, as I look at the record that
23 we have of this, you know, there was, I think, in
24 conversations with Ron and all, it was suggested that an
25 approach would be to try and kind of create a barricade of

1 animals, you know, that spread across the border so that you
2 could maximize the potential that you would get to see use
3 of that border area. And, now, you have a hole in that
4 wall --

5 A. Uh-huh.

6 Q. -- so to speak. I mean, I can see the logic of
7 it.

8 A. Yeah. It was really based on where we had
9 mountain ranges that extended into Mexico as well as where
10 we had high enforcement rates and/or a wall planned.

11 Q. Yeah.

12 A. Atascosas fit that bill. Patagonias also fit that
13 bill and we had a lion. We had a lion there, so --

14 Q. You know, looking back into summer, early fall of
15 2008, you know, there is -- you know, there is in the record
16 there your discussion of going -- of where to start for
17 lions, and I think you were talking about, well, potentially
18 starting as far north as the Huachucas or go to the
19 Atascosas because of the lion den.

20 How did you finally decide to start -- I mean, I
21 can think of a lot of logical reasons, but I need to know
22 what your thinking was to start in the Atascosas.

23 A. The reasoning behind not doing the Huachucas was
24 because that mountain range kind of ends just before you get
25 to the border.

1 Q. Yeah.

2 A. Also, it was Thorry's opinion that he couldn't
3 track as well. It was a little rockier habitat. And so
4 Thorry thought both Patagonias and the Atascosas were better
5 in those respects.

6 Q. Was Emil part of that conversation at that time?

7 A. Yeah. I don't recall that he was guiding us to
8 any area, but when I came to him and said, what do you think
9 about the Atascosas, you know, he said, yeah, there's a lot
10 of lions there. I know where to find them.

11 Q. But you were the one bringing the idea of the
12 Atascosas to him?

13 A. Yeah, and I don't -- yeah, and I don't think that
14 he guided me there. I brought up the Atascosas and the
15 Patagonias.

16 Q. Well, I mean, in the record, you know, that we
17 got, and, again, because I got all of this kind of clocked
18 out in my head. You haven't had the opportunity I have to
19 stay up with that, but you started having some conversations
20 about the Atascosas weeks before the record indicates you
21 had even met Emil?

22 A. Yeah. Yeah. I had mentioned it to Thorry and to
23 Ron.

24 Q. When you were getting restarted then, and you and
25 Thorry and Emil were discussing -- and Michelle wasn't a

1 part of those conversations?

2 A. No, not -- she hadn't come back to the project
3 until November, so --

4 Q. Did you at that time discuss, again, having the
5 same sort of capture kit to include having a jaguar collar
6 in place to restart that study?

7 A. Uh-huh. Yeah, I think so.

8 Q. In November of 2008, McCain found some new photos,
9 new in the sense that they hadn't been seen before, but they
10 dated back into the summer of 2008. He found some new jag
11 photos of Macho B.

12 A. Uh-huh.

13 Q. He announced those to the Jag Conservation Team.
14 Did he tell you about those photos at that time?

15 A. Yeah. He told me that they were from August. He
16 showed them to me.

17 Q. Yeah.

18 A. And it was his opinion, he relayed to me, that
19 they are in an area where in the past when he got that -- a
20 picture there, that he didn't -- he wouldn't see that cat
21 again for several months.

22 Q. Okay. So, then, his that photo, seeing those
23 photos, then, he was saying that the pattern that he thought
24 that represented that he wouldn't expect to see that animal
25 again for several months?

1 A. Yeah.

2 Q. Is that an accurate restatement of that?

3 A. Yeah. Yeah. And several meaning like six or more
4 was the impression I had from Emil.

5 Q. So he would have -- and he, then, told you about
6 these photos. Would that have been the November time frame?

7 A. Yeah, somewhere in there.

8 MR. MCMULLEN: Were you ever aware where the
9 photos were picked up.

10 THE WITNESS: I knew they were over in, I'd say
11 36-B. I thought they were in like the Tumacacoris or the
12 Atascosas, somewhere in there, but he didn't tell me exactly
13 where.

14 MR. MCMULLEN: Okay. So you didn't know where
15 they were?

16 THE WITNESS: I didn't know exactly where they
17 were.

18 Q. BY MR. HOVATTER: Did that cause you to re-assess
19 your thinking about the likelihood of catching the jaguar?
20 I mean, it had been several months, but --

21 A. I still thought it was extremely slim. We had
22 actually trapped a lion in the Bear Valley area, which I
23 knew to be sort of the area where we had most often seen the
24 jaguar, but I didn't know where those last pictures came
25 from. Anyways, we had trapped the lion.

1 Q. That was that first lion that you caught?
 2 A. Yeah. And that would have been close to the time
 3 frame of those pictures being taken. So I thought if
 4 anything, there was evidence that the probability was
 5 extremely slim.
 6 Q. Let's see, that first lion was captured in
 7 November?
 8 A. Yeah.
 9 Q. Yeah. And then you captured three lions pretty
 10 quick?
 11 A. Yeah.
 12 Q. After that first lion, you caught the next two
 13 fairly quickly?
 14 A. Yeah, I think all three of them were in November.
 15 Q. In February, so Thorry goes back to Bear Valley.
 16 He shows up there on the 4th, and he goes out. Emil is
 17 there. And we know the idea was Emil had established that
 18 snare set the first time, and so he was out -- my
 19 understanding is he had volunteered to help because he
 20 wasn't on payroll. Were you aware that he was going to help
 21 Thorry re-establish that snare set?
 22 A. Yeah, I was aware that he was just going to show
 23 up where the snare is.
 24 Q. Now, on that day, Thorry and Emil and Janay Brun
 25 are out walking, and they are walking the snare set. And

1 they also -- and Thorry goes with them as they are looking
 2 at the cameras that are out. Were you aware that Emil had
 3 or that there were jaguar cameras out in that area?
 4 A. I wasn't aware if they were on the snare line
 5 itself. I was aware that he had cameras in the vicinity.
 6 Q. In the vicinity. So that didn't come as a
 7 surprise to you. It wouldn't have come as any surprise.
 8 Now, on the 4th, they find a photo of Macho B right there.
 9 The yellow sticker up there is where Macho B was ultimately
 10 captured. That is a little over a mile.
 11 A. On the 4th of February?
 12 Q. Yeah. Did Thorry or Emil give you --
 13 understanding hard Comms out there in the field, but did
 14 they let you know that they had found that photo?
 15 A. No, huh-uh. The location of it that you just
 16 pointed out to me, this is the first I have seen. I
 17 subsequently heard -- the first time I heard about that
 18 photo was when I interviewed with the Feds.
 19 Q. Yeah. Now, the next day, Michelle comes out and
 20 joins them, and they find a jaguar track. Now, Emil
 21 identifies it as a jaguar track. Frankly, if you held a gun
 22 to my head and made me swear it was a jaguar track, you
 23 would have to probably pull the trigger, but -- and he finds
 24 it about where that yellow sticker is. Again, that yellow
 25 sticker, it's about 100, 200 yards away from that yellow

1 sticker, and the yellow sticker is where Macho B was caught.
 2 MR. MCMULLEN: Oh, yeah, the track was --
 3 MR. HOVATTER: It was to the east I think.
 4 MR. FABRITZ: The track was red, wasn't it?
 5 MR. HOVATTER: Because they came down from Bear
 6 Valley, they came in from the east. And the red is where
 7 the track was, yeah.
 8 MR. MCMULLEN: Red is where he was caught.
 9 Q. By MR. HOVATTER: And blue, the four blue dots are
 10 the snares. Now, did Kirby -- I mean, did Thorry or
 11 Michelle give you a call, let you know that they had found a
 12 jaguar track?
 13 A. No.
 14 Q. So were you aware that or did Thorry talk to you
 15 about needing another dart rifle or a better -- a better
 16 dart rifle for this project than the one he had?
 17 A. I am aware now that he had gone back to get a dart
 18 rifle, and I can't recall at the time -- I don't recall him
 19 asking or mentioning anything about a dart rifle.
 20 Q. So do you have any memory of him talking to you at
 21 the time about needing it?
 22 A. No, I don't think so. And if he had, I can't
 23 understand why he wouldn't have used mine because it would
 24 have been more convenient, because I had one at my house in
 25 Tucson.

1 MR. MCMULLEN: Do you know which one he had, the
 2 dart rifle?
 3 Q. BY MR. HOVATTER: Did he have a rifle or a pistol?
 4 A. No. No. What I had heard, and I think I had
 5 heard it from you guys, was he went back to Payson to get a
 6 dart rifle.
 7 Q. Flagstaff.
 8 A. Flagstaff. And I don't know which one he would
 9 have.
 10 MR. MCMULLEN: Do you know if Michelle had a dart
 11 rifle?
 12 THE WITNESS: No, she did not. She didn't have
 13 any. The only capture implement would have been a CO-2
 14 pistol, or not a CO-2 pistol, a plug pistol.
 15 MR. FABRITZ: They had something, but I just can't
 16 seem to remember.
 17 Q. BY MR. HOVATTER: There was a conversation started
 18 a couple of days before that, around the 2nd --
 19 A. I don't think they had my rifle, and that was the
 20 only rifle that I had for the project. But I understood
 21 that Thorry had his own rifle, pistol, and he usually used a
 22 blow gun is what he always used.
 23 Q. There was a conversation a couple days before,
 24 probably about the 2nd of February, where there is an e-mail
 25 sent out by Emil to some jaguar experts asking for the

1 latest information they had on the right drugs to use in the
2 field for a captured jaguar. Did Thorry or Emil have any
3 conversation with you about the fact that they were going to
4 be trying to get that kind of information?

5 A. Huh-uh. That would have -- the only knowledge I
6 had of that type of information was when I was talking about
7 the latest protocol.

8 Q. The latest protocols?

9 A. Yeah.

10 Q. Now, on the 6th, was it the 5th or the 6th then,
11 Michelle and Thorry established -- it would have been the
12 5th, then, established four more snares in that area. Those
13 are the green, three in that area, and then a fourth one up
14 by Ruby. So, now, there were in that area where Macho B was
15 ultimately captured, there was seven snares in that
16 immediate area. Did they have any conversations with you
17 about what they were doing on that?

18 A. Huh-uh.

19 Q. Well, let me ask you this, because in the context
20 of the way that you operated out there, because you were
21 very decentralized, the Comms were not good, would you have
22 expected in the way that you were operating for them to have
23 told you that they were -- had made some significant
24 modifications of the snare set?

25 A. I would have expected it.

1 Q. What about the finding of a jaguar track?

2 A. That I would have expected.

3 Q. And finding of a new jaguar photo within a mile of
4 the sets?

5 A. That I would have expected.

6 Q. Now, Emil announced that photo from Spain to the
7 Jaguar Conservation Team on the 9th of February, so five
8 days after it was found. As I understood our conversation,
9 you -- were you made aware at that time that there had been
10 a new photo found in that area?

11 A. No.

12 Q. I think I may know the answer to this question,
13 but when was the first that you knew that there had been a
14 photo found at that point?

15 A. When I was interviewed. In fact --

16 Q. Oh, when you were interviewed by the Feds?

17 A. As far as the point is concerned, today is the
18 first time I have seen it on the map.

19 Q. On a map?

20 A. And -- but as far as the first time I was aware of
21 the photo in February, that was when I was interviewed by
22 the Feds.

23 Q. After Macho B was captured on the 18th, and
24 Thorry, Michelle were out there, and they report back to
25 you, and then everything went kind of off to the races after

1 that. And we discussed this in our previous interview about
2 kind of the transition then to another level of supervision,
3 but when Thorry called you on that, did you have --
4 at that point, there hadn't been a decision to change the
5 supervisory chain. Did you have any guidance or in your
6 discussion with them, did you provide them any guidance
7 about what your expectations were for managing that animal?

8 A. Well, no, I didn't. But with these collars, I
9 mean, I hadn't predicted that things would go bad, you know.

10 Q. You weren't alone in that?

11 A. Had I known -- yeah, but these collars are really,
12 other than the person checking on the data on-line, there
13 really is no management really. I would have assumed -- I
14 would have had Thorry or Michelle recover the collar had it
15 dropped or had we had -- but, again, I didn't have the --

16 MR. MCMULLEN: Access to the data.

17 THE WITNESS: -- access to that data, so I
18 wouldn't -- I kind of assumed that that was passed over to
19 Non Game, and they would take care of that.

20 Q. BY MR. HOVATTER: And that's because of the jaguar
21 because it was an endangered species?

22 A. Yes, and it wasn't part of our project.

23 Q. Did you direct -- did that -- did you --

24 A. I didn't say anything to Thorry, no, about this is
25 Non Game's animal now. I didn't say that.

1 Q. When you talked to Chasa the next morning to let
2 her know about this, did you advise her about your thoughts
3 on how this animal ought to be taken care of or who should
4 have responsibility for that animal?

5 A. I didn't, no. I made an assumption that Non Game
6 would be taking over that follow-up on it. And I can't
7 recall now if Chasa assured me, I think she may have, said
8 that that would be the case.

9 Q. And the first that you knew that Thorry had
10 gone -- had driven up north to get a new dart rifle was
11 when?

12 A. I think it was when I interviewed.

13 Q. Yeah, when we were talking with the first
14 interview. This is a really switching gears question. Were
15 you aware that one of the members of that field team had
16 falsified their time and travel sheet? Did you have cause
17 to ever have any conversation with Thorry or Michelle about
18 their time and travel sheets? I know that you weren't --
19 well, I guess, were you -- were Thorry's and Michelle's
20 being both done by someone else or were you doing Michelle's
21 and someone else was --

22 A. I was signing Michelle's and Bill was signing
23 Thorry's, Bill Persons.

24 Q. And did you ever have any reason to believe that
25 their time and travel sheets were not accurate?

1 A. No.

2 Q. Had you ever had any conversation with either of

3 them during the course of your association with them about

4 how time and travel was supposed to be done?

5 A. I never had a conversation with Thorry. I had

6 extensive conversations with Michelle because she was -- she

7 was my report, and I was her first supervisor with the Game

8 and Fish Department. So I had explained all of that to her.

9 Q. Were you ever -- were you aware, during the course

10 of this study up through the capture of Macho B on the 18th

11 of February, were you aware that Emil McCain was using

12 jaguar scat for baiting cameras?

13 A. Huh-uh. In fact, I had written in -- sent him an

14 e-mail once. He had a picture from his camera that he sent

15 me, just I am trying to remember. It may have been -- it

16 may have been a picture of one of our collared lions that he

17 had gotten on a camera.

18 Q. Uh-huh.

19 A. And I asked him specifically, how did you get him

20 to stop in front of the camera, because he was posing in

21 front of the camera. And he said he used -- he used

22 whatever scent bait he had. And I think he even said he has

23 used cologne before.

24 Q. Yeah. I have seen that almost any really strong

25 odor is probably sufficient. It would be interesting to do

1 a study to see which men's colognes are most attractive to

2 lions.

3 A. But, anyways, yeah, the first I had heard of

4 jaguar scat was when I read it in the paper that -- one of

5 the stories that I read in the Tucson paper.

6 MR. HOVATTER: Guys, that is what I wanted to

7 know. What do you want to ask?

8 MR. MCMULLEN: Just one follow-up. When you

9 started making your notification phone calls about, hey, we

10 caught a jaguar, do you remember anybody saying to you,

11 remarking back to you, anything about what a surprise or

12 dismay that the jaguar walked away from the capture site

13 wearing a collar? Was there anybody --

14 THE WITNESS: No. No. Huh-uh. And the only

15 notifications that I made was Chasa.

16 MR. MCMULLEN: In any follow-up conversations,

17 things, obviously, started happening quickly, do you

18 remember anybody saying, how in the hell did that thing end

19 up with a collar on it?

20 THE WITNESS: Huh-uh, no.

21 MR. HOVATTER: Okay. Marty? Kirby, I am sorry to

22 have kept you waiting so long.

23 THE WITNESS: Oh, I understand.

24 MR. HOVATTER: It makes for long days with very

25 short periods of time for these conversations, but I do

1 appreciate it.

2 THE WITNESS: Okay.

3 MR. HOVATTER: And we will see where we get.

4 THE WITNESS: All right.

5 MR. HOVATTER: We will see where we and the Feds

6 get.

7 October 9, 2009, Telephone Interview

8 MR. BRISTOW: Hello.

9 MR. FABRITZ: Kirby?

10 MR. BRISTOW: Yes.

11 MR. FABRITZ: This is Marty in Phoenix. How are

12 you doing?

13 MR. BRISTOW: Good. How are you doing, Marty?

14 MR. FABRITZ: Good. Hey, I got Craig here with

15 me. We just had a couple short questions. We are closing

16 out this thing, and Gary wanted to ask you a couple quick

17 questions --

18 MR. BRISTOW: Okay.

19 MR. FABRITZ: -- regarding what we have been doing.

20 MR. MCMULLEN: Hi, Kirby.

21 MR. BRISTOW: Hey, Craig. How are you doing?

22 MR. MCMULLEN: Good.

23 KIRBY BRISTOW,

24 pursuant to Garrity Warning, was examined and testified as

25 follows:

1 EXAMINATION

2 BY MR. FABRITZ:

3 Q. It is all -- this is all the same Garrity rules

4 and all that. I mean, we have been through that. So, here,

5 I will just get into it. There was an e-mail, I know we

6 referred to this, you may not remember, but there was an

7 e-mail on the 2nd of February that Emil sent out. It had to

8 do -- let me see -- he basically referred to setting the

9 traps as being jag friendly. Do you remember that one?

10 A. I don't remember that one.

11 Q. Let's see, you may not even be aware of it.

12 Basically, Emil sent an e-mail to Roberto Aguilar, Aguilar,

13 and Thorry, and let's see, it was actually -- it was

14 addressed to Roberto, and he's talking about -- I guess he

15 was in New Zealand at the time, but anyway, basically, the

16 body said, hey, I wanted to pick your brain for the most

17 recent knowledge on jaguar immobilization. As I told you

18 last fall, I am working with Game and Fish in Arizona in the

19 Cross Border Carnivore Study. We are targeting lions and

20 bears, but there is always a chance of snaring a spotted

21 kitty down here.

22 Then it goes on, Thorry Smith and Kirby Bristow or

23 AZGFD just got some more collars in and plan to start

24 trapping again later this week. I was hoping that we could

25 make ourselves completely prepared for the unintended event

1 of catching a jag. I already set the snares in the most jag
2 friendly way possible, short leads, large shock absorbers,
3 et cetera. I am not sure if the best --

4 A. Yeah, that sounds familiar.

5 Q. So that is not ringing a bell? We were just
6 wondering --

7 A. No. No. No. I am saying that sounds familiar
8 now that you read the whole thing.

9 Q. Basically, in reference to that e-mail, I mean,
10 were you aware or did you or anybody else give guidance --
11 the way we could read that is, is Emil could have been
12 setting those snares before Thorry got there, but we are not
13 really sure. I don't think he did.

14 A. Oh, yeah.

15 Q. Or could that have been a reference to the prior
16 fall when he was out? Do you have any knowledge of that?

17 A. No. I mean, without knowing exactly the date, and
18 I have a memory of that e-mail now that you read the whole
19 thing, but I can't remember now if it was --

20 MR. MCMULLEN: Hey, Kirby, this is Craig. The
21 date of the e-mail that Emil sent that talks about where he
22 says, I already set the snares in the most jag friendly way
23 possible is dated February 2nd. And your field team never
24 made it down to that Bell & Bell Ranch until February 4th.
25 So our question is if you were aware whether or not Emil had

1 already been setting snares prior to the arrival of your
2 field team on February 4th, because this e-mail saying he
3 set them in a jag friendly way is dated February 2nd, which
4 is before our people even got there?

5 THE WITNESS: Yeah. Yeah. It would be -- it
6 would be my guess that if he did, I wasn't aware that he was
7 setting them before they arrived, but yeah, just from the
8 date and the sound of the e-mail, it sounds like he did --
9 he did set them before they arrived.

10 MR. MCMULLEN: Yeah. Yeah.

11 THE WITNESS: I wasn't aware that he was doing
12 that. I was under the assumption that we were setting
13 snares and checking snares, and we always had one Game and
14 Fish person there.

15 MR. MCMULLEN: Yeah. Well, we just wanted to ask.
16 It was something that kind of jumped out at us after the
17 15th read-through.

18 THE WITNESS: Although, actually, yeah, actually,
19 we did have occasions where there weren't Game and Fish
20 people there, because at least when we were running the
21 snares in the fall, we had those occasions.

22 MR. MCMULLEN: Well, but Emil was under contract
23 during the fall.

24 THE WITNESS: Yes.

25 MR. MCMULLEN: During the spring, he was not under

1 contract. His contract had run out.

2 THE WITNESS: Yes.

3 MR. MCMULLEN: So that would make sense, you know,
4 Emil was running the snares in the fall by himself because
5 he was a contractor.

6 THE WITNESS: Yeah. Yeah. It was my intention
7 that in the spring that he was -- that he didn't set any
8 snares by himself or he didn't run any snares by himself.

9 MR. MCMULLEN: Yeah. Okay. Well, we just wanted
10 to ask.

11 THE WITNESS: Okay.

12 MR. MCMULLEN: See if you had any insight on that.
13 That is really all it was, right?

14 MR. FABRITZ: Yes.

15 MR. MCMULLEN: Let me check right here. Okay.
16 Did you have -- do you have any insight on the fact that the
17 snares were set in a jag friendly way? Had you ever heard
18 that or were you aware of that?

19 THE WITNESS: Yeah, I think -- I think I heard
20 that e-mail or I read that e-mail. Was I CC'd on that
21 e-mail?

22 MR. MCMULLEN: No.

23 THE WITNESS: It sounds familiar. So it may have
24 been that I heard it -- I have heard it since then in the
25 course of the investigation.

1 MR. MCMULLEN: Right.

2 THE WITNESS: Because it does sound familiar. I
3 don't know that I heard that term jag friendly, but I
4 heard -- but I knew that Emil and Thorry were trying to be
5 updated on the latest protocol in the unlikely event we
6 caught a jag, jaguar.

7 MR. MCMULLEN: Okay. Yeah. I think that's it,
8 Kirby. It just had nothing really to do with you. We just
9 wanted to see if you knew about Kirby -- not Kirby, whether
10 or not Emil had been setting -- running those traps before
11 Thorry got there.

12 THE WITNESS: Yes. The only person -- I didn't
13 think that he set or checked any traps in the spring.

14 MR. MCMULLEN: Okay. All right. Well, you have a
15 good weekend.

16 THE WITNESS: All right. Thanks a lot.
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CERTIFICATE

I, Tammy Gillett, do hereby certify that the foregoing 24 pages were transcribed by me; that I was then and there a Certified Reporter in and for the County of Maricopa, State of Arizona, and that the foregoing pages contain a full, true, and accurate transcript of all the digitally recorded and/or taped proceedings, all to the best of my skill and ability.

I FURTHER CERTIFY that I am not related to nor employed by any of the parties hereto, and have no interest in the outcome.

DATED at Phoenix, Arizona, this 4th day of March, 2010.

TAMMY GILLETT
Certified Reporter
No. 50430

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