

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

TRANSCRIPT OF INTERVIEW  
TERRY JOHNSON  
JULY 9, 2009  
VOLUME I

Individuals present at the Interview on 7/9/09:

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  
Terry Johnson, Employee

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## PROCEEDINGS

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MR. HOVATTER: The media said we need to request an investigation, and we almost immediately got it, and so we never did do this.

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MR. JOHNSON: Yeah.

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MR. HOVATTER: We kind of started down that, you know, with that one little meeting we had about a week after the euthanization and all with Mike Senn and me, and that would have been with the absence of all the new stuff that popped up. And that would have been something we would have continued, I think, fairly aggressively, but we didn't. So we had that Center lawsuit notification. That 60-day clock ends on Friday.

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MR. JOHNSON: Uh-huh.

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MR. HOVATTER: So, you know, we waited and waited and waited with the hope, no real expectation, but hope that the Federal investigation would get done, then we could just go on fairly freely. That obviously hasn't happened. Well, we know we are not going to be in court the day after the deadline even if the Center does sue. There is no guarantee they will.

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We do know that we have a filing that is going to be due. While we have a filing right now that we could launch to tomorrow if we had to, you know, what we find out about all of this could, in fact, enable us to either make a

1 stronger, some stronger statements in the filing, or could,  
2 in fact, also cause us to have to be a bit more euphemistic  
3 in our finding -- or in our filing.

4 I don't think that is going to be the case.  
5 I think it is likely what we are going to find will enable  
6 us to say some things with a little more strength, but maybe  
7 not. But, regardless, we cannot go into that period without  
8 knowing more about this than we currently know. So that's  
9 why we decided to start on this despite the fact that we had  
10 said we would not have these kinds of conversations out the  
11 of the respect for protecting any perception of a negative  
12 impact on the investigation, of the Federal investigation.

13 We still think that we are doing that in such a  
14 way that it shouldn't have that effect, but that perception  
15 issue is another part of that, and that is one that we  
16 can't -- that is probably going to be the subject of those  
17 other areas, but at any rate, that is why we decided to do  
18 this internal administrative investigation.

19 I have no expectation in this interview that we  
20 are going -- that we -- we are entering this interview with  
21 no expectation that there has been any conduct that should  
22 require -- that would require us to look at administrative  
23 action. Having said that, we remain open to the fact that  
24 there is always the possibility that something like that may  
25 come up, and that is why we have chosen to do Garrity

1 Warning on these -- for each of these interviews.

2 MR. JOHNSON: Uh-huh.

3 MR. HOVATTER: So I am going to read you -- and we  
4 are taping all of these because none us could write fast  
5 enough, and I will give you a copy of this after we both  
6 sign it.

7 MR. JOHNSON: Okay.

8 MR. HOVATTER: But I am going to read you the  
9 Garrity Warning on this, Terry. We have got employee, Terry  
10 Johnson, 7-9-09. Interviewer, Gary Hovatter, Marty Fabritz,  
11 and Craig McMullen.

12 We are conducting an internal investigation  
13 involving matters that will be discussed shortly. This is  
14 an administrative investigation. You do not have a right to  
15 have legal counsel present during the interview, nor will  
16 you be advised of constitutional rights. You are ordered to  
17 cooperate fully with this investigation. You are ordered to  
18 respond completely and truthfully to all questions posed to  
19 you during the investigation. Failure to respond completely  
20 and truthfully to all questions will be considered  
21 misconduct.

22 As set forth in Garrity versus New Jersey 385 U.S.  
23 493 and the line of cases which follow, any responses given  
24 during this administrative investigation cannot be used  
25 against you in a subsequent criminal investigation. You are

1 instructed not to discuss your interview or this  
2 investigation with any Arizona Game and Fish Department  
3 employees while the investigation is pending.

4 And the statement you are going to sign says, I  
5 have -- both you and I will sign, says, I have read the  
6 above statement, I understand the orders given to me about  
7 this investigation. I understand my obligation to cooperate  
8 fully with the investigation. Pardon me. I understand my  
9 obligation to completely and truthfully answer every  
10 question. I further understand that I have been ordered not  
11 to discuss this investigation with any Arizona Game and  
12 Fish Department employees while this investigation is  
13 pending.

14 Do you have any questions about that?

15 MR. JOHNSON: Only about Fish and Wildlife Service  
16 employees?

17 MR. HOVATTER: I knew you would ask that question.  
18 In doing this, it is not our intent that this would preclude  
19 further conversations under the Federal investigation with  
20 the Fish and Wildlife Service.

21 MR. JOHNSON: When I say Fish and Wildlife Service  
22 employees, I am being specific to Frank Solis and the other  
23 two agents with whom I have spoken.

24 MR. HOVATTER: Yes.

25 MR. JOHNSON: Not any other.

1 MR. HOVATTER: Yeah. It is not our intent that  
2 this precludes the continuation of that investigation, and  
3 that remains, of course, Terry, your right to talk to them  
4 or not as you so desire in that investigation. Okay?

5 MR. JOHNSON: You guys don't happen to have a  
6 bottle of water here or anything?

7 MR. MCMULLEN: We drank them all over the last  
8 four days.

9 MR. HOVATTER: Can we get him one?

10 MR. JOHNSON: No, that's fine.

11 MR. MCMULLEN: Do you want me to go get one?

12 MR. JOHNSON: It would be helpful. I get  
13 dehydrated.

14 MR. FABRITZ: Do you have one?

15 MR. JOHNSON: I don't have one, I am sorry.

16 MR. MCMULLEN: Well, they sell them for a buck  
17 fifty in there.

18 MR. FABRITZ: In the Director's office?

19 MR. MCMULLEN: No, in the lounge.

20 MR. FABRITZ: I brought some other ones from home.

21 MR. JOHNSON: I don't have any money.

22 MR. FABRITZ: Let me go get it. You guys talk  
23 about it. Is there a --

24 MR. MCMULLEN: Yes, it is two bucks, a buck fifty  
25 in the employee lounge.

1 MR. JOHNSON: Thank you.

2 MR. HOVATTER: No sweat. As long as you owe me  
3 two bucks, I will never be broke.

4 MR. MCMULLEN: That's right.

5 MR. HOVATTER: Unfortunately, I won't be worth  
6 much, but I will never be broke.

7 MR. MCMULLEN: It is always better to be owed than  
8 to owe.

9 MR. HOVATTER: This is true. I had a staff  
10 sergeant, Anthony Perkins. He was one of my sergeants in  
11 1976 in Alaska, still owes me 50 bucks.

12 MR. MCMULLEN: Does he know it?

13 MR. HOVATTER: Oh, yeah. No, it was one of those,  
14 you know how learn, you know, most of the best lessons you  
15 learn are based on your making mistakes learning that  
16 lesson.

17 MR. MCMULLEN: Oh, absolutely.

18 MR. HOVATTER: So one of things was, as a young  
19 officer, especially back then, you know, the soldier would  
20 slide up to you and say, sir, you know, I am a little tight  
21 right now. Can I borrow 50 bucks? I will pay you back on  
22 payday. So Perkins is a sergeant, a resource utility  
23 sergeant in Fort Wainwright, Alaska, in 1976. I go, I guess  
24 I can do that. And right after that --

25 MR. JOHNSON: Thank you so much.

1 MR. HOVATTER: -- my company commander said, okay,  
2 lieutenant, one, you never, never, never loan money to your  
3 soldiers because the relationship between you and your  
4 soldiers changes like that when you do that. Now, they owe  
5 you money, and that may -- that could be seen in a lot of  
6 bad ways.

7 MR. MCMULLEN: Yeah.

8 MR. HOVATTER: And, oh, by the way, because if  
9 they don't pay you back, what are you going to do? You  
10 can't discipline them for it. And if they do something  
11 wrong, anything you do could be viewed in the light of,  
12 well, the reason you hammered him on that is because they  
13 owe you 50 bucks.

14 MR. MCMULLEN: 50 bucks was a lot of money.

15 MR. HOVATTER: So I paid \$50 to learn that lesson  
16 because I never loaned a dollar to another soldier in 30  
17 years.

18 MR. JOHNSON: And you never asked him for the 50  
19 either?

20 MR. HOVATTER: Oh, no, I did. I had to. That was  
21 okay at that time. The thing was is that, and it was funny,  
22 because like two years later, I had a flock of brand new  
23 lieutenants out of West Point show up, and I happened to  
24 hear them talking about, yeah, so and so asked me if he  
25 could borrow 20 bucks, what do you think? And they are

1 talking, and I just got -- because that's exactly what my  
2 commander said, I said, the answer is, no, don't do it. You  
3 do it, I will pound you into the ground like ten pins, don't  
4 do it.

5 MR. JOHNSON: I never had a relationship that was  
6 one of two things ever in my whole adult life since college.  
7 One was when a friend started talking about his marital  
8 problems, I could guarantee you within six months, we would  
9 no longer be friends for whatever reason, whether it is --  
10 and the other was loaning of money, just doesn't work.

11 MR. MCMULLEN: Really. Interesting.

12 MR. JOHNSON: Yeah. Yeah.

13 MR. HOVATTER: It is almost the unwritten rules of  
14 guyhood.

15 MR. JOHNSON: Even if they go back and patch up  
16 their problems, they both then have discomfort with the  
17 third party. It just doesn't work. I have been carrying  
18 this around for a while now.

19 MR. HOVATTER: Thanks.

20 MR. JOHNSON: It is more to read, like you need  
21 it.

22 MR. HOVATTER: But, you know, the stuff, you know,  
23 the stuff you send me is stuff I always get a kick out of  
24 reading. Now, and about the fourth draft of one of your  
25 wolf AMOC briefings, you know, I have got to admit, it

1 starts to all kind of go hazy.

2 MR. JOHNSON: Yeah.

3 TERRY JOHNSON,

4 pursuant to Garrity Warning, was examined and testified as  
5 follows:

6 EXAMINATION

7 BY MR. HOVATTER:

8 Q. So, Terry, some of this is a question, you know,  
9 for completeness, we have to ask it. I think some of these  
10 things you know the answers on. The other thing that is  
11 always a challenge in this is that we have all of this  
12 hindsight now. It comes to bear on all of these things.  
13 So, you know, some of these questions, ideally, you would be  
14 able to go back in time and say on that date, what did you  
15 know?

16 A. Right.

17 Q. And what did you think about what you knew, but  
18 we will do the best we can on that.

19 A. Okay.

20 Q. But that is all something we factored into the  
21 Feds.

22 A. I will do two things, too, and just having dealt  
23 with Fish and Wildlife Service a number of times now, my two  
24 statements about myself are, my -- what little I do know is  
25 colored by what I have learned since the events took place.

1 The other thing is my memory is not as good as it was in  
2 January, and it is certainly not as good as it was two years  
3 ago. I am short-term memory challenged on some things. It  
4 is just the way it is.

5 Q. I am going to ask this question in two different  
6 ways to you, you know. At the time of, and understand, our  
7 perspective, essentially, what I am really digging into is  
8 the original capture of Macho B happened before. My  
9 essential approach to the subsequent recapture and  
10 euthanization is kind of, you know, if the original capture  
11 was good, right, and proper, then everything after that is  
12 kind of quibbling about details or subjective perspectives  
13 on the issue.

14 The other part of this is a lot of what I am  
15 asking about, too, is related not so much to getting at  
16 those -- at those specific events, but how those things can  
17 form potential process or procedure changes we want to make  
18 in the future in the way we behave and the way we operate.

19 A. Okay.

20 Q. At the time of that original capture, did you  
21 believe that the Department had the current and applicable  
22 permits required for the intentional or incidental take of a  
23 jaguar?

24 A. Yes.

25 Q. Is that still in hindsight in respect regarding

1 what you know since then, do you -- are you still of that  
2 opinion?

3 A. Absolutely, yes.

4 Q. Got it. Based on what you know now -- well, I  
5 want to reword that. If you can go back, and I am going to  
6 ask this question the same way, if you could go back at the  
7 time of that capture, can you, in your memory, did you  
8 believe at that time that that was an incidental or an  
9 intentional take?

10 A. I believe that that capture when I learned of it  
11 on February 19th was absolutely incidental. It was  
12 accidental, whatever term, it was not intentional.

13 Q. Subsequent now, you know, fast forward to where we  
14 are today, is that still your belief?

15 A. No.

16 Q. What do you believe? Do you believe that that was  
17 an intentional or unintentional take?

18 A. I believe that there was intent to capture a  
19 jaguar.

20 Q. Okay. Do you think that intent was on behalf  
21 of -- that our people, people -- Game and Fish folks acted  
22 with the intent, or since we have both Game and Fish and  
23 non-Game and Fish folks, that that was an act, an  
24 intentional, an intent by our folks, by non-Department folks  
25 who were involved or both?

1           A.    I am unable to establish in my mind a distinction  
2    among three or four people as to where the intent lay, who  
3    was knowledgeable and who was not knowledgeable, who was  
4    collaterally involved and accidentally or unwittingly  
5    involved, but my suspicions revolve around three individuals  
6    in particular, two of whom are Department employees and one  
7    of whom is not.

8           Q.    Which three are those?

9           A.    Emil McCain is the non-Department employee, Ron  
10   Thompson, and Thorry Lane, I think his last name is.  
11   Thorry --

12          Q.    Smith?

13          A.    Smith, I am sorry. I should know that for sure,  
14   but Thorry Smith. I do not understand enough about  
15   Michelle's involvement to come to even a suspicion one way  
16   or another. And the other folks that may or may not have  
17   been involved in these -- this thing are all non-Department  
18   employees. Non-Department employees, I have got questions  
19   about Roberto Aguilar's knowledge. I have got suspicions or  
20   questions about Ole Alcumbrac's prior knowledge, knowledge  
21   prior to February 19th, and I have got -- I have  
22   got uncertainties as to Jack Childs' involvement or not,  
23   so --

24          Q.    One name, and it is kind of -- what about Kirby?

25          A.    I don't know enough about what Kirby actually did

1 in the fall of 2008 or the spring of 2008 to know whether he  
2 had a clue about what was going on or whether he was a part  
3 of whatever might have gone on or not gone on.

4 MR. MCMULLEN: Can I ask a follow-up, Gary?

5 MR. HOVATTER: Yeah, by all means.

6 EXAMINATION

7 BY MR. MCMULLEN:

8 Q. What makes you -- what are the factors that cause  
9 you to have the belief?

10 A. Yeah.

11 Q. I mean, why do you believe that?

12 A. Why do I believe that there was intent?

13 Q. Yes.

14 A. Okay. I believe that there was intent on the  
15 basis of what was withheld in information and some explicit  
16 disclosures of information subsequent to March 3rd. The  
17 withholding of information is I had contact with Emil McCain  
18 prior to February 18th in terms of receiving locational  
19 information about jaguars through the remote camera work.

20 Never in all of that communication did Emil  
21 disclose to me that there was snares being set in that area  
22 and that such snares were being set in that area back in  
23 October, November, and were being reopened in early February  
24 when jaguar presence in the area had been very recently  
25 documented. And there was no mention that there were snares

1 being set with jaguar scent being used at the snare site.

2 Q. Okay. So you know that?

3 A. I don't know anything other than what I have been  
4 told.

5 Q. Okay.

6 A. Okay. I will come back to that in a second.

7 Q. Okay.

8 A. And the scent was also, and this is -- I have  
9 stronger information on this, again secondhand, though, that  
10 scent was being used on camera sets that were within  
11 one-half mile of the snare set.

12 Q. The jaguar scent?

13 A. Jaguar scent. And that that -- the snare set and  
14 the camera, the closest camera, were within an area that had  
15 been used by Macho B previously. So you have got -- and the  
16 geography or topography, I should say, of that area  
17 establishes logical movement corridors of jaguars. And if  
18 you take just a pure biology approach to this thing, you  
19 have got people who are setting snares in an area where,  
20 yeah, capture of a mountain lion is very likely, but there's  
21 a high probability of presence of a jaguar, and you are  
22 using the right scent.

23 To be very specific about it, and I would have to  
24 go to back to the notes that I made and try to freshen up on  
25 some of this, but to be very specific on that, Craig, on

1 March 31, when Emil McCain called me to tell me that Tony  
2 Davis was hot on his trail as a result of Tony Davis having  
3 gotten information from Janay --

4 Q. Brun?

5 A. -- Brun, okay. I do have trouble, more trouble  
6 with names than I've ever had before, and the conversation  
7 with Emil, he told me that they had been using jaguar scent  
8 at a camera site within one-half mile of the snare that  
9 captured the jaguar, but he said that absolutely he and  
10 Thorry had not used or told this Janay or Michelle, anybody  
11 else, to use jaguar scent with the snare itself.

12 I understand from the outer world that Janay has  
13 quite a different recollection of that situation. My  
14 comment to Emil when he told me this information was if I  
15 look at this as an ecologist, regardless of whether you use  
16 scent at a snare, you used scent at a camera set. You knew  
17 of the presence of jaguars. You were in an area known to  
18 use jaguar.

19 There is an intent to capture the very moment you  
20 put a snare in that close to a camera set that is scented  
21 with jaguar. I said, to me, you have crossed the line. So  
22 regardless of whether you or Janay win this pissing match  
23 over whether the scent was used at the snare, I couldn't  
24 look at it any other way, and that's when I went charging  
25 down the hall to talk to other people and raise the issue.

1 I had suspicions earlier than that, but nothing  
2 that was as concrete as that. And one of the suspicions was  
3 based on a comment that Emil made to me on the telephone  
4 very early on this, and again, I have to go back to the day,  
5 it was March 3rd, March 4th, somewhere along in there. I do  
6 have the date noted somewhere in my records here.

7 He asked me -- he started a line of questioning or  
8 a line of discussion that we had not engaged in before. It  
9 was very blunt the way he broached the subject. He said he  
10 has got concerns about his liability, the capture and the  
11 death of this jaguar.

12 Q. Okay. So this is post euthanization?

13 A. Post euthanization, yeah. And my comment to him  
14 was that -- along the lines, you know, I am not attorney. I  
15 can't advise you about liabilities. You are not a  
16 Department employee. I can't advise you about liabilities,  
17 but if all things are as represented and if this capture was  
18 truly intentional, then the death of the jaguar is -- the  
19 Department is accountable for that because we are the ones  
20 who were conducting the operation, you know, people were  
21 operating under our supervision.

22 So, ultimately, we have got the responsibility  
23 there. So I didn't understand the liability. I made the  
24 statement two or three times.

25 MR. HOVATTER: You just said if it was

1 intentional?

2 THE WITNESS: If it was not intentional.

3 MR. HOVATTER: Not intentional.

4 THE WITNESS: I am sorry, if it was not  
5 intentional. If there was no intent involved in this, and I  
6 made that statement two or three times, and Emil made a  
7 statement that that's not necessarily a safe assumption to  
8 make.

9 MR. HOVATTER: Did you go into that at that point?

10 THE WITNESS: I was stunned by that. I asked,  
11 what did you say? I asked him to repeat it. He said,  
12 that's not necessarily a safe assumption to make. And I  
13 said, that it was not an intentional capture? He said, yes.

14 Q. BY MR. MCMULLEN: It was not an accident?

15 A. That it was not an accidental capture, that there  
16 was intent. I am sorry, I go back and forth here. He was  
17 concerned -- his comment was that it was not safe to assume  
18 that it was an unintentional, completely accidental capture.  
19 At that moment, I said, I can't continue this conversation  
20 anymore. I have got people I have got to talk to in my  
21 agency, and the -- I immediately placed a call to Bill  
22 because Bill had been very heavily involved. This was  
23 after -- well, it was after the death of the jaguar.

24 I need to go back and get very specific about that  
25 date. I sent a text message to Bill, and I said, call me

1 immediately. Bill calls me back as soon as he picks up the  
2 message. I said, here is what Emil just told me. Do you  
3 have any information that indicates to you that this was an  
4 intentional capture or that it was not done intentionally?  
5 And Bill's -- he said the same thing to me, absolutely, this  
6 is stunning. This is news to me. All I know is that -- all  
7 I have known up until this point is that it was an  
8 unintentional capture. That is the way we have represented  
9 it from the beginning.

10           Then I made that concern known at very -- I think  
11 we had a meeting a day or two later with a number of people  
12 present, and I brought that issue up and talked with Gary,  
13 with Larry, with Bob, Bob Broscheid, Mike Senn, but we  
14 didn't have anything to hang our hats on at that point. We  
15 didn't even have the interview with Thorry at that point.  
16 And so we went into the phone interview with him knowing  
17 that this concern was out there, and based on the outcome  
18 with Thorry, I had a discussion with Mike, and then again  
19 later with Larry, and I think with Gary as well.

20           We made a conscious decision to assume that our  
21 employee had been forthright with us, that it was an  
22 unintentional capture, but then when that March 31st  
23 conversation came along and Emil acknowledged those things,  
24 he may well have perceived those as unintentional. I don't  
25 know at this point in life what he perceived and what he

1 didn't, but that was the first -- the Thorry interview was  
2 the first point at which, based on any of the comments from  
3 Emil, I really became uncomfortable with whether this was --  
4 whether we could represent ourselves as having been part of  
5 an unintentional capture.

6 Q. That makes sense.

7 A. Kind of moved through the whole process, but on  
8 February 19th, I told the world, Arizona and the Buenos  
9 Aires National Wildlife Refuge what I thought to be the  
10 absolute truth, that we had a lion and bear project of some  
11 sort, and if we captured a jaguar, it was unintentional.  
12 And that's the story we stuck to for the next few weeks, and  
13 it is just -- my faith in that story has eroded considerably  
14 and suspicion.

15 MR. MCMULLEN: Can we flesh out a couple of these  
16 names?

17 MR. HOVATTER: Oh, yeah, yeah.

18 Q. BY MR. MCMULLEN: You said you wondered about  
19 Roberto Aguilar and Ole, and they are not part of the  
20 people -- this is a Department administrative --

21 MR. HOVATTER: I mean, we can ask about  
22 non-employees.

23 MR. MCMULLEN: What significance does it have to  
24 us?

25 MR. HOVATTER: Well, I think only to the extent

1 that there -- they may be connecting links between folks who  
2 don't otherwise -- Department folks that don't seem to  
3 otherwise have a link.

4 Q. BY MR. MCMULLEN: Roberto and Ole and Jack?

5 A. Roberto -- Jack is -- he's the one, when we first  
6 got into jaguar monitoring efforts, surveying and detection  
7 efforts with remote cameras started with Warner Glenn  
8 starting in the Chiricahuas, and that was back in '98-ish.  
9 And after a couple of years, I think it was '99, Warner  
10 wanted to take -- give up that responsibility. He was  
11 doing it as Chairman of the Depredation Committee for the  
12 Jaguar Conservation Team that I chaired.

13 And Jack Childs, who was the second person who had  
14 seen a jaguar in 1996, his in Arizona, Warner's in New  
15 Mexico, was willing to take that on. He's a houndsman, very  
16 active interest in the jaguar, obviously, for lots of  
17 different reasons, all of which at that point I was  
18 convinced were altruistic.

19 And then Jack started picking up the pieces and  
20 doing the remote camera work with his wife, Anna Marie or  
21 Anna Mary, I always get that confused, and a cadre of  
22 unknown volunteers. And then this graduate student from  
23 Humboldt State University starts coming over getting  
24 involved, and that's Emil McCain.

25 And over the course of a few years, the project

1 morphed from Jack being the primary contact for the  
2 monitoring work that was going on to Emil. Emil by 2005,  
3 2006, I would guess, was doing 95 percent or more of the  
4 field work along with volunteers. And Jack was the flow,  
5 the lead on paper, but not the lead in reality in the field.  
6 So that's Jack's involvement, and right up until the point  
7 of the capture, and Jack was the person who told me that a  
8 jaguar had been captured.

9           At the Jaguar Conservation Team for the  
10 Department, he told me that Jack took a phone call from  
11 Emil, who was in Spain at that time, and he tells me just  
12 before the Jaguar Conservation Team meeting, hey, this  
13 jaguar has been captured, and we don't know yet if it is  
14 Macho B, but there is a lot of reasons to think that it is  
15 probably Macho B.

16           So that's the Jack Childs connection. He has been  
17 part of this all the way through. My personal experience  
18 with Jack has been that he has been very forthright, a real  
19 stand-up guy, that he has been very frustrated with me and  
20 with the Department in terms of our failure to make a  
21 decision about whether we would go intentionally capture a  
22 jaguar. He has got his own perceptions about whether a  
23 decision should have been triggered three or five, six years  
24 ago, and I have got my own.

25           But I have never had the feeling and still do not

1 have the feeling that he would go out and do something  
2 covertly to capture a jaguar. Okay. But then we come  
3 along, and as I started to get information after February  
4 19th, I see some e-mails that Bill Van Pelt has gotten, and  
5 there may have been other people as well, but Bill  
6 definitely.

7 Roberto Aguilar, Roberto Aguilar was a  
8 veterinarian at the Phoenix Zoo for a period of time. For  
9 whatever reason, his employment there was terminated,  
10 whether it was resignation or requested resignation, I don't  
11 know, still don't know. He has got a lot of experience with  
12 big cats, had moved on to become some sort of a consultant  
13 over somewhere in the Pacific for a period of time, but he  
14 still had connections with big cat people throughout the  
15 western hemisphere.

16 And then all of a sudden, I see this e-mail that  
17 establishes -- Roberto does some blind copying of e-mails to  
18 Bill Van Pelt. So I would hear about Roberto every once in  
19 a while, but he is not somebody I dealt with myself. Some  
20 of his e-mail was very helpful to us because there's this  
21 close circle that Michael Robinson and some other folks have  
22 in the outer world that Roberto is part of, and they talk  
23 about wolf and jaguar issues and actively exclude anybody  
24 from the Government from being part of that.

25 So every once in a while we got some useful

1 information about what they were doing or not doing, and  
2 that is what this is about. But what got my attention was  
3 there was some communications that I had never heard about,  
4 I want to say about February 1st, 2nd, or 3rd, between  
5 Thorry Smith, Emil McCain, Roberto Aguilar, Sharon Deem,  
6 about what is the protocol here for anesthetizing a jaguar  
7 if one is captured? Not a one them shared that information  
8 with us beforehand.

9 MR. HOVATTER: So you became aware of those after  
10 the fact?

11 THE WITNESS: After February 19th. And the nature  
12 of the e-mails, just the fact that they were very damage  
13 specific, and that they -- they weren't -- they didn't  
14 reference the Jag Team handling protocols that were in  
15 existence at that point, but just sought new guidance from  
16 Sharon Deem, who is one of the gurus of jaguar veterinary  
17 medicine.

18 I first -- Bill and I spoke about this on February  
19 the 20th, if not the 19th, why is this stuff going on? And  
20 we sit there and say, isn't it good that our guys are doing  
21 due diligence to make sure that they have the most  
22 cutting-edge information?

23 Q. BY MR. MCMULLEN: In case they happen to get one,  
24 just in time?

25 A. Yeah, exactly. Yeah, they should have let us know

1 that there were snares that were being reopened and that  
2 they were being in that area. And yeah, they should have,  
3 according to the protocols, if they had doubts about the Jag  
4 Team protocols should have gone to me or Bill to let us know  
5 that they had concerns. If they got new information from  
6 veterinarians, they should have let us know, all that sort  
7 of stuff. By God, at least they were doing due diligence  
8 out in the field in case they encountered a jaguar.

9           And then we began to see that in a different light  
10 when I began to find out that the -- in between the time  
11 Emil had communicated locational information for Macho B  
12 from January 10th, 12th through the 21st, and the time the  
13 tracks were found in early February and the time that the  
14 jaguar was captured that there had been these other  
15 communications and that radio collars had come in.

16           I didn't know that we were in a radio collar  
17 shortage, didn't know the trap snares they had out in the  
18 area in the fall, didn't know the snares had been shut down  
19 in November-ish, whenever they were shut down, and didn't  
20 know that all of these things were going to occur. What I  
21 did know is that Emil had said at a number of different  
22 times over January, February, that sometime in February, he  
23 was headed to Spain to do lynx work and to reconnect with a  
24 girl that had come over here to serve as a volunteer on  
25 jaguar things, and they had become enamored.

1           So they were going to go hook up, literally,  
2   figuratively, you name it, over there. Life is good. Emil  
3   will be doing the lynx work only because he has gotten this  
4   jaguar fame and established some credentials there. And  
5   then we, Bill and I, actually discussed this. And, yeah, is  
6   there any fricking way that Emil and/or anybody else could  
7   have plotted to capture a jaguar while he was out of the  
8   country? And my initial reaction to that was that the ego  
9   was such that it couldn't have been.

10           He could not -- he has been invested in capturing  
11   a jaguar for so long, and Macho B is his and Jack's cat, and  
12   all this -- this stuff is out there, that he would have --  
13   the ego would have forced him to be present. Then you start  
14   looking at all these other things coming together, and we  
15   started asking ourselves, well, what if we read that wrong,  
16   and his greatest cover is being out of the country when the  
17   snares are run and the jaguar is captured?

18           Do we actually know these people well enough  
19   despite having worked with some of them for several years to  
20   really know the extent to which the desire for fame, the  
21   desire to be the David Mech of the jaguar world of the  
22   Arizona Borderlands might have influenced some of their  
23   decisions, and we didn't.

24           And that is really where the long story made  
25   somewhat short, I am still today, I don't know the

1 relationships among some very key individuals well enough to  
2 know what they did do, what just happened, and the  
3 difference between suspect, suspicions, and facts about what  
4 occurred on February 18th.

5 MR. MCMULLEN: That is a big challenge in a thing  
6 like this.

7 EXAMINATION

8 BY MR. HOVATTER:

9 Q. When you were doing that speculation with Bill,  
10 was that -- clearly, that was after the initial capture.  
11 Was that after the recapture or sometime in-between those  
12 two things?

13 A. Our first suspicions, our first conversation, I  
14 think, was February 20th, yeah, before that meeting.

15 MR. MCMULLEN: The internal meeting?

16 THE WITNESS: This is the internal meeting. I  
17 mean, just look at all the stars that had to come together.  
18 And the more we learned and the less, the fewer facts that  
19 were available, I mean, you start -- when you start looking  
20 for boogeymen, you see them everywhere. The fact that there  
21 was no -- we weren't contacted, and the protocols required  
22 Bill or me or both of us to be contacted the very first  
23 moment. The fact that --

24 Q. BY MR. HOVATTER: The very first moment that --

25 A. That would have been February 18th. The day they

1 saw that damn jaguar in the snare, the first contacts,  
2 whether it is, you know, once they reach the outside world,  
3 Bill and/or I should have been notified. We didn't get that  
4 until the next day. Well, Kirby didn't contact his  
5 supervisor, my understanding of it is, until the next day.  
6 Chasa didn't learn of it until the next day.

7 There is a whole bunch of things that caused us  
8 concern, and then Bill -- in our discussions, Bill tells me  
9 about this e-mail, you know, Roberto blind copying some  
10 information, and we didn't have -- we didn't have a copy of  
11 the field form that was filled out.

12 And then when we saw the field form that was  
13 filled out, when Chasa gave us a copy on or about the 20th  
14 of February, then we see that the print-out differs a little  
15 bit from the actual field form. And some of those  
16 differences are really pretty -- they could be very  
17 innocent, but nevertheless, things weren't quite the same.  
18 The hard copy of the field form has some different  
19 information than the database print-out has.

20 MR. FABRITZ: You think that is a data problem  
21 or --

22 THE WITNESS: We think -- I think -- I think it is  
23 simply the fact that people didn't make the database, the  
24 actual electronic database line up with the field form. I  
25 don't think that there was anything fudged. I just think it

1 is --

2 MR. HOVATTER: Well, you know, when you transfer  
3 data from a hard form to something electronically, sometimes  
4 you go, boy, I wish I had used "the" instead of "an" or  
5 something.

6 MR. MCMULLEN: Exactly.

7 MR. FABRITZ: Is there a copy of the original form  
8 somewhere?

9 THE WITNESS: The copy of the original form is  
10 different than the current electronic version. You know, on  
11 the field form, you may -- I don't remember the exact words,  
12 but, I mean, it may say that it was high. The other one may  
13 give you a high versus medium versus low sort of thing,  
14 where the electronic thing may give you a numerical range,  
15 one through five, or things like that.

16 To me, I didn't see anything innocent -- anything  
17 suspicious about that, but it was just -- this multitude of  
18 holes in what we knew about what had led up to February  
19 18th, and what happened between February 18th and the  
20 February 20th meeting, I just wasn't confident that we knew  
21 the whole story.

22 MR. FABRITZ: So even with the protocol you talked  
23 about, you and Bill, part of the protocol was you guys would  
24 have been one of the first -- would have been the first  
25 people to be notified?

1 THE WITNESS: Yeah.

2 Q. BY MR. HOVATTER: So let me ask you about that,  
3 because that goes to some of the process stuff, too, that I  
4 was thinking about. Who we know to have been on-site on the  
5 18th were -- we know Emil was in Spain. We know that Thorry  
6 was there, and we know that Michelle was there. And you go  
7 through his field notes, you tell me that it is corroborated  
8 by those field notes. There is no indication in his notes  
9 or any of the other stuff that I have got that we know that  
10 anyone else was there. Does that reflect your guys read of  
11 that?

12 A. I don't know of anyone else based on the  
13 photographs, based on the -- I have never seen the field  
14 notes, but based on everything we have been given, no, all I  
15 know is those two people.

16 Q. Now, the question that came up was, within my  
17 mind, and we had some discussion about this earlier with  
18 some other folks, was, it is clear that Emil was intimately  
19 familiar with the jaguar protocol and the jaguar  
20 conservation guidelines and all that?

21 A. He helped write them.

22 Q. And he was not there, although he was certainly  
23 electronically available, you know, I am sure. I would  
24 imagine. I don't know that to be the case, but I am sure he  
25 was. In light of subsequent things, the next week or so,

1 Mike got involved in the recapture part of it in such  
2 detail. Part of what I am thinking the process was, on the  
3 one hand, part of what I am trying to get to on process and  
4 procedure is that we look at the responsibilities on the  
5 ground. We had a non-endangered species, bear and lion  
6 research project under research branch.

7 A. Uh-huh.

8 Q. We have the 10(a) permit and some MOU  
9 responsibilities for notification to Fish and Wildlife  
10 Service on issues with Eric and non-game, and then we have  
11 had for many years, we have had the -- kind of pulled out  
12 into a set of their own, the Mexican Wolf and Jaguar  
13 Program?

14 A. Yeah.

15 Q. We have a communication with Tim Snow in Region 5,  
16 you know, about communicating jaguar sightings and other  
17 information to stakeholders and others, a lot of which seems  
18 to be driven by kind of that original depredation focus of  
19 that Borderlands Jaguar Detention Project camera network?

20 A. Right.

21 Q. What is not so clear is the cross talk between  
22 research branch and the Jaguar Conservation Team effort, and  
23 so -- and more specifically, then, when we net down to that  
24 day, I am kind of, of the mind that Michelle being where she  
25 was in her employment, pretty much still in an understudy

1 mode, it seems to me, but it is not clear that Thorry -- we  
2 know that Thorry got information as part of this.

3           You know, it is clear in the record that he got  
4 some things on some protocols, and they appear to be  
5 ultimate, but I can't confirm there was ever anything that  
6 came down through the research branch chain that ever said,  
7 okay, we have got somebody working in a study, albeit while  
8 it is not intended to catch a jaguar, clearly, they are  
9 using equipment that, you know, you can't build a snare that  
10 says only jaguar, only lions allowed to step in this snare.

11           Did you -- was there ever a communication on your  
12 part or was there ever a routine sort of annual or some sort  
13 of communication with research branch or Eric that was  
14 intended to provide information that they could use to  
15 inform the multiplicity of people who might be operating in  
16 that area?

17           A.    There was at one point, but I don't know whether  
18 it continues. That one point was when I was up -- I was  
19 Non-game Branch Chief through December '03 or '04, one or  
20 the other. I can't remember right now. We had quarterly or  
21 twice-a-year, sometimes just once-a-year meetings with all  
22 the work units that were involved in implementing the  
23 non-game and endangered wildlife program.

24           All the regions, all the branches, the research  
25 branch was a part of that, game branch was a part of that,

1 because there were all these different connections. And  
2 during that period, from the '90s through that period, we  
3 would circulate, at least once, if not twice a year, copies  
4 of our Section 6 Work Plan, solicit comment on the Section 6  
5 work plan, which included jaguar at that point.

6 I would -- I used to provide a copy of the actual  
7 10(a)(1) permit in addition to this Section 6 work plan,  
8 which is a component of our program as well, and that was at  
9 the program manager level --

10 Q. Yeah.

11 A. -- not necessarily at any level lower than that.  
12 So there was that routine. One of the first things that  
13 happened when -- actually, Leonard Ordway came into non-game  
14 as the Acting Branch Chief, who was under Bruce Taubert's  
15 direction, they destroyed our SOP manual. And the SOP  
16 manual that existed spoke to things like that, the  
17 dissemination of information, cross program meetings, indeed  
18 the permitting process, dissemination of that information  
19 and --

20 Q. Do you know why that was?

21 A. Yeah, I do know why that was. It had everything  
22 to do with the rotten relationship between me and Bruce  
23 Taubert. The more effectively I was eliminated as the  
24 historical presence in non-game, the better off Bruce liked  
25 it. That is pretty bluntly put, Gary, but that is --

1           Q.    I understand.  Do you think -- is it your  
2   impression that that was an act that Bruce did, probably --  
3   or either probably or you know that he directed it at that  
4   time?

5           A.    I don't know that he directed it.  I know that  
6   Leonard and Bruce discussed it, and Leonard did it with the  
7   blessing of Bruce.  Part of the reason was there was a  
8   feeling, a strong feeling, that non-game operated to some  
9   extent as an attachment autonomous work unit.  It just was  
10  different than the rest of the -- I mean, we were the only  
11  group -- only work unit that had standard operating  
12  procedures.

13                   And our standard operating procedures manual was  
14  50, 60 pages long, whatever it was, and it spoke to things,  
15  mundane things, how you process requisitions, how you handle  
16  EA checklists.  There is all these different kinds of  
17  things, both on the administrative side, and not everyone  
18  likes SOPs.  A lot of employees in non-game liked various  
19  parts of it.  Many of them were developed by people in  
20  non-game other than myself, but other people just don't like  
21  standard operating procedures any more than they like  
22  procurement guidelines.  That's the reality of it.

23                   What really went on then, and don't get me wrong  
24  here, my desire to leave non-game and to leave Bruce were  
25  intense.  And there were three options at my request that

1 were put on the table, and one is fire me, the second is I  
2 quit, and the other one is to change my job.

3           And a year in advance of that decision, I  
4 submitted the concept of taking the Endangered Species  
5 Coordinator and setting it off as a separate entity. For  
6 the 20 years through that period, I had been both Endangered  
7 Species Coordinator and Non-game Chief and Non-game Branch  
8 Supervisor, and fortunately, for me, the Director's  
9 perception was that the workloads in those three areas were  
10 vaster than any one employee should have to carry for one  
11 year, let alone 20 years, and Duane offered me the  
12 opportunity to become the Endangered Species Coordinator  
13 with responsibility over wolf and jaguar and leave all the  
14 non-game stuff to the Non-game Chief.

15           Q. Let me ask you this. This is an education  
16 question on my part, because I get -- you know, one, I have  
17 just had a curiosity for some time, because, you know, what  
18 I have kind of -- knowing I am not in the Army, I still kind  
19 of brought the Army attitude. One of the principals of war  
20 is you lead command, and we have always had that -- you  
21 know, having that non-game, and then having these two pieces  
22 of things, you know, the jaguar and the wolf, on the one  
23 hand having seen the amount of energy that they consume, it  
24 has a certain sensibility to me.

25           But when we talk about Endangered Species

1 Coordinator, obviously, there are other endangered species  
2 like the black-footed ferret and condor that didn't come  
3 with that charge. I am really kind of, as much as anything,  
4 my learning curve education trying to catch up with some of  
5 the Department history.

6 In your original proposal, would that have  
7 included, that position, have included all of the endangered  
8 species?

9 A. It would not have been done wolf and jaguar. It  
10 was for endangered species coordination across all species,  
11 all the work units, policy, the national policy issues,  
12 those sorts of things. But because of where we were as an  
13 agency, and relative to jaguar and wolf, the first question  
14 you ask is, okay, if Terry doesn't handle those, who does?

15 And Duane's perspective was we could not afford to  
16 simply drop them. We couldn't go back to the old days when  
17 we tried to make Ritchie Remington carry a whole lot of the  
18 operational wolf stuff as Region 1 supervisor, basically,  
19 eliminated him from being Region 1 supervisor, except in  
20 terms of wolf management. That wasn't healthy for anybody.

21 So we just had these things. And they were things  
22 that I did and was good at that Duane was very appreciative  
23 of. And despite -- I have got my shortcomings, I am  
24 reasonably aware of most of them, but I also have some  
25 significant strengths and assets and Duane --

1 Q. Well, yeah, because you have a history.

2 A. -- wanted to capture -- he wanted to capitalize on  
3 those things.

4 Q. He had, by the time the decision was made for you  
5 to leave non-game branch, you had almost a decade of  
6 experience representing probably the biggest time investment  
7 that the Department had on the jaguar program, and I  
8 presume, I am not sure, I can't know when the wolf program  
9 started, but I presume that you --

10 A. I started it one year before I came to the agency  
11 and carried the lead on that all the way from -- all the way  
12 through the operational thing.

13 Q. Again, it is not especially germane to this, but I  
14 have always been kind of interested.

15 A. But it is -- it is germane in the sense that --

16 Q. Well, it is germane to the process issues?

17 A. The process issues, exactly.

18 Q. Because it is clear with you wearing both hats, it  
19 was clear that, you know, the potential for non-game to  
20 become sort of increasingly somewhat divorced from the sense  
21 of day-to-day responsibility for those two species became  
22 more likely after that point. And, then, when you have  
23 research branch involved and the way that they are involved,  
24 it kind of comes --

25 A. And you have got changes in personnel. You go

1 from Jim to a series of actings to Chasa. You have got --  
2 you have got a series of changes at the program manager  
3 level within research branch. There is just loss of history  
4 and continuity all the way through '03 to February 18th of  
5 '09. And the communication, whether the SOPs were good,  
6 bad, or indifferent, they were at least something to hang  
7 your hat on in terms of ensuring information flow at some  
8 level among the different work units.

9 And that is there. And that is why from the very  
10 beginning, my comment here is regardless of whether it was  
11 intentional capture or unintentional capture, we have  
12 process issues within this agency that have surfaced as a  
13 result of this situation that have to be fixed in terms of  
14 information flow, who knows what, who is responsible for  
15 what, and how they worked with each other.

16 But I was aware of those even before February  
17 19th, on December 4th, when I gave the second of my more or  
18 less average two briefings a year to the Director on the  
19 jaguar issues.

20 Q. That was September 4th?

21 A. December 4th.

22 Q. December 4th?

23 A. December 4th. Part of going into that briefing  
24 involves me looking at the existing protocols that apply to  
25 capturing and handling a jaguar. And when I looked at those

1 and had the conversation with Bill, both before and after  
2 that December 4th briefing with Larry, my comment was that  
3 our protocols were crappy, that the last revisions had not  
4 fixed all of the problems, and the last revisions were in  
5 '06 and '07.

6 MR. MCMULLEN: '07 was the last one we saw.

7 THE WITNESS: '07 May.

8 MR. MCMULLEN: Yeah.

9 THE WITNESS: But there is -- there are actually  
10 three protocols that come into play, and how you handle a  
11 sighting, respond to a sighting, and how you handle an  
12 actual jaguar itself, and then there is the whole issue of  
13 capture --

14 MR. MCMULLEN: Yeah.

15 THE WITNESS: -- the intentional capture. All  
16 those things come into play. Even the most recent one, the  
17 May 7th or the May '07 version, Christ, this has got people  
18 listed who hadn't been employees for some of those agencies  
19 two and three years, and it has got question marks injected  
20 in things that -- where Tim had just -- we need to get this  
21 information and put it in here.

22 Well, you look back at -- some things are just  
23 coincidence. In '07, those things should have been dealt  
24 with prior to the '07 and '08 briefings for the Directors as  
25 soon as I became aware of them. But August '07 is when I

1 hit my head, and the things that we had planned to do with  
2 jaguars, also, summer of '07, June, July, August of '07 is  
3 when the wolf project seriously started to fall apart.

4 And so my focus through that period was 98 percent  
5 on wolves and very, very minimally on jaguars. So the  
6 things that I was not attentive to that were my  
7 responsibility, and Bill, bless his heart, by that time was  
8 moving on to becoming the black-tailed prairie dog person  
9 and was being removed from the jaguar and the wolf  
10 responsibilities, but we worked together along enough that  
11 he would try to provide assistance to me when I needed it.  
12 When I would ask for help, he would invariably give me that  
13 help.

14 But one of Bill's weak points is attention to  
15 detail, and that comes across, and Tim, the same thing, they  
16 were --

17 MR. FABRITZ: Tim Snow?

18 MR. HOVATTER: Tim Snow.

19 THE WITNESS: The quality of staff work outside  
20 the agency and inside the agency as it pertains to those  
21 protocols is not acceptable. The quality is not there.  
22 There is no other way -- and ultimately, I am the one who is  
23 accountable for those things. So when I go into the  
24 briefing on December 4th with Voyles, we are looking at  
25 several issues, the standard thing about the intentional

1 capture of a jaguar, do we pull the trigger on authorization  
2 or not?

3 In prepping for that meeting, I am looking at the  
4 protocols, and I see that they stopped. I also see  
5 at that point that the only jaguar that we know of that is  
6 out there in the Arizona landscape is last August, the  
7 previous August, was Macho B, which by now is 14, 15, 16  
8 years old. And the previous world record that we know of  
9 was 13 years in the wild, not a good candidate for putting a  
10 radio collar on.

11 Voyles is a smart guy. The first two seconds of  
12 our discussion, that issue came up. If we are looking for  
13 the potential of capturing a jaguar, is this cat a good  
14 candidate? We both agreed it wasn't. But, then, there were  
15 other elements that we needed to address as well. I am  
16 sorry. I am all over the place here.

17 MR. MCMULLEN: No, that is okay. Was that relayed  
18 down the chain of command, that there is a specific  
19 discussion between you and the Director about this is not a  
20 good cat to capture because of his age? Was that relayed  
21 anywhere else?

22 THE WITNESS: No, I believe that Bill and I had  
23 the discussion, but we didn't -- we didn't -- we didn't move  
24 to the next step. We didn't move to the next step for one  
25 reason. Completely aside from protocols and completely

1 aside from the presence or the condition of a jaguar, there  
2 is another element that was mandatory for us to make a  
3 decision to move forward with the next level of discussion,  
4 which was with Fish and Wildlife Service prior to Voyles'  
5 signing off on an intentional capture of any jaguar, and  
6 that was to have the money in place for a monitoring program  
7 once a collar was on a jaguar.

8 In the discussion with Larry, I asked him whether  
9 that was -- on December 4th, whether there was an -- I was  
10 optimistic going into that meeting. I am probably the most  
11 optimistic pessimistic cynic you will ever meet in your  
12 life, but I was optimistic that we might actually finally be  
13 able to crack the funding nut, and the reason was Napolitano  
14 had just ascended to the Homeland Security throne, and she  
15 still had another couple weeks out here in the state.

16 My hope was that Larry would be able to get to  
17 her, and she would then be able to squeeze Homeland Security  
18 to make some decisions about some mega bucks for funding for  
19 endangered species along the borderlands that Fish and  
20 Wildlife had not been able to crack loose in the previous 18  
21 months or so.

22 So there for a nano second, I was optimistic that  
23 we would be able to get that monitoring funding, be able to  
24 step up our camera work, and, then, if and when the right  
25 jaguar came along and the right circumstances came along, we

1 would be prepared to make a decision about capture, but that  
2 was Macho B is not going to be that animal because of  
3 health. Unfortunately, Larry was not able to make the  
4 contact with Napolitano in the second two weeks of December  
5 that he anticipated.

6 MR. HOVATTER: Yes, well, I remember some of that  
7 because we had a lot of hope for a lot of potential,  
8 Pronghorn and a lot of other things potentially we could get  
9 at with that.

10 THE WITNESS: Just didn't happen. It becomes the  
11 holidays. The Jaguar Borderlands Protection Project has  
12 been running dry of money now for two or three months. They  
13 are down to three, four, five thousand dollars. My focus,  
14 then, turned to the Fish and Wildlife Service to try to get  
15 some money directly from them to inject into the monitoring  
16 program. It has nothing to do with capture. It has to do  
17 with cameras.

18 We are also aware that a decision is going to be  
19 coming along here before long on the grant application for  
20 Department funds for the camera work, not for capture. And  
21 so, you know, December now turns into January, and I am  
22 chasing that money to try to sustain the telemetry work --  
23 not telemetry, the camera work, remote camera work, and  
24 the -- I didn't pull the trigger on any memo to anybody  
25 saying, hey, we have made a conscious decision that we are

1 never going to capture the Macho B.

2 I didn't see any urgency. I can remember using  
3 that phrase with Larry in early December. There is no  
4 urgency here. We don't know of a jaguar presence since last  
5 August now, and that jaguar is an old fart, you know, and  
6 plus, you know, we don't have funding in place. And, plus,  
7 there are problems with the protocols.

8 Q. BY MR. HOVATTER: Let me ask you. Were you aware  
9 in that December meeting that there was, in fact -- now, it  
10 is called the bear and lion study, but more appropriately,  
11 it is the Large Carnivore Habitat Conductivity Study. Were  
12 you aware that had been started October, November?

13 A. I was aware that -- not snaring, Gary. I was  
14 aware that there was a large carnivore project. I was aware  
15 that there was hair snaring work that started in '07.

16 Q. Yeah.

17 A. But hair snaring is where my head was in terms of  
18 the large carnivore project. I was damn sure not aware that  
19 there was snaring down in the area where Macho B had been  
20 reported in August, let alone in January and February.

21 Q. Well, or October or November?

22 A. And also --

23 MR. MCMULLEN: Yeah.

24 THE WITNESS: -- falsely confident that, hey, we  
25 have got the right pieces involved anyway, because I had

1 heard they had picked up Emil to help them with their large  
2 carnivore project. Well, this is great. This guy knows  
3 more about the jaguars along the borderlands than anybody.  
4 We don't have to worry about information flow. So I am  
5 naively expecting that there is going to be communication at  
6 that level.

7 I was also aware by the time January comes along  
8 that Ray and Dean had both come to Bill, because December  
9 and January, I had the meeting with Voyles on the 4th. A  
10 few days later, I went to Mexico on a fishing trip with my  
11 younger son.

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11                   And that was just my reality. Then along comes  
12 February the 18th or February 19th, the Jaguar Conservation  
13 Team, in preparing for that and in the anticipation that I  
14 am not going to survive what is going to happen or what  
15 might happen, I start to allay an epiphany, I need to get my  
16 house in order, and my house is jaguar and wolf. And I want  
17 to get things in as much order as possible because they are  
18 both just as fucked up as they can be for very different  
19 reasons.

20                   I started to get into the protocols and fix them,  
21 sent them out to Tim and Bill and Jim Stewart, and one of  
22 them over to Aaron Fernandez in the Fish and Wildlife  
23 Service, and just say, these are things that have got to be  
24 fixed in case we ever get to the point, because I want to  
25 leave a tidy package for my Director anyway. And since I

1 am, by that point, probably better aware of the flaws in our  
2 process, in our communication, and in our preparation for  
3 such an event than I have been in the last three or four  
4 years because I am relying only on myself at this point, I  
5 am not -- Bill's not carrying the freight for me.

6 I gear up for that February 19th meeting. I am  
7 fully prepared to walk in and say, hey, I had a briefing  
8 with my Director in December. It is now the end of  
9 February. We are in the middle of a heat wave, temperatures  
10 are ten degrees or so high. The only cat that we have got  
11 out there that we know about is an old cat. Our protocols  
12 really do need a round of scientifically rigorous review,  
13 and they need to be fixed over these next few months.

14 So my focus is on -- and then we also have a  
15 conservation assessment that is out there -- merely out  
16 there for public comment. We just got a whole lot of  
17 things, and we have already endured the hate campaign from  
18 the outside world on the whole issue of jaguar capture back  
19 in '05 and '06 and the Governor's briefings back in '06,  
20 '07, those sorts of things.

21 And so my premise is that we will have a really  
22 good meeting on February 19th, and we will make it very  
23 clear that the Department is hugely engaged in trying to  
24 protect jaguar habitat through our corridor's work and  
25 through our -- Josh's group, not -- the research is

1 contributing information, but it is the inter-agency group  
2 that Josh has been part of assembling, and that we will be  
3 able to lay out a pretty good course of action for  
4 meaningful engagement within the Jaguar Conservation Team in  
5 protocol revision in coming to closure on the conservation  
6 assessment, gearing up for our next meeting, which was going  
7 to be in May.

8           And so I go down to that meeting, prepared to do  
9 all this stuff. I have actually gone through all the  
10 summary notes that some of which were in draft form from me  
11 for the last several years, some of which were final. I  
12 made sure those all are finalized and printed out and ready  
13 to hand out to people and ready to load on the web site,  
14 just bring a lot of loose ends to tie them up, and I walk  
15 into the meeting, I get blown off my feet, that there's a  
16 jaguar captured.

17           And I can -- I mean, I can remember when Kennedy  
18 was shot. I can remember when the Challenger blew up, you  
19 know, the wheres and the whats and those sorts of things,  
20 and the birth of my two boys, that sort of stuff, and where  
21 I proposed to my wife, and I will remember forever how I  
22 learned about the capture of that jaguar and where I was and  
23 how stunned I was that there was even any possibility to  
24 capture the jaguar out there, and we were doing snare work.

25           Q. BY MR. HOVATTER: And the person who told you was?



1 Q. We know you had your briefing with the Director on  
2 December 4th. We know that based on all of the information  
3 that we were privy to at the time, we thought the only  
4 jaguar in the state was Macho B, and he was too old to  
5 withstand --

6 A. Yeah.

7 Q. -- to likely to withstand the rigors of a capture.  
8 Was there any general marching orders within the Department  
9 through your program, through research, or whatever that you  
10 are aware of that did the following: One, if there was an  
11 accidental capture of a jaguar for whatever reason, with  
12 hounds, in a mine, or with a snare, were we supposed to slap  
13 a collar on them? That is the first thing.

14 And were there any protocols or any direction from  
15 you, from the Director, through research, Chasa, or whatever  
16 that said, if you are engaged in some sort of carnivore  
17 capture work or some sort of capture activity, and there  
18 becomes evidence of jaguar in the vicinity, whether by time  
19 or space, were there any directives --

20 A. No.

21 Q. -- we were supposed to cease activity or anything?

22 A. No. There were no directives, either from the  
23 Director, from me. There were no directives. There were no  
24 awareness of -- on my side, of activities that might.

25 Q. Yeah. Was there any -- because we know -- we

1 understand that there was a collar in Region 5 that had been  
2 set aside for a jaguar. It was from Telonics from '07.

3 A. From 2000.

4 Q. 2000?

5 A. Right.

6 Q. And, then, you no doubt learned that they  
7 configured a collar for a jaguar and received it in late  
8 January or February, North Star did, Emil did?

9 A. North Star configured a collar. We configured a  
10 collar. They had donated that collar to Emil, though,  
11 September of '07 or '08.

12 Q. Yeah, yeah, that was the reconfigured one?

13 A. Yeah, reconfigured.

14 Q. Was there -- what were the general orders and  
15 marching orders up or down the chain of command in terms of  
16 if there was an accidental capture, whatever the motive was,  
17 were we supposed to -- were those guys supposed to slap that  
18 collar on?

19 A. If there was an unintentional capture of a jaguar,  
20 and that jaguar obviously has to be anesthetized in order to  
21 remove it from something, we put a collar on it, unless  
22 there is some compelling reason that you -- I mean, the  
23 jaguar comes in, he has got a broken leg, he can't be  
24 released or anything else, absolutely.

25 I think the understanding throughout the -- at all

1 the levels that might engage with a jaguar, yeah, if there  
2 is an unintentional capture, we put a radio collar on them,  
3 because for the last -- since 1997, since that first jaguar  
4 pursuit, which actually precipitated the collar that was  
5 placed at Region 5, you guys -- you are familiar with that  
6 one?

7 MR. HOVATTER: Yeah.

8 Q. BY MR. MCMULLEN: Uh-huh. Yeah.

9 A. Okay. Then all of the guidance from science, I am  
10 not talking about from Enviros, I am not talking about from  
11 PETA, and the rest of the folks, and that's what it is, it  
12 was if you want to get good information on jaguars in the  
13 borderlands, you have got to find a way to get a collar on a  
14 jaguar and make use of the technology.

15 There are other things that you can do to try to  
16 generate information, but ultimately, it is capture and  
17 collar them.

18 Q. Okay.

19 A. So, yeah, and the.

20 MR. HOVATTER: Just one second. Let me -- this is  
21 Larry. Hey, Boss. Boss, I am going to call you on a land  
22 line. I will call you on a land line right now.

23 MR. FABRITZ: It might be a good time for a break  
24 anyway.

25 (Recess ensued.)

CERTIFICATE

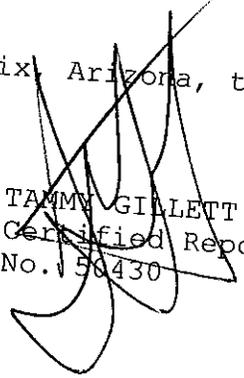
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I, Tammy Gillett, do hereby certify that the foregoing 54 pages were transcribed by me; that I was then and there a Certified Reporter in and for the County of Maricopa, State of Arizona, and that the foregoing pages contain a full, true, and accurate 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 13th day of August, 2009.

TAMMY GILLETT  
Certified Reporter  
No. 50430



ARIZONA GAME AND FISH DEPARTMENT  
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PHOENIX, ARIZONA 85086

TRANSCRIPT OF INTERVIEW  
TERRY JOHNSON  
JULY 9, 2009  
VOLUME II

Individuals present at the Interview on 7/9/09:

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  
Terry Johnson, Employee

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## PROCEEDINGS

1  
2 MR. MCMULLEN: Well, where we had left off was  
3 just that I had asked if there were any general orders  
4 regarding ceasing activity, any kind of ongoing tracking  
5 activities if there was jaguar activity detected in the  
6 vicinity, whether by time or space, of the trapping  
7 activity. If there were any general orders regarding what  
8 to do if we captured one incidentally, and you reapplied the  
9 general orders were, slap the collar on, and so I think we  
10 pretty much handled that.

11 THE WITNESS: Yes.

12 MR. MCMULLEN: So I am not --

## EXAMINATION

13  
14 BY MR. HOVATTER:

15 Q. In your opinion, if we had continued those  
16 quarterly meetings you used to do, do you think that they  
17 would have or likely to have been adequate, they would have  
18 been cross program enough, to at least have a higher  
19 likelihood that folks like Thorry and others that are  
20 working on the ground would have been better informed about  
21 the implications of what for them appears to be a bear and  
22 lion study, but which, obviously, turned into a jaguar  
23 study?

24 A. I think that if the cross program managers  
25 meetings had continued at the twice-a-year pace and had

1 served as -- continued to serve as an opportunity to discuss  
2 the whole non-game and endangered wildlife work plan,  
3 including Section 6 and the other sorts of things, that it  
4 would have been -- it would have served a useful purpose.

5           When the meetings became converted to, out of  
6 Department necessity, to focusing on operational planning or  
7 this, that, and the other thing, there was still an  
8 opportunity. If there were discussions about the  
9 operational things, and those discussions included what is  
10 occurring on the ground in research, then I would have  
11 thought that in '07, '08 when research -- the project  
12 started morphing from hair snares to snares, and you are  
13 talking about the area in which the project is occurring,  
14 duh, the light goes on, and we have got some jaguar issues  
15 down there or wolf issues or whatever they might be.

16           So, yeah, I see the purpose there. I think the  
17 other thing is that the once-a-year annual dissemination of  
18 our current permit, the 10(a)(1) permit, is an important  
19 component of that. I think that actually may still be  
20 occurring. I think Eric is still doing that. I don't know.  
21 I know on the front end of that, though, we also used to  
22 solicit from all the different work units, the field work  
23 units, and the Phoenix based WD branches, here is our permit  
24 from -- our existing permit, what activities do you have  
25 projected for the next six months, year, two years,

1 whatever? What activities do you have that should be  
2 covered under this permit if they are not?

3 Q. The permit being?

4 A. Both the 10(a)(1) thing and the Section 6 work  
5 plan because we used to do things like -- like in the  
6 research itself, you see that the research stuff is in  
7 there. And that Section 6 work plan is very fish oriented,  
8 you know. It would have at least been an opportunity to  
9 say, hey, we are doing some large carnivore stuff. That  
10 would have triggered, I think, discussion of the habitat  
11 objective under the jaguar, and in my note, I needed to  
12 provide some increased communication.

13 Q. Should there, in your opinion, should there have  
14 been an EA checklist for that Large Carnivore Habitat  
15 Conductivity Study?

16 A. I believe there should have been. I believe there  
17 should have been.

18 Q. You know, we were looking through all the  
19 paperwork, getting at the sufficiency of our 10(a) permit,  
20 when you look at the endangered species, non-game or job  
21 statements, there is -- they are not excruciatingly  
22 detailed, but they are significantly detailed, and they are  
23 pretty clear about what expectations are. And I know it is  
24 not your work team, but when we look at the research branch,  
25 the totality of their job statement under which they

1 intended to operate is, you know, this.

2 A. Right.

3 Q. And it would be this job statement that would be  
4 covered by the 10(a). And so if this was sufficient to  
5 cover the 10(a), then their approach to work under the job  
6 statement was then covered by the 10(a). Have you seen that  
7 one before?

8 A. This one?

9 Q. This is the one -- that is the commission memo was  
10 this. That's their annual job statement.

11 A. Actually, no, I had not seen this. I have seen  
12 the commission memo, yeah.

13 Q. Again, you are not a 10(a) administrator. You are  
14 not the MOU. You operate under it, also, but I guess my  
15 question would be, you know, not having familiarity with  
16 this process before, the language of the 10(a) being this,  
17 this, the description of the study project essentially is  
18 the commission memo. There is no stand-alone study  
19 project --

20 A. Uh-huh.

21 Q. -- plan for this.

22 A. About 10 or 15 different versions.

23 Q. Well, what that was, was not the plan, that was --

24 A. Yeah.

25 Q. Those were grant.

1 A. Grant solicitations, yeah.

2 Q. Terry, you have worked in this area a lot more  
3 than I have. So I am wondering is this as sufficient from  
4 your standpoint to say, then, that, for example, this isn't  
5 yours, so I am not asking you from the standpoint of your  
6 accountability or anything on this, it is activities under  
7 job title, objectives, study wild birds, mammals and their  
8 habitats, and capture animals in a fixed telemetry devices  
9 and/or other markers, collect body measurements, blood  
10 tissue, that's an activity under that jobs titled objective.

11 And does that -- is that, then, sufficient in  
12 normal practice to be clear that that 10(a) is inclusive of  
13 that activity with no more specificity than that?

14 A. Yes, I think it is. And I would go back to the  
15 reason I think it is. If you look at the Section 6 work  
16 plan or job statement, basically, it is the same functional  
17 document is the research description there. We don't  
18 delineate that in great detail all of the standard  
19 management practices.

20 MR. MCMULLEN: Those are better.

21 THE WITNESS: We give some examples, but we don't  
22 delineate everything in there, and this is why I come back  
23 to the statement that we make in the Section 6 job  
24 statement, which is I would think the same statement that  
25 should appear in the research at some point, is that if a

1 project is going to be developed in more detail, for  
2 example, a lion corridor or large carnivore study, then we  
3 will subject that to the appropriate environmental review or  
4 appropriate review, call it whatever you want to, and that's  
5 the point in which, in hindsight, our EA checklist would  
6 have served as very well.

7           Once you get that detailed study plan together for  
8 the lion and bear work, it is much more substantial than  
9 that document there, then you run it through the EA  
10 checklist, and then whoever is checking off the two  
11 categories for non-game and endangered, basically, Eric  
12 Gardner is the Non-game Branch Chief or Non-game and  
13 Endangered Wildlife Coordinator, or whatever you want to  
14 call him, manager, that is his opportunity to say, okay.  
15 Yeah, your activities are focused on completely different  
16 species, but here is how I see it in terms of the likelihood  
17 of affecting endangered species, and an EA checklist would  
18 accomplish that for you.

19           There is another way of doing that, and that is  
20 you take the Section 6 work plan, and you add a new job to  
21 that work plan, and that job is just delineate the non-game  
22 and endangered folks who review all projects, study plans,  
23 call them whatever you want, that have a potential to result  
24 in capture, take, or harm, or whatever the federally listed  
25 predatory endangered species and put the burden on the

1 non-game and endangered wildlife folks to do that review  
2 instead of the EA checklist.

3 Another option is to simply write the EA checklist  
4 into that Section 6 work plan. I think that is even more  
5 overt. Simply say that an EA checklist will be completed  
6 using that Section 6 work plan for all the projects that are  
7 likely to affect, may affect, or result in.

8 Q. BY MR. HOVATTER: This is the Section 6 work plan?

9 A. Yes.

10 MR. MCMULLEN: Go ahead. Stay with your train of  
11 thought.

12 Q. BY MR. HOVATTER: I want to kind of -- I think I  
13 know what the answer is. Understanding why it makes perfect  
14 sense to not have pursued Macho B for a deliberate take --

15 A. Uh-huh.

16 Q. -- we also haven't made a decision to make that  
17 effort since that what? '97 was the last time we tried to  
18 do that?

19 A. '97, whatever animal it was. Whether it was a  
20 jaguar or not, it is still somewhat arguable.

21 Q. I saw in the notes. It wasn't clear that it  
22 wasn't a mountain lion that was being chased?

23 A. Yeah.

24 Q. You had indicated earlier that there had been some  
25 conversation with Jack Childs who had been somewhat

1 frustrated for -- back several years. At some point in that  
2 process, theoretically, this is a terrible hindsight  
3 question, but if Macho B, and, of course, Macho B is not  
4 the -- it is just jaguars on the border, but knowing that  
5 Macho B is in play, was there a reason why we had not made a  
6 decision -- I mean, if it had been Macho B in '97, Macho B  
7 is a young, healthy, vibrant jaguar, is there a reason why  
8 we had not made a decision to pursue a jaguar deliberately  
9 in the sense that protocol was put in place after that '97  
10 effort seemed very detailed and very thorough about the  
11 things that would have to happen that seems to address a lot  
12 of lessons learned in a pretty detailed way?

13 A. Uh-huh. It was pretty primitive in hindsight, but  
14 there was a lot of time and effort put into developing all  
15 those protocols in '98, '99, 2000, but the -- why didn't we?

16 Q. Uh-huh.

17 A. Go capture a jaguar? We didn't have the funding.  
18 We didn't have funding to monitor. We were still cobbling  
19 together at that point two or three hundred dollars a year  
20 just to support the remote camera work that was being  
21 developed. We just flat didn't have the funding. I mean,  
22 honestly, the bigger question I have asked to myself  
23 at this point in life is why the hell did we ever send the  
24 people down in '97 in that October, November stint? Talk  
25 about catching a tiger by the tail, what were we going to do

1 with the damn thing if we caught it?

2 Q. That kind of comes true in the discussion in the  
3 minutes of the meeting from around that time. That flavor  
4 kind of comes through.

5 A. Yeah. It must have been seemed like a good idea  
6 at the time, but then when you look at the -- why was Jack  
7 allowed to become frustrated over lack of a decision on  
8 capture between '98 and 2005, 2006. In the early years, we  
9 had no funding to support monitoring. We didn't have the  
10 level of GPS technology for collars in the early years that  
11 we have now. So we couldn't have just relied on satellite  
12 coverage, that sort of thing.

13 There also, even though it was somewhat primitive,  
14 pretty detailed. The capture protocols themselves were  
15 still pretty primitive, and we really didn't have any  
16 concept in those early years. We knew of occurrences, but  
17 we didn't know of anything that had localized. I mean, we  
18 really didn't have that information. That evolved over a  
19 period of years.

20 And, also, in order to go capture one, you had to  
21 have recency of information. I mean, the '97 thing only  
22 occurred because the deer hunters called in, called Lenny  
23 and Glenn, and said, we think we have a jaguar up a tree.  
24 Well, hot pursuit ensues. With the camera work, our  
25 photographs would come in two, three, four, five, six months

1 after the fact.

2 And sometimes they would come in -- I mean, you  
3 have only got really a window in terms of climate, in terms  
4 of weather, temperatures. You have got basically about  
5 November-ish through end of February before ambient  
6 temperatures are such that capturing a jaguar would be a  
7 real -- could be really problematic for the animal involved.  
8 And summer comes early, summers stays late, that sort of  
9 business complicates things as well.

10 There were just so many so many things that were  
11 not settled sufficiently to warrant triggering a decision on  
12 capture.

13 Q. Actually, I am not sure I am even going to ask  
14 that. Do you know if Thorry Smith was ever involved -- did  
15 you ever have a conversation with Thorry Smith about the  
16 possibility of catching a jaguar before that?

17 A. No, never. I did not know until just going  
18 through e-mails in this room that Thorry had even been  
19 involved in that jaguar camera monitoring as early as '05,  
20 '07. He was a volunteer with Emil's group. He is mentioned  
21 in an e-mail, and that, I think, is an '05 e-mail. The  
22 e-mail is actually from Diane Hadley, I think, one of those  
23 Northern Jaguar Project people, and his name is on there. I  
24 didn't even know there was such a thing as a Thorry Smith  
25 until years later. I still haven't met Thorry Smith.

1 Q. Now, and I should have segued to this real quick.  
2 The discussion about the EA checklist, did you ever have a  
3 conversation about doing an EA checklist? I think I know  
4 the answer based on the other questions.

5 A. No.

6 Q. Yeah.

7 A. No. And, again, looking at this in hindsight,  
8 what floors me at this point is that if the concerns were  
9 sufficient in research at the supervisory level, I am not  
10 talking Thorry Smith level, in January of '09 to come and  
11 ask for specifics about our authorities to capture a jaguar  
12 intentional or unintentional, and they were, in that the two  
13 people talked to Bill Van Pelt about it, and Bill provided  
14 them with copies of it.

15 Q. What did Bill provide them? Was it the -- it was  
16 the guidelines and protocols or --

17 A. No, he thinks it was just the Section 6 work plan  
18 and the --

19 Q. Just the Section 6?

20 A. And possibly the permit.

21 Q. That's that -- that would have likely been -- I  
22 should -- and I am just asking you this because I am just  
23 slapping my head because I should have asked Bill this since  
24 I had this, that would have been that -- the one about the  
25 jaguar that --

1 A. Yeah.

2 Q. The named cats of the Southwest Conservation?

3 A. Job 6 or whatever it is.

4 Q. Yeah.

5 A. Ron Thompson said that he had, again, an e-mail  
6 saying that he had provided a copy of a protocol to Thorry.

7 In a conversation, the conference call with Thorry on March  
8 11th or whatever it was when he was still in Hawaii, he  
9 asked -- I asked him a question about which protocol he was  
10 trying, he was operating under, he was trying to remember,  
11 and he talked about a 2000, 2001 protocol. And I put words  
12 in his mouth, I think, by saying, do you mean the 2005?

13 He couldn't remember. Well, if he is talking --  
14 if literally he was talking about 2001 or 2000, he's talking  
15 about an appendix to a Jaguar Conservation Team report, an  
16 evaluation of progress. That is not even a stand-alone  
17 document. And by 2005, 6, and 7, that thing had been  
18 outdated two or three times.

19 I know that Thorry and Emil -- actually, I don't  
20 know that Emil was. Thorry, Roberto Aguilar in one of his  
21 e-mails provided a copy of the 2005 Wildlife Conservation  
22 Society Jaguar Handling Protocol to Thorry, that's an e-mail  
23 somewhere in all that well of material, that the Wildlife  
24 Conservation Society Protocol is referenced by attachment  
25 protocol. It is like 200 pages long or so. And, now, it is

1 carried by Panthera instead of Wildlife Conservation  
2 Society, but it provides a lot of explicit information on  
3 handling jaguars and thing.

4 But, no, I would have thought, Gary, somebody  
5 said -- is sufficiently concerned about a project to say, I  
6 want to know what our legal authorities are if we capture a  
7 jaguar? At that point, they know what their methods are,  
8 and I would think they would be asking to make sure that  
9 that they have copied, what do we do if we catch it? The  
10 issue isn't just how -- you know, what our authority is.  
11 What do we actually do?

12 MR. MCMULLEN: Who do you understand was asking  
13 the question? I mean, are you saying somebody asked it. I  
14 want to make sure we have the same understanding.

15 THE WITNESS: Dean Treadwell and Ray Schweinsburg  
16 both had the conversation with Bill Van Pelt.

17 MR. MCMULLEN: Okay.

18 THE WITNESS: Somewhere January-ish.

19 MR. MCMULLEN: Okay. I just want to make sure we  
20 all were on the same page with who was making those  
21 inquiries.

22 THE WITNESS: Ron Thompson had a conversation as  
23 well, but I don't know what period that was, January or  
24 February, early February. I am not sure. And it may well  
25 be the people, I was at the doctor's or whatever, not

1 available, and they just got Bill because he really was much  
2 more readily available in January and February.

3 MR. MCMULLEN: Sure. I understand.

4 Q. BY MR. HOVATTER: In earlier conversations we had  
5 with some of the other folks, there was reference made to a  
6 McCain or a Journal of Wildlife Management article?

7 A. Yeah. That is the McCain and Childs 2008 one?

8 Q. Yeah.

9 A. Yep.

10 Q. And the question came up that there was quite a  
11 bit of discussion, you know, it was about jaguar, I guess, I  
12 haven't read the article.

13 A. Yeah.

14 Q. Normally, those types of articles include, or are  
15 expected to if it is a study, to include a description on  
16 methodology?

17 A. Got it.

18 Q. There apparently was no mention of use of bait or  
19 lure for that project?

20 A. No mention of scents, yeah.

21 Q. Did you have any thoughts about that article at  
22 the time? Did that strike you at all as odd or unusual or  
23 did the description of the methodology in that thing make  
24 sense to you?

25 A. It made since to me at the time, and not just at

1 the time it was published because we saw several drafts of  
2 it, my focus in looking at those drafts and even at the  
3 final publication, was on the conclusions that were drawn  
4 about residency, about permanency, about area of coverage  
5 and those sorts of things. The sad thing is that we were  
6 sufficiently familiar, or I was sufficiently familiar with  
7 the methods that they were using, camera traps, we knew they  
8 were using scents. We knew that from coyote scents,  
9 whatever scents were available. And at some point in the  
10 '05, '06, '07-ish the use of jaguar scents was even  
11 discussed.

12 Q. In what context was that, Terry?

13 A. It was in a Conservation Team Meeting when we were  
14 talking about methods of capture. The jaguar scents had  
15 been used and camera snares, camera snares or camera traps,  
16 whatever you want to call them, from Tierra Del Fuego all  
17 the way north. It is a logical thing to do if you are going  
18 to track coyotes, then the most attractive scent to use is  
19 coyote scent. If you are trying to get a photo of a jaguar,  
20 then a jaguar scent would make sense.

21 Looking back at the articles, I mean, the last  
22 draft that Emil sent me of that paper, there is a line in  
23 there that in March, when I was looking back at this, I  
24 thought, oh, my God, look what he says. It is right  
25 there in black and white because he talks about the

1 reviewers having requested that he address the scent  
2 marking.

3           The reviewers had asked for some changes in the  
4 manuscript. If he was going to address the scent marking, I  
5 thought, oh, wow, if they told him to do that, why didn't  
6 his methods get modified. The only reason he was talking  
7 about it at all, I finally realized a whole month later, he  
8 was talking about he was going to inject into the manuscript  
9 the fact that Macho B had scent marked in response to the  
10 snares.

11           The only logical reason for that male scent  
12 marking a camera trap or snare, whatever you want to call  
13 it, is that there must have been a whiff of a jaguar there  
14 that needs responding to. But it never -- it never was an  
15 issue for me, because it is just understood, I mean, it is a  
16 standard management practice, and there is no take involved.  
17 All we are doing is shooting photos.

18           And, now, in the future, I would assign it a lot  
19 more importance because I no longer trust people to the  
20 extent that I did at the time, but using the scent in  
21 association with camera to me is just irrelevant up until  
22 the point at which you find out that you are setting snares  
23 within half a mile of a camera that has been scented with a  
24 jaguar, whether it is scat or it is urine or it is whatever,  
25 especially if it is estrus, and you know that the jaguar

1 that is out there is a male.

2 MR. MCMULLEN: Okay. Can we flesh that out just a  
3 hair? You mentioned estrus.

4 THE WITNESS: I don't know whether the scent, the  
5 scat, or the urine. I don't know what the zoo actually  
6 provided to Emil. So I don't know whether it was from a cat  
7 that was in estrus or not.

8 MR. MCMULLEN: Do you know who -- do you know who  
9 all procured scat from the zoo, jaguar scat from the zoo?  
10 Was it just Emil or was it --

11 THE WITNESS: Somebody else picked some up for  
12 him. I am thinking it was a female volunteer, but I  
13 honestly can't tell you who it was. I don't remember.

14 MR. MCMULLEN: We need to capture that question.

15 Q. BY MR. HOVATTER: Do you think that discussion you  
16 were relayed about the conservation team discussion about  
17 using scent, should that have shown up or probably in the  
18 minutes?

19 A. No.

20 Q. Was it that kind of discussion?

21 A. We didn't -- the notes that were taken for the --  
22 you undoubtedly know why having read through them all, they  
23 are very uneven. There are significant things that were  
24 discussed that aren't even captured in the notes. The  
25 quality of the notes depends entirely on who was taking

1 them. The '06 period, in particular, notes were being taken  
2 by a lady that we ended up finding ways not to renew her  
3 employment. They were just such terrible quality.

4           And I will give you a specific example of why I  
5 have no confidence that all the important things were  
6 recorded in the notes. In April 2006, we had the biggest  
7 discussion of all on capturing a jaguar, intentional capture  
8 of the jaguar, all this business. And the summary notes for  
9 that meeting don't even address the issue. The raw notes  
10 for that, I think Bill Van Pelt scribbles, have a statement  
11 in there about no support or highly controversial or  
12 something like that, and yet, two days later, Tony Davis and  
13 another reporter, I can't remember the other guy's name,  
14 both published articles about that very discussion, it was a  
15 huge discussion in that meeting, thirty days later.

16           So I cranked out a briefing memo for Duane and for  
17 the Governor's Office, and everybody in the world on how the  
18 whole capture issue, the fact that no decision has been  
19 made. What had been -- the Jag Team, the members, signatory  
20 members, had recommended, that this states, both states, the  
21 Fish and Wildlife Service capture and collar a jaguar, but  
22 it wasn't a decision. The Jag Team didn't have that  
23 decision. They didn't have the authority for that decision.

24           Q. That was in 2006?

25           A. I think that is 2006.

1 Q. So what I am gleaning from all of that is that we  
2 were aware in the context of the camera part of the project  
3 that jaguar scat had become a part of that process?

4 A. Not necessarily scat, jaguar scent, jaguar scent.  
5 And I am not -- I don't -- I don't know that I ever -- I  
6 don't remember ever refining it from scent to either urine  
7 or to scat. It is just some sort of an attractant that was  
8 coming from a jaguar.

9 Q. Terry, between the capture and the recapture and  
10 the monitoring of Macho B because we had the meeting on the  
11 20th of February --

12 A. Uh-huh.

13 Q. -- where we designated you and Bill as your  
14 understudy, and then we were going to do at least daily  
15 reports that were done.

16 A. Uh-huh.

17 Q. And my memory is that your health also was a part  
18 of that, because Bill -- sometimes you did it, but how did  
19 from the standpoint -- can you describe how information  
20 flowed to you, from whom it flowed to you to do those  
21 updates, those daily updates?

22 A. Yeah.

23 Q. How did that process work from your perspective?

24 A. It wasn't a smooth process. I got information  
25 from Emil at all weird hours of day almost entirely by

1 e-mail. I got e-mails from Jack. I got information e-mails  
2 from Bill and conversations with Bill. There wasn't much  
3 phone calling going on in that.

4 [REDACTED]  
5 so Bill would maintain those updates while I was gone, and  
6 then I would get back into it as quickly as I could  
7 thereafter.

8 The problem that surfaced is that as early as, I  
9 want to say Sunday or Monday, so that would be -- Thursday  
10 was the 19th, 20th, 21st, 22nd, whatever it is, the Sunday  
11 or Monday, Tuesday, somewhere along in there, the GPS  
12 signals indicated that there wasn't as much movement as you  
13 would expect from the jaguar.

14 And so the discussion started at that point about,  
15 well, what does this mean? Is it just laid up because it  
16 has, you know, got a full belly? Is it just hunkered down  
17 by water? Is there something -- a problem developing, these  
18 sorts of things? Well, on -- excuse me -- by Tuesday, the  
19 24th if I have got days and dates correct, Tuesday, the  
20 24th, it was really apparent to me, if Tuesday was the 24th,  
21 that we had a problem. Yeah, Tuesday is the 24th.

22 And the problem was this. Emil and Thorry were  
23 not taking the direction from Bill that they should have  
24 been taking.

25 Q. How was that?

1           A.    They were debating whether to go in or not and  
2 whose call it was to go in and check the status of this  
3 animal.

4           Q.    Debating who?

5           MR. MCMULLEN:  They were debating amongst  
6 themselves?

7           THE WITNESS:  Amongst themselves.

8           MR. FABRITZ:  Excluding Bill?  Is that what you  
9 mean?

10          THE WITNESS:  They were private conversations  
11 taking place among them, and then Ron Thompson was also in  
12 that loop, and we didn't even know it initially.  Then there  
13 was Bill over here.  One of things that I got concerned  
14 about was that Emil started identifying the people that  
15 would go in, and he initially didn't want people to go in  
16 because he wanted it to wait until he gets back.

17          Q.    BY MR. HOVATTER:  Who is that?

18          A.    Emil.

19          Q.    Emil.

20          A.    He wanted, if possible, we could hold this off  
21 until I get back from Spain the next week or whatever it  
22 was.  And my comment, concern to Bill or comment to Bill was  
23 that this isn't about Emil.  If you have got concern about  
24 the jaguar, somebody needs to go in.  And if there's a  
25 decision to be made here, it is not Emil's, it is not

1 Jack's, it is not Thorry's, it is yours or mine. [redacted]  
2 [redacted], then you are going to have to make  
3 that call if it needs to be made after you get the next  
4 updates and blah, blah, blah, because he kept on going back  
5 and forth.

6 He would get a GPS location and it would be very  
7 encouraging, and then he would get another one six hours or  
8 12 hours or 18 hours later, and it would be, maybe there is  
9 a problem. So he would just go back and forth, kind of a  
10 manic depressive thing. But I thought we had a very clear  
11 understanding when I went [redacted] that Bill was the one  
12 who would make the call as to whether we went in and who  
13 went in.

14 And when I came out and really started to engage  
15 again on that late Thursday, I think it was, my first  
16 conversation with Bill is, well, we didn't go in. Well, did  
17 you believe that we shouldn't go in? Well, no, they kind of  
18 talked over me on this business, and then the next thing  
19 that I learn is that the -- they had been looking at Ole.

20 Q. Go ahead.

21 A. That Emil and Thorry and Ron, to an unknown  
22 extent, had been talking about who would go in, and it would  
23 be Bill wasn't a part of that group going in, and Ole  
24 Alcumbrac would be part of that group going in.

25 Q. Now, was that -- was Bill excluded from Emil or

1 from that conversation?

2 A. He was excluded from -- the decision was being  
3 made without Bill as to who would go in and when they would  
4 go in. And then I got back out, and I contacted Emil and  
5 Jack, and, of course, and Bill and said, here is the deal.  
6 This is a Game and Fish activity. Game and Fish will make  
7 the decision as to who goes in and when they go in and blah,  
8 blah, blah. And Bill is the one who is going to make that  
9 call.

10 Then I think that Friday night, they made the --  
11 they made arrangements to go in on that Saturday morning,  
12 and when they hiked out that night, I got a phone call from  
13 Bill when he got back out to satellite coverage, we weren't  
14 able to make contact, and that was kind of encouraging  
15 because you would think the jaguar is moving around, and so  
16 waiting for more GPS localities to come in from Emil.

17 I go to bed Sunday night or Saturday night, as far  
18 as Bill knows and I know, the only person that is still  
19 behind is Thorry. Even at that point, nobody had told us  
20 that Ole Alcumbrac and his techs and Jim deVos were coming  
21 in on Saturday to go back out in field on Sunday. It just  
22 was a --

23 Q. So you weren't informed of that?

24 A. Absolutely not.

25 Q. Who went into the field on Saturday?

1           A.    On Saturday, Kurt Bahti, Thorry, and Bill, I  
2    think, were the only three that went in on Saturday.  And  
3    when Bill and I were talking about it, it was even kind of  
4    weird.  Again, you see Emil where Emil isn't necessarily, he  
5    found it very odd that you are chasing a cat based on GPS  
6    locations, and yet Thorry did not have the GPS with him.  
7    Fortunately, Kurt did have one so they were able to use  
8    something else from back in his truck or whatever.

9           So our question even at that point was where is  
10   Thorry getting his direction?  Is it from Emil?  Is it from  
11   Ron?  Is it from, you know, Bill?  Is it -- who is really on  
12   first here?  And then we found out on Saturday that --

13          Q.    We being you and Bill?

14          A.    Yeah.  I mean, I found out that Bill had screwed  
15   up his ankle or whatever coming out of the place on Saturday  
16   night, and so he was -- he went home, and then I found out  
17   on Sunday, or Saturday night, whatever, I guess it was  
18   Sunday, that, hey, they are out in the field on Sunday.

19   Thorry is still tracking, and Devo had come in and Ole and  
20   supposedly two other techs, two of Ole's techs, and I don't  
21   know their names or sexes or anything else even  
22   at this point.  There is a lot here.

23          Q.    So is it your understanding when Bill left after  
24   he dinged his ankle, when he left on Saturday night or  
25   Saturday evening, that he did not know that Alcumbrac and

1 those guys were coming back Sunday morning?

2 A. Yeah. Yeah.

3 Q. Interesting.

4 A. He knew that Thorry was there.

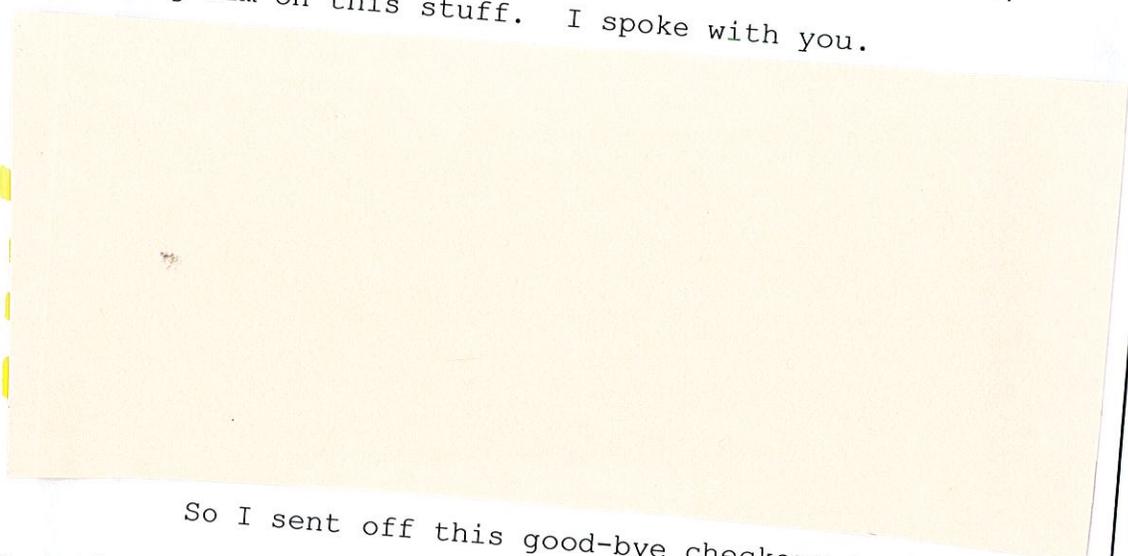
5 Q. Uh-huh.

6 A. Thorry was going back in, but I don't believe that  
7 Bill knew, and I am sure he didn't. And, then, when I got  
8 the information on Sunday, and there are lots of e-mails,  
9 not lots, but e-mails about this back and forth. When I  
10 found that -- when I heard that afternoon that Ole had tried  
11 to dart the cat and the dart had bounced off, again, I  
12 questioned who is making the calls here? You know, what  
13 is -- who is on first, let alone second, third, and home  
14 plate?

15 And, then, it just became clear that from the  
16 descriptions that were coming out, and Thorry called me  
17 sometime Sunday afternoon, and he hiked out and he talked to  
18 me and very forthcoming about what they had encountered, and  
19 the jaguar looked like he was in such bad shape that Ole had  
20 tried to dart it, and then the jaguar scampered off. And  
21 they weren't able to -- the dart bounced off, and they  
22 weren't able to follow up with it.

23 But Ole's estimate at that point in the field was  
24 that renal failure was occurring, and this was a cat that  
25 was in bad shape. And then over the course of the next two

1 or three hours as it became clear that we were going to need  
2 to organize a real capture effort for Monday involving  
3 helicopters, Wilderness, Highlands, Wildlife Services, all  
4 of these things. I spoke with Larry, Ben, Ben Tuttle,  
5 briefing him on this stuff. I spoke with you.



6  
7  
8  
9  
10  
11

12  
13 So I sent off this good-bye checkers sort of  
14 e-mail that said I think I am pretty well busting things up,  
15 and I feel like I am leaving it all screwed up and  
16 everything else, and then I got out of Dodge. And then I  
17 sat there, then, the next day, as I started looking at what  
18 has actually happened, and I am convinced absolutely that on  
19 my best day of my entire 62 years of age, I could not have  
20 handled the logistical issues as well as you and the other  
21 guys handled them on Sunday night, Monday morning. It  
22 just -- it was a good call for everybody, even if I had been  
23 fully functional.

24 Q. By the way, you were doing pretty good. You know,  
25 it was an easy call to make. We needed to have you around

1 for the next round.

2 A. Gary, up until that point, up until that point on  
3 Sunday night when those final decisions were made about me  
4 getting out and Larry and Tuttle being on the same plate  
5 about we have got to capture, we have got to get this thing,  
6 I never felt up until that point that the Department has had  
7 its shit together in terms of who was cooperating with whom  
8 and how they cooperating on it. I never felt anywhere along  
9 there that Emil, Thorry, Ron Thompson, and Bill and I were  
10 all on the same page, never felt like we were getting all of  
11 the information of everybody to inform us as to what was  
12 being considered and why.

13 And that feeling of unease increased significantly  
14 from the 25th through the day of the 1st, and I look back at  
15 that, and I think, initially, I thought, if we had pulled  
16 the trigger when I thought we pulled the trigger, [redacted]  
17 [redacted] I thought they were going in the next day.  
18 I thought that was the agreement we had made. Then Bill got  
19 reversed on that.

20 I was pissed about that, no question about it,  
21 because I thought that, even me, I am not a jaguar guy, I  
22 mean, I am not a big cat biologist, it has been 20 years  
23 since I have even been an ecologist, but there were enough  
24 tea leaves out there to suggest to me that there was a  
25 problem that was worth investigating in the field to get a

1 firsthand observation as to whether this cat was in good  
2 condition or not.

3 And I thought all we have done is we have blown  
4 four or five or six days. And even when we did finally go  
5 in, if they intended to go in and capture on Sunday, Ole had  
6 his field kit with him when they were hiking, why wouldn't  
7 you use dogs? Why wouldn't you ask for somebody to bring in  
8 dogs on Saturday and Sunday when you are calling in the vet.  
9 So I am pretty dissatisfied in hindsight looking back at  
10 those elements of it.

11 MR. HOVATTER: Kind of think we have answered the  
12 question on the collar. I am satisfied with that. There  
13 was --

14 MR. MCMULLEN: I think he ran through all of them.

15 Q. BY MR. HOVATTER: I think we have done that one.  
16 And, actually, I don't think I need to ask that. I have  
17 asked that. When does Ole first show up in this on your  
18 screens?

19 A. On my screens, the first thing I hear about, about  
20 Ole is in the week of -- around the 24th, 25th, 26th is the  
21 first time I hear Ole's name mentioned in conjunction with  
22 Macho B out in the field. The reason why that caught my ear  
23 and eye, Gary, is I understand that Ole has done a lot of  
24 good work for the Department on lots of different species.  
25 But I also have been -- I have known him for a long time. I

1 don't know him really well personally, but he used to  
2 work -- when I had to Adobe Mountain, he was associated with  
3 Adobe Mountain, and he has got a pretty big track record of  
4 mortalities with animals that he has handled. And I could  
5 think of several other vets that I would have been more  
6 interested in bringing into the field to deal with Macho B.

7 Q. Were you aware before the capture that Thorry was  
8 doing some coordination about the right dosage for the dart  
9 work?

10 A. No. No.

11 Q. This is more of the bigger process issue. Looking  
12 at -- looking at the jaguar guidelines and all, it is clear  
13 that the expectation is that we are to have -- that there  
14 would be a flow of information that you would be kind of the  
15 clearinghouse for any sightings, however bogus and all they  
16 might be, be it camera, be it operation game, what have you,  
17 that that would flow to the Jaguar Conservation Team, and  
18 then that would be kind of vetted through the processes  
19 established by the conservation team to determine what, if  
20 anything, to do with those.

21 Can you describe, and we have had some  
22 conversation already with some of this, about the outreach  
23 effort that went into trying to sensitize the border  
24 community and also those folks in the Department who might  
25 work in an area that a jaguar might be more than normally

1 likely to be sighted, how the word was disseminated and how  
2 it propagated so that folks knew that there was a Jaguar  
3 Conservation Team and that there things that should be  
4 flowing to it.

5       A. Sure. Not necessarily in chronological sequence,  
6 but they involve the public notices on the Jaguar  
7 Conservation Team meetings through the endangered species  
8 updates and through just news releases. We had -- most  
9 every meeting had one or more newspaper reporters present,  
10 and there were always follow-up articles written on the  
11 meetings and on the various issues.

12               We put together the Jaguar Brochure on reporting  
13 sightings and posted that on the web site, handed out copies  
14 of that at different presentations. We had the Education  
15 Committee developed a school curriculum that was enacted in  
16 school districts in New Mexico and Arizona borderlands  
17 communities, and our education branch was involved in  
18 helping us construct that.

19               We actually had a series of presentations  
20 conducted by our -- I am not going to call it a committee,  
21 but an outreach group that flowed from our Education  
22 Committee made presentations all over Southern Arizona, Jack  
23 Childs, Emil McCain, Craig Miller. At one point there was  
24 actually a tour through Southern Arizona, and including  
25 Phoenix in that, to give presentations about, hey, jaguars

1 are here, all this sort of stuff.

2 We put the jaguar warning in our Hunt Guidelines  
3 and sustained that. I think we put that in back in maybe  
4 '98, and then carried that forward every year since then.  
5 We had an article now and again in Wildlife Views. We had  
6 interviews with television people, radio people, and by us,  
7 I mean, someone involved in this effort, whether it was Jack  
8 or Emil or Craig Miller from Defenders or Scotty Johnson  
9 from the Defenders or Bill or myself.

10 When some things happened in Mexico that were  
11 cool, we brought the Mexicans up, and I had some media  
12 coverage for that. The acquisition of a jaguar refuge in  
13 Northern Sonora was the big one for that. So we did a lot  
14 of different things, but we had -- we didn't have anything  
15 in the sense of every two months, there would be some update  
16 that would go out to the public.

17 We also had the serendipity that comes with some  
18 of the reports that would come in that would generate their  
19 own sort of media coverage and word of mouth and things, and  
20 so we would follow up on those. It is like the little boy  
21 who cries wolf, we had so many bogus reports over the  
22 ten-year period and so few that had substance that possibly  
23 we didn't get enough -- we didn't focus enough on giving  
24 coverage when we did.

25 At the same time, the agreement among all the

1 cooperators, up until the Sky Island Alliance started  
2 blowing it intentionally, was that we were going to be very  
3 discreet about locations and not try to attract people to a  
4 given area. But, man, that changed big time once the Sky  
5 Island Alliance and the other folks started getting behind  
6 the Atascosa Highlands Wilderness concept and started using  
7 the jaguar to pump it.

8 Q. Which was necessitating telling people where they  
9 were being seen?

10 A. Not just telling people, they actually conducted  
11 tours. They took their high-rollers into our camera sets  
12 and showed them. Emil has pictures of Sergio Avila and  
13 other folks from Sky Island Alliance actually leading tours  
14 right into our sets.

15 Q. When -- what was your -- what was your --  
16 everything happened real fast after that jaguar, between the  
17 time the jaguar was captured relatively speaking and when  
18 the recapture?

19 A. Uh-huh.

20 Q. What was your -- well, for want of a better term,  
21 what was your sense of the fact that we were accessing --  
22 our access to the collar information was going through Emil  
23 McCain?

24 A. Well, we had agreed from the very get-go that our  
25 monitoring for jaguars was going to be done through the

1 Borderlands Jaguar Protection Project, and that revolved  
2 around the camera sets. When the collar was donated by  
3 North Star to Emil, I thought that we had a clear  
4 understanding that if that jaguar -- that if that collar  
5 were put on a jaguar, it would be put on a jaguar by Arizona  
6 Game and Fish, which would be consistent with the capture  
7 and handling protocols and that the data would certainly be  
8 available to us.

9 But our discussions with Fish and Wildlife  
10 Service, nobody really wanted to have the actual GPS  
11 locations. We didn't conceive of a situation where the  
12 jaguar would die. What we thought about was this jaguar  
13 would be roaming across the landscape generating all this  
14 information, and if the government agency possessed raw  
15 data, then it would be for Emil.

16 We had been so burned by the Sky Island Alliance  
17 divulging those specific locations for the Atascosa  
18 Highlands purposes that, probably overly concerned about the  
19 extent to which the locations would become public, but once  
20 we got into that intense period between March, February 20th  
21 and March 2nd, I became extremely frustrated that we had to  
22 rely on a guy in a different country.

23 And at that time, we didn't even know one thing  
24 that we know now, we had to rely on Emil to provide us with  
25 the locations, and he is in a whole different time zone than

1 we are. So we have got, you know, he's sleeping when we are  
2 up and those sorts of issues. He has got his lynx  
3 obligations over there, and we really were at his mercy.  
4 And looking back at it in hindsight, we would have been much  
5 better served by having the signals downloaded to Game and  
6 Fish and take our chances with the locations getting out.

7 Q. What is the one thing -- you said the one thing we  
8 didn't know then, but we know now. What were you referring  
9 to?

10 A. I thought the laptop Emil McCain had over there  
11 was the Borderlands Jaguar Detection Project laptop. I  
12 thought that was the one and only place getting the GPS  
13 signals. Not true.

14 Q. Yeah. Who else -- now, I remember. Who else was  
15 getting those?

16 A. Janay Brun was getting those at the actual  
17 Borderlands Jaguar Detection Project computer which was  
18 right there in wherever the hell Emil lives in Ruby or  
19 Arivaca, and that's one that Fish and Wildlife Service -- I  
20 don't know whether they got Emil's laptop or not, but they  
21 certainly ceased that computer.

22 Q. Uh-huh.

23 A. I didn't know. Then it turned out that -- pretty  
24 certain I don't have this screwed up, Bill would know for  
25 sure -- there was yet another person that was getting the

1 signals. Because somewhere along in that period just before  
2 March 1st, Jack Childs told us that if we couldn't get a  
3 hold of -- if Emil's communications weren't working, we  
4 could get the location with information from his brother or  
5 father. I think it was his Dad in Colorado or somewhere.

6 Q. Yeah.

7 A. Yeah. So, then, I am thinking, well, if you are  
8 downloading those signals to three places, why weren't we  
9 downloading them to four or five, including Game and Fish  
10 and Fish and Wildlife Service, and I guess I just -- I am  
11 not that technologically savvy.

12 Q. Now, but there was a discussion, though, after  
13 that collar was donated in 2007 by North Star, there had  
14 already been some conversation amongst all the Jaguar  
15 Conservation Team players that about the access to that data  
16 should that collar would be put on, and then, at least  
17 initially, at least up through now what we know, that having  
18 that be through the Borderlands Detection Project was the  
19 way that everybody was content to have that approach.

20 A. Yeah, and the NGO's, the primary NGO's involved in  
21 this, Sky Island Alliance, Northern Jaguar Project, and  
22 Defenders of Wildlife all agreed that it is best to have it  
23 with a private individual, so that it couldn't be FOIA'd or  
24 public records requested from the agencies. They had more  
25 confidence in the private individuals keeping it

1 confidential than us.

2 Q. Now, Ron Thompson had requested Section 6 job  
3 stuff from Bill in early February, and then Ron passed that  
4 on to Thorry. Were you aware of that -- of that  
5 communication --

6 A. No.

7 Q. -- occurring?

8 A. No. I wasn't then. I was later. And, actually,  
9 I don't remember whether I was copied in one of those, in  
10 that e-mail or not, but I certainly wasn't aware of it. And  
11 I think when I did become aware of it is after the capture  
12 when Bill and I were talking about who knew what when. And,  
13 then, he said that he had been approached, not just by Dean  
14 and by Ray, but also by Ron Thompson.

15 MR. FABRITZ: For? I am sorry --

16 THE WITNESS: For our authorities. I mean, the  
17 Section 6 work plan.

18 MR. MCMULLEN: Just to make sure we were covered  
19 if we caught the jaguar?

20 THE WITNESS: Right.

21 Q. BY MR. HOVATTER: Is there a logical reason why  
22 Ron and Dean would have been involved in that?

23 A. Well, I don't know -- actually, I still don't know  
24 what the hierarchy is in research. I don't know. Chasa is  
25 at the top, and I know that Thorry is at the bottom, or

1 Michelle is at the bottom, and somewhere in-between, I  
2 think, Kirby is Thorry's immediate supervisor, but I don't  
3 know how Kirby relates to Dean or Ray.

4 Q. Can you -- this is turning back the clock. For  
5 the Northern Jaguar Project --

6 A. Yeah.

7 Q. -- and Emil was a part of that, can you give me  
8 kind of your thumbnail of your perspective on that project  
9 and Emil's involvement in it?

10 A. This is -- most of what I -- most of my  
11 perspective on that project has been shaped by what I have  
12 read and learned since February 19th. What I knew about the  
13 project in the earlier period, in 2003, whenever that  
14 project, you know, was formed, I think originally as Friends  
15 of the Jaguar or something in Tucson, and then either  
16 morphed or split off into the Northern Jaguar Project in  
17 concert with Naturale and Defenders of Wildlife.

18 The Northern Project, Jaguar Project, was focused  
19 on conserving jaguar habitat in Northern Mexico, and they  
20 very, very definitely were planning off our efforts through  
21 the Jag Team and Arizona Game and Fish in particular to  
22 collaborate with Mexico so that there were conservation  
23 activities going on south of the border as well as north of  
24 the border, and then we were trying to evolve towards this  
25 unified conservation strategy for the Northern Jaguar

1 population that spills over into Arizona and New Mexico.

2 And in running the Jaguar Conservation Team  
3 basically through that period of 2000, 2003, in particular,  
4 2003 and 2004, we were just getting our wolf act together,  
5 trying to reconstruct the entire wolf project. So there is  
6 a period of time in there, '02, '03, and '04 where Bill was  
7 virtually running the Jaguar Conservation Team. I don't  
8 think I made even half the meetings. So there was a lot of  
9 interaction there that I really wasn't part of.

10 And Bill and I made conscious decisions that, hey,  
11 he would deal with jaguar, and I would deal with the wolf,  
12 because there was more than enough in either one to go  
13 around, and we would just try to help each other when we  
14 knew we needed it. I was aware of, because of the Jaguar  
15 Conservation Team meetings somewhere along through that  
16 process, that one heck of a pissing match developed between  
17 Carlos Lopez Gonzalez, Emil McCain, and Sergio Avila.

18 But it is only after the fact that I go back and  
19 read the e-mails, some of which I received, most of which I  
20 had not, most of which went directly to Bill from the  
21 players in here, that two jaguars had died in Northern  
22 Sonora. And I knew that Emil was associated with both of  
23 them and Carlos was associated with them and then Sergio,  
24 but I honestly didn't have an understanding of exactly what  
25 the pecking order was back then.

1           Now, that I have read -- I know the e-mails and  
2 understand all that business, I have got a better  
3 understanding of it. When we talked about it in the  
4 conservation team meetings, my focus in those meetings I was  
5 present on was trying to hold together the conservation team  
6 partnership, and what it sounded to me a lot like is just  
7 another academic pissing match, for lack of a better phrase,  
8 I can't come up with another one right now, we had already  
9 gone through that Raul Valdez and Carlos Lopez. I mean egos  
10 are egos, and no one seems to like the other person's work.

11           So I misjudged it as really just an ego-based  
12 thing. I had no idea at that time, not until very recently,  
13 that the jaguars that were killed in Sonora -- well, there  
14 was one that was successfully captured and collared were  
15 actually captured and collared without permits from Mexico.  
16 And they had no idea that this burying of the jaguar, the  
17 cover-up that had occurred back in 2003.

18           Q. You weren't aware of that happened at that time?

19           A. No, I wasn't aware of that.

20           MR. FABRITZ: How did the jaguars die?

21           THE WITNESS: Snaring.

22           MR. MCMULLEN: They died in the snares?

23           THE WITNESS: They died as a result of the snaring  
24 in the handling of the snare. Myopathy, heat stress. They  
25 were attaching a hypodermic syringe to a stick off a tree

1 trying to use it as a jab pole. I mean, they had no  
2 equipment whatsoever, no training whatsoever. Those things  
3 became very clear in the jaguar team discussions that there  
4 was just absolutely no preparation down there, no veterinary  
5 advice, no protocols, no nothing.

6 And my focus was on reassuring people that, hey,  
7 if we ever get into this situation in the U.S., we will be  
8 handling it completely differently, with training people,  
9 veterinary advice, protocols, all this business. So don't  
10 equate what happened in Northern Sonora with what might  
11 happen some day in Arizona or New Mexico.

12 Q. BY MR. HOVATTER: Let me, because I don't want to  
13 add anything, because it is germane to the next question or  
14 whether this next question is logical or not, so it is as a  
15 result -- it is only recently that the fact that there were  
16 not permits for that Northern Jaguar project and that there  
17 had been the sort of clandestine burial of the body and  
18 cleaning of the skull, it was not -- that is something you  
19 were not aware of at the time?

20 A. That's correct. Should have been, but wasn't.  
21 And if -- I still don't understand one part of it, Gary. I  
22 understand the divorce between Carlos Lopez Gonzalez and  
23 Emil and Sergio. I mean, I have read the e-mails from  
24 Emil's mom and his dad and back and forth between them and  
25 all this business, but I don't know when the divorce between

1 Sergio and Emil came into play.

2 And the only reason I bring that up is that at  
3 some point in between 2003 and 2006 or 7, Sergio became a  
4 hero within the Northern Jaguar Project, and Emil became  
5 persona non grata, and I honestly don't know why that  
6 happened. But I do know that Emil still as recently as this  
7 year was doing work in Mexico in conjunction with Ron  
8 Thompson.

9 Q. As late was when?

10 A. 2009. I maybe said 2008, but no, as recently as  
11 March 2009, camera work, and I don't think there was any  
12 capture and collar efforts involved in 2009 down there,  
13 but --

14 Q. You know, this is probably a wholly unfair  
15 question, not for you, but I mean, if it was for a  
16 Department employee, I might feel different about asking  
17 you, but put yourself in -- back in 2003, 2004 time frame  
18 when this happened, the Northern Jaguar aspects Emil was  
19 involved in. If the Jaguar Conservation Team had been made  
20 aware that Emil apparently was operating in the manner that  
21 would have been illegal in the United States, operating  
22 without permits, which I presume that is sort of the Mexican  
23 equivalent of our 10-10(a) type of an approach, had, in  
24 fact, buried the body and hidden the hide and the skull of  
25 jaguar that had died, to one end, I have read the e-mails,

1 too, it is unclear, other than that it does seem someone did  
2 not want that known, but also wanted to be able to recover  
3 those parts at some point?

4 A. Yeah.

5 Q. Would we still -- would Emil have remained a part  
6 of that process, the Jaguar Conservation Team, process?

7 A. Emil McCain, Sergio Avila, and Carlos Lopez  
8 Gonzalez, would not have been -- they should have -- we  
9 should have divorced ourselves from all three as a result of  
10 what I have read about what occurred in 2003. Even at this  
11 point, though, there are -- Emil and other folks down there  
12 claim that someone had authorized, someone in the Mexican  
13 government had authorized them.

14 Q. Unfortunately, based on what we know about the way  
15 Mexico sometimes, that is plausible?

16 A. It is. It could have been State authorization.  
17 It could have been Federal authorization.

18 Q. It could have been a mayor?

19 A. Yeah. I mean, that is one of the things that I  
20 try to take into consideration in the Jag Team meetings is  
21 that there are always these sorts of things. I mean, Raul  
22 Valdez was very intent on discrediting Carlos Lopez  
23 Gonzalez, and they were competing for the same funding, the  
24 Turner Foundation and from the Supplier Club International.  
25 I have seen enough academic throat cutting over the course

1 of my academic career since the Dark Ages, and I understand  
2 just how people can get off on those sorts of things.

3 But when I look back at other things, if Howard  
4 Quigley, a member of our Scientific Advisory Group, had come  
5 forward at that time and said, do you know that we had to  
6 cut Emil McCain loose from our lion project up here because  
7 we couldn't trust him to stay within the sidebars that were  
8 established for the project?

9 MR. MCMULLEN: That's the lion project?

10 THE WITNESS: It's a lion up in Montana in  
11 Yellowstone, you know, you add that. If I had known that  
12 there was the violation of season on the raptor thing up in  
13 Idaho, you start adding all those different pieces together.

14 MR. MCMULLEN: When was that?

15 THE WITNESS: All I know is from a newspaper  
16 article Tony Davis, Emil McCain was found guilty of taking  
17 wildlife out of season in Idaho. I think it was Idaho.  
18 Maybe it was Wyoming, but I think it was Idaho.

19 There is a newspaper article, I have got a copy  
20 back at the office somewhere. There is an Idaho Game and  
21 Fish agent who was interviewed in that article. It has been  
22 represented as a felony in some of the newspaper coverage,  
23 but according to the other folks, it was a misdemeanor, but  
24 regardless, there's that. There are things that happened in  
25 Mexico. There's the mountain lion project, the personality

1 conflicts, the knowing now how willing he seems to have been  
2 to push boundaries on some of these things.

3 In hindsight, it is a pretty bad management call  
4 on my part to have -- try to make use of him in the jaguar  
5 effort and to sustain a relationship with Sergio and to  
6 sustain a relationship with Carlos Lopez Gonzalez. And one  
7 of the ironies here is that Carlos Lopez Gonzalez is the  
8 field lead for Mexican wolf reintroduction 30 miles south of  
9 the border.

10 MR. MCMULLEN: Who is?

11 THE WITNESS: Carlos Lopez Gonzalez.

12 Q. BY MR. HOVATTER: Carlos is the -- yeah.

13 A. The one that Emil used to work for, who didn't  
14 have the permits, that supposedly didn't have the permits  
15 that he claimed to have had, and supposedly knew and blessed  
16 the burying of the thing. So all I can say is at this  
17 point, Mexico is still working with some folks. Maybe they  
18 know more about what happened and didn't happen than we do,  
19 and maybe they know nothing about it.

20 Q. So if I could, we have got the Emil, there was the  
21 taking wildlife out of season deal, and that was -- we are  
22 thinking that was either Idaho or Wyoming?

23 A. I am pretty sure that it was Idaho.

24 MR. MCMULLEN: I heard there was a license fraud.

25 Q. BY MR. HOVATTER: Fraudulently obtained a

1 resident's license?

2 A. Yes. Yes. But it was fraudulently obtained, and  
3 then he took -- I think it was for harvest of a raptor. I  
4 don't think it was a big game thing. We are talking about  
5 the same incident though.

6 MR. MCMULLEN: Okay.

7 Q. BY MR. HOVATTER: Harvested a raptor out of  
8 season. And then a Montana lion study?

9 A. Montana lion study. I have a one-liner e-mail  
10 from Howard Quigley just since Macho B's death that says  
11 that, kind of cryptic sort of thing, it just says, you do  
12 know that our problems, my problems or our problems,  
13 whatever, with Emil started long before he was ever involved  
14 in jaguar work? And then I heard that it had to do with a  
15 lion project.

16 Q. Was that part of his master's? He did his  
17 master's on the lion?

18 A. You know, I don't know whether that particular  
19 lion research was used for his master's. What I thought was  
20 that it was not, that he initially got into Jack Childs to  
21 conduct his Humboldt master's work, and that was on lions  
22 along the border. He was still working on that.

23 Q. What was Tim's -- I saw one e-mail where you were  
24 going into Tim to give him knowledge about a jaguar so that  
25 he could disseminate it. What was Tim Snow's relationship

1 to all of this during that?

2 A. That is a pretty good question. The protocol that  
3 we have for reporting sightings and things, a lot of the  
4 information flowed into Bill, and then from Bill to Tim or  
5 to Bill. And Tim has been very erratic in responding to the  
6 sighting reports because of workload issues and because  
7 of -- you get into a whole Region 5 issue between Tim and  
8 Bob Fink and Gerry Perry and now between Tim and Leonard  
9 over what his priorities are. And following up jaguar  
10 sighting reports and passing along information is a pretty  
11 low priority.

12 So I have been taking notes at meetings and  
13 following up on a bunch of tasks, have been pretty  
14 frustrated for four or five years over that. So some of the  
15 e-mail that you have seen from me to Tim was surely to put  
16 him on the spot, hey, I know what you are supposed to be  
17 doing, please disseminate this information. Bill covered  
18 for him frequently. He would go ahead and take on that  
19 workload myself -- himself, and I just reached the point,  
20 Gary, I said, I can't do this. Tim has got to do it.

21 The other element of it was that the folks on the  
22 ground, Kirk Bahti, and the WMs out there, they are supposed  
23 to be interfacing with the permittees out there, and Tim is  
24 supposed to be keeping them informed to what is going on in  
25 the jaguar world, and he is supposed to keep his regional

1 supervisor involved, too. And it's just -- the information  
2 just didn't flow, didn't flow --

3 Q. Now, is that specified in the protocol? I mean, I  
4 have gone through it, but quite honestly, I don't have the  
5 familiarity.

6 A. No. The protocol, the sighting report protocol,  
7 puts the burden more on Bill Van Pelt to be the collector of  
8 the information, but Tim is the one who is supposed to  
9 functionally be handling it down in the region.

10 Q. How is that -- and I don't, but how was that  
11 coordinated or how was that between -- clearly, we had cross  
12 division --

13 A. Uh-huh.

14 Q. -- issues in that we also have, obviously, the  
15 non-game, the expected non-game programmatic latch up, how  
16 was it agreed to or articulated that Tim had that direct  
17 responsibility?

18 A. Bill and I would separately and together have,  
19 through program management meetings, the cross program  
20 meetings, we would have those discussions with Tim. He  
21 would come up as a non-game specialist. We would have the  
22 same discussions with Gerry Perry in the annual work  
23 planning and Section 6 work planning, that sort of stuff.  
24 We had the same discussions about Tim's responsibilities,  
25 and then spend various times during the course of a year

1 begging Gerry for more time from Tim.

2 Q. What was Gerry's -- did Gerry -- did Gerry concur,  
3 I guess, that is the only way to ask it. Did Gerry concur  
4 with Tim's responsibilities?

5 A. He concurred that it was a responsibility, but it  
6 was low priority in relation to handling nuisance urban  
7 wildlife calls, handling issues relating to beavers along  
8 the Cienega Creek.

9 Q. So it was a responsibility but a low priority?

10 A. Low priority --

11 Q. Okay.

12 A. -- and Tim was involved in a big snit with Gerry  
13 for whatever reason over 40-hour weeks working very rigidly.  
14 I know the Fair Labor Standards Act issues are involved  
15 here, but Tim evolved out of resentment, I guess this is  
16 still true to this day, a much more rigid viewpoint of  
17 leaving the office behind and staying just within that 40  
18 hours. If he is off going -- like when he went to -- when  
19 he still goes over to do Mount Graham red squirrel counts,  
20 he is gone for a week, and then he has a week of comp time  
21 or leave time or whatever, there is no one that fills in  
22 behind him on jaguar.

23 Bob Fink does nothing. There is nobody from below  
24 that does this. It just goes into a black hole. And in the  
25 spring, I wanted to test whether we had any heightened

1 sensitivity on these counts. So when we got the jaguar  
2 sighting report from the Rosemont Junction area back in  
3 March, early April, and I fired that off to Tim, and Forest  
4 Service was involved, and blah, blah, blah, I sent it off to  
5 Tim. I said, okay. I need to know what you have done in  
6 follow-up.

7 MR. MCMULLEN: This is 2009?

8 THE WITNESS: This is 2009. We should be  
9 extremely sensitive now because this report is a dead jaguar  
10 by the side of the road, and even though it is undoubtedly  
11 bogus, it is fired off. I didn't get the final follow-up  
12 from Tim until, I think, it is seven weeks later, you know,  
13 that's just -- he has been busy. He has got a lot of other  
14 things going on.

15 So I can't say they work -- Tim and Bill, when  
16 they talked on the phone, it worked out real well. If one  
17 of them caught the other one, generally, it is Bill making  
18 the calls, but that verbal stuff handled -- was handled real  
19 well. Just in routine processing information, we would go  
20 into there to the Jaguar Conservation Team meeting, and we  
21 would be given the same song and dance.

22 Yeah, we received that reporting, you know, on  
23 November 1st, but I didn't have time to get to it until  
24 January 15. By then, it is too late to follow up on, and we  
25 just get crucified by the outside world.

1 Q. BY MR. HOVATTER: Other than those two, this is on  
2 Emil, other than those two phone calls, those two post  
3 euthanization phone calls that we talked about in some  
4 detail, what has been your connection with Emil since then,  
5 since the --

6 A. Since the capture?

7 Q. Since the euthanization.

8 A. Oh, since the euthanization?

9 Q. I am excluding those two really kind of critical  
10 phone calls we talked about.

11 A. Well, I had -- I had several e-mails. I  
12 couldn't -- I can't tell you whether they were three or five  
13 or whatever. I printed those out in the public records  
14 request. I forwarded them to -- printed them in hard copy  
15 or else forwarded them electronically copies to Frank Solis.  
16 Most of them -- most of the communications since then have  
17 been, and there haven't been that many, were the concerns  
18 about himself, concerns about the liability, concerns about  
19 what, you know, what is going to happen with all this stuff,  
20 and looking for legal advice that -- not me.

21 Q. We are not in a position to give him?

22 A. Yeah. And the one, there's an exchange, three or  
23 four maybe even, at some point in the middle of March, yeah,  
24 I am pretty sure it is the middle of March, I could pinpoint  
25 that for you, if you need me to, he called and sent an

1 e-mail someone was tinkering with the cameras, the cameras  
2 that were still out after Macho B's capture and death. And  
3 he was trying to make the case that it was Sergio Avila  
4 going out there and tinkering with these things.

5 And I just advised him, again, I said, look, if  
6 you are trying to make allegations if these are Department  
7 property, and we are having, you know, somebody is damaging  
8 Public Department property, then you have got to go through  
9 the hoops here and file a complaint and give us the  
10 information and pursue it.

11 If you are trying to claim it as your personal  
12 property, then that is separate and outside of this  
13 business, but it is just winnowed off, and I never heard  
14 anything more from it, about that. So I don't know whether  
15 he was making the claim not just that cameras were being --  
16 one of our cameras had been damaged, but they were being  
17 tinkered with. Someone had supposedly removed the film or  
18 the disk.

19 Q. Disk?

20 A. Yeah. And it wasn't too much longer after that,  
21 that maybe just a week or so, that I got that March 31st  
22 call. And then I think I have had one or two e-mails or  
23 phone calls from him since. I just haven't responded.

24 There is one I called back with Mike and Larry present in  
25 the office, but I haven't had any other communication with

1 him.

2 Q. When is the next Jag Conservation Team scheduled?

3 A. They canceled the in May. The next one is  
4 September 24th, and I don't know that we are going to be  
5 able to make it.

6 Q. If we hold that, what is your -- I mean, I can  
7 see, that could be a pretty wild and woolly event. We have  
8 had wild and woolly before. Wild and woolly doesn't scare  
9 me, even going into the meeting and just being able to say  
10 nothing more than we have not -- investigations haven't been  
11 concluded, so we have nothing more to say.

12 What concerns me most about that meeting is that  
13 there is really no reason to meet unless we have something  
14 going on. And at a minimum what has to be going on is  
15 revision of our protocols. And we can't provide such  
16 protocols and involve the Scientific Advisory Group until  
17 we -- the investigations are closed out, and even then,  
18 right now, I got to tell you, Gary, I have got Emil McCain,  
19 Carlos Lopez Gonzalez and Roberto Aguilar all on the  
20 Scientific Advisory Group that I need to get rid of before  
21 it is reconstituted, and I can't do that either.

22 And, then, I have got the unknown quantity, Dean  
23 Rice, that I invited into it, and I still see at this point  
24 that there is no reason not to have Dean Rice on it. I  
25 don't know. My suspicion is he probably doesn't want

1 anything to do with jaguars the rest of his life.

2 Q. Should the bear and lion study be restarted?

3 A. Yeah, I believe it should, absolutely I don't --  
4 except for the pathetic process management on my part, not  
5 good coordination and knowing what that project was and how  
6 it might relate to jaguars and making sure that the agency  
7 is covered in terms of analyzing it for potential impacts  
8 and things, and except for the possibility that this was an  
9 intentional capture, we didn't do anything wrong.

10 The conservation -- the conservation team was a  
11 good thing. We need information on large carnivore  
12 corridors across the borderlands regardless of what happens  
13 this year, over the next 15, 20 years, that border thing,  
14 security fence issues are going to be ever present. We are  
15 going to need that information.

16 The use of snares and the other techniques for  
17 lions and bears are appropriate. I think you should restart  
18 it, but I don't think we can restart it using snares until  
19 we have some closure on some issues.

20 Q. Can you briefly outline your knowledge of the  
21 relationship, relations, relationships between Thorry, Ron  
22 and Emil?

23 A. I actually can't. My knowledge of Emil and Ron,  
24 their relationship is that Emil has done some work for Ron  
25 on jaguars, and possibly mountain lions as well in Mexico.

1 I know that they are well aware of each other through the  
2 conservation team. Ron has gone to conservation team  
3 meetings.

4 Q. Does he have a formal -- does he have a position  
5 on the Jaguar Conservation Team?

6 A. No, no, none. But Ron is someone that I sought  
7 out. I knew Ron when he worked for the Coronado National  
8 Forest. That was still in Tucson. It was back in the mid  
9 '70s. He was one of the most enlightened Forest Service  
10 biologists I ever met. He was early on involved in Trogon  
11 work and some things that were really cool. So I have known  
12 him for a long time.

13 I had sought him out a number of times and he had  
14 offered a number of times some real insights on jaguar  
15 conservation assessments and conservation strategizing, and  
16 those things, mostly e-mail relationship. And I have worked  
17 with him within the Department when he was a law dog up in  
18 Region 1, and we had some Golden Eagles Hopi Navajo issues  
19 up there. So I have known him for a long time.

20 I did not know that Ron and Emil worked as closely  
21 as it looks to me like they did now on jaguar issues,  
22 particularly the lion and bear study. I was not aware that,  
23 you know, I honestly wasn't aware of Thorry until this  
24 capture took place. And yet I know that -- I mean, he was  
25 listed as a cc or two on at least a couple of e-mails, but

1 it was just a name in a long distribution list. I mean, T.  
2 Smith. Now, I recognize who it is.

3 I didn't know that back as far -- as long ago as  
4 '05 issues, Thorry was working with Emil on the camera  
5 running at some level. There is one specific e-mail that  
6 identifies that -- I can't tell you this person, whoever it  
7 was who was writing it, I can't tell you what -- it had to  
8 do with the development and capture protocols. I can't tell  
9 you what Thorry's -- what Thorry Smith's feelings are on  
10 this, because he wasn't present in the meeting.

11 You know, I look back and I see that, hell, I  
12 didn't even know he was a Department employee. I didn't  
13 know him at all. I certainly had no clue whatsoever -- no,  
14 I knew that Emil was working with our lion and bear project  
15 at some level. I didn't know that Thorry and Emil and Ron  
16 were all talking about jaguar protocols, capture protocols,  
17 drugs, and whatever else they were talking about in January  
18 and February, none, none.

19 MR. HOVATTER: Questions?

20 EXAMINATION

21 BY MR. MCMULLEN:

22 Q. I want to follow up on one thing. In the McCain  
23 Childs JWM article --

24 A. Yeah.

25 Q. In that manuscript, did they mention specific

1 locations where the jaguar had been at all?

2 A. There's a general map in there that depicts the  
3 area in which this Macho B --

4 Q. Atascosas, Patagonia area?

5 A. Yeah, but no specific locations, not that I  
6 recall.

7 Q. Who all provided or produced that manuscript?  
8 When was that?

9 A. Oh, Lord. I don't know who the anonymous  
10 reviewers were for JWM.

11 Q. It has been in the Department for a while?

12 A. I do not know that. I know that, again, there  
13 were a bunch of different drafts over a course of years.  
14 Myself and Bill both had opportunities to provide comment,  
15 and I know that I provided comment to Emil and to Jack  
16 verbally, maybe even in writing once or twice, but beyond  
17 that, I don't know.

18 MR. MCMULLEN: No, that's fine.

19 EXAMINATION

20 BY MR. HOVATTER:

21 Q. Let me follow up with that, then, if I can. In  
22 any of those discussions, because in the Jaguar Conservation  
23 Team effort once the Borderlands Jaguar Detection Project  
24 was up and running, when discussions were made of where  
25 photographs had been taken and all, did those get into

1 detail within the team or were they kept fairly generic from  
2 the standpoint of location?

3 A. Effort was made to keep them generic, but on some  
4 occasions, this person would describe a place this way, and  
5 another person would describe the same place a different  
6 way, and you could piece together two or three places, you  
7 know, with descriptions, and you can know pretty  
8 well where -- I mean, southwest of Tucson increasingly  
9 became refined to the Cerro Colorado, north end, this  
10 particular rancher, I mean, you could start to make some  
11 connections.

12 Q. Was there ever in your memory given, you know,  
13 that is a lot of notes, a lot of meetings, did the Manzanita  
14 Mountain area ever come up in discussions in the Jaguar  
15 Conservation Team with respect to Macho B?

16 A. It did not. The first time I heard Manzanita Peak  
17 or Manzanita was when Emil came unglued that the paragraph  
18 that was placed on the web site had this formation in it,  
19 this was after the capture of Macho B, one of those first  
20 ten, I think, that we were putting up so the media could  
21 grab them, and asked specifically that that one be taken  
22 down because anybody who knows the area would know that that  
23 was Manzanita Peak. That is the first I heard about that.  
24 That's the first time.

25 Q. There was -- when we are discussing with some of

1 the research branch folks the grant proposals, it was noted  
2 that the term jaguar came up because this was going to be a  
3 large carnivore study, and obviously, the jaguars are the  
4 other large carnivores known to be found in the border area,  
5 although they were not to be -- it wasn't about going after  
6 a jaguar, but it was about going after bears and lions?

7 A. Yeah.

8 Q. It was mentioned that you had wanted the term, the  
9 jaguar tag removed from those proposals?

10 A. Yeah, I have heard that.

11 Q. Do you -- what is your memory of that aspect in  
12 that?

13 A. I think it is in the fall of 2007, September,  
14 October, November 2007. By that time, we had been, Bill and  
15 I had been engaged in discussions with Fish and Wildlife  
16 Service about how over a period of a year or more, how to  
17 put the squeeze on Homeland Security, or Ron asked or  
18 whoever, to come up with funding for the jaguar award. Our  
19 focus was on sustaining -- was getting funding for  
20 sustaining the Jaguar Conservation Team's monitoring  
21 program, and that was camera tracking, and that is run by  
22 the Borderlands Jaguar Detection Project.

23 And Bill went to a meeting somewhere along in that  
24 period, met with Susan Sferra, Erin Fernandez, I mean, some  
25 Fish and Wildlife Service people. And the discussions were

1 very clear and focused about if there was money to be gotten  
2 for jaguar, the first thing we wanted taken care of was not  
3 just the maintenance of the existing camera work, we wanted  
4 expansion all along the border over into New Mexico, and  
5 that was our No. 1 priority. And I discussed that with  
6 Duane Schroufe, and he was in agreement with that. That was  
7 the Department's priority.

8 Then the next thing I know, I think it is like  
9 January of '08, I was back in DC at the time, I see this  
10 e-mail from Erin Fernandez in Fish and Wildlife Service, and  
11 she's trying to set up a meeting to discuss funding, and the  
12 research branch is involved in that. And it is in that  
13 period in there when I tried to make it very clear verbally  
14 and possibly in e-mails as well that the Department's No. 1  
15 priority for jaguar work was sustaining the monitoring work,  
16 not in having a secondary surrogate study of jaguars by  
17 mountain lions and bears. We wanted primary work on  
18 monitoring on the jaguars, and I didn't want to mix the two  
19 of them.

20 Q. Yeah.

21 A. But also said that since 1999 is the earliest  
22 recollection I have, we have talked about the possibility of  
23 using surrogate carnivores to gather information on movement  
24 of corridors across the border. This goes back to Black  
25 Bear discussions with Sonora on possible transplants into

1 Sonora, which then got terminated for a couple reasons, one,  
2 we had the Mount Lemmon settlement. We didn't want to go  
3 down that path, moving problem bears down to Sonora, and the  
4 other thing they were really looking for, not just bears,  
5 but for money to support the project. Anyway we couldn't go  
6 down that path.

7 So when the project was getting going, I think I  
8 actually had e-mail between the guy that has gone from us  
9 now, Todd Atwood and maybe Thorry as well, whoever is  
10 involved in the jaguar study, the large carnivore study,  
11 about keeping the two things separate. We want to go after  
12 funding for the large carnivore study, absolutely can  
13 support that, no question about it, but first, we have got  
14 to take care of jaguar monitoring efforts.

15 Q. So you think the surrogate approach potentially  
16 does have merit?

17 A. Oh, Lord, yes. In terms of sample sizes, it blows  
18 the socks off any direct jaguar effort.

19 Q. This is, because I think Todd left the Department  
20 in May of '08. Does he have any, in your mind, does he have  
21 any real relationship to this issue?

22 A. Yeah, he must. I will tell you why. One of the  
23 first calls I got after the jaguar capture was from guy a  
24 named Stuart Breck. Stuart is a USDA Wildlife Services  
25 researcher, and I worked with him on wolf issues for several

1 years now.

2 Q. This was after the capture?

3 A. This was after the capture. And Stuart calls and  
4 he is pissed. He's pissed at me. And why? Because within  
5 this large carnivore study group, whatever it is, no one is  
6 talking to him about the capture of the jaguar and the radio  
7 telemetry work and all this sort of business. I said,  
8 Stuart, A, I don't even know you are involved in this  
9 business. B, I am pissed myself, because, you know, I  
10 wasn't getting the information on this thing, but by gosh,  
11 we will both try to keep each other informed on this.

12 So I just asked him, I said, tell me, who is  
13 involved in this study. He mentions Todd Atwood. But he  
14 describes Todd Atwood as being in graduate school in  
15 Illinois I think it is. Then when I followed up on that a  
16 day or two later within the Department talking to folks, oh,  
17 no, we think Todd Atwood is on leave from the Department  
18 while he is doing his -- I still don't know to this day  
19 whether Todd is actually on an educational leave,  
20 sabbatical, whatever, or whether he is an actual employee of  
21 the Department.

22 What I did know, what I learned, as I got into  
23 this, this first couple of weeks is that there must be about  
24 12 or 15 different versions of proposals that are given.  
25 When I asked for a description of the project, they are

1 given all these different proposals.

2 Q. Oh, trust me, been there. Got that T-shirt.

3 MR. MCMULLEN: I cued up right there.

4 THE WITNESS: Some of them include --

5 MR. MCMULLEN: Some say jaguar?

6 THE WITNESS: Some say jaguar. And some of them  
7 include the Sky Island Alliance who says that absolutely  
8 they are not a part of this project, and I don't know. I  
9 don't understand how they deal with that.

10 Q. BY MR. HOVATTER: The Todd Atwood, what study is  
11 that, that Stuart referred to, what was that?

12 A. One of those versions of a proposal for expansion  
13 of the narrowly defined large carnivore study focused on  
14 hair snares in the Huachucas originally. One of the, at  
15 least one, if not several other proposals, for expansion of  
16 that study into the broader corridors using other mechanisms  
17 and surrogate lions and bears and things, not just the hair  
18 snares, Stuart is listed in that. Todd Atwood is listed in  
19 that. They are listed on several different versions.

20 Q. Is Stuart a part of the Jaguar Conservation Team?

21 A. No. Stuart is a researcher in Wildlife Services  
22 who is associated with the wolf project.

23 Q. So why is -- again, this is probably intuitively  
24 obvious to you, but why was he so fired? He is not a part  
25 of the Jaguar Conservation Team, and my understanding is

1 that the study, such as it has expanded, the Large Carnivore  
2 Habitat Conductivity, hasn't included Todd since he left,  
3 because he wrote some of these proposals, apparently, before  
4 he left in May, and I don't think Stuart or Todd are part of  
5 those projects right now.

6 A. Stuart if he had been excised from the project, he  
7 didn't know that when he called me. He still thinks he is  
8 part of the project and people are trying to develop funding  
9 to expand the project, and he wants to know what is going  
10 on.

11 Q. So, I mean, is he an acting or he believes he is  
12 involved in the project that once it gets funded, he is  
13 going to be a part of it?

14 A. He's part of the effort to expand the project.  
15 Therefore, he's part of the project. I don't know another  
16 way to put it. I didn't get into --

17 MR. MCMULLEN: He has been kept out of it?

18 THE WITNESS: Information is not flowing.

19 Q. BY MR. HOVATTER: I was thinking about, you know,  
20 certainly Todd and Stuart, you know, when we talk about  
21 folks who are actually actively involved in the snaring and  
22 the monitoring of the hair and stuff, although the hair  
23 monitoring and everything, I don't think I asked  
24 specifically who the people were who were still doing that,  
25 but it tends to be kind of the same cast of characters, and

1 Stuart and Todd weren't on that list, but I didn't  
2 specifically ask about that.

3 A. But at the same time, let me back up, fill in one  
4 piece, in early December, I got a call from Dave Bergman.  
5 Do you know Dave?

6 Q. Yeah.

7 A. Okay. Wildlife Services State Director for  
8 Arizona, and Dave tells me, Stuart tells me there is a  
9 jaguar meeting coming up to talk about funding. This is in  
10 December of '08. I am just getting ready to go to Mexico,  
11 got the day of the briefing for Larry and all this business,  
12 and I don't have a clue. So I fire off an e-mail.

13 Q. Oh, I saw that. I saw that.

14 A. Well, Dave heard of that from Stuart Breck, and  
15 that meeting that took place on the 8th, 9th, or 10th of  
16 December in Tucson involved Ron Thompson, involved the Cats  
17 Along the Border Research, Large Carnivores Along the Border  
18 Research, Disease Movement Back and Forth Across the Border,  
19 I mean, they are all part of this effort, and they are all  
20 looking for funding.

21 And Stuart is engaged in at least enough at that  
22 point, and I have no idea that he is, that he calls Dave to  
23 try to find out what meeting is going on or to mention that  
24 this meeting is going on, and it may have jaguar  
25 implications. And I think he did that -- well, he and Dave

1 talk a lot, but, you know, whether he did that as a courtesy  
2 to me to let Dave know and have Dave let me know or whether  
3 Dave just took it on himself to let me know that there were  
4 jaguar implications, I don't know.

5 Q. Did you -- you didn't attend that meeting, did  
6 you?

7 A. No, I didn't. I finally got, you know, I got the  
8 information on the agenda, I think, from Steve Spangle or  
9 Sheri Barrett or Erin Fernandez by way of Jim Rohrbough, and  
10 then at the same time, I got the information from Ron  
11 Thompson. I think I have got one e-mail in there about this  
12 has the aroma of Ron Thompson, and I didn't mean that in the  
13 ugly sense, but hey, it is large carnivores and it is money,  
14 and it is not very well coordinated. So that's my aroma  
15 situation.

16 I mean, nobody is talking to anybody on the jaguar  
17 in the Department about this thing, and yet people say it  
18 has jaguar stuff. So, anyway, Ron assured me that it wasn't  
19 jaguar focused, that it was diseased focused, and large  
20 carnivore stuff, and I said, okay, hey, it is not about  
21 jaguar monitoring.

22 Q. So when you finally, because I watched that  
23 screen, when you finally pinned that down and you and  
24 Thompson had the conversation?

25 A. Yeah. I didn't see it as something I needed to

1 change my trip to Mexico.

2 Q. Do you know if anybody else from the Department  
3 besides Ron attended that?

4 A. I do not know, no, huh-uh.

5 MR. HOVATTER: Any other questions, Guys?

6 MR. MCMULLEN: I am good.

7 MR. HOVATTER: Marty.

8 Q. BY MR. HOVATTER: Terry, what have I neglected to  
9 ask you about that you think is germane to our better  
10 understanding of this?

11 A. I wish I could remember everything we even talked  
12 about. I think just there are a few things that are  
13 extremely clear in my mind. One is Arizona Game and Fish  
14 had the permit authority through Section 10(a)1(a) permit in  
15 combination with our Section 6 work plan to capture and  
16 collar a jaguar unintentionally or intentionally. I believe  
17 that absolutely. I think it is equally crystal clear, was  
18 crystal clear, to Emil McCain and research folks, at the  
19 higher levels, anyway, as well as to game branch, Ron  
20 Thompson, Region 5, all these folks that we had not made --  
21 our Director had not given the authority to anyone to  
22 exercise that permit authority and --

23 Q. Which would have been required by the protocol?

24 A. That was required by the protocol. It was  
25 required -- we discussed that over 2005, 6, 7, 8, all the

1 way through that process, hey, people we have got the  
2 authority, but Game and Fish has not made a decision to  
3 capture, and that is all the way through December of 2008.  
4 And there is absolutely no way that Emil McCain could not  
5 have foreseen the likelihood of capturing Macho B based on  
6 January and February track and photograph information  
7 through sets, through snares, that are set with jaguar scent  
8 within a half mile of a camera.

9 Q. How do you interpret -- here is the thing.

10 A. Yeah.

11 Q. You see those sort of celebratory sense of those  
12 e-mails?

13 A. Yeah.

14 Q. You have, by the same token, part of each e-mail  
15 string, you see after Roberto and Dean kind have gotten off  
16 on -- they are taking the tone, we are helping Game and Fish  
17 get prepared to catch a jaguar. Emil comes into make the  
18 point to both of them, no, no, no, if you go back and look  
19 at what I originally said, Thorry is not getting ready to  
20 catch a jaguar. It is just he's trapping in an area, and we  
21 always -- and so he's getting prepared in case we were to  
22 catch one. But, then, obviously -- I guess, do you have a  
23 sense, this is a wholly subjective question to you on  
24 this --

25 A. Yeah.

1 Q. -- as to whether there is -- whether what we have  
2 was is someone who realized there's a possibility and is  
3 hoping it happens versus realizes there is an opportunity  
4 and is trying to make it happen?

5 A. I think there is another e-mail, an e-mail in that  
6 sequence in which Emil acknowledges that that area is one  
7 that has been inhabited in the past or used in the past by  
8 Macho B. Here is my bottom line, until I learn differently,  
9 hear differently in a factual way, my suspicion is that Emil  
10 led some people down a primrose path. That's honestly where  
11 I am.

12 I just wish I felt better about -- I wish that Ron  
13 and Thorry had been more forthcoming about what they were  
14 doing in asking questions before the captures were made, I  
15 would feel more comfortable about it. It is just that their  
16 relationship among the three, I don't know how deep it goes  
17 and everything else, but I do not believe for one minute  
18 at this point in life that Emil did not know what he was  
19 doing.

20 Q. Do you think that Ron's participation, while he  
21 wasn't a member, his participation in the Jaguar  
22 Conservation Team meetings that he went to, that he either  
23 knew or should have known that you and Bill were the  
24 Department's people on jaguar?

25 A. Yeah. We have got an e-mail exchange on that

1 point, and he says that, he apol -- I am not sure that he  
2 actually apologized, but it is over this whole coordination  
3 communication thing, and he said, oh, blame it on my law  
4 enforcement background, I am a believer in chain of command.  
5 And my response to him was pretty curt, I am a believer in  
6 no surprises. I don't care about chain of command. We  
7 caught entirely by surprise. Yeah, yeah.

8 Q. Anything else, sir?

9 A. No, the only thing I would point out is that right  
10 at this moment, Melanie Culver from U of A is doing her best  
11 to bring Ron Thompson into the Mexican wolf world, research  
12 world, and I am not saying that is a good thing or a bad  
13 thing, but at some point, the Department needs to define  
14 just what the realm or scope of activities are on his part.

15 Q. As I say, reporting process, we need to sit down,  
16 we have got these -- in almost everything, there is  
17 inherently cross working in some way, shape, or form, but  
18 where we have this cross branch, and in some respects cross  
19 division, we are going to have to have meetings and probably  
20 we will do an annual sit and review of that, if I have to,  
21 until we can get our planning process where it is more  
22 routinely capable of roping all of these things together the  
23 way it ought to.

24 We will sit down and we will delineate  
25 responsibilities and delineate authority. I have got to

1 tell you my memory of that 20 February meeting that I  
2 convened to, okay, who is in charge? You remember when I  
3 asked, okay, who is in charge of this jaguar now? I thought  
4 I made it pretty clear to everybody in that room, that  
5 information and authority, information was to flow to you  
6 and Bill.

7 A. Yeah.

8 Q. And authority was to derive through you and Bill,  
9 probably some maybe from the Director, but through you and  
10 Bill --

11 A. Right.

12 Q. -- to the field, and I believe that I was pretty  
13 unambiguous. I guess I should ask that. That is my  
14 sense of it. What is your remembrance?

15 A. I think you were absolutely unambiguous about it.  
16 I think you will recall that in that meeting, I raised my  
17 first concern about Ron's involvement, what he knew, what he  
18 was doing at that point. And within two minutes of the  
19 break-up of that meeting, I came back the next time, I think  
20 you will recall that -- or maybe -- maybe you weren't at the  
21 next meeting. This is one that Senn called.

22 Within literally minutes of the break-up of the  
23 first meeting, Ron was at my door complaining that he had  
24 been advised by somebody that I thought he was stepping on  
25 my turf, and that was the first conversation we had about

1 it. It is not about turf. It is about people knowing what  
2 they need to know to do their jobs. And so at that very  
3 next meeting, I came back and said, I am not making  
4 accusations or anything else about who spoke up, who didn't  
5 speak up.

6 The second meeting Dean Treadwell was taking notes  
7 for the research because Chasa was not there, and said, I  
8 want to make it clear that the Department had -- that Bill  
9 and I were the leads, and we just needed to know who the  
10 heck is engaged in what we are doing. That is not a trust,  
11 I am sure nobody has ever told you, Gary, I mean, I am sure  
12 lots of people have questions about trusting me, but when I  
13 look at Emil, I look at Emil, my bottom line is he is not a  
14 Department employee. And I would have expected him to be a  
15 lot more forthcoming with me about what he was doing and  
16 what he knew and what things were going on, but he is still  
17 not a Department employee. I think that there are things  
18 that Ron should have been much more forthcoming between.

19 Q. I understand that. Terry, thank you.

20 A. Thank you, all.

21 MR. HOVATTER: Much appreciate it. Very helpful.

22 MR. MCMULLEN: Thanks, Terry.

23 MR. JOHNSON: Whatever you need.

24 MR. FABRITZ: Hey, Terry. I will get a copy of  
25 that. It might be tomorrow.

1 MR. JOHNSON: Copy of?

2 MR. FABRITZ: The Garrity thing.

3 MR. JOHNSON: Not worried. Now, because my memory  
4 is what do we need to be doing tomorrow and when?

5 MR. HOVATTER: We are going to meet -- I was going  
6 to have Leonard and Diana make the call on that. So I  
7 haven't interacted with them, so I am not sure if you --

8 MR. JOHNSON: That's on the jaguar side of things?

9 MR. HOVATTER: Yeah.

10 MR. JOHNSON: What about the wolf side of things?

11 MR. HOVATTER: On the wolf side of things, would  
12 you just give Leonard a shout? I asked him -- told him we  
13 needed a meeting.

14 MR. JOHNSON: Okay.

15 MR. HOVATTER: I think I asked him to set that up,  
16 but if I didn't, would you just give him a shout, and my  
17 suggestion would be 8:00 o'clock tomorrow?

18 MR. JOHNSON: Okay.

19 MR. HOVATTER: It shouldn't be very long. I just  
20 want to make sure that everybody hears it the same way.  
21 Larry is going to be pretty much out of the net for the next  
22 week and a half, so --

23 MR. JOHNSON: Yeah. Okay. I will go talk with  
24 him.

25 MR. MCMULLEN: Terry, appreciate your candor.

1 MR. HOVATTER: Terry, when we talk about the ARM  
2 MOU with Fish and Wildlife Service, what document is that  
3 actually?

4 MR. JOHNSON: When we talk about which MOU?

5 MR. HOVATTER: In the context of Eric talks about  
6 the MOU so we have a responsibility to report under the MOU.

7 MR. JOHNSON: Okay. There's an hierarchy MOU for  
8 implementation of the ESA. And Eric and Josh --

9 (End of tape.)

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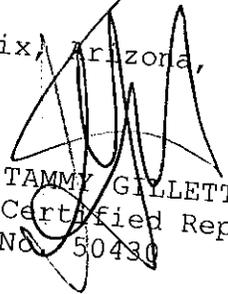
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I, Tammy Gillett, do hereby certify that the foregoing 74 pages were transcribed by me; that I was then and there a Certified Reporter in and for the County of Maricopa, State of Arizona, and that the foregoing pages contain a full, true, and accurate 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 17th day of August, 2009.

  
TAMMY GILLETT  
Certified Reporter  
No. 50430

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TRANSCRIPT OF INTERVIEW  
TERRY JOHNSON  
AUGUST 24, 2009

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  
Terry Johnson, Employee

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## EXAMINATION

1  
2 BY MR. HOVATTER:

3 Q. It is Monday, the 24th of August. It is about  
4 09:45 hours. We are in the Dove Room with Terry Johnson,  
5 myself, Gary Hovatter, Marty Fabritz, and Craig McMullen.

6 And, Terry, the purpose of this interview is to  
7 continue some of the questions we had -- questioning we had  
8 gone through over the Macho B jaguar circumstances, and we  
9 are still under Garrity. Do you need me to reread the  
10 Garrity Warning?

11 A. No.

12 Q. Okay. We are good on that. The majority of what  
13 we are going through in these final interviews is really  
14 going towards the process end of this to try and look at how  
15 we -- what we learned about ourselves that we can, in fact,  
16 do something about, so we might get different outcomes in  
17 the future. And so this is kind of, in no particular order,  
18 these are the areas I kind of came across things, but the  
19 Jaguar Conservation Team, what is the mission and the  
20 purpose of that team?

21 A. The purpose of the team is to use a public forum  
22 to forward jaguar conservation in the borderlands. It is a  
23 simplistic statement of the purpose as stated in the MOU  
24 under which the team operates. And the MOU is between  
25 Arizona Game and Fish and New Mexico Game and Fish as the

1 two co-lead agencies, and then a variety of other signatory  
2 agencies come in, including Fish and Wildlife Service.

3 So it is information dissemination. It is  
4 information gathering. It is to support and direct  
5 on-the-ground research, gathering information from outside  
6 sources that have expertise in jaguar conservation and  
7 management, and then to use that information to inform the  
8 agencies so that they can conduct their mandatory wildlife  
9 conservation obligations and use that information.

10 Q. And there is -- it seemed like -- when I read  
11 that, the MOU and all, is it correct that if you found a --  
12 is it a collaborator or cooperator?

13 A. Cooperator.

14 Q. Cooperator. It says if you are a cooperator, you  
15 are a voting member?

16 A. That is correct.

17 Q. Is it majority rules vote type of approach or --

18 A. We have intentionally never established rules. We  
19 discussed that early on in the process, and we use the same  
20 philosophy that we have tried to use in wolf and other  
21 adaptive management settings, that is, you strive for  
22 consensus. If you don't get consensus, then you decide what  
23 to do from there. If you reach a point at which one of the  
24 major agencies says this action would result in -- we would  
25 conflict with our legal obligations, then that's a heads up

1 that there is a deal breaker there.

2 Q. So regardless of the vote then. So are votes when  
3 they are held considered binding in some way or are they  
4 considered merely an expression of how close we are to  
5 consensus on an issue?

6 A. Well, they are -- nothing is binding. It is  
7 always subject to rediscussion and to reconsideration, but  
8 we do reach -- relatively few votes have been taken over the  
9 years, but we do move forward based on those votes, and in  
10 some cases, there have been minority votes, but the minority  
11 votes have always been, when we move forward with an issue,  
12 have always been the subject to those agencies in the  
13 minority saying, it is not what I want, but we can live with  
14 it, you know, and that sort of situation.

15 There is no statutory obligation, though, for  
16 anybody to do that, which the team decides, and, in fact,  
17 many of the votes are on recommendations. The management  
18 team itself, the conservation team, does not decide what  
19 management wildlife actions to take on the ground. It makes  
20 recommendations to New Mexico Game and Fish, Arizona Game  
21 and Fish, Fish and Wildlife Service, whatever the  
22 appropriate agency is.

23 And the same is true of -- Wildlife Services would  
24 be a good example. The team has voted on a number of  
25 different issues. I am particularly conducting a risk

1 assessment for M-44 use in the very first days of the  
2 conservation team, and that vote was to request that  
3 Wildlife Services do a risk assessment. They did. They  
4 could have told us to stop it. It was a legal obligation,  
5 but they didn't.

6 Q. Yeah, and that kind of explains something that --  
7 I was reading through some of the notes and minutes, and  
8 Jack Childs was chairing a group, and they were coming to --  
9 coming to closure on establishing research priorities?

10 A. Yeah.

11 Q. And from reading it, you go through the period of  
12 the several months of leading up to, here are -- here is the  
13 will of, you know, this part of the Jaguar Conservation Team  
14 is that these are the priorities, but you could tell that  
15 there was a real struggle between the, for want of a better  
16 term, invasive versus non-invasive censusing approach?

17 A. Yes.

18 Q. Ultimately, at the end, what it sounded like  
19 because there is no record of votes, but there this is  
20 obvious record of back and forth in this. There's a  
21 recording that these groups are fairly unalterably opposed  
22 to capturing and collaring, but then they come out and they  
23 say the No. 1 priority for jaguar conservation on the border  
24 is to capture and collar a jaguar.

25 There is no qualitative, you know, as long as he

1 is not less than this or not older than this, it is the kind  
2 of statement that does make sense in the context of it, but  
3 I was wondering how -- because, of course, it comes across  
4 in some respects as fairly autocratic, and I think it has to  
5 be. The way you describe it, it makes sense then. It is  
6 something of a diplomatic way of saying that while we have a  
7 voting opportunity, that is not a binding, statutory binding  
8 requirement that we then act in accordance with the majority  
9 vote.

10 A. And the same thing, the same rules apply below the  
11 conservation team level within the committees. The  
12 committee that you are talking about is actually a  
13 combination of a couple. It started out as the Depradation  
14 Committee. Then midway through the course, it also took on  
15 a research function. And sometimes it is called the  
16 Research Committee, sometimes called Depradation, sometimes  
17 called other things as well.

18 And there are members of that committee or  
19 subcommittee or work group, again, it is known by a variety  
20 of names over the years who are not representatives of  
21 signatory agencies. Nevertheless, we look for a majority  
22 opinion from that committee or that work group to inform the  
23 conservation team, which then does take a vote, and that  
24 majority vote, a number of the partners engaged in an NGO, a  
25 couple specifically, are strongly opposed to any capture of

1 any animal and any hands-on on any animal.

2 But when that situation reached a final decision  
3 point by the conservation team itself, all the members,  
4 signatory members of the conservation team that voted on the  
5 issue recommend capture or not, recommended capturing and  
6 collaring of the jaguar.

7 Q. Yeah.

8 A. And that process took place, really, the first  
9 discussions were in 1997 when we had an opportunity to chase  
10 a jaguar, and had it been -- turned out to be a jaguar and  
11 been caught, it would have been collared. That was in  
12 October of 1997. Well, those discussions of that, how that  
13 incident was handled and whether we were truly prepared if  
14 we got that tiger by the tail led through this lengthy  
15 process and finally culminated, I think it was April 30,  
16 something like that, of 2006 with the conservation team  
17 vote.

18 Q. That also, I think, helps explain things. There  
19 is a number of times in looking at the e-mail traffic and  
20 all where Emil McCain, he is announcing new photographs, and  
21 he does that in November of '08 and he does it again in  
22 February of '09. And he refers to the Borderlands Jaguars  
23 Detection Projects notification obligation under the Jaguar  
24 Conservation Team. So that role, I guess, they were really,  
25 as much as anything, they would have been a cooperator or

1 are they, because they are -- they are not a State agency?

2 A. There are two levels that we started with in this  
3 project, and we basically got rid of one level. Originally,  
4 the Jaguar Conservation Team was considered to be the  
5 signatory cooperators, and then they -- the members, anyone  
6 in the public was free to cooperate in the Jaguar Working  
7 Group, which basically was the working meetings.

8 And out of that Jaguar Working Group, we would  
9 under auspices of the conservation team, we would have these  
10 subcommittees or work groups, et cetera. The Borderlands  
11 Jaguar Conservation Project started as Jack Childs working  
12 with Warner Glenn under Warner as chair of the Depradation  
13 Committee. Warner was running remote cameras. Jack ended  
14 up picking it up and moving it -- expanding it from Warner's  
15 ranch there in the boot heel of New Mexico and extreme  
16 southeastern Arizona, began looking at that over in the  
17 Atascosas where Jack lives, out in Arivaca, and then more  
18 interest picked up. And, then, Emil McCain was attracted to  
19 it as he began pursuing his graduate studies in California,  
20 UC Davis, I think.

21 Q. Humboldt.

22 A. Humboldt.

23 Q. Humboldt.

24 A. Humboldt. They are all the same. Yeah, Humboldt  
25 State. And then over a period of years as Jack got older

1 and Emil's youth and enthusiasm began to exert itself more,  
2 he began to take the lead within the conservation project.  
3 The conservation project was considered as it evolved and  
4 then finally codified by Jack as a distinct entity was  
5 informally known as the Research Arm of the Jaguar  
6 Conservation Team.

7           It is just a group that were actually active in  
8 the field in gathering information and reporting it back.  
9 Jack's obligations, though, or Emil's obligations to Jack  
10 really stem from two areas. One is a desire to cooperate,  
11 not be a cooperator in a big C sense, signatory, but to  
12 cooperate with the Jaguar Conservation Team. And the other  
13 is for its Federal permit that authorized the remote camera  
14 work to begin with.

15           Q.    Because Jack had that?

16           A.    Jack had the permit. And we had naively assumed  
17 that Emil was covered under that permit, not quite so sure  
18 that he actually was ever listed under the permit  
19 at this point in time. I have not seen the permit recently.

20           Q.    So in that regard, was there a requirement, do you  
21 know if there was a requirement under Jack's permit for them  
22 to report sightings?

23           A.    Yes. Yes.

24           Q.    So when they speak to obligations, they may, in  
25 fact, be talking to a legal obligation under their permit?

1 Is that permit from -- because they had several, I think.  
2 There was a Forest Service permit that was floating around  
3 there, too.

4 A. Yeah, I have not seen it.

5 Q. Fish and Wildlife. Well, the Fish and Wildlife  
6 Service one was just so that they could install cameras?

7 A. That is occupancy of the site, yeah. The actual  
8 operation of the cameras, the reporting of the information,  
9 that was an obligation under the Fish and Wildlife Service  
10 permit, but they were obligated to report to Arizona Game  
11 and Fish, Fish and Wildlife Service, and actually to the  
12 conservation team, the chair.

13 Q. And that was under the permit that they got from  
14 Fish and Wildlife Service?

15 A. Yes. We did not issue a permit because in our  
16 interpretation over the years, camera traps did not fall  
17 under the State definition of take. They did fall under the  
18 Federal definition of take.

19 Q. Do we have a copy of that permit, do you know? I  
20 don't know that I have ever seen that. I have seen it  
21 referred to.

22 A. Out of the Jack Childs' permit?

23 Q. Yeah.

24 A. I don't know that we do. I think we saw it right  
25 at the beginning, but I don't -- I don't -- I haven't found

1 one in going through all of the files.

2 Q. Yeah. I mean, it is not incumbent on us, I guess,  
3 technically to have one, is it?

4 A. No, it is not, but it is bad process. We should  
5 have had one.

6 Q. Yeah. It would useful to have had it so we can  
7 review it. The next question I would logically ask is --  
8 this is really kind of impossible to answer without having  
9 it, and that is would baiting of those cameras,  
10 understanding that baiting is, you know, the baiting with  
11 jaguar scat is one thing. Baiting itself seems to be, my  
12 reading of what research I have been able to do, baiting for  
13 traps, baiting for cameras, is not at all unusual. That is  
14 a fairly common practice?

15 A. Uh-huh.

16 Q. The baiting with jaguar scat seems to generate  
17 more emotion about that for those camera traps, but point in  
18 fact, was there anything that would have been -- that would  
19 have precluded baiting that we know of in their permit?

20 A. There is nothing that I know of. The only reason,  
21 in my opinion, that the use of jaguar scat as a baiting  
22 technique, the only reason that became of interest to the  
23 public was Macho B died.

24 Q. Yeah.

25 A. If the cat hadn't died, there would have been no

1 issue. Because the whole purpose of the camera trap was to  
2 document, and the general feeling is that use of that bait,  
3 that scent or scat, whatever it might be, is not going to  
4 draw jaguars into an area. But if they are present in that  
5 area, it may draw them in sufficiently close to trigger a  
6 camera.

7 Q. You know, there's a sense that, you know, one of  
8 the things -- let me ask you, it is pretty clear that in the  
9 article or the paper that they got published in the Journal  
10 of Mammalogy --

11 A. Uh-huh.

12 Q. -- Emil and Jack, when they talk about their  
13 methodology, they do not refer to using scent at all, let  
14 alone jaguar scat, in their methodology. They also don't  
15 make it clear that where they were working was in the  
16 Atascosas. You have got to derive that when you recognize  
17 in their acknowledgements they thank the owners of -- they  
18 thank the guy by name, who we know are the folks who own  
19 Bear Valley Ranch. So, I mean, it is clear that that was  
20 the area that they were -- that that paper was focusing on.

21 The question that, I think, arises from or has  
22 arisen from that has been whether or not that article would  
23 have been, and this is a judgment, a subjective question on  
24 its face, whether or not if they had, in fact, because it is  
25 certainly not an oversight that they did not do that, that

1 they did not put that in their methodology. That has to  
2 have been with forethought that they did not include that in  
3 their methodology.

4 A. Not necessarily.

5 Q. Explain your thoughts on that.

6 A. I don't know the reason the information wasn't  
7 included in the report. I actually drew what proved to be a  
8 wrong conclusion about that very issue. There was an e-mail  
9 somewhere in -- this publication was developed over a period  
10 of years. I think it was about two years actually, that  
11 maybe a little overstatement, with a number of drafts.

12 The first drafts were criticized pretty harshly,  
13 and the final thrust was that this is second hand and third  
14 hand information, fourth hand information in some cases for  
15 me, is that the Journal gave very specific guidance to what  
16 they wanted presented and how they wanted it to be  
17 presented, and it is very possible that in one of the  
18 earlier drafts, there was no description of the techniques  
19 that were used, and that might have been lost in the edits,  
20 I don't know.

21 What threw me off the trail is this wasn't a  
22 concern. You look at the methodologies, you would expect  
23 them to be as very thorough in --

24 Q. Yeah, I mean --

25 A. -- to express that issue.

1 Q. -- with a journal of that --

2 A. There was an e-mail from Emil, I don't know, I  
3 have forgotten whether it was to me directly or copied to  
4 me, but it is about that last or next to the last rewrite.  
5 I think it was the last rewrite. In the cover message, he  
6 says something about the scent marking would be addressed in  
7 there. And time, meaning, I was thinking, okay, that  
8 addresses the marking of traps, of camera traps with scent,  
9 but it wasn't at all.

10 I look at it now, and it is very obvious what he's  
11 talking about is that the photograph and documentation of  
12 Macho B spraying at a couple of cameras. It is just a year  
13 or two later, you look at it through very new eyes. I don't  
14 understand why a journal would rule out or keep someone from  
15 indicating their complete methods. That makes no sense to  
16 me, but I, at least, have to acknowledge that for me it is a  
17 possibility.

18 Q. For me, the reason why it is so minute a  
19 possibility as to be not a possibility is because the very  
20 title of the piece, The Naturally Occurring Population --

21 A. Uh-huh.

22 Q. -- and it would seem to me that any baiting, that  
23 unless the journal, you know, the reputable journal, if it  
24 was going to allow an article to have that title and there  
25 was baiting involved, would want to have addressed the fact

1 of why that was still considered a naturally occurring  
2 population as opposed to a potentially  
3 baited-across-the-border population?

4 A. I could see that logic, but I think -- I am not a  
5 jaguar biologist. My feeling is, and when you look at the  
6 whole arc of jaguar work from Tierra del Fuego north, that  
7 the consensus is that scent marking will not draw jaguars  
8 into an area that they do not already occupy. All it will  
9 do is potentially affect their specific route of traversing  
10 that area.

11 And I wouldn't think that the natural occurrence  
12 of the jaguar and the borderlands would have been affirmed  
13 by the multitude of photographs that had been taken since  
14 1996 through the publication of that paper, and whether  
15 jaguar scent was used in conjunction with the camera set or  
16 mountain lion scent --

17 Q. I am sure it wasn't used in conjunction with Jack  
18 Childs hounds and Warner Glenn's hounds I wouldn't think  
19 from the standpoint they found them on this side of the  
20 border. There was no baiting going on at that point?

21 A. No, that is a good point. I mean, they picked up  
22 the trail. There was no scent used in conjunction with the  
23 '97 observation either, hounds on the trail. My point is  
24 that you put that together with historical records, you have  
25 got photographs that are being developed through '96 through

1 2006, 7, 8, the final publication date of the thing,  
2 unquestionably jaguars occupy. The questions are at what  
3 level.

4 Are they resident? Are they not resident? Are  
5 there only males? Are the males aged, things that are  
6 outcasts, or are they young males that are disbursing, and  
7 where are the females? I mean, lots of different questions  
8 in there, but I don't think the failure to include scent  
9 marking in that paper is necessarily an indication that it  
10 was a conscious decision on the part of one or more of the  
11 authors. It may be simple space limitations.

12 Q. Well, you know, it is illustrated, there is an  
13 article of McCain's, it is about him, and the whole thing  
14 really revolves around this commitment he has to the idea of  
15 scent communications by jaguars.

16 A. Uh-huh.

17 Q. To the point where you read it and regardless of  
18 what the literature and research may say, he certainly  
19 sounds like he's got a very strong commitment to that idea  
20 about this scent communication system?

21 A. I think Emil has some very strong opinions about a  
22 number of elements of big cat behavior based on his lion  
23 work and his jaguar work. I think his ego is larger than  
24 his basis for having an ego. I think he is still relatively  
25 inexperienced in a lot of ways with jaguar work in

1 comparison to a number of different people.

2 But I also think that he has a few curious  
3 perceptions about interacting with other people. I have  
4 known a lot of biologists over the arc of my college and  
5 professional career, and there seem to be at least three  
6 primary groups. There are those that are completely open  
7 about anything because they are not threatened by anybody  
8 else in the world.

9 And, then, you have got those folks in the middle  
10 who may not really understand whether they are open or they  
11 are not, and they just sort of stumble through. I will tell  
12 you, the journal told me to put it in, I put it in. They  
13 told me to put it out, I put it out, or my major professor  
14 or my supervisor or whatever.

15 Then you have got those other folks who are so  
16 paranoid that if they share any of their top secrets that  
17 somehow they will be jeopardized by other people beginning  
18 to apply them or questioning them.

19 And when I look back over the last four months,  
20 there is much more intensive involvement in reading jaguar  
21 papers than at any time over the previous ten years. It  
22 looks to me that Emil falls a little bit into that third  
23 group. He's very jealous of his information, and perhaps  
24 makes things more secretive than is really necessary or is  
25 healthy.

1           Q.    Let me ask you, can you posit any sort of, from  
2 what you know of him because, of course, we have never  
3 talked to him. Well, I have talked to him once, but it was  
4 not a Q and A, it was just a contact he made to me, and I  
5 called him back. But beyond that, I have no knowledge of  
6 this guy. So we are having to discern through folks who do  
7 know him and have worked with him and know something about  
8 him. But can you conceive of any motivation that he might  
9 have, in other words, what is in it for him to -- should he  
10 have tried to convince people to hide the fact that he had  
11 used jaguar scat in conjunction with this effort on the  
12 border?

13           A.    The question that I would love to have been able  
14 to ask Fish and Wildlife Service in the last four months is  
15 does his permit authorize him to use jaguar scat? And the  
16 second is who is authorized to provide that jaguar scat.  
17 The limitations on endangered species in possession of zoos  
18 are fairly severe. And transfer from one institution to  
19 another is part and parcel.

20                   The only thing that makes me suspect that there  
21 may be latitude to transfer that, those materials, which are  
22 basically parts of the jaguar, just as much as a fang would  
23 be or a claw, is that I am very much aware that a retired  
24 group of Fish and Wildlife Service and the Arizona Game and  
25 Fish people for a period of a few years marketed zoo poo.

1 And the stuff was marketed in Phoenix and Payson and the  
2 surrounding areas, specifically to ward off coyotes and  
3 other things from your back yard.

4 Q. Uh-huh.

5 A. Now, the problem with that, and I know nothing  
6 about the details, I know the names of at least two of the  
7 primary individuals, Bob Wright and Dave Rowe. Bob Wright  
8 is a retired law enforcement from Fish and Wildlife Service.  
9 Unfortunately, I know enough about Bob Wright to know that  
10 as a law enforcement agent, he was a bit of a lone ranger  
11 and made up the rules as he went along.

12 Q. Uh-huh.

13 A. And that's an unfortunate situation. There are a  
14 couple of current employees in Arizona Game and Fish who  
15 have much better firsthand experience with Mr. Wright in  
16 that capacity, including our Director. But that is a  
17 question that I would love to see the permit to draw my own  
18 conclusion on.

19 Q. Now, would this be this permit from Jack Childs?

20 A. Jack Childs' permit, does it authorize the use of  
21 jaguar scat. And, if so, does it stipulate where that scat  
22 can be obtained, and secondarily, were the zoos actually  
23 authorized to provide that scat? If neither provided that  
24 authority, then it certainly puts the secrecy in a whole new  
25 light.

1           If both of them provided the authority or either  
2 of them provided the necessary authority, I do not  
3 understand for the life of me why keeping jaguar scat scent  
4 marking for snares would be kept secret.

5           MR. MCMULLEN: Is there a way to backtrack the  
6 referee drafts of that article and see if it was in the  
7 original or a draft?

8           THE WITNESS: Only on Emil's computer or Jack's  
9 computer if they kept all of their drafts.

10          MR. MCMULLEN: But the referees wouldn't -- the  
11 people who were reviewing those drafts wouldn't?

12          THE WITNESS: They provide comments anonymously  
13 through the Journal of Mammalogy, and they can either  
14 acknowledge who they are or not. And that comment goes back  
15 directly to the author. In this case, the lead author is  
16 Emil. So it might not even have gone back to Jack.

17          MR. MCMULLEN: Okay. Because I thought a lot of  
18 those, there were some reviews that were done anonymously  
19 and some were --

20          MR. HOVATTER: Some were named reviewers and some  
21 were anonymous reviewers.

22          THE WITNESS: It depends on how the journal  
23 approaches it, but it also depends on the author themselves.  
24 I could give you examples of other folks. Well, actually,  
25 Emil. Emil sent some of the drafts to me or to Bill to

1 solicit comment, and that is beyond the obligations to the  
2 Journal. He sent them to a number of other people, too,  
3 Alan Rabinowitz. So he made -- he certainly shared some of  
4 the drafts, but I don't know that he shared all of the  
5 drafts. And I don't know that he showed all of each draft  
6 with any given individual. It could have just excerpts.

7 MR. MCMULLEN: I have one more question. It is  
8 just curiosity. It has no bearing on any of this stuff.  
9 How many jaguars have been detected in Arizona since 1996 or  
10 '97? Sorry, Gary.

11 MR. HOVATTER: No, that is fine.

12 MR. MCMULLEN: I got to know.

13 THE WITNESS: I wish I could be absolutely  
14 certain. There have been -- I have to go back and go  
15 through the math and try to remember it. Okay. We have the  
16 '96 Glenn and the '96 Childs, and those are very different,  
17 definitely different animals. Then you have Glenn had the  
18 second one over there in New Mexico that is close enough  
19 to -- close enough to Arizona to have possibly been in  
20 Arizona at a given time, but neither of the Glenn animals  
21 were documented in Arizona to my knowledge, neither one of  
22 them. And then there was the third one just south of the  
23 border that may also have been in that group.

24 Over in our part of the world since 1996, we have  
25 got Macho B. We have got the Childs sighting in 1996, which

1 was later documented then to be Macho B. Macho A is a  
2 distinct cat, not Macho B. Then there is a third animal  
3 that is not Macho B, because we have both sides of Macho B,  
4 but we only have one side of this animal. So we don't know  
5 whether it is the other side of Macho A or a third animal.  
6 So there are potentially three jaguars since 1996 in  
7 Arizona, or two, depends upon this third cat.

8 MR. MCMULLEN: Thank you.

9 Q. BY MR. HOVATTER: Now, my curiosity. Who actually  
10 named these cats?

11 A. Well, it is actually simplistic. Jack and Emil,  
12 Male A, Male B, first one seen, second one seen. Now,  
13 because of the timing, Macho A was called Macho A because it  
14 was definitively their first male encounter since the '96  
15 since the -- when the project started. They could have gone  
16 back and called the '96 jaguar Macho A. One would likely  
17 think they would have, but for whatever reason, they didn't.  
18 So, then, you get Macho A, you get Macho B, then you get the  
19 third unknown. We know it is a male. And there are no  
20 females.

21 Now, whether they would have gone down that  
22 logical path and called a female Ambra A, Ambra B, I don't  
23 think so. I suspect there would have been a far catchier  
24 name. In their defense, I can't think of a less objective  
25 name to use other than a number. The one thing that I have

1 always encouraged people to do is never to put a name on an  
2 animal and call it Polly or Oscar or whatever, because that  
3 really does engender problems with the public, especially  
4 when you have to put it down or it dies.

5 Q. Yeah.

6 A. Macho A and Macho B were innocent enough or  
7 non-threatening enough, it never concerned me.

8 Q. Going back to the jag now, why, ultimately, did we  
9 decide to establish that entity?

10 A. The Jaguar Conservation Team?

11 Q. Yeah.

12 A. It started off as -- the very first step in trying  
13 to convince quickly, in the early discussions, the early  
14 1990's about the way the jaguars should be listed in the  
15 U.S. or not. At about 1996, the guy that I worked with for  
16 a number of years, Gary Graham in Texas called me, he said,  
17 hey, flaky jake idea, what do you think about the developing  
18 of the conservation agreement to use in -- to forestall in  
19 lieu of Federal listing of the jaguar.

20 And, of course, hey, we were interested in that.  
21 This agency was going through a period, then, of really  
22 trying to forward the concept of collaborative voluntary  
23 conservation in lieu of regulatory approaches. So it fit  
24 right into our philosophy that was emerging and being  
25 applied on the ground.

1           And as we developed that, there were two reasons  
2   for that approach, others as well, but two primary reasons.  
3   One is it enabled us to put forth the concept that the State  
4   wildlife agencies would be in the lead on the conservation  
5   efforts on the ground as opposed to having a Federal lead.  
6   And the other was it was an opportunity to develop a  
7   framework through which we could elicit local participation  
8   at levels that simply didn't occur at that time in a  
9   regulatory framework.

10           So it looked like a good approach to try, and the  
11   problems, of course, were clear from the beginning. The  
12   time lines were ferocious. It already looked like the  
13   Flat-tail Horned Lizard and the Barton Springs Salamander  
14   Conservation Agreements were going to founder in the courts.  
15   The concepts were too new. They hadn't been tried. There  
16   seemed to be the standard of programs had to be in place for  
17   two years before they could be accepted by the courts as  
18   legitimate conservation efforts and then a number of other  
19   issues.

20           But, primarily, those were, I guess, you could  
21   look at those as three reasons. One was to obviate the need  
22   for Federal listing. The second one was to provide a State  
23   leadership role with a broad spectrum of partners. And the  
24   third was to draw the local communities and the local  
25   ranchers into the mix.

1 Q. In what way would a group like this have been able  
2 to preclude listing if, in fact, the animal exists in the  
3 country and listed as an endangered status, how would an  
4 effort like this have precluded?

5 A. Obviously, it didn't preclude for a number of  
6 different reasons, but one was -- one reason was that our  
7 base -- with this particular animal, our premise was that it  
8 was upheld by the real scientific community in the jaguar  
9 world is that the jaguar is -- the threats to the jaguar in  
10 the United States do not require an Endangered Species Act  
11 approach to resolution.

12 If the penalties were commensurate on the State  
13 side, then it is fully protected. I mean, it is already  
14 protected. You can't kill a jaguar, and if you do, you pay  
15 a legal penalty for that, but the penalties were  
16 considerably different on the Federal side. So one of our  
17 premises was that we could elevate the State penalties so  
18 they would be equal to or greater than the Federal  
19 penalties. That negates that one.

20 You move through the five listing factors, one of  
21 which is the regulatory issues. The question of habitat,  
22 our premise in those days, and this was pre-border wall, was  
23 that it wasn't habitat limited. There were plenty of  
24 mountain lions and bears occupying that landscape killing  
25 deer and javelina, and one or two or ten jaguars would not

1 significantly affect that prey base.

2 By and large, the large areas of public lands, the  
3 presence of livestock unknown, all of those things were  
4 things that favored the presence of jaguars. You just had  
5 to make sure that they could move back and forth from Mexico  
6 and that they wouldn't be killed when they were out here.  
7 So if you look at disease wasn't an issue. Parasites or  
8 actual diseases hadn't been an issue, didn't surface as an  
9 issue in jaguar biology until about ten years later in South  
10 America, some concerns that we had to creep forward.

11 So, basically, our premise was that under  
12 Endangered Species Act, the factors that apply to those  
13 species to dictate that a listing was necessary were not  
14 sufficient to warrant Federal listing if there was an  
15 adequate State program in place and that State program  
16 operating in conjunction with parallel activities in Mexico  
17 should be adequate.

18 Q. It was, in fact, listed ultimately?

19 A. It was.

20 Q. When was that?

21 A. 1997, just a couple of months after we signed the  
22 conservation agreement.

23 MR. MCMULLEN: Can I ask a follow-up.

24 MR. HOVATTER: Sure.

25 MR. MCMULLEN: Ron had mentioned, while we are on

1 the history of the Jag CT, that at one point there is some  
2 discord that developed between the conservation team,  
3 because one of their early commitments of the conservation  
4 team was to form to try to prevent the designation of  
5 critical habitat for a jaguar. And, then, later it was his  
6 belief that the team was involved in pursuing designation of  
7 critical habitat.

8 THE WITNESS: He is incorrect.

9 MR. MCMULLEN: Okay.

10 THE WITNESS: You have to distinguish the groups  
11 that are participating in the conservation team from the  
12 team.

13 MR. MCMULLEN: Okay. All right.

14 THE WITNESS: The team has never swerved from its  
15 opposition to Federal listing and its opposition to  
16 re-introduction and its opposition to critical habitat.  
17 That is the signatory agencies. Absent, of course, Fish and  
18 Wildlife Service, which doesn't take the position on the  
19 listing or on critical habitat within the team, and New  
20 Mexico Game and Fish, which has been equivocal over the  
21 years about the critical habitat element.

22 The team has never taken any formal vote on  
23 critical habitat support or not support. The individual  
24 agencies have expressed it through the team. As far as  
25 listing, the original premise was to do the team instead of

1 listing. So critical habitat wasn't even an issue  
2 at that point because it wasn't listed.

3 MR. MCMULLEN: What cooperators with the team  
4 then, I think you called them civilian people --

5 THE WITNESS: Participants.

6 MR. MCMULLEN: Participants, okay. Was there a  
7 group associated with the CT, not the signatory members, but  
8 a group associated with the Jag CT that sued for  
9 designation?

10 THE WITNESS: Yeah. The Center for Biological  
11 Diversity and the Defenders of Wildlife were the primary  
12 groups that carried the issue straightforward. Defenders  
13 was originally equivocal about the listing issue, and, in  
14 fact, at one point, Defenders thought it had reached a  
15 settlement agreement with the Fish and Wildlife Service that  
16 obviate the need to list, and then, secondarily, as it  
17 evolved, obviate the need to designate it as a critical  
18 habitat.

19 The center never swerved from its position, not  
20 formally. It may have deviated behind the scenes. Then the  
21 Sky Island Alliance and some of the other partners began to  
22 affiliate with the concept of critical habitat designation  
23 and recovery team formation as the specter of the border  
24 fence began to emerge. By the time the fence was real, the  
25 support in the NGO community for critical habitat

1 designation had increased significantly.

2 Q. BY MR. HOVATTER: Along those lines, and this  
3 is --

4 A. I need to make one point about that.

5 Q. Oh, sure, please.

6 A. The Scientific Advisory Group from the beginning  
7 advised the conservation team that critical habitat was  
8 biologically infeasible in the United States. There is no  
9 habitat in the United States that is critical to the  
10 survival of the species, and they have affirmed that  
11 repeatedly. Critical habitat from a biological perspective  
12 for the jaguar exists south of the U.S. Mexico border, from  
13 there on well to the south. The problem is the Endangered  
14 Species Act definition and application of critical habitat  
15 isn't entirely science based, and that's where the --

16 Q. Well, now, I guess you couldn't -- it is almost  
17 impossible to think it would create some sense of the  
18 Arizona part of this population was a distinct population  
19 segment. So that doesn't seem to be applicable. So having  
20 said all that, a Judge does find in favor of the Center's  
21 position here on designating a critical habitat?

22 A. No, the Judge's ruling is that the Service needs  
23 to make a determination.

24 Q. Determination.

25 A. The Court did not pre-decide that they must be

1 declared.

2 Q. That's right. The Center's suit forced the -- the  
3 Service forces them to make a determination. It doesn't  
4 tell them what the determination has to be. And, of course,  
5 until that time, the Service had been resisting  
6 successfully. You said there was no need to do it. So they  
7 were not coordinating energy?

8 A. It wouldn't be prudent.

9 Q. Now, the Sky Island Alliance uses that decision to  
10 call on us to disband the Jaguar Conservation Team. Is  
11 there any merit to that from our perspective? Is there any  
12 merit to their request?

13 A. The conservation team itself is not an impediment  
14 to the Service's decision to declare critical -- determine  
15 critical habitat. The conservation team itself has not been  
16 in support of recovery team establishment. In fact, the  
17 Service's listing of the jaguar referenced using the  
18 conservation team as a surrogate to or in lieu of a recovery  
19 team, but there is no question in my mind that the NGO  
20 community believes that our -- the conservation team  
21 primarily through Arizona Game and Fish leadership of the  
22 team has not been supportive of the Service moving to  
23 designate critical habitat or to establish a recovery team.

24 Q. So it kind of gets us, if we were to remove,  
25 willingly remove our piece from the board, it eliminates a

1 voice, a fairly strong voice, for countering any move to  
2 pressure the Fish and Wildlife Service --

3 A. It reduces our pulpit from representing 13 to 15  
4 agencies to representing our own agency. And, then, the  
5 other element to that is it is important to note that the  
6 conservation community has consistently misrepresented  
7 Arizona Game and Fish's position regarding the recovery team  
8 itself.

9 Our position has been that we would oppose the  
10 formation of a recovery team as restricted to the United  
11 States of America, that they have America, a recovery team  
12 for the jaguar must by definition address the much greater  
13 extent of the range, at the very least extend into  
14 Mesoamerica, and at the very best, extending all the way to  
15 the southernmost regions of distribution in Brazil and  
16 Argentina.

17 In short, our position is that a recovery team  
18 needs to be biologically meaningful. We have seen too many  
19 evidences of recovery teams that were not biologically  
20 meaningful.

21 Q. Do you think we missed, the Fish and Wildlife  
22 Service, missed an opportunity -- this is a wholly  
23 subjective question -- by not simply saying, sure, we will  
24 call for a recovery team, for a multi-national recovery team  
25 for jaguar?

1           A.    Yeah, they missed a huge opportunity, but they  
2 ' missed it consciously. One of the things that the  
3 conservation community really doesn't even begin to  
4 appreciate is that the complexities of convening a  
5 multi-national recovery team under the Endangered Species  
6 Act and act under the Endangered Species Act is huge.

7           Q.    Which, of course, is a U.S. law?

8           A.    Not exactly, exactly. The other thing is that  
9 what they have chosen to ignore and not represent to the  
10 public is that there is, in fact, a conservation team for  
11 the jaguar, but it is the Mesoamerican conservation effort  
12 that is guided or led by Panthera and Alan Rabinowitz and  
13 includes partners from Brazil and Argentina all the way up  
14 into Mexico.

15                   The reason that they decline to bring that effort  
16 in is that those folks are unanimous that conserving the  
17 jaguar does not require in any way, shape, or form  
18 addressing jaguar needs in the United States.

19           MR. MCMULLEN: We are peripheral.

20           THE WITNESS: We are completely a peripheral  
21 population.

22           Q.    BY MR. HOVATTER: We are the tip of the tail of  
23 the dog wagging the dog.

24           A.    If you focus on it truly making sure that the  
25 available resources are funneled into the areas where they

1 have the biggest bang for the buck, that's basically  
2 northern Mexico through Mesoamerica into South America.

3 MR. MCMULLEN: Interesting.

4 MR. HOVATTER: Go ahead.

5 THE WITNESS: The amount of money it would take to  
6 convert public lands in Arizona and New Mexico to completely  
7 protected public lands or to acquire private inholdings and  
8 put those forward to jaguar conservation, you could probably  
9 buy 40 percent of the available habitat in middle America  
10 and South America and insure that connectivity between the  
11 existing protected areas and truly conserve the species, but  
12 that would not mean jaguars would be protected adequately  
13 conservatively and always present in the U.S. It is  
14 politics from start to finish.

15 Q. BY MR. HOVATTER: In August 2008, WCF Grant  
16 Proposal, Emil mentions, quote, given a large enough sample  
17 size, we could begin to use it capture, recapture  
18 techniques. I don't know that you reviewed that grant  
19 proposal, but do you have any idea what he means by that  
20 when he says given the large enough sample size?

21 A. I do know what he means by that. I didn't review  
22 the draft. I think Bill might have, but from conversations  
23 with Emil over the several years there, he is simply saying  
24 that if he were able to get enough jaguars marked, we could  
25 begin to estimate the population.

1 Q. Okay.

2 A. That is all it is.

3 Q. In July 2007, the BLM Grant, this isn't intended  
4 to be a memory test, by the way, it might sound like that  
5 way, BLM Grant that was passed through us, Emil notes the  
6 use of scent posts and cameras. The question, so, I mean,  
7 clearly, in that note, it sure sounds like he's describing  
8 the technique that, in fact, he routinely appears to have  
9 been using for some time. Do you know if that -- first of  
10 all, do you recall ever having seen that grant or having any  
11 discussion of it? And, two, if you had seen it, would it  
12 have raised any eyebrows on our part if we had seen it?

13 A. If I had seen it, it wouldn't have raised any  
14 eyebrows on my part. The reason is that is my memory. I  
15 have a very strong recollection that at various times in the  
16 Jaguar Conservation Team's public meetings, when we were  
17 discussing the pros and cons of capture and collar through  
18 '05, 6, and 7, we discussed the camera trapping approach  
19 repeatedly. We discussed the results of the camera  
20 trapping, and I am absolutely certain that scent post.

21 Q. I mean, it wouldn't raise any eyebrows to me.

22 A. It wouldn't raise my eyebrows whatsoever.

23 Q. It doesn't relate to me to ultimately what  
24 happened that there is no sort of like fly path that  
25 predetermined that this was going to be an outcome some day.

1 For me, it was just more illustrative of the fact that this  
2 was out on the table. It was out in the open. It wasn't a  
3 clandestine act.

4 A. Scent posting was not clandestine at all. I don't  
5 recall when, if ever, the transition from using mixes of  
6 predator urine and the other typical scent posting things  
7 segued over into using jaguar scat. That I don't know.

8 Q. So you are not aware of there ever having been a  
9 conscious discussion of that?

10 A. No, I do not recall that either privately or  
11 publicly.

12 MR. MCMULLEN: That is an interesting --

13 Q. BY MR. HOVATTER: Should the WCF Grants -- that is  
14 an interesting idea about the evolution, you know, because,  
15 I mean, you look at the things that have been used for  
16 scent, I mean, I understand bad cologne gets used for scent  
17 sometimes. I am not sure what defines bad cologne. There  
18 has to be something in the permeating process. You can't  
19 use Old Spice.

20 A. You don't use livestock cologne. That is the one  
21 thing that I am pretty certain of.

22 Q. Should WCF Grants be vetted for possibly some  
23 implications in your opinion?

24 A. Yes.

25 Q. Are they? I mean, from your perspective, are you

1 aware of whether they are?

2 A. No, not consciously they are not. I think the  
3 expectation would be that if a grant is working with an  
4 endangered species that it would pass through somebody who  
5 is involved in our endangered species subprogram not  
6 directly, but I think the assumption there is that all of  
7 the folks who are involved in endangered species work in the  
8 Department are equally informed about the Act and the  
9 regulatory requirements.

10 And so the assumption is that, hey, if I sent a  
11 non-game specialist in the region, I have covered by ESA  
12 base. The second thing is that I have no doubt whatsoever  
13 that every grant is not consciously to routed to a reviewer  
14 to ensure that indirect take of endangered species is  
15 addressed.

16 Q. The problem, and people hate it because  
17 bureaucracy, in part, is a dirty word because people hate,  
18 they say, well, I had to go do all of this paperwork and  
19 none of it applied to me. And so ergo, it is an unnecessary  
20 bureaucratic system. By the same token, though, the reason  
21 why you didn't have those systems is because they presume  
22 that the people involved in a process left to their own  
23 devices that we cannot -- we have no reason to assume that  
24 their personal knowledge is adequate to address all of the  
25 potential problems that could occur.

1 MR. MCMULLEN: Well, we see that more now.

2 Q. BY MR. HOVATTER: Yeah. And so you establish  
3 something that requires them to do something with someone  
4 who does have expertise who could look at it and say yes or  
5 no, because otherwise you are thrown wholly back on the  
6 personal knowledge of the people who are directly  
7 participating?

8 MR. MCMULLEN: That is a very good segue to the  
9 10(j) question in the HGMS. Can we play that now?

10 MR. HOVATTER: Yeah. Go ahead.

11 MR. MCMULLEN: You are smiling, so this has worked  
12 its way back around to you through outside sources.

13 THE WITNESS: I don't know whether that has, but  
14 something has.

15 MR. MCMULLEN: Is the jaguar listed as a 10(j)?

16 THE WITNESS: No, it has not been listed.

17 MR. MCMULLEN: We know that 10(j) species, at  
18 least prior to Macho B did not show up in an HGMS inquiry  
19 because the designation 10(j) means that it is not supposed  
20 to affect wildlife management action. And so prior to Macho  
21 B, it was not showing up. Do you think that it should, all  
22 10(j) species, I don't know how many 10(j)s we have in  
23 Arizona, maybe one?

24 THE WITNESS: No, there's several.

25 MR. MCMULLEN: Okay. Do you think that they

1 should show up on an HGMS inquiry? And, also, would jaguar  
2 have shown up on an HGMS inquiry based on your knowledge had an  
3 EA checklist been completed for this project?

4 THE WITNESS: I think that they did show up on the  
5 EA checklist in the EA checklist process. And I know  
6 exactly what the quizzical look on your face is. The two  
7 things that refer to T and E species on the checklist, there  
8 are two lines there, it doesn't say except non-essential  
9 experimental. It says threatened and endangered species.  
10 10(j) species are still threatened and endangered species.  
11 The obligation is for the Non-game and Endangered Wildlife  
12 Program people doing those reviews to consider listed  
13 species, and that includes 10(j) species.

14 Q. It makes no -- that's right. It doesn't make any  
15 difference, Unless they are -- yeah.

16 MR. MCMULLEN: So is this a process thing that we  
17 had, a decision was made somewhere along the line that  
18 10(j)s wouldn't show up on an EA checklist?

19 THE WITNESS: I have no clue where or when or by  
20 whom that decision was made, but it is illogical.

21 Q. BY MR. HOVATTER: I know what it sounds like. It  
22 sounds like, oh, no, it wouldn't apply to 10(j). So that  
23 became rule.

24 MR. MCMULLEN: Well, the rationale we received  
25 from at least one person was that 10(j)s are by definition

1 not supposed to affect wildlife management activities that  
2 otherwise would occur if they weren't there. So, therefore,  
3 we need to not consider them.

4 Q. BY MR. HOVATTER: That is following the logic  
5 trail where every link in the chain is logical until you  
6 reach your conclusion. At that point your conclusion  
7 becomes delinked from the chain, and it becomes itself  
8 illogical. I can see that. I kind of see how the logic  
9 would arrive at that destination, but it would be wrong?

10 A. Even if they arrived at that destination, Wildlife  
11 Management activities are an insignificant minority of the  
12 EA checklist that occur over the course of a year and an  
13 insignificant portion of the overall project review that  
14 occurs. Developments, all those sorts of things that pass  
15 through our process, our environment review process, all of  
16 those things fall outside the spirit of traditional wildlife  
17 management activities.

18 Even, then, looking at 10(j)s, Wildlife Services  
19 was obligated to Section 7 consultation for the -- for its  
20 activities within the 10(j). We were required to conduct an  
21 EA to select translocation sites in initial release sites  
22 for the Mexican wolf subsequent to the overall NEPA that was  
23 done through the EIS. And so, I mean, there's precedent all  
24 along for doing these things, but is there an improvement to  
25 be made in clarifying that the threatened and endangered

1 includes 10(j)s. Unquestionably, at this point.

2 Q. Yeah. I mean, that is a half sentence. Terry,  
3 again, subjective, asking you a subjective question. Why --  
4 do you have any idea or any sense of why an EA checklist was  
5 never done for this now Large Carnivore Habitat Connectivity  
6 and Present Study, but that doesn't roll off the tongue very  
7 well, so I am going to refer to it in the shorthand that  
8 came to be known as the Bear and Lion Study. Do you have  
9 any sense or understanding of why an EA checklist never got  
10 done on the Bear and Lion Study?

11 A. I don't know why it didn't get done. All I can  
12 say is that it was an incredibly bad judgment that one did  
13 not need to be done.

14 Q. Well, it almost happened a number of times. It  
15 just never did.

16 A. There are so many places where it would have  
17 seemed so logical to do it, the movement from hair snares  
18 to --

19 MR. MCMULLEN: Snares.

20 THE WITNESS: -- leg hold to snares, leg hold,  
21 foot hold, call them whatever you want to call them, that's  
22 the snare world, but the movement from hair snares to whole  
23 animal capture. The employment of a person who is working  
24 in an area where jaguars have occurred and knows where they  
25 are and knows that jaguars are susceptible to capture and

1     snare.

2           Q.   BY MR. HOVATTER:  Because they have, in fact,  
3     captured jaguars in snares south of the border?

4           A.   Yes.  Now, I just can't understand the decision to  
5     employ snares in an area known to have been recently  
6     occupied by a jaguar would not have raised an issue of  
7     consultation.  And, yet, apparently, the only consultation  
8     issue that it raised was are we covered by our permit for  
9     taking an animal?  And even that was dealt with extremely  
10    informally.

11          Q.   You know, you get to November of '08, 12 November,  
12    and Emil sends out a note announcing to the Jaguar  
13    Conservation Team that he has recovered a photo from August,  
14    early August, from one of the cameras.  Now, subsequently,  
15    another week or so later, he then announces a subsequent  
16    camera has discovered a photo that was taken a few days  
17    earlier in late July.  He notifies you and Bill and the  
18    Jaguar Conservation Team of the photos.  At that time, he's  
19    actively trapping in the Bear and Lion Study?

20          A.   You can't tell that from the e-mails.

21          Q.   You don't see anything in that, and then there is  
22    also, of course, e-mail traffic between him and Kirby and  
23    the others on the Bear and Lion Study, and he never mentions  
24    photographs to them?

25          A.   He doesn't mention reporting them to the

1 conservation team or to the Department.

2 Q. Yeah.

3 A. I haven't seen those e-mails.

4 Q. Do you have -- is there anything that logically  
5 explains that to you?

6 A. Yeah. The logic of it to me is that there's a guy  
7 who is improving his control of the situation by keeping  
8 separation between parts that should be aware of each  
9 other's activities and his own activities.

10 Q. Is that part of what you had in mind when you  
11 talked about Emil being one of those folks who felt the need  
12 to control the information?

13 A. Yes. I think he controlled the situation very  
14 well.

15 Q. Do you recall when you became aware that that Bear  
16 and Lion Study was going -- and that it included snaring?

17 A. I became aware of the Bear and Lion Study, the  
18 intent to move from hair snare to a broader study and  
19 out of the Huachucas, I think the earliest was the -- it  
20 might have been the fall of '07, October or November-ish of  
21 '07. I think that's about where it was.

22 Q. Is that Todd Atwood's study?

23 A. It was an exchange I had with Todd Atwood over a  
24 meeting Fish and Wildlife Service was convening. And Todd  
25 Atwood and I think there was somebody else involved.

1 Q. Kirby?

2 A. Not Kirby. The guy who actually encountered the  
3 jaguar.

4 MR. MCMULLEN: Thorry.

5 THE WITNESS: Thorry. Yeah, thank you. Sorry  
6 about that. And Thorry. I didn't know either one of them,  
7 and anyway, there was an e-mail exchange, but that was  
8 over -- that wasn't about what they are doing on the ground.  
9 That was about developing funds to do something on the  
10 ground.

11 Q. BY MR. HOVATTER: Yeah.

12 A. And I did not know that the snares were actually  
13 being deployed in jaguar -- jaguar country in November or  
14 October or whenever they were put out the following year.  
15 So I wasn't aware of that. And that's part of the reason  
16 why I think the next -- after the October exchange, some  
17 background here, we have always been frustrated by  
18 communication with Fish and Wildlife Service on jaguar  
19 issues and a number of others in this sense with regard to  
20 funding for corridor studies or for predator, big predator,  
21 large carnivore studies or whatever.

22 Susan Sferra was sometimes an initiate contact  
23 with us about the possibility of developing funding, and  
24 then Erin Fernandez would step in, and Erin Fernandez tends  
25 to have a very independent approach. That was part of the

1 frustration that we felt. Erin had started the discussions,  
2 or Susan had started the discussions. Bill was handling  
3 them for us because I was off in the wolf world and off in  
4 my own head world, and then all of a sudden, here comes Erin  
5 with an announcement, and it has got Research directly  
6 involved in it and blah, blah, blah.

7           So the next awareness was in January after that  
8 exchange that fall, January of '08. I remember now in  
9 reviewing the files that I was back in D.C. and received an  
10 e-mail from Erin or somebody about -- from Erin about the  
11 study, and I said that we needed to get more information  
12 about what is going on.

13           Q. That is January '08?

14           A. January '08. And, then, through the spring of  
15 '08, nothing happened. There was no further -- no further  
16 surfacing. We lost track of where Fish and Wildlife Service  
17 was headed in its deliberation with Homeland Security about  
18 the source of the funding. Nothing really -- nothing really  
19 came along for several months, in fact, almost an entire  
20 year.

21           Then all of a sudden, early December, I got word  
22 of a meeting that was being held to discuss -- had something  
23 to do with cats. I was informed by Dave Bergman who had  
24 heard of it from Stuart Breck in Colorado, and they just  
25 wanted to know whether I was aware of the situation. And I

1 followed up on it, and I got a little bit of information  
2 about it. It turned out that it was -- as Ron Thompson  
3 depicted it, the meeting had stemmed from disease flow  
4 issues across the border. And the meeting actually occurred  
5 on Monday.

6 My participation had not been solicited, and so it  
7 didn't look like I needed to be there. So I went ahead with  
8 my trip to Mexico and came back, and, certainly, it's one of  
9 the decisions I regret considerably at this point in life.

10 Q. Did you request anybody, because we did have Kirby  
11 Bristow and others from the Department attended. Did you  
12 contact any one of them and ask for them back read from what  
13 occurred at the thing?

14 A. No, I didn't. I relied on Ron.

15 Q. Yeah.

16 A. Ron, as we exchanged e-mails later on, believes in  
17 need-to-know basis, and my philosophy is more along the  
18 lines of no surprises. So we didn't have a very full and  
19 open discussion as it turns out of what was being done.

20 Q. You know, there's an e-mail from -- oh, shoot,  
21 Steve Spangle. He sent a note to Steve, and said, Steve, do  
22 you know about this?

23 A. Yeah.

24 Q. And Steve's first note back is, no, we are not  
25 having a meeting. It is you guys are having a meeting?

1 A. Right.

2 Q. And then he sends a note out and it broadens, who  
3 is it, Beckman? Who is this? Not Beckman. Who is it?

4 MR. FABRITZ: Stuart Breck.

5 Q. BY MR. HOVATTER: No, not Stuart. He's got -- the  
6 guy is kind of -- it's one of his guys. It wasn't Erin.

7 A. Oh, it's a Herb guy.

8 Q. He sends a note to Erin and Susan, and they come  
9 back and say -- well, and he comes back to Steve and says  
10 this isn't about jaguars?

11 A. Right.

12 Q. Except that later on in that e-mail, he says,  
13 except that this is about jaguars, this part. So it  
14 patently is about jaguars. And, then, Steve sends it to you  
15 without comment. There was no comment in the e-mail. He  
16 just forwards it on, what he got from -- and I can't  
17 remember the guy's name right now, but it is not  
18 particularly germane. But do you -- the genesis of this --

19 A. Jim Rohrbough.

20 Q. Yeah, Jim Rohrbough. The genesis of all this  
21 seems to have been Erin Fernandez?

22 A. Uh-huh.

23 Q. Now, lions and bears are resident wildlife that  
24 are not endangered. They are not the purview of Fish and  
25 Wildlife Service. Clearly, an interest in the impact of the

1 border fence on across-border wildlife movement would be of  
2 interest to Fish and Wildlife Service and probably would  
3 fall within their purview in the sense that, that's a  
4 result, you know, that is a Federal act that affects more  
5 than one state. It affects more than one country.

6 But do you have any sense of what Erin's rationale  
7 for convening -- for the Feds convening being the genesis of  
8 convening a meeting to have this conversation ostensibly  
9 about what is resident wildlife in the purview of the State,  
10 and by the way, game animal.

11 A. It has to do with the overlapping relationships.  
12 Susan Sferra is a scientist at the Fish and Wildlife  
13 Service, I think still, as a Bureau of Reclamation employee,  
14 and she was assigned to the Service specifically for the  
15 consultation on impacts of the borderland security measures.  
16 And how that came to be, I honestly don't know.

17 But Erin, within the Fish and Wildlife Service is  
18 the regional staff level lead operating out of Arizona on  
19 borderlands conservation and the Service's cooperation with  
20 Mexico in Mexico. So you have got this overlapping  
21 business, and this is part of the frustration that I  
22 expressed earlier, neither one them is a very strong  
23 communicator with the State agency.

24 Susan wasn't, when Susan worked in Arizona Game  
25 and Fish, and Erin certainly hasn't been since she came into

1 the Fish and Wildlife Service. I don't really understand  
2 all the reasons, but suffice it to say that there appears to  
3 have been some -- Erin stepping forward with something that  
4 we had thought was in Susan's ballpark, and it had to do  
5 with pressures the Service was getting, as I understand it  
6 now, or as I did after this Spangle exchange, and it had to  
7 do with one of those very situations.

8 Homeland Security and INS had gone nowhere with  
9 all the information that had been conveyed to them, nowhere  
10 that we knew of. And, then, all of sudden, they surfaced  
11 with, hey, very quickly, we have got to have some  
12 information from you. And then for whatever reason that  
13 triggered this other group.

14 Well, Jim Rohrbough is another one. Now, Jim and  
15 Erin have put together over the last few years a number of  
16 different issue papers for the Trilateral Committee that  
17 have referenced collaboration with Arizona Game and Fish  
18 that flat out did not exist. But they were portrayed in the  
19 Trilateral Committee as active partnerships, and we only  
20 learned of them afterwards.

21 So it didn't surprise me at all that neither Jim,  
22 nor Erin, had brought anyone in Game and Fish outside those  
23 initial contacts into it. The lack of coordination and the  
24 lack of comprehensiveness didn't surprise me at all. Ron  
25 Thompson was engaged, Kirby Bristow.

1 Q. The person that Erin goes to most specifically as  
2 the Department contact is Kirby?

3 A. Yeah.

4 Q. Do you ascribe any particular intent behind Erin's  
5 not inviting you? Let me ask you this. What is Erin's  
6 relationship to the Jaguar Conservation Team?

7 A. She is the official representative from the Fish  
8 and Wildlife Service Conservation Team, but in reality, more  
9 often than not, Sherri Barrett speaks for the Service at the  
10 meetings.

11 Q. And that's what I had thought, but I needed --  
12 wanted to get clarification. So she clearly knows that the  
13 Jaguar Conservation Team exists. She clearly knows that  
14 you -- or even if she misfired on that it is because there  
15 was some transition period where folks were going to Bill  
16 thinking that -- recognizing that you kind of come back in  
17 the end on that, but either way, if they had gone to either  
18 you or Bill, it strikes me that we might have had a  
19 different outcome. They didn't to go either of you.

20 So, now, I will ask that question. Do you ascribe  
21 any particular intent behind Erin's approach to the  
22 Department not including you or Bill on that?

23 A. No, I really don't. It is just that casual,  
24 casual arrogance I might phrase it as, but there are some  
25 relationships in there that I don't understand as well.

1 Erin has on several occasions not indicated she was a fan of  
2 Emil, and I have never known whether that is because of the  
3 other relationships that exist in there. She certainly  
4 seemed to have be interested in research folks getting  
5 involved in monitoring cats, predators, large carnivores on  
6 the border, whether that is because she had more positive  
7 feelings about the science of their approach or their  
8 persistent pushing and looking for money, I don't know. I  
9 really don't.

10 Q. Well, you know, Emil gets -- and Jack both get  
11 involved in it. And I kind of rationalize Emil from the  
12 standpoint if he has got a relationship with Kirby through  
13 the Bear and Lion Study trapping, Jack has -- you know, the  
14 only reason Jack would be involved would be the jaguar  
15 connection that I can think of?

16 A. And as he is the official permittee.

17 Q. Yeah.

18 A. Yeah. And if you are inviting the official  
19 permittee and the informal research arm of the Jaguar  
20 Conservation Team, I would have thought you would have  
21 informed, because it extends across the border, not just in  
22 Arizona, it considers New Mexico as well. New Mexico Game  
23 and Fish and Arizona Game and Fish relative to the Jaguar  
24 Conservation Team would have been brought into it as well.

25 Q. I just can't -- when I looked at the invitee list,

1 I can't make that meeting not be -- it is not about jaguars,  
2 not having had by design up front have included the  
3 possibility that jaguars needed to be a part of the  
4 discussion, I just can't get there with that?

5 A. In particular, because our discussions over the  
6 previous several years had talked about at various levels  
7 the -- put it in Emil's words, the lack of the sample size  
8 of the jaguars, and the concept of using other large  
9 carnivores as surrogates identified movement in the corridor  
10 and then the downstream benefits to jaguar conservation of  
11 protecting those corridors or managing those corridors,  
12 protecting them by interaction with the construction.

13 Q. You know, the term surrogate shows up fairly late  
14 in the process, but Todd Atwood back in 2007 and 8 uses the  
15 term umbrella species. To me, which in the context in the  
16 way he uses it seems to be much the same as what was  
17 intended by the folks who started using the term surrogate.  
18 I guess part of it, I have a question from your perspective  
19 as a biologist of some longstanding and significant  
20 experience, do you think the idea of surrogacy has merit  
21 with regards to bears and lions as surrogates for jaguars?

22 A. I think that we actually don't know enough about  
23 jaguars at the northern limits of the range to know the  
24 extent to which lions or bears actually do serve as a  
25 surrogate for -- and I don't know the extent to which their

1 movements overlap, either in kind or in location across the  
2 border. But the concept was interesting enough that I was  
3 certainly an advocate for exploring it with Black Bears back  
4 in '99 and 2000. Umbrella species, surrogate species  
5 itself, it may prove ultimately that if we ever get to that  
6 point that we learn so much about jaguars and cats and lions  
7 and bears in the border, that they aren't surrogates.

8 MR. MCMULLEN: We had that thought and that  
9 discussion, we have got a sympatric populate. Well,  
10 mountain lions and jaguars living sympatrically, but they  
11 have very similar life histories. So it occurred to us, and  
12 even Ron thought about it, that they may not necessarily  
13 serve to study one another.

14 THE WITNESS: It might not, but how do you know  
15 unless you get the information?

16 Q. BY MR. HOVATTER: There is something of a cats is  
17 cats approach to this. Here is part of it. Functionally,  
18 does it make a difference to us? If I posit this -- I am  
19 going to posit a hypothesis two different ways. We are  
20 going to study bears and lions on the border. And through  
21 that study using them as surrogates, we will make -- derive  
22 some knowledge about the potential implications for jaguars,  
23 or B, we are going to study bears and lions on the border,  
24 and as a part of that, make an effort to determine whether  
25 or not bears and lions would be a suitable surrogate species

1 for making conclusions or drawing conclusions about the  
2 potential impact of activities on the border on jaguars.

3 To me, there is a very, you know, it is not a many  
4 word difference, but it is a very distinct -- there's two  
5 different hypotheses.

6 A. Uh-huh.

7 Q. The one almost assumes that we all just know that  
8 bear and lions are a suitable surrogate. The other leaves  
9 open the possibility that or seems to presume that we do not  
10 know. They may, and it would probably be of some value to  
11 see if potentially we could determine if they are?

12 A. Uh-huh.

13 Q. And it seems to me most of the language that I see  
14 takes the position that cats is cats?

15 A. Uh-huh.

16 Q. In talking with Chasa and Kirby and others, they  
17 have some memories, nothing that I have ever seen  
18 documented, and they have some memory that there was some  
19 conversation back about probably April, May, June of '08  
20 time frame, and this would have been Todd Atwood has been  
21 producing all the number of proposals or study proposals.  
22 You can see the migration of the more evolution of  
23 technology and thinking.

24 And they were coming up on making a -- having to  
25 make a presentation to the Commission to get approval of

1 some Federal aid funded studies, one of which would be this  
2 Large Carnivore Habitat Connectivity Study. About that same  
3 time -- that is going to happen in May. They are writing  
4 the proposal in April. It is going to happen in May. Then  
5 Todd Atwood leaves about that time, and then there is this  
6 migration to Kirby.

7           So all this is occurring within a period of  
8 several weeks, and there is some memory, it seems to me,  
9 there had been some conversation they had with you about  
10 that time frame with regard to the use of the term jaguar as  
11 the potential impact on funding, that there was some  
12 conversation about some grant proposals and studies that  
13 they had this surrogacy and jaguar issue had crept into  
14 their language and that that caused some conversation about  
15 the potential that the idea of jaguar surrogacy could be  
16 seen in funding circulars as a substitute for research that  
17 might be more specifically focused on jaguars and that there  
18 was some expression of concern to the extent that they felt  
19 the need to change some of that language, take jaguar out of  
20 some of that.

21           A. I think that's accurate. I think it stems back to  
22 the very first discussions that I had with them in the fall  
23 of '07, as I recall, October-ish or whatever it was. My  
24 concern all along through '07 and '08 was that if -- because  
25 we don't know whether lions and bears are surrogates for

1 jaguars, if the allocation of funding, and we don't know how  
2 big the pool is, we don't know what the guidelines are, we  
3 don't know even what the expectations are for proposals, at  
4 least I don't anywhere through this process. This is all  
5 supposed to be evolving, and we ultimately don't have a clue  
6 what Homeland Security will actually agree to at the far  
7 end.

8 My concern was that if there are limits, limited  
9 numbers of dollars that are available and those go into --  
10 only into the umbrella species so to speak, and the umbrella  
11 species proved not to be of significant value inserting the  
12 surrogates for jaguar, but that causes the monitoring  
13 program to go unfunded, we will have lost our direct inflow  
14 of information on jaguar.

15 At some point, those guys have got to say,  
16 agencies go jump. We are only getting a dollar and a half a  
17 year, and we just -- we have expended all our personal --  
18 anyway, that was the issue.

19 Q. What did you see as the appropriate way for us to  
20 deal with that situation? I mean, how would we square that?  
21 On the one hand, I think, it seems like part of the reason  
22 that language crept into some of their proposals was looking  
23 at to whom they are submitting it trying to find the best  
24 way to make the bread as possible. At the same time, you  
25 see that the risk that -- the limited dollars that get bled

1 off into that, a study where we haven't even proven the  
2 hypothesis that bears and lions are, in fact, a suitable  
3 surrogate, the money gets bled off of there.

4           You can see to some entities it might be appealing  
5 to say, well, if I could pour money into a study that I get  
6 answers about bears, lions, and jaguars, that might beat the  
7 heck out of one that is specific to just jaguars. Do you  
8 think -- what should have been the Department's approach  
9 when that was highlighted, where you have Research Branch  
10 going in one direction and where you are working as the  
11 Department's designated hitter on the jaguar program of  
12 longstanding, how should we have dealt with that as a  
13 Department?

14           A. Well, I think that we had two other transitions  
15 that occurred during that period from '07 into '08 that are  
16 not unrelated to this issue. One is the transition from  
17 DeVos to Chasa as Research Branch Chief, and the other is  
18 the spring '08 transition from Shroufe to Voyles. During  
19 that period up until Devo left and then Duane left, we were,  
20 I think, reasonably clear that the priority for jaguar work  
21 in this State was to support the priorities of the Jaguar  
22 Conservation Team, and No. 1 for the conservation team was  
23 to support the Borderlands Jaguar Detection project to  
24 monitor and yield information.

25           And, then, as those transitions occurred, new

1 discussions were had, new people were involved, the  
2 potential for incredibly larger sums of funding became  
3 known, and we lost that focus about the number one priority  
4 for jaguars. I think another element comes into it, Atwood  
5 left, and I didn't know that -- I didn't know that he left  
6 until considerably later, and, then, even then when I found  
7 out in March, I think it was, that he was gone, I got mixed  
8 information as to whether he truly was gone. I mean, there  
9 were folks that explained to me back then that he still --  
10 he's an employee on leave and coming back at some point.

11 Q. Is that March of this year?

12 A. March of this year, yeah, March of this year, it  
13 is still represented that way. And I guess my point is  
14 there was just such lousy communication over that period  
15 that it doesn't surprise me that there -- that they have  
16 got, you know, 15 different proposals out to 15 different  
17 funding sources to some extent say different things.

18 It certainly doesn't surprise me with that, kind  
19 of, who is on first approach that Fish and Wildlife Service  
20 would have been uncertain as to what our priorities were,  
21 and certainly, that I might have not been brought into some  
22 of those discussions or Bill might not have been brought  
23 into some of those discussions.

24 To cut to the chase, though, my expectation as an  
25 agency, and this was the discussion I had with the Research

1 folks in the fall of '07, and I thought we were in  
2 agreement -- that we were in agreement as to accepting it,  
3 whether we were in agreement that it was right is a  
4 different issue, is that Duane had made very clear that his  
5 first priority for any funding available for jaguar work was  
6 not for surrogate or umbrella work first, it was for support  
7 of the monitoring project. And, then, the support would be  
8 for any indirect studies or other things that --

9 Q. Was that a meeting or how did that get  
10 promulgated, that understanding from Duane?

11 A. The understanding from Duane came from my verbal  
12 briefings. I briefed him two or three times a year, had  
13 those discussions, and then repeated them when the Research  
14 people came into it, when I first heard the Research people  
15 were coming into it in '07. And then I reaffirmed those  
16 with him in follow-up discussions with Duane and with the  
17 conservation team as a whole as to what our agency  
18 priorities were, but I don't --

19 Q. The thing that seems to have happened is part of  
20 that did come through, I think, very loud and clear. What  
21 happened, though, is that the only thing that changed was  
22 not acts on the ground, but was just eliminate the word  
23 jaguar from the process?

24 A. Right. As long as you are talking about large  
25 carnivore work or bear and lion stuff, we don't mention the

1 J word, we are okay. And if funding ends up being  
2 insufficient to sustain the monitoring project, so what?  
3 Gary though --

4 Q. Go ahead.

5 A. -- when I look at the agency issues, I am a firm  
6 believer that Machiavelli doesn't live. I am a firm  
7 believer that planned non-cooperation doesn't occur as much  
8 as just ignorant serendipity.

9 Q. Yeah, I don't find much that I would consider  
10 malicious intent. But, you know, the problem is that if you  
11 stack enough arrogance up long enough and deep enough, it  
12 has the effect of malice whether it has the intent or not?

13 A. And the consequences are as if malice had  
14 occurred.

15 MR. MCMULLEN: They are equal.

16 THE WITNESS: Yeah.

17 MR. MCMULLEN: There's no distinguishing the  
18 thoughts about it.

19 THE WITNESS: The end certainly causes you to say  
20 that the means were inappropriate, but I don't think there's  
21 a conscious plan to thwart the empire.

22 Q. BY MR. HOVATTER: It sure doesn't look that way.  
23 It sure doesn't look that way. Let's see what I was trying  
24 to get at. There is an e-mail in January 5 of '09. Susan  
25 Sferra sends an e-mail to Bill. And it says, hi, Bill, I am

1 helping Leslie Fitzpatrick and Sherri Vera with modifying  
2 the existing Fish and Wildlife Service Cooperative Agreement  
3 with AGFD entitled AGFD Border Patrol Agreement, and the  
4 modification amendment, we will reallocate the remaining  
5 49,000 and change to jaguar camera monitoring in southern  
6 Arizona.

7           Was that the outcome of any -- was that just the  
8 outcome of the normal flow of looking at funding and looking  
9 at the status or was that related to any particular event or  
10 activity that caused that?

11           A. One, the money had been standing, as I understood  
12 it, though, when I discussed it with Bill in January, and at  
13 what point in January, I don't recall, it might have even  
14 been early February, but I think it was January, is that the  
15 Service was feeling some pressure because this money had  
16 been sitting there unused for a lengthy period of time,  
17 about a year is what I recall.

18           Q. Uh-huh.

19           A. So there's a desire to obligate the funds just  
20 simply because you want to see funds spent. The second  
21 thing is that Jack and Emil had been hounding us all,  
22 rightfully so, all the way through the fall and really  
23 started to reach a crescendo in December that they were out  
24 of money.

25           And by January, they reached the point of saying I

1 think they had less than \$5,000 left and to support -- that  
2 it was going to run out. It was going to run out very  
3 quickly. So there was a desire to say, well, you know, hey,  
4 Game and Fish, if this money is over there being unspent,  
5 they are getting the same calls. Susan is not, but Erin is,  
6 and likely other people as well in Fish and Wildlife Service  
7 from Jack and Emil saying where is the money.

8 By this time, also, BLM was, I think, right about  
9 a year behind on their commitment to pursue some internal  
10 grants that would provide some support for the monitoring.  
11 Forest Service had lapsed by that time on a -- looking at  
12 New Mexico Game and Fish, of course, was not existent in  
13 terms of providing funding for anywhere at all.

14 So really, then, you have also the fact that Macho  
15 B had been photographed again in July and August, and we are  
16 coming into the season where good things can happen in terms  
17 of a jaguar recurrence, probably got pretty heavy  
18 concentration of jaguar photographs in that February through  
19 March, April period. I am not really sure what the  
20 distribution is across the month of the year, but anyway,  
21 all of those things are combining, and Jack and Emil are  
22 just flat tired of surviving on less than poverty level  
23 salaries.

24 I am not sure where it happened, but Emil had  
25 destroyed his own -- his one truck. I am not sure what he

1 was driving at that time. All these pressures were out  
2 there, and that led to this inquiry or whatever of Bill, and  
3 Bill kicked it over to me and said, hey, guys, I am not a  
4 jaguar guy anymore. I am working on prairie dogs, talk to  
5 Terry.

6 Q. When did the -- how does the transition of jaguar  
7 work to Bill and back to you? From you to Bill and back to  
8 you, how did that -- what was the time line on that?

9 A. When Eric came in as Non-game and Endangered  
10 Wildlife, Permit Chief and Branch Chief, we had -- he and  
11 Duane and Bruce and I and Bill may have been involved in  
12 some of those discussions, had several discussions about  
13 Eric integrating into the program and taking over the  
14 responsibilities and one thing or another.

15 And one of the tension points was the extent to  
16 which wolf and jaguar work impinged on the other  
17 responsibilities and the Non-game Birds and Mammals Program  
18 Manager, and for lack of hard data arbitrarily agreed that  
19 Bill's timing in wolf and jaguar world would not exceed 25  
20 percent of his position, whether that was codified in bases  
21 or memos from Eric or not, I don't know, but that was the  
22 agreement.

23 And at that time, that time being -- time frame  
24 being roughly '06, '07-ish, by that time, the New Mexico  
25 problems and the wolf project had escalated between December

1 of '06 and the summer of '07. In '07, it really hit the  
2 fan. Through that period, while, in fact, it goes back to  
3 '03, I increasingly focused on wolf because that's where  
4 the -- I mean, that was at the door, and the jaguar stuff  
5 was pretty low profile making sure there's funding for  
6 monitoring cameras and then holding the occasional Jaguar  
7 Conservation Team. That was easier for Bill to handle.

8 And, then, we got into the point of which Bill,  
9 the WAFWA Agreement was developed, and no bones about it,  
10 that was my idea. And it was my idea because I have a very  
11 good friend and colleague, Bill Van Pelt, that was not  
12 prospering under Bruce Taubert as Wildlife Management  
13 Division Chief, and I wanted to look for a place that Bill  
14 could have a friend near home. It had nothing to do with  
15 Eric or Non-game.

16 I pitched the concept. Bill bought into it.  
17 WAFWA bought into it. Duane bought into it, create this  
18 position, and Bill would move into an area of relative  
19 independence. But once he made that -- once that WAFWA  
20 contract finally came into fruition, which was like a year  
21 after we started it, I think it was May, I really may be  
22 wrong on this, Gary, but May or June of '08 --

23 Q. Uh-huh.

24 A. -- then it was okay, Bill, is now 100 percent  
25 prairie dogs and WAFWA. Terry, you are on your own for wolf

1 and jaguar with reliance on the Acting Program Manager in  
2 Birds and Mammals Program Manager in Non-game, which is  
3 basically saying nobody, because Jamie, who was the one who  
4 was intended to serve that first tour of duty as Acting  
5 Program Manager, absolutely no experience, no awareness  
6 whatsoever of wolves or jaguars and had his hands full with  
7 the Bird and Mammals Program.

8 Q. Yeah.

9 A. And, then, the other sources of support, of  
10 course, were their regional staff, and on wolf that is  
11 clear, and on jaguar, that's not so clear that jaguars was a  
12 priority --

13 Q. Yeah.

14 A. -- for the Region 5 staff. That is kind of where  
15 it is. So from that time on, from that permanent transition  
16 time on, Bill's involvement in jaguar work increasingly  
17 revolved around I am not the guy anymore, you need to talk  
18 to Terry, and then he would try to help me understand what I  
19 should be doing in some cases, because my role had always  
20 been at the umbrella level and not the operational level.  
21 Bill had handled that from the beginning.

22 Q. So that 49,000 would have gone to the camera  
23 monitoring? That would have been Jack and Emil's camera  
24 monitoring project?

25 A. Yes, that would have gone there.

1 Q. Since we had the ESA permit, we have our 10(a)1(a)  
2 permit, when Emil got that North Star jaguar collar, it was  
3 donated to him, first, the question -- one of the questions  
4 I have on that, I think that was done at a Jaguar  
5 Conservation Team meeting or a --

6 A. Yeah.

7 Q. Do you recall the circumstances of how that  
8 occurred?

9 A. Yeah, I do. There's the Wildlife Society Annual  
10 Meeting took place in Tucson, Arizona. In what year that  
11 was, I couldn't tell you, whether it was '06 or '07,  
12 somewhere in that time frame.

13 Q. I think it was '07.

14 A. So that would have been a September meeting, they  
15 always are. Emil, one of the special sessions was large  
16 carnivores. I am not sure what the official title was, but  
17 John Morgart was down there ostensibly to talk about the  
18 Mexican wolves, but the reality was to receive an award for  
19 his Mexican wolf work.

20 And in that special session, one of the sessions,  
21 Emil gave a presentation on the jaguar world. And my  
22 thought would be that Emil very likely made two points that  
23 he always makes in his presentations. One is that the  
24 capture and collar is the avenue through which we will get  
25 information on jaguars, and the other one is these

1 scum-sucking agencies do not provide adequate support for  
2 the monitoring project, and I am begging for help, whatever  
3 it might be.

4           Given that the guy from North Star, as I  
5 understand it, was actually down there, in part because it  
6 is a marketing opportunity for him, comes out with probably  
7 not entirely an altruistic gesture to donate a collar, and  
8 he donates it to the guy that was right there. I have no  
9 doubt whatsoever that what was portrayed there was more the  
10 Borderlands Jaguar Protection Project doing the work than  
11 the representation of the conservation team being the lead  
12 there and the individual agencies.

13           Q. Do we know if, the answer may well be no, whether  
14 Jack's permit would have permitted -- from the Feds would  
15 have permitted him to, in fact, trap on the border?

16           A. I do not know from firsthand reading of the  
17 permit. What I know from every discussion with Fish and  
18 Wildlife Service with Jack and with Emil, with Bill Van Pelt  
19 and with everyone else in the world, the answer is no --

20           Q. Uh-huh.

21           A. -- that that permit was restricted to non-direct  
22 monitoring with remote camera sets. It did not extend to  
23 physical capture and collaring at all.

24           Q. So take, either incidental or deliberate, was not  
25 an issue in their permit because it wasn't permitted?

1           A.    Well, under the Federal definition, take was  
2    allowed.

3           Q.    Well, yeah, yeah, take and that camera work, yeah.

4           A.    But not capture, no.

5           Q.    So how should we interpret -- Emil accepts this.  
6    The only way that collar can be of any use to him is  
7    somebody captures a jaguar.  It isn't going to be him?

8           A.    Right.

9           Q.    Because legally he can't?

10          A.    Right.

11          Q.    How should we interpret -- was there any  
12   discussion in a subsequent Jaguar Conservation Team meeting  
13   of what the implication of having that collar meant, because  
14   we already had bought a collar.  We had a collar already  
15   sitting there in Region 5 that we thought based on the  
16   outcome, because that was going to be for either -- my  
17   impression was for either a decision under the protocols to  
18   do a deliberate take or should there be an incidental take  
19   that we had the collar in position --

20          A.    Correct.

21          Q.    -- to go ahead and collar the animal?

22          A.    The collar that was in Tucson was old, old  
23   technology, and whether it was in a working condition or not  
24   at the time that the GPS collar was donated to Emil, I don't  
25   know.  I think it was supposed to go through some tweaking,

1 but that would have been at the old technology level as  
2 well. The collar that was donated to Emil, we knew that it  
3 had been -- he told us right away that it had been donated.  
4 Right away being -- he might have told Bill even the day  
5 after it was donated.

6 But, certainly, within a month of that time, we  
7 were aware the collar had been donated, and it was  
8 absolutely understood by Emil, Jack, and everybody else that  
9 at that point, the Jaguar Conservation Team had made its  
10 recommendation to the State wildlife agencies and Fish and  
11 Wildlife Service that capture and collaring of a jaguar  
12 should occur and that had occurred.

13 Q. That was --

14 A. That was '06. So this is a longstanding thing,  
15 but it was equally clear to all of us that the Arizona Game  
16 and Fish had not made its decision on that recommendation,  
17 and one of the reasons I know that that was clearly  
18 understood is because in conservation team meetings, I would  
19 usually take a shot from either Jack or Emil or both about  
20 not having -- the agency not having made a decision on this.

21 So there is absolutely no question in my mind that  
22 that GPS collar was donated with the expectation that  
23 eventually everything would be lined up in the agency,  
24 either Arizona Game and Fish or New Mexico Game and Fish  
25 would determine, okay, if there is a jaguar present, we know

1 enough about where it is and the seasons are right and all  
2 the conditions are right and the protocols are in place,  
3 that capture and collar will occur.

4 But the collar itself did not convey any authority  
5 to capture and collar, either at the Federal level or at the  
6 State level.

7 Q. If we had made a decision to deliberately capture  
8 would baiting the trap set with jaguar scat have been  
9 permitted in our -- under our permit from your perspective?

10 A. Yes. Yeah, under our permit, yeah, yeah. If our  
11 Director had authorized us to execute and our Director would  
12 not have authorized to execute until he had had the  
13 discussions with Fish and Wildlife Service for concurrence  
14 and with New Mexico Game and Fish for counsel on it. It  
15 would have been necessary for them to do it.

16 Q. That would have been, then, under the protocols.  
17 The most appropriate way for us to have done that would be  
18 to leverage the work we invested in the Jaguar Conservation  
19 Team. We established protocols that we had for a deliberate  
20 take, and that describes the decision process and the  
21 equipment and the manpower and all of the other  
22 implications?

23 A. But there is a key point there, and that is in my  
24 early December briefing with Larry Voyles, I don't know what  
25 date it was, first week in December anyway --

1 Q. Yeah.

2 A. -- when we discussed the protocols and the  
3 decision that was still pending, that was the decision of  
4 the Director to move forward, and I briefed him and  
5 explained to him again that before he could make such a  
6 decision, we would have to have discussion with the Fish and  
7 Wildlife Service, Spangle's staff, we would have to brief  
8 Tuggle, Stevenson's staff, brief him, and then the Directors  
9 either jointly or individually concur that it was the right  
10 step to take at the right time.

11 At that point, it was generally -- well, not  
12 generally. I reviewed as a part of that briefing and  
13 follow-up to that briefing our protocols and realized then  
14 how outdated they were and how incomplete they were in a  
15 couple of places. And the next logical step was then to  
16 revise and update those procedures given that we were not  
17 moving forward with a decision -- we had not been asked to  
18 make, nor had Larry made a decision to authorize capture.

19 In early February, I sent those protocols out to,  
20 I think I had two different distribution lists for the  
21 different protocols. One of them involved Jim Stewart, New  
22 Mexico Game and Fish, and I think the other one was entirely  
23 internal, to Van Pelt and Snow. I don't think I sent it out  
24 to Stewart. The reasons for the difference was my level of  
25 discomfort with each of them was different.

1 Q. Yeah.

2 A. And I just thought that there was sloppy work in  
3 one of them that needed to be resolved before we even took  
4 it forward to Stewart, let alone to Fish and Wildlife  
5 Service. And my expectation was that we would be able to  
6 resolve those over the spring. By this time, by February,  
7 my focus was on getting the house in order for the  
8 conservation team meeting on the 19th of February, and then  
9 using that conservation team as a means of kicking off the  
10 extra review that would be required, not just the agency,  
11 but the scientific advisory group.

12 Q. Let me ask you, it seems to me that, when that  
13 collar got -- when Thorry put the collar on that jaguar,  
14 that was done under the auspices of our permit, our  
15 10(a)1(a) permit. And at that point, while it was  
16 physically, I guess, the property of Emil McCain, because it  
17 was donated to him, did that -- I am kind of -- I am looking  
18 at the fact that we didn't have access, direct access to the  
19 collar, and that kept Emil in that chain on that, which  
20 relative to other earlier conversation we had earlier in  
21 this interview about this holding -- this information  
22 access. Were we required to acquiesce and Emil being the  
23 only person who had access, direct access to that data?

24 A. No, I don't think we were required to. I think he  
25 could have told us to shove it.

1           Q.    You want this collar, you get your access to the  
2 data through me?

3           A.    Right.  And, then, our alternative at that point  
4 would be to either agree or to take the collar off the  
5 animal.  It is a question that should have been -- in  
6 hindsight, should have been resolved before, but the issue  
7 for us was the same as the issue for Fish and Wildlife  
8 Service whether we preserve some element of foibility by  
9 having the data downloaded to the outside individual, and  
10 then the summaries or necessary information provided to the  
11 two agencies.

12                    I think Fish and Wildlife Service, thinking about  
13 it, Fish and Wildlife Service was very explicit about that.  
14 Spangle even, in my initial notification, someone in Fish  
15 and Wildlife Service said he forwarded it to him, it came  
16 back to him, and said, you understand the specific location  
17 is mentioned now, so that is subject to public disclosure.

18                    And from that point on, then, I was very generic,  
19 at Spangle's request, in how I relayed information there.  
20 But there was a comment element of it that concerned me in  
21 that the first few days after the capture, after I became  
22 aware of the capture, and that wasn't -- it wasn't the  
23 information that was my concern.  The information was  
24 secondary actually.

25                    It was that I perceived that a group of people

1 were involved in deciding how we would monitor that jaguar  
2 other than pure GPS information relay and what decisions we  
3 would be making -- that we would make about that jaguar, and  
4 they were not looking to Bill Van Pelt for -- or Arizona  
5 Game and Fish to make that call. Emil was making those  
6 calls.

7 And my first awareness of that and just how real  
8 the problem was, try to work my way through here, somewhere  
9 between the 21st, 20th, 21st -- no, it would have been the  
10 23rd or 24th, whatever, of February, and the day I went in  
11 to [REDACTED], that was the 25th of February, it  
12 became clear to me through the communications that Arizona  
13 Game and Fish was not calling the shots. Emil was making  
14 some decisions about whether to go in, whether the cat was  
15 in trouble, whether -- who should go in, that sort of  
16 business.

17 So I addressed that with Bill and with Jack and  
18 Emil and said that -- reminded folks that the cat was  
19 collared under Game and Fish authority. Incidentally,  
20 captured, yes. Collar was in place there. It is a Game and  
21 Fish project at that point. And the other folks outside the  
22 agency are advisors and participants and cooperators, but  
23 the folks that are legally accountable for it are Arizona  
24 Game and Fish.

25 I had that discussion with Bill and thought that

1 we were squared away, that he would make the decision after  
2 consulting with all of the internal and external folks about  
3 whether to go in and check out the condition of the cat on  
4 the ground. And, then, when I came out on Thursday, started  
5 re-engaging on Friday to the extent that I could, Bill told  
6 me that a decision had been made that he didn't agree with.  
7 And my words to him were pretty blunt, that he was the lead  
8 there.

9 [REDACTED], and if he wasn't comfortable with  
10 something that was happening or disagreed with it, that it  
11 was his responsibility to say no. This isn't going to  
12 happen or this is going to happen. So on Friday night,  
13 Friday afternoon or Friday night, whatever it was, that's  
14 where he tried to re-assert that Arizona Game and Fish was  
15 making the decisions.

16 While naive me didn't understand what the -- the  
17 way that was being played on the ground was that advice from  
18 Thorry and from Ron Thompson was being used to support the  
19 decisions that were being made on the ground as to who went  
20 in and for what reasons they went in. And we weren't, in  
21 fact, in command of the situation.

22 And then by Sunday, it became even more obvious  
23 when both Bill and I learned that Ole was on the ground, Jim  
24 deVos was in the area, two techs were on the ground, and the  
25 dart gun was out there, all of which was new to us. And by

1 then the situation had deteriorated to the point in which  
2 everyone was very happy for Arizona Game and Fish to take  
3 over the lead on what was occurring on the ground. I  
4 apologize if I am rambling.

5 MR. HOVATTER: No, no, no.

6 MR. MCMULLEN: No, not at all.

7 Q. BY MR. HOVATTER: There is an e-mail from 2  
8 February, Terry, and it is your e-mail to Ron Thompson, and  
9 the subject is Jaguar Draft Concept Proposals for DHS Funds.  
10 And it says, Hi, Brian and Chasa were in WMD staff today  
11 when we discussed the DHS funding. You said, I saluted  
12 your, and it was quote, your, unquote research proposal, and  
13 asserted that it complemented and it does not conflict with  
14 much less refined concepts that I have articulated. Josh  
15 and probably a Branch Chief or two will meet Spangle, et al,  
16 on February 12th to figure out what the next step is. Do  
17 you recall what Ron's project was?

18 A. Yeah, it was the -- I don't know what the title  
19 was, but it was the large cat. His involvement with Todd  
20 Atwood, Stuart Breck, whoever all the coordinated people  
21 were. It wasn't his personal project. It wasn't his  
22 individual project.

23 Q. Okay. That's why it is in quotes?

24 A. It was Research, yeah, right.

25 MR. MCMULLEN: Is this the LCHC?

1 Q. BY MR. HOVATTER: The Large Carnivore Habitat  
2 Connectivity Study?

3 A. That could have been the title at that time. I  
4 don't recall. It was the Game and Fish proposal for using  
5 bear and lion as umbrella species or surrogate species to  
6 gather information. And the reason I was comfortable with  
7 it is that we were in complete agreement at the WMD staff  
8 meeting, that providing funding for the -- hard funding for  
9 the direct monitoring project was part of our push for those  
10 spots.

11 Q. It would have been an evolution of that, because,  
12 you know, the LCHC really on the ground started October,  
13 November. So that was a going concern at that time. And  
14 then when they ran of the collars, they stopped that  
15 project. So it sounds to me like there was some further  
16 discussion. Frankly, I would think it probably derived  
17 from, in part, from that December meeting that the Feds had.

18 A. I would guess, but one of the -- I have never seen  
19 a project operated quite the way the large carnivore project  
20 is operated with multiple proposals all over the place which  
21 are different at some level. And they are playing to -- and  
22 I don't pretend to have seen them all, but I have heard  
23 there are like 15 or 20. I have probably only seen five or  
24 six myself, but proposals that are out there at the same  
25 time identified different objects and different methods from

1 each other, and how anybody makes sense of what is real, and  
2 they list partners who aren't even close to partners.

3 Q. The documents we find, this is why I always hate  
4 undated documents, because it is almost impossible now this  
5 removed to be able to sequence them. You can see a  
6 potential logical evolution based on, you know, increasing  
7 complexity and things, but even that is not a certain  
8 approach in trying to sort that out.

9 A. It didn't even change all the way through the -- I  
10 think the most recent one I saw was in May of this year, and  
11 we're draft still on that version, even though that was the  
12 final, and it still had some of the same errors that a  
13 previous version had had, not subject to errors, but  
14 nevertheless errors.

15 Q. Do you know if that 12 Feb meeting with Spangle  
16 that was supposed to have occurred ever occurred?

17 A. I think it was canceled. That is the one Josh was  
18 going to be the lead on?

19 Q. Yeah.

20 A. I believe that meeting was either canceled or  
21 pushed back to the following week. There was some sort of a  
22 delay in there that didn't occur, because I know when I  
23 followed up with Josh, it seemed like it was -- it might  
24 actually have been after the cat -- it would have been after  
25 the capture. There had not been a meeting. I think there

1 was some telephone coordination, but we had not made that  
2 big next step yet. And, then, that occurred a week or two  
3 later. We did eventually make it though.

4 Q. The day after that, you had sent a note to James  
5 Elliott. It is on that 49 K again --

6 A. Oh, okay.

7 Q. -- talking about putting that money into their  
8 agreement with Jack Childs. Did that money ever actually  
9 then get to Jack?

10 A. No, no. James being what James is, me being what  
11 I am, we didn't execute the paperwork, make the final  
12 allocation, send out the notice to the them, and funding was  
13 going to flow, et cetera. And then soon after, the jaguar  
14 was captured, it became clear that maybe we didn't want to  
15 be sending the money down there yet.

16 MR. MCMULLEN: That was an alert.

17 Q. BY MR. HOVATTER: Yeah.

18 A. Yeah.

19 Q. What happens next with this? Let me ask you this.  
20 You and I talked about this very briefly in other  
21 coordinations --

22 A. Uh-huh.

23 Q. -- and not in this context. Can we, in fact, have  
24 a relationship with Jack Childs and Emil McCain in the  
25 Jaguar Conservation Team?

1           A.    Well, this one is difficult for me. I think it is  
2 very difficult for Arizona Game and Fish. Unless Jack  
3 Childs, in my opinion, unless Jack Childs is found culpable  
4 of some violation, I don't see that we have the grounds for  
5 having no relationship with him whatsoever. I do believe  
6 that as a result of what has happened, whether it is  
7 criminal or not, that Emil McCain has violated trust  
8 sufficiently in terms of his partial disclosure to different  
9 people about different things, that this agency cannot trust  
10 him to be forthright and forthcoming on anything, whether it  
11 is lions and bears or jaguars.

12                   And I can't see having any sort of employment or  
13 advisory relationship there. By advisory, I mean things  
14 like inclusion on a scientific advisory group for jaguar  
15 work or anything else. I really can't see that. The  
16 problem is if you make that determination, how do you  
17 execute it? You can't excommunicate him from the church so  
18 to speak. He can attend public meetings. We can't stop him  
19 from attending public meetings, including jaguar  
20 conservation things.

21                   But I can see a need, a possible need at some  
22 point, unless there is something definitive that comes out  
23 of this, that either clears him beyond the shadow of a doubt  
24 that we have to answer a question in public about why he is  
25 not engaged, why he is not further engaged, and that answer

1 is going to be -- need to be very politicky. If something  
2 comes out that incriminates him, that's there.

3 But I have said from the beginning that I think  
4 because of the way the permits were cut to Arizona Game and  
5 Fish, the only thing that is potentially criminal in my non  
6 law enforcement trained mind is if Emil manipulated the  
7 situation or someone manipulated the situation to make an  
8 intentional capture of the jaguar.

9 Q. Let me ask you this.

10 A. And that is a policy violation in my mind, not a  
11 criminal.

12 Q. Yeah. Would -- presuming that Jack Childs comes  
13 out clean in all this, would he have to repudiate Emil  
14 McCain in order for him to be someone we could work with?

15 A. If our work with him were to revolve around the  
16 Jaguar Borderlands Detection Project, I would be inclined to  
17 say yes, not without reservation and not without more  
18 carefully describe the circumstances, but what I think is  
19 dead here is the Borderlands Jaguar Detection Project.

20 Q. That was my next question. Can we regardless work  
21 with Jack Childs, even if he comes out clean in this  
22 investigation on the Borderlands Jaguar Detection Project?

23 A. I believe change is this. If we have an active  
24 research program, and I really -- you can't imagine how much  
25 I hate saying this, if we have a research program in

1 southern Arizona that is running hair snares and camera  
2 traps for lions and bears, jaguar monitoring needs to be  
3 integrated into that project and operated by Arizona Game  
4 and Fish, and if we choose to have volunteers working with  
5 us or whatever or paid employees or whatever, it needs to be  
6 done as part of that project. There is no other way to  
7 ensure that the left hand knows what the right hand is  
8 doing.

9 Q. Do we have the necessary expertise to do the on  
10 the ground work for doing that within the Department right  
11 now? Or do we have for the bear snares and hair snares and  
12 things?

13 A. I think we do. I think that Research has a lion  
14 and bear stuff covered, and I think Ron Thompson has the  
15 necessary expertise in the jaguar world.

16 Q. Did you ever know or come across Janay Brun before  
17 that now famous e-mail?

18 A. It appears that I have run across Janay Brun in  
19 two ways. I would not know her if she walked through the  
20 door. I wouldn't know her if she called me on the phone,  
21 but I was at a Jaguar Conservation Team where she is listed  
22 as one of the attendees. So I know, assuming that her notes  
23 are accurate, and they aren't always accurate, she must have  
24 been there.

25 I also know from having gone back to the e-mails

1 in response to the public records request and the various  
2 sew lease solicitations of e-mails that she and Thorry  
3 actually were listed in jaguar e-mails, among many other  
4 people, much earlier than I was aware of either one as an  
5 individual, '03, '05-ish, something along back in those  
6 lines.

7 I know I read an e-mail from Janay offering her  
8 services to Arizona Game and Fish as a jaguar volunteer  
9 before she ever became a volunteer with the Borderlands  
10 Detection Project.

11 Q. When did that occur?

12 A. That was one she sent to Bill. I don't remember  
13 the time on it, '01, '02, '03, somewhere back in there, but  
14 there's an e-mail or a letter. Actually, I may be confused.  
15 It is either a hard copy letter in our files or it is an  
16 e-mail to Bill, but either one, it was addressed to him.

17 MR. HOVATTER: Is that something we have in our  
18 stuff?

19 MR. FABRITZ: It is not ringing a bell to me.  
20 Maybe so. Maybe so.

21 THE WITNESS: If you haven't seen it, it is  
22 probably a hard copy letter. Our files, I have worked a lot  
23 on our jaguar files over the last couple of months, but --

24 Q. BY MR. HOVATTER: If you could find that, would  
25 you send that to us?

1           A.    I will go back -- I have to go back through --  
2    there are two or three massive folders of just crap that was  
3    in places it shouldn't have been, and that is what I have to  
4    work through.  But there was a hard copy of something,  
5    whether it was a print-out of an e-mail or print-out of a  
6    letter.

7           Q.    Well, by places it shouldn't have been, are you  
8    just talking things where they kind of lost track?

9           A.    There are times within the jaguar overall files  
10   that purport to be of a Jaguar Conservation Team meeting or  
11   comment on a litigation, whatever, that may have anything  
12   and everything in this.

13          Q.    So it is misfiled and it is just not -- it is just  
14   lack of attention to details --

15          A.    Yeah.

16          Q.    -- as opposed to some malice of forethought?

17          A.    Oh, there is no malice.  It is jaguar.

18          Q.    Yeah.

19          A.    Yeah, it is jaguar.

20                MR. HOVATTER:  Guys, anything else?

21                               EXAMINATION

22   BY MR. MCMULLEN:

23          Q.    Yes, there is a few things, Terry, that we either  
24   hit on today and glossed over and didn't follow up or that  
25   we didn't ask that were in here or things like that?

1 First one I wanted to go back to was I asked you a  
2 two-part question. I don't think we ever got back to the  
3 second part. It had to do with 10(j) species showing up on  
4 an inquiry for HGMS.

5 A. Uh-huh.

6 Q. And the two parts to the question were, one,  
7 Mexican wolf, and two, would jaguar have shown up on an HGMS  
8 inquiry. When I asked you that question, I remember you  
9 pinging on that pretty good, but I don't think we ever got  
10 back to answer the question. You said something about it  
11 did show up on a HGMS inquiry. Can we go back to that?

12 A. Yeah. Yeah.

13 Q. First, would, based on what you know, would jaguar  
14 have shown up on an HGMS inquiry for the LCHC project, the  
15 Bear and Lion Project?

16 A. Not by name. It shows up as endangered species,  
17 not by name. Same thing with wolf.

18 Q. So HGMS inquiry, we are doing this lion snaring  
19 study on the border, HGMS inquiry, so it would show up there  
20 as endangered species there, but it wouldn't say which one?

21 A. That's correct.

22 Q. Okay. You said it did show up on an EA checklist.  
23 Did that refer to Mexican wolves or both of them?

24 A. Both of them. They are both. The two lines on  
25 the EA checklist that says, other impacts on threatened and

1 endangered wildlife, blah, blah, blah. That covers wolf,  
2 covers jaguar. Jaguar because it is listed, wolf because it  
3 is listed and just has the 10(j) status, but they are both  
4 federally listed species that are present in the state or  
5 presumed to be present in the state under the jaguar case.

6 Q. Okay. That clears it up now. Thank you. I just  
7 wanted to be sure that we fleshed that out. And there is  
8 one you had but you didn't ask?

9 MR. HOVATTER: What was that?

10 Q. BY MR. MCMULLEN: It went back to the chronology  
11 of parsing out information, partial disclosure of  
12 information by Emil. And do you think -- it is kind of  
13 almost a rhetorical question, but I guess you can answer it.  
14 Do you think you would have connected the dots had you known  
15 when Emil started releasing information to you about the  
16 photos that he had recovered from the summer of 2008, he  
17 released that information in November of 2008. Do you think  
18 you would have connected the dots if you would have known he  
19 was snaring at that time?

20 A. Even in my pre-February 25th state of mind, which  
21 is not good, but it is not an excuse, unless I were dead,  
22 when I see dots that are within ten miles of the set of a  
23 snare that is using jaguar scent or within half a mile of a  
24 camera set, and there is an aggregation, and there are  
25 occurrences over a three- to four-week period, yeah.

1 Q. Yeah. That is why it was nearly a rhetorical  
2 question. I just wanted to go back. In your chain of  
3 command, we tried to establish a chain of command here. You  
4 didn't show up on the radar screen there. Where is your  
5 chain of command? Are you within WMD?

6 A. You don't want to disclose this point.

7 Q. There is none?

8 A. No, there is. There actually is. There's the  
9 operational chain of command. Then there's the actual  
10 written chain of command.

11 Q. Yeah?

12 A. I am a member of the WMD headquarters. My  
13 immediate supervisor is Mike Senn. And I work very much  
14 directly with the Director, but the Deputy Director is in my  
15 chain of command. I am obligated to keep both of them  
16 informed and aware.

17 Q. So your deputy would be Bob?

18 A. Bob now. But on many issues, and up until Bob --  
19 well, even after Bob started engaging in jaguar, this is the  
20 Ron Thompson, Terry Johnson dichotomy. My job is to keep  
21 everyone above me from being surprised on issues. That  
22 might be Margie. It might -- it is certainly the  
23 Commission. So it is not just a matter of -- I can't walk  
24 away from something and say I told Mike Senn, my job is  
25 over.

1 MR. MCMULLEN: You, sir -- yes.

2 EXAMINATION

3 BY MR. HOVATTER:

4 Q. Let me ask you, did Mike Senn -- after the  
5 euthanization, did he ever pull you aside and sit down to  
6 kind of -- to dissect out from you or interview you to  
7 determine what you knew about or suspected about what had  
8 happened?

9 A. Not me individually. We had several conversations  
10 between Friday, the 21st of February, and the 2nd of March.  
11 Actually, I will go broader than that 11th, 12th, 13th of  
12 March, somewhere along in there. The conversations were,  
13 though, along the lines of either as we walked away from the  
14 meeting, we spoke in the hallway, because I had some  
15 concerns about some issues. The decisions weren't mine, but  
16 I wasn't convinced that the decisions were right.

17 Q. For example?

18 A. The first big one was the interview with Thorry.  
19 The interview with Thorry, the questions were not direct  
20 enough. They didn't cover enough ground. I had lined out  
21 12 or 15 questions in advance of that interview and had  
22 discussed those questions with Chasa and with Bill, and I  
23 discussed them with Mike before the interview took place as  
24 we went to the interview.

25 Q. Were you a part of that interview?

1           A.    Yeah, I was part of that interview, and Mike's  
2 decision was that he would be the lead on that interview.

3           Q.    Who all participated?

4           A.    Chasa, Bill, Mike, and myself.

5           MR. MCMULLEN: That was after you had had your  
6 conversation with Emil when he said that might not be a safe  
7 assumption referring to was the capture incidental,  
8 accidental.

9           THE WITNESS: Yeah.

10          MR. MCMULLEN: Okay. So you had reasons to write  
11 specific questions to cover ground?

12          THE WITNESS: Whether I wrote the questions out  
13 before or after Emil's comment to me, I am not sure.

14          MR. MCMULLEN: Okay.

15          THE WITNESS: Because I had questions about who  
16 was present at the capture and what they did at the capture  
17 long before Emil made that comment to me. I had those  
18 questions on February 20th as soon as I was notified, and  
19 many of those questions did not get resolved at the meeting  
20 on the 21st. And that's when we discussed then the need to  
21 get more information from all of the different people in the  
22 Department who had been involved.

23          MR. MCMULLEN: The 21st was the after-action  
24 review.

25          MR. HOVATTER: No, 9 March is when we did the

1 after capture.

2 THE WITNESS: The 21st was the very first  
3 coordination in which Bill and I were established as the  
4 leads working with folks. And as I say, I had questions  
5 then.

6 Q. BY MR. HOVATTER: You know what, and, Terry,  
7 because I am trying to remember, why didn't we get at those  
8 questions? What is your -- how did --

9 A. Yeah, because we opted, and I had the same  
10 discussion with Voyles, as I did with Senn, and with you,  
11 Gary, at two different levels during that time period. The  
12 decision was that we would trust our employee.

13 Q. Uh-huh.

14 A. And we would not go down the path of suggesting  
15 that an investigation were underway and suspicions were  
16 there, that we would just do that, rely on our employee to  
17 be forthcoming and to be honest with us. And I don't know  
18 that -- I don't know that Thorry was dishonest. I don't  
19 mean to say that I think he was. I don't know to this day  
20 the extent to which Thorry or Ron or Emil have been  
21 forthcoming with me.

22 Q. What makes you wonder about -- specifically about  
23 who was there on the day of the capture?

24 A. The timing. Emil had just left for Spain. There  
25 had been no discussion. That snare was obviously set in an

1 area in which we had photographic records from January. At  
2 some point in there, there had been discussion or maybe an  
3 e-mail from Emil even, I don't remember at this point, about  
4 tracks in the area. It just -- it smelled, Gary.

5 Q. Had you been informed or do you recall that -- the  
6 tracks were seen on the 5th of March, or --

7 A. 5th of February.

8 Q. 5th of February. Did you get -- was there any  
9 communication with you about those tracks, about that track  
10 at that time?

11 A. I don't -- I actually do not remember whether  
12 there was e-mail or whether there was voice, but after the  
13 capture, Bill told me that there had been tracks somewhere  
14 in that area, and Emil in a phone conversation or somewhere  
15 along in that period after, I guess he would have been back  
16 from Mexico or from Spain by that time, mentioned that --  
17 tracks were mentioned, but I didn't know of them to begin  
18 with.

19 I might have missed something. It might be there  
20 in an e-mail, but it wasn't the tracks that were the killer  
21 for me. Actually, it might even have been Thorry that  
22 had -- I really don't know. I shouldn't even go down that  
23 ground. The tracks to me were small potatoes in comparison  
24 to the distribution of the photographs that were taken. To  
25 say, just the timing itself just --

1 Q. When Emil distributes, lets everybody know about  
2 the paragraphs sometime around, I think, the 9th or 10th of  
3 February from Spain about these tracks, about the  
4 photographs, were you -- when did you become aware that we  
5 were trapping?

6 A. February 20th.

7 Q. Yeah, okay. From the 9th of March, we have that  
8 after-action review. You bring up that issue about your  
9 conversation with Emil, and I know what my memory is of  
10 that, from that point forward, but rather than tainting your  
11 memory with that, from that point, that day or that  
12 afternoon until the time that Thorry was interviewed, what  
13 is your memory of the sequence of what happened, how all of  
14 that led up to the interview?

15 A. I didn't go back and review anything before this  
16 meeting, which probably is a mistake. I have got -- I do  
17 have some memory issues. There are some things that are  
18 crystal clear to me --

19 Q. Understood.

20 A. -- and others that are not crystal clear.

21 Q. Understood.

22 A. Are we talking about the phone call in which Emil  
23 made the statement it is not necessarily a safe assumption.

24 Q. Yeah, because what happened in that was that is  
25 when you said that, and then that stopped being an after --

1 in my mind, stopped being an after-action review. It became  
2 something entirely different.

3 A. When he made that statement to me and we were  
4 talking about the mechanics of the capture, my question, his  
5 initial question to me was I am beginning to get concerned  
6 about my personal liability here. And that is when I gave  
7 him the song and dance about the Department's permit. The  
8 Department actually made the capture. He wasn't present.  
9 We were doing monitoring. Things had gone belly up.  
10 Ultimately, we are the ones that are accountable for it.  
11 He's acting as an advisor to the Department, that thing.

12 But when in the course of that conversation, then,  
13 I made the -- I made several statements, one of which tried  
14 to make all the time in, hey, you are actually looking for  
15 legal advice, I am not a lawyer. I can't advise you on this  
16 stuff. But as long as it was truly incidental, blah, blah,  
17 blah, and we had the permit in place, we know we had the  
18 permit in place, then it is -- and I assumed it was an  
19 incidental capture, and that is when he made his comment  
20 right at that point. I could see life ending right at that  
21 moment, right at that moment.

22 Q. Yeah.

23 A. That is when I called Bill immediately. I don't  
24 know the dates now, but I called Bill, and Bill got back to  
25 me and said that Emil had never -- nobody had ever made such

1 a statement to him. And then I followed up at the office,  
2 you know, with this thing, but then, and I think we had a --  
3 we had a meeting here at the office somewhere a day or two,  
4 the day after or the next, a day or two later, and I brought  
5 up the issue at that point --

6 Q. Uh-huh.

7 A. -- with you guys. And then I think it was a  
8 subsequent conversation, then, when he made the statement  
9 about the snare capture had been taking place within a half  
10 a mile of a camera set that had been baited and that there  
11 was bait at the -- it was after the Janay, of course, duh.

12 Q. Yeah.

13 A. The Janay article I read in the paper.

14 Q. There were two salient phone conversations.

15 A. Yeah, it was the second.

16 Q. One was the one that you brought up in that 9  
17 March meeting, and that's when we -- because I think Thorry  
18 was already on vacation.

19 A. That's the safe assumption thing.

20 Q. Yeah.

21 A. We had not yet had the telephone conference with  
22 Thorry.

23 Q. That's when we were prepping then. That is when  
24 we made the decision to not wait, that he we had to get a  
25 hold of Thorry because the thought was up until that time

1 that things were as portrayed. So I am interested in the  
2 preparation as you saw it for that interview of Thorry while  
3 he was in Hawaii.

4 A. My preparation consisted of just lining out a  
5 series of questions, and by that time, for whatever reason,  
6 we were already -- well, actually I know the reason. We  
7 were already deeply into the public records --

8 Q. Yeah.

9 A. -- life, and as I lined out my questions given the  
10 discussions that I have had with the other folks in that  
11 March 9th meeting and with you and with Larry privately,  
12 with Mike privately about my concerns, I was concerned about  
13 creating another public record that would suggest to the  
14 outer world that we had significant concerns about the  
15 veracity of our employee statements. The initial capture  
16 document is what I am referencing particularly there. But  
17 knowing the way my own mind works and doesn't work at this  
18 point in life, I needed the comfort of writing my questions  
19 out.

20 Q. I certainly did. You know, I decided long ago,  
21 the antidote to having any concerns about open records is to  
22 just write the truth and behave to the maximum extent you  
23 can within what you know to be law and policy and rule, and  
24 then let the chips fall where they may.

25 MR. FABRITZ: Let the chips fall where they may.

1           THE WITNESS: The other side of that is I am not  
2 naive that I go into a discussion with an employee who might  
3 or might not be under formal investigation, but about who is  
4 actions I have concerns or questions --

5           Q.    BY MR. HOVATTER: Uh-huh.

6           A.    -- yet unproven that you just don't go in and ask  
7 somebody, hey, tell us what happened, and then just, you  
8 know, just passively accept what is said without further  
9 questions. So I lined my questions out. When I walked in,  
10 when we started going to go to the conference call, and I  
11 think we walked directly from the meeting down to place the  
12 conference call to Thorry, he was on wait. I think Mike had  
13 him on hold or Chasa did in Hawaii. I asked, made a joke  
14 about this non-existent list of questions whether or not  
15 they wanted to use those as the framework for the interview,  
16 and had a copy with me. In fact, I had multiple copies with  
17 me to offer up to other people because I didn't know what  
18 their preparation was.

19                    But Mike said that he didn't want to approach it  
20 that way, that he wanted to -- he would lead the interview  
21 rather than Chasa. I was uncomfortable with that, but it  
22 was his decision.

23           Q.    Why were you uncomfortable with that?

24           A.    Because Chasa is the immediate supervisor, not  
25 immediate supervisor, but our application in the past on C

1 1.10's, granted this was not one at the time, the work unit  
2 supervisor has largely been the one to interview. And if  
3 our desire was not to create the perception of  
4 investigation, having an Assistant Director ask the  
5 questions changes that is karma immediately.

6 Q. Did you discuss your concern about that with Mike  
7 on that?

8 A. What I said was I was not comfortable with just a  
9 soft approach, that there was significant issues and  
10 questions that I thought needed to be asked, but that I  
11 would respect the decision. So I did. We didn't run  
12 through the questions.

13 Q. Uh-huh.

14 A. But there were some responses in Thorry's  
15 interview that just didn't make sense, didn't sound right.  
16 So Bill and I ended up asking some follow-up questions. I  
17 also tried, during that interview with a couple comments to  
18 make, to make Thorry feel at ease, because I recognized that  
19 it was discomfoting situation. But the bottom line is, I  
20 didn't have the strength or conviction to say here are my  
21 questions, and I want to walk through them all, whether Mike  
22 asked him or whether I asked them.

23 Q. When that interview was over, how did you guys get  
24 organized for the report that was written about it? I mean,  
25 what was Mike's role?

1           A.   Mike said he would write the report, that he would  
2 summarize the conversations. He had taken notes, and I  
3 believe he said that he would write it up.

4           Q.   Did he vet that with any of the other  
5 participants?

6           A.   I have not seen the report.

7           Q.   You talked about decisions you disagreed with.  
8 And so the decision you disagreed with regarding that  
9 interview was --

10          A.   Not asking specific questions and hard follow-up  
11 questions.

12          Q.   The drill-down on that?

13          A.   Yeah, the drill-down. It was just soft. And then  
14 as we went on, and things still didn't quite add up.

15          Q.   What things didn't add up for you?

16               MR. FABRITZ: Do you mean during that conversation  
17 or --

18               THE WITNESS: Over the course of the next week or  
19 two all the way to that second phone call from Emil that  
20 really precipitated things. Bill and I talked pretty  
21 openly, and we talked very openly through that period before  
22 the investigation formally started, and we started looking  
23 back at, you know, here is what he had had verbally. Here  
24 is what he had received in e-mail. Here is what I had  
25 verbally, what I had in e-mail and kept going back to that,

1 that is not a safe assumption to make.

2 The report, the initial field report that Thorry  
3 had submitted that Chasa provided, we didn't have that  
4 initially. We didn't get that until weeks after the capture  
5 had taken place. I didn't personally, you know, other  
6 people did. But we kept replaying these conversations that  
7 we had, and Emil would reference, okay, this is the way it  
8 is going to be done or the way, you know, that the status of  
9 the cat and how we are going to go in to investigate, and  
10 then we find out that there were other people involved in  
11 the dialogue that we hadn't been told about.

12 And then at some point in there, Bill surfaced --  
13 there was an e-mail that Roberto Aguilar had forwarded an  
14 e-mail between Emil, and I want to say Sharon Leads --

15 Q. Uh-huh. Yeah, it was.

16 A. -- you know, some things like that. I am sitting  
17 there saying, where are we in this chain? You know, this  
18 stuff is going on. Why in the hell on February 4th or 5th,  
19 the day before apparently the snares were reopened or the  
20 day after the snares were reopened, I think it might have  
21 been just before, why are we so concerned about the presence  
22 of a jaguar that we are asking for what the current drug  
23 protocol is for scented -- for anesthetizing a jaguar if it  
24 is captured. And why are those questions going to outside  
25 people and not to the internal people?

1 MR. MCMULLEN: Our chain of command?

2 THE WITNESS: Yeah, chain of command or the folks  
3 that are supposedly leads on the jaguar. It just made no  
4 sense whatsoever, and those kinds of questions for me  
5 personally are still unanswered today.

6 Q. BY MR. HOVATTER: Yeah?

7 A. But that's the discomfort. And one of the  
8 questions was, this actually changed over the arc of time,  
9 in the interview with Thorry, we did ask him what protocol  
10 he was operating under, and he stumbled on that one and then  
11 came to a position of it is the 2001 protocol. 2001  
12 protocol is an appendix to a Jaguar Conservation Team's  
13 summary notes.

14 Well, since 2001, there have been multiple  
15 redrafts of protocols culminating in the most recent  
16 revisions, I think, were for handling and for report,  
17 actually physical capture and physical handling of an  
18 incidentally captured jaguar and for the capture of a jaguar  
19 actual report, those were in '07, like January, February, or  
20 something, and, then, the second one in May.

21 And I was aware that Ray and Kirby or Dean had  
22 spoken with Bill in January of '09 about permit authority,  
23 and Ron Thompson had said that he had provided a copy of the  
24 document to those folks without me knowing that as well.

25 And my naive assumption was that what he was doing was

1 providing -- Ron didn't keep the permits, he was providing  
2 the protocol.

3 And, then, here was Thorry saying 2001, you know,  
4 it just -- things didn't make sense, but in particular what  
5 didn't make sense was the timing of the event, and I looked  
6 at that two different ways. One is that it truly was  
7 completely accidental, things just fell together because  
8 there's no freaking way that Emil's ego would allow the  
9 first capture and collaring of a jaguar in the United States  
10 to happen without him being present at the event, and the  
11 other one was we have been snookered completely. And he had  
12 put the wheels in motion knowing that what we are talking  
13 about is the capture of a 16 or so year old cat, and if  
14 something goes wrong, he's in Spain, and he is innocent.  
15 And to this day, I don't know whether those or some other --

16 Q. I kind of wondered why -- we interviewed Thorry in  
17 Hawaii. He doesn't have his field notes or anything else  
18 with him. Do you have any knowledge -- do you have any idea  
19 why we didn't interview him when he got back and reinterview  
20 him? Okay. So, now, you are back. Let's get all the  
21 documents. Sit down and go through this again. Do you have  
22 any idea why we didn't do that?

23 A. No, I don't other than the -- what we had was, by  
24 the time he got back, some information or comments from an  
25 outside individual that in places seemed to be at odds with

1 what our employee had said, and we opted to go with our  
2 employee. And I did have that conversation directly with  
3 Mike and with Larry and told both of them that, hey, it is  
4 not my decision. I respect the Agency's decision, but this  
5 is also why when we had that -- after the infamous call from  
6 Emil that according to Eric had me marching down the hallway  
7 saying, you, come, and with more anger on my face than he's  
8 ever seen, before we went down and had that meeting down  
9 there called -- Spangle --

10 Q. Uh-huh.

11 A. -- and Tuggle. At one point in that meeting,  
12 Larry got up and asked me to come and take a walk with him  
13 in the parking lot. And I went out and had the same  
14

15  
16  
17 comment was that there were process errors, procedure,  
18 sloppy -- procedural sloppiness that ultimately I felt  
19 extremely accountable for.

20 And there was the lack of -- not lack of, but the  
21 inadequate specific follow-up and questioning early on in  
22 the process of the people involved, and there's another  
23 piece of that I'll mention in just a second, that I was  
24 extremely uncomfortable with now that this other comment  
25 that these allegations had been made in the paper, that at

1 the very least, we are guilty of not being rigorous enough,  
2 early enough.

3 But it wasn't, you know, I said I felt responsible  
4 for that. I felt accountable for that. And Larry very  
5 specifically said, you are over-reaching your bounds of  
6 authority. The decision was mine. You provided the advice.  
7 You asked some questions. Yeah, I understand the theory,  
8 but it doesn't work that way, not for me individually. The  
9 responsibility doesn't get exported to somebody else just  
10 because they are higher than me.

11 Q. No. But you are not getting it. I think, you  
12 know, that, too, part of that was Larry, because he and I  
13 talked about this, good decision or bad decision, it was his  
14 decision, and he didn't want you taking more ownership for  
15 that than you should. He knows full well your sense of  
16 personal responsibility and accountability for things, I  
17 think he as much as anything just wanted you to kind of give  
18 yourself a break.

19 A. I appreciate that, Gary. He has said the same  
20 thing, but there is no break to be given when the likely  
21 consequences are as severe as they are, and I am not talking  
22 about with the individuals.

23 Q. No, no, no. It's the reputation of the Department  
24 and our flexibility in the future and things like that. But  
25 let me ask you this.

1 A. One of the things -- let me close this point, if  
2 you would.

3 Q. Yeah, please.

4 A. One of the things I still don't understand to this  
5 day and disagreed with at the time is why we didn't  
6 interview -- why Michelle wasn't interviewed and why Thorry,  
7 and that both Bill and I both questioned.

8 Q. Who did you question?

9 A. Chasa and Mike.

10 Q. Did they give you any reason for that?

11 A. No.

12 MR. MCMULLEN: Michelle said something she got a  
13 call from Chasa and Mike. She said that in her interviews.  
14 Do you remember that, too?

15 THE WITNESS: I am talking about before the Thorry  
16 interview. We had an employee present who had direct  
17 knowledge of what had happened on the ground, and this other  
18 guy is over in Hawaii. And my belief was, then, you go with  
19 the bird in the hand.

20 Q. BY MR. HOVATTER: You got no explanation from  
21 them?

22 A. Wait for Thorry. Thorry is the supervisor.  
23 Thorry is the one who is responsible.

24 Q. Michelle was to me relatively invisible, not  
25 relatively, she was invisible until fairly late in this. Do

1 you have any idea why we didn't use -- we self-muzzled on  
2 the 31st of March, you know, we self-muzzled?

3 A. Yeah.

4 Q. Because we didn't want to taint the investigation.  
5 From the 2nd of March to the 31st of March, we are on the  
6 ground?

7 A. Yeah.

8 Q. I keep coming back, you know, just like what I  
9 beat myself up for is why didn't we use that almost 30 days  
10 better than we did, and that is not on you, because that is  
11 not your call. That is not your decision. I just sit here  
12 wondering why in the chain of command, Chasa, Mike, me,  
13 Larry, Bob, why we didn't use that time better?

14 A. I think it is because our inherent inclination is  
15 to think the best of people and to believe that our  
16 employees are honest, but also to believe that our employees  
17 know everything, not necessarily a matter of honesty. For  
18 all I know at this point in life, Thorry didn't know some  
19 things that were essential.

20 Q. Uh-huh.

21 A. I think we want to believe that and want to  
22 believe that the right things were done for the right  
23 reasons by the right people, and I don't think in this case  
24 those feelings were born out by what happened.

25 Q. After the interview with Thorry, I am trying to

1 remember what the date was on that?

2 MR. FABRITZ: 11th.

3 Q. BY MR. HOVATTER: 11th. Okay. After the  
4 interview with Thorry, did Mike or Chasa -- do you have any  
5 memory of Mike or Chasa doing any -- taking any other  
6 actions to do any further exploration, interviews, or work?

7 A. No. What surprised me, and I can't put dates on  
8 it, all along through this what surprised me was the extent,  
9 this is going to come across as a criticism and I suppose it  
10 is, but the extent to which Chasa was not personally engaged  
11 with the employees in Research to find out who had done  
12 what, who knew what, and who did what, whether it was Ray or  
13 Dean or Kirby or Thorry or Melissa.

14 Chasa did offer something that was important early  
15 on, and that was to have that conference call. We didn't do  
16 it the week before because we were uncomfortable encroaching  
17 on an employee's vacation. There was a lot at stake.

18 Q. Uh-huh.

19 A. Vacations are somewhat expendable, or at least one  
20 day. I am not saying drag him or back or anything, but the  
21 number of times through the process, Chasa didn't have  
22 firsthand knowledge as we moved through March of what Ray  
23 had done and Dean in terms of -- or Kirby in terms of  
24 project overview, and copies of the individual -- she gained  
25 that over time. And in fairness to her, this whole thing

1 probably didn't have the significance to her that it did to  
2 me because she didn't have the history of involvement --

3 Q. Uh-huh.

4 A. -- and perhaps really didn't appreciate just how  
5 fickle the public can be about how agencies handle  
6 situations like this. I think she had been through the  
7 Sabino Canyon Lion Study. It surely should have been an eye  
8 opener, but my own involvement in wolf issues, Jesus, it is  
9 no surprise to me that people could start giving hard  
10 positions.

11 And what I was very well aware of was there were  
12 folks who had a vested interest in showing that we had done  
13 something wrong, whatever it had been. And I probably  
14 didn't get that point off across well enough to all the  
15 folks involved from the very beginning that we better know  
16 beforehand. You said, I want to say many times through the  
17 process, we damn sure better know before the paper knows.

18 Q. Did you ever get any sense through all of this of  
19 Kirby's investment in this for want of a better term?

20 A. The sense that I had was that Kirby was not very  
21 actively engaged in structuring or implementing the project,  
22 that he had been valuable in compensating for some missing  
23 field time at some point in there, but then he had a broken  
24 ankle or had injured himself and wasn't very much engaged in  
25 the February part.

1 Candidly, my perception of Kirby is that he is  
2 still naive to the situation, the surfacing of that most  
3 recent research proposal out there in the world of -- even  
4 more so than that, the wording or his approach to crafting  
5 the EA checklist for the lion and bear work up in wolf  
6 country. And Esther is her name?

7 MR. FABRITZ: Esther.

8 THE WITNESS: Esther. And the guy over in  
9 Habitat, whose name escapes me as well, who runs the EA  
10 checklist process. In my discussions with both of them  
11 after the EA checklist was brought to me by the guy in  
12 Habitat, Esther said, her comment was that Kirby was still  
13 hopeful that every day that we would be able to move on with  
14 our lion and bear work unencumbered by all this business.

15 The EA checklist itself was sloppy. The draft, it  
16 shouldn't have even been given to Non-game to review, and  
17 then when Non-game was given it, it wasn't looked at with  
18 the detail that I would have expected given the events of  
19 February and March and April.

20 MR. FABRITZ: So sloppy in the case that it was  
21 just like rushed through, didn't have lots of detail? You  
22 said sloppy.

23 THE WITNESS: Yeah, sloppy in terms of omissions.  
24 It mentioned -- it referenced the snares, but the  
25 description of snares in one area didn't jive with the

1 description of the snares being used in another area. It  
2 just was incomplete information, and that's why the issue of  
3 training of folks relative to wolf handling procedures  
4 at that point, I would have thought that the one thing would  
5 be absolutely sure of is that our employees were  
6 appropriately trained in the handling of the other animal.  
7 And that's why I surfaced the issue of, well, there's  
8 training available in August. Maybe somebody ought to be  
9 going through it and it worked that way. But I would have  
10 expected Research to surface those issues themselves rather  
11 than --

12 Q. BY MR. HOVATTER: Do you think the reaction on  
13 that particular EA that we appropriately reacted to that?

14 A. I haven't seen it. It hasn't come back to me. So  
15 I can't say. But I do know that when I raised the training  
16 issue and the quality of the EA checklist issue with Esther,  
17 things changed immediately, and it was withdrawn for  
18 additional work. And I assume Chasa was involved in that as  
19 well.

20 Q. I knew that it had. I hadn't seen it come back.

21 A. The response at that level was concern about the  
22 quality and the comprehensiveness of it and then the  
23 training issue.

24 Q. Was an issue made of -- because, well, Michelle  
25 was available while Thorry was on vacation, so was Kirby.

1 Was any issue made about accessing Kirby to talk to him  
2 about the event?

3 A. I asked that question early on, and the initial  
4 check-in that Chasa had made was that Kirby had been laid up  
5 with this leg injury of some sort during that period and had  
6 not been involved in the capture of the jaguar.

7 Q. Of course, he was involved in the prelude to the  
8 capture?

9 MR. FABRITZ: But that was it? He wasn't into  
10 more than just the immediate capture?

11 THE WITNESS: Yeah, he left at that point. There  
12 wasn't much of a focus, it seemed to me, on whether the  
13 responsibilities of the field people had been adequately  
14 delineated in the project material or in the coaching that  
15 had been provided.

16 Q. BY MR. HOVATTER: That is evident now.

17 A. Hey, Thorry is a lion expert. He is out there  
18 trapping lions and bears. Like I said, it was based on -- I  
19 don't mean to discount that either, because I just don't  
20 know. There just seemed to be relative acceptance of pretty  
21 limited knowledge of what was going on and why and how at  
22 the supervisory levels within the chain.

23 Q. Was Mike a part of those conversations with Chasa  
24 when these issues were discussed in that prelude to the  
25 interview of Thorry?

1           A.   Discussions about what had happened and who we  
2   questioned?

3           Q.   Well, some of those things about Kirby, I mean,  
4   relating to Kirby, it sounds like essentially there's not  
5   really --

6           A.   Actually, no. In the earlier discussions, Gary,  
7   no because I didn't know what the chain was. I mean,  
8   literally, I didn't know. But did I involve Mike or did I  
9   talk to Mike and did I talk to Chasa about the concerns as  
10   they began to -- as I began to incrementally discover them,  
11   whether that is because I was truly just learning them or  
12   they were just registering, yeah, I talked to them all along  
13   up until the point in which the formal investigation  
14   started. And, then, very, very little discussion, none  
15   about the issues, none about what was surfacing or not  
16   surfacing through the investigation. Discussions primarily  
17   revolved around our need to handle public records request  
18   and continue on down that path.

19          Q.   Now, I was just kind of interested in those  
20   conversations back during the March time frame when Chasa  
21   and Mike were both present, how that dynamic worked?

22          A.   Yeah. The number of occasions that they were both  
23   present amount to, I think the meetings that you were  
24   present in, the interview with Thorry, an interview with  
25   Tony Davis that Bob Miles sat in on. Somewhere along that

1 process, Chasa -- we discussed with Chasa before that, but  
2 she wasn't able to be physically present in that meeting,  
3 and all through there, various times. Both Bill and I  
4 commented we just didn't understand who was responsible for  
5 what in Research Branch for the project itself, the  
6 structuring and the implementation of the project.

7 Q. Would it surprise you if you were told that there  
8 apparently was never a study plan written for that research  
9 project?

10 A. Actually, I was aware of that when I asked for the  
11 study plan very early in the process, early March sometime,  
12 and what I got was the Commission memo.

13 Q. That is what I got.

14 A. I remember laughing at -- probably at, but to  
15 Chasa and saying, is that all there is? We would never  
16 skate with that in the Non-game world for a project  
17 description.

18 MR. HOVATTER: Guys, what else?

19 MR. MCMULLEN: About ten minutes ago, you started  
20 answering a question and said there's another point you  
21 wanted to get to. It had to do with -- you said, I will get  
22 back to that point in just a second. I think it had to do  
23 with the discussion of what things didn't smell right to  
24 you. And Gary asked you the question, you started  
25 answering, and you mentioned, but I will get to that here in

1 just a second, and then you continued answering. I don't  
2 think we ever got back to the just a second. So I am trying  
3 to refresh your memory.

4 THE WITNESS: Actually, I remember the exchange.  
5 Now, I don't remember whether we got to whatever it was or  
6 we didn't get to whatever it was. I don't remember what it  
7 was. There was something that I wanted to say that I didn't  
8 say that now escapes me, but --

9 MR. MCMULLEN: I believe it was in the context of  
10 what things didn't smell right to you in the course of  
11 pre-investigation.

12 THE WITNESS: Yeah. I think I probably have  
13 covered everything, at least the major things, but just to  
14 recap them real quickly, the lack of notification, Bill and  
15 I learning of the -- that there was a snare effort going on  
16 in the jaguar country that Emil was involved in choosing the  
17 snare sites and opening the snare sites and all of that. I  
18 mean, all of that just seemed very strange to us.

19 The -- that field form coming through when it was  
20 requested that Chasa ultimately provided to us had been  
21 referred to earlier, but not copies of field notes, not any  
22 of the documentation from either Michelle or Thorry, and my  
23 presumption is that Research people keep field notes on  
24 those things, but I don't know.

25 MR. MCMULLEN: Not always a safe assumption.

1 MR. HOVATTER: Not always a safe assumption.

2 THE WITNESS: Okay. There was those things, the  
3 interaction --

4 MR. HOVATTER: We were equally wrong in our  
5 assumption.

6 THE WITNESS: Okay. The subsequent discovery that  
7 there had been interactions with Roberto Aguilar and Sharon  
8 Deems and questions about protocol, drug protocol, without  
9 saying, hey, to me or Bill, what we are doing here is not --  
10 is not consistent with the protocol that exists, and there  
11 is good reason for not doing it that way. The disconnect  
12 between Emil taking such great pains to make the photograph  
13 locations known to me, to Fish and Wildlife Service, without  
14 ever acknowledging that he's out there in that very area  
15 setting snares and no communication with Research on their  
16 end either, hey, we have got this information. I don't  
17 know, Craig. I am not sure.

18 MR. MCMULLEN: That is fine. I just -- I knew  
19 that our chance of recapture was slim because we migrated a  
20 long ways from there. I just wanted to see if we could  
21 lodge that back out between all of us, we would remember.  
22 Then we had a lot of discussion about the fact that the  
23 December 2008 meeting called by Erin Fernandez, we have a  
24 hard time reconciling how that had nothing do with jaguars.  
25 So we asked that question to two of the Department

1 people that we interviewed who were either there or  
2 teleconferenced in. The answer was, jaguar was not  
3 discussed there or that -- and kind of in the same context,  
4 the only discussion was that this meeting is not about  
5 jaguar.

6 MR. HOVATTER: That was their statement.

7 MR. MCMULLEN: A statement at the very beginning,  
8 understand, this is about bear and lions. This is not a  
9 meeting about jaguars. Would that surprise you -- does it  
10 clarify in your mind --

11 THE WITNESS: Did Emil and Jack McCain not  
12 participate in that meeting, one or the other?

13 MR. MCMULLEN: They were there.

14 THE WITNESS: Did Ron Thompson not participate  
15 that meeting?

16 MR. MCMULLEN: He participated. I think it was  
17 his recollection that there was really no substantial --

18 MR. HOVATTER: We have had a couple of different  
19 folks that remember the same way, that there was nothing --  
20 that if jaguar came up, it was just very, very, very  
21 peripherally and just a very quick reference. But part of  
22 this is it goes back to, you know, that, okay, the way  
23 we will address concerns about jaguar in this study is just  
24 take the word jaguar out.

25 THE WITNESS: Uh-huh.

1 MR. HOVATTER: You know, it's a little like  
2 saying, you know, I have got a fly swatter, and this fly  
3 swatter -- but there are hornets in the room, but this isn't  
4 going to be about hornets. This fly swatter is only going  
5 to kill flies. Well, if you swing it and there is a hornet  
6 in the way, it dies. It doesn't seem to have been this  
7 connecting of the dots. You cannot by eliminating the term  
8 from the conversation, you know, somehow make that snare in  
9 the ground in the Atascosas jaguar?

10 MR. MCMULLEN: So the point of me bringing that up  
11 was kind of, in your mind, is it possible that that 2008  
12 meeting in Erin Fernandez' mind was really only about bears  
13 and lions or is it possible that it was really -- we were  
14 going to talk about -- we know that this study is about  
15 jaguar, but kind of what Gary is saying, let's just don't  
16 talk about it.

17 THE WITNESS: Well, two things, if the meeting was  
18 entirely about future work with no reference to what had  
19 been going on apparently in October, November, the snares  
20 that were opened and then closed and the capture of a lion,  
21 the death of a lion and the need to replace a lion, and if  
22 there were absolutely no discussion about how the  
23 resurrection of that study would take place when radio  
24 collars were returned, renewed, whatever, and it were  
25 entirely on work that would be done in 2010, 11, 12, then,

1     yeah, I could understand it.

2             Can I believe that people with that intelligence,  
3     one of whom is responsible for the Fish and Wildlife Service  
4     aspects of ensuring that jaguars are unharmed, sitting there  
5     at the table with a jaguar person who has been snaring lions  
6     in that very area and is heavily vested in the expansion or  
7     continuation of the lion and bear work in that very area and  
8     who has just recorded, no, I can't conceive that sentient  
9     college-educated beings are capable of that level of  
10    oversight.

11            MR. HOVATTER: Now, was it Erin Fernandez the  
12    person that you are talking about that had the Fish and  
13    Wildlife Service responsibility?

14            THE WITNESS: Yes.

15            MR. HOVATTER: And, see, you know, this all --  
16    because, you know, when you look at it, I can parse this out  
17    a number of different ways, what I can't make sense is when  
18    you look at the totality of the invite list --

19            THE WITNESS: Even if you invite Emil McCain, why  
20    do you invite Jack Childs?

21            MR. HOVATTER: That is the one thing. Emil McCain  
22    can fit in the context he was doing lion and helping with  
23    the lion and bear work part of that. Now, that ended on the  
24    16th of November. He is not on payroll any longer after  
25    that. He is not getting subcontractor pay for lion snaring.

1 THE WITNESS: My opinion is that at that point in  
2 life, Emil and Jack saw the research project as the future  
3 funding vehicle for the jaguar work. It wasn't going to  
4 come through Jag Team. It wasn't going to come through me.  
5 It wasn't going to come through, you know, those other  
6 sources. And Erin, in my opinion, I will agree that the  
7 best way to handle this is if you exclude jaguar from the  
8 discussion, then they exclude my efficacy for the Fish and  
9 Wildlife Service to try to move those funds in the jaguar  
10 direction and allow them to be moved in the research part of  
11 it.

12 MR. HOVATTER: Then it becomes a surrogate study?

13 THE WITNESS: Yeah. Yeah.

14 MR. MCMULLEN: I just wanted to make sure you had  
15 a chance to comment on our knowledge of the fact that it was  
16 not -- jaguars were not discussed in any substantive way at  
17 that meeting and to see how you weighed in on that.

18 THE WITNESS: I appreciate that.

19 MR. MCMULLEN: The last thing was, you know, what  
20 was interesting to us, or I think is the fact that within  
21 WMD, there was, I think the best way we have come to discuss  
22 it amongst ourselves was there is a lack of community and  
23 command with regard to jaguar issues. For example, Chasa  
24 was asked very directly if we catch a jaguar as part of this  
25 project, are we supposed to collar it? She gave very clear,

1 unambiguous direction, no, you are not supposed to collar  
2 it.

3 MR. HOVATTER: We made -- the Department had  
4 already made a decision long before that, that if we ever do  
5 capture one, we will collar it, which is why we positioned a  
6 collar down in Region 5.

7 MR. MCMULLEN: We have what we call a capture kit  
8 there.

9 THE WITNESS: Yeah.

10 MR. MCMULLEN: So I guess I wanted to just throw  
11 that out as one of our observations, so it didn't catch you  
12 off guard later.

13 THE WITNESS: I appreciate that.

14 MR. MCMULLEN: And that -- how do I comment? I  
15 just didn't want you to get caught off guard by that later.

16 THE WITNESS: I mean, it floors me. But in a way,  
17 it doesn't surprise me. I think everything boils down to  
18 two things. One is ego and the other is money. And from  
19 the very beginning, the jaguar was of little interest to 98  
20 percent of the people in this agency, because, first of all,  
21 there were very damn few of them. The second was there was  
22 never any real funding attached to it.

23 But when the fence started to go up and the  
24 prospects of millions of dollars for supportive projects  
25 went up, then immediately the interest broadened. And the

1 sad fact of life is that our approach has been more often  
2 than not to try to protect the interest of a given work unit  
3 or program in order to get the funding. And that's the  
4 approach that it has always been.

5           You want to take a look at a parallel? Take a  
6 look at the Cactus Ferruginous Pygmy Owl and the flow of  
7 information between Research Branch and Non-game Branch and  
8 between the Non-game and Endangered Wildlife Program even in  
9 the region, and this sort of business is just -- our  
10 approach is almost once somebody gets identified as a lead  
11 for a given species or project or whatever, hey, I can go  
12 off and do my work and my job. And there is not a lot of  
13 cross pollination that occurs. And as long as nothing goes  
14 really substantially wrong, that approach actually works  
15 very well. I mean, it allows people to focus on things and  
16 pursue them.

17           MR. MCMULLEN: We have talked a lot about trying  
18 to walk that balance between adequate coordination for  
19 projects being implemented and not overburdening the  
20 pre-planned project. That is a delicate balance right  
21 there, but it gets a little bit to what you are talking  
22 about.

23           THE WITNESS: I will give you guys another  
24 example. I don't want to tie you guys up forever, but I  
25 brought this with me accidentally. That is the Standard

1 Operating Procedures Manual for the Wolf Project. In  
2 addition to this, we have got 2003 through 2009 summary  
3 notes from Active Management Work Group Meetings. We have  
4 comment on all sorts of Federal issues, litigation, et  
5 cetera, on the Mexican wolf.

6 We have got discussion in Management Team with  
7 presentations by yours truly on our Agency's desires with  
8 regard to defining recovery of the species and addressing  
9 the 10(j) issues. And last year, a Draft Conservation  
10 Assessment from Fish and Wildlife Service was distributed  
11 through our Habitat, our blue sheet process for comment.  
12 You know what Region 5's comment was? This conservation  
13 addressed the arc of Mexican wolf historical and possible  
14 future distribution in Arizona which ranges from the Utah  
15 Colorado line to the Mexico border.

16 MR. MCMULLEN: Uh-huh.

17 THE WITNESS: It doesn't apply to us.

18 MR. MCMULLEN: Meaning?

19 THE WITNESS: No comment. When the Habitat  
20 program in Region 1, no comment. Within the Program Manager  
21 level in both Region 1 and Region 5, no comment. Field  
22 Team, Chris Bagnoli, no comment. Engagement, we just don't  
23 engage in issues that we don't recognize how they may affect  
24 us.

25 MR. HOVATTER: To what do you attribute that? It

1 is obviously asserted on its face that that would occur, but  
2 it occurred, and these are not people who want bad things to  
3 happen, not unintelligent, so why?

4 THE WITNESS: I think with regard to the wolf, it  
5 is ugly enough and known to be ugly enough, the less I know  
6 about it, the more easily I can stay unengaged in it. In  
7 some cases, it is not that. Jaguar, Bob Fink, actually was  
8 in Willcox. This is after two years of begging and cajoling  
9 and outright requesting for his engagement. Present in a  
10 meeting in Willcox, Arizona, on the same day as the Jaguar  
11 Conservation Team, April '06, didn't even come over to the  
12 meeting to engage in the participation, wasn't represented  
13 there. I don't -- I don't really have an answer to the  
14 question, Gary, I don't.

15 We tend to run extremely fully loaded. Everybody  
16 has got lots to do. Everybody is really busy. There is  
17 actually, I think, a fair element of trust of other people  
18 to do -- to handle a situation and do the right thing.  
19 There is an aversion to politics at many levels. I think by  
20 and large, there is a significant percentage of the Agency  
21 that isn't all that enthralled about being involved in wolf  
22 work and controversial work with endangered species and  
23 somewhat of a feeling that they are Federal obligations.  
24 And, then, on the Federal side, there's reinforcement  
25 virtually every day. We would just rather the State really

1 not be part of this effort. So I think there are really  
2 complex issues, but it doesn't leave me in a very good place  
3 for increasing awareness.

4 MR. HOVATTER: Anything else?

5 THE WITNESS: Too much rambling. I really  
6 shouldn't -- what I am trying to convince myself of is this.  
7 For almost 12 years, jaguar stuff worked pretty well. We  
8 made some progress, had some issues, everything else. It  
9 has all fallen to hell in the last part of it, and I guess  
10 my message is I don't see an SOP manual this thick answering  
11 the questions. Ultimately, I think the issues are both on  
12 the leadership side and on the employees being willing to  
13 engage in things that they may not have direct day ops or  
14 immediate day ops and then the commitment to no surprises  
15 thing. It may not be my work unit, but it may not be my  
16 program, but somebody needs to know something about the  
17 unit. Remember those silly-ass manila folder tents about  
18 communication?

19 MR. FABRITZ: Has to know.

20 THE WITNESS: Okay. Those things.

21 MR. MCMULLEN: They are not so silly.

22 THE WITNESS: If every employee walked the line on  
23 all those things, myself included, we would all be better  
24 off.

25 MR. FABRITZ: It is easy to presume somebody else

1 is going to do something, and you have just got to take that  
2 extra effort.

3 THE WITNESS: Go out there and look at the  
4 projects.

5 MR. HOVATTER: For many years when I would take  
6 over an office, I would have everybody put a sign in their  
7 cubicle. They could put it where they want, and it said,  
8 who else needs to know?

9 THE WITNESS: Yeah.

10 MR. HOVATTER: The deal was, you know this. Right  
11 now you are an Army of one in that novel, so who else needs  
12 to know what you now know?

13 THE WITNESS: Yeah. Well, on my side, at some  
14 point, as much you would like to think it doesn't occur, you  
15 become resentful of the lack of engagement in some areas,  
16 and you can see that in an e-mail exchange on the November  
17 report from Emil McCain. I sent it down to Tim Snow to  
18 handle all of the appropriate blah, blah, blah, and got an  
19 out-of-office reply said that he is gone for two weeks  
20 because of comp time issues or vacation or retro or  
21 something, and so I made a conscious decision that was as  
22 stupid as can be. I sent it back to Bob Fink and said,  
23 okay, you are next in the chain. You are supposed to handle  
24 this stuff, and I walked away from it.

25 I have no idea whether those contacts were made.

1 Based on the last five or six years of experience, I would  
2 guess that they weren't. And that's just a stupid decision  
3 on my part.

4 MR. HOVATTER: In the great scheme of things,  
5 since it is clear you have a guilt gene that is at least as  
6 strong as my own, that ultimately didn't matter to the  
7 course of what happened, of course. But it is emblematic of  
8 a bigger issue of, you know, I will say if you walk past a  
9 problem, you just set a new standard. Now, if you are  
10 confronted with something, even if you -- you know, I have  
11 never gotten a job where they said the only part of this job  
12 you have to do is the part you like and the part you are  
13 good at. So it's kind of what comes to the job, if you are  
14 not good at it, you have to become good enough. And if you  
15 don't like it, you have to get it done anyway.

16 THE WITNESS: Uh-huh.

17 MR. HOVATTER: So Bob, in this example, depending  
18 on what he did, he may have done everything by it, we don't  
19 know, but if he didn't, it wasn't incumbent on him to know  
20 how to do it instantly. It was just incumbent on him to  
21 realize that he now has the responsibility to the Department  
22 to do something about it that is going to result in whatever  
23 the least, the minimum acceptable level of work that has got  
24 to get done to make sure that we accomplish success on that  
25 issue.

1 THE WITNESS: Yeah. Yeah.

2 MR. HOVATTER: Terry, other than that, we have got  
3 nothing to talk about it. Go take some aspirin or whatever  
4 you take.

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I, Tammy Gillett, do hereby certify that the foregoing 125 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 22nd day of September, 2009.

TAMMY GILLETT  
Certified Reporter  
No. 50430