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

TRANSCRIPT OF INTERVIEW
JULY 14, 2009
THORRY SMITH
VOLUME I

Individuals present at the Interview on 7-14-09:

- 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
- Thorry Smith

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Certified Reporter

No. 50447

PROCEEDINGS

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MR. HOVATTER: And, you know, I know I told you this at the time but I really still do, I couldn't be more proud of the department and the way folks worked on that recapture.

MR. SMITH: The recapture, it was remarkable. Come out of the field and have you guys setting that up already, that was great. I wish the end result was a little happier but what do you do about that?

MR. HOVATTER: I mean it's -- that, you know, it is what it is. But it doesn't take anything away from the effort that everybody put in.

MR. SMITH: No, it doesn't.

MR. HOVATTER: Pulling that together the way we were able to as crappy as the calms were and pulling all that together, I remain and will stay proud of how the department pulled that together.

MR. SMITH: I will to.

MR. HOVATTER: Good work. Good job.

MR. SMITH: Set it up. I heard you had a month off? No? Lynn said you guys went out hiking around?

MR. MCMULLEN: Yeah. We were going to go that way.

MR. HOVATTER: Here's the other set, Marty.

MR. MCMULLEN: We didn't make it to Colorado.

1 MR. SMITH: Oh, no. Lynn said that you guys were
2 thinking about it.

3 MR. MCMULLEN: (Indiscernible.)

4 MR. SMITH: What's that?

5 MR. MCMULLEN: (Indiscernible.)

6 MR. SMITH: Is this it?

7 MR. MCMULLEN: This is it.

8 MR. SMITH: Oh, man. Well --

9 MR. HOVATTER: Let me tell you what -- what --

10 MR. FABRITZ: Sorry if I'm distracting.

11 MR. HOVATTER: There is a reason why we're game
12 and fish guys and not on the -- on the basketball
13 treatment.

14 Thorry, some of this -- this probably will be a
15 shorter conversation on this than a lot of the other folks
16 as part of the prelude on this. Because I think we are
17 going in the position and from the beginning on this
18 remains that that this was exactly what we believed and
19 what we told the world it was, that this was an incidental
20 tagging of a jaguar. And, you know, we had the outcome we
21 had. It was something none us wanted, none of us
22 expected, but frankly, so be it. That is what happened.

23 We had all -- we fully intended after the
24 recapture and the euthanization to really start digging
25 into process and procedure issues. What did what we learn

1 about ourselves as an agency do we want to change, do we
2 want to modify? What is it that we learned that we liked
3 that we want to we make sure that we maintain and
4 sustain.

5 And we kind of started down that path about a
6 week after the euthanization, and it was about that time
7 that conversations that we were having with folks outside
8 the department and conversations, more importantly
9 conversations folks, some of those folks were having with
10 the press outside of the department kind of drove us to
11 first -- the first part of that we had some times where
12 when we ended up we called you in Hawaii, that we were
13 very confident with what we got out of that, that we were,
14 in fact, on the trail, on the path that we believed we had
15 started on.

16 Then we get into -- really, quite frankly, we
17 didn't use that month well to dig into process and
18 procedures. And all of us had believed that we had the
19 time. We had folks kind of scattered doing other things
20 that we needed to recollect. And then we ran out of time
21 unexpectedly. And that was when we had the Janay Brun
22 allegations.

23 And at that point we realized we probably had to
24 do something more akin to an investigation but we also --
25 we also realized that with the way that jammed up with

1 kind of the media environment that had been developed and
2 then what fell into the middle of that media environment,
3 the ripple it had, with Congressman Grijalva, with the
4 Center for Biological Diversity, it became also clear that
5 any investigation we did in-house was not going to pass
6 mustard of the public. Just nobody was going to believe
7 that we did a complete, thorough, fair, and impartial
8 internal review of ourselves. So that is when Director
9 Voyles requested a formal investigation, and of course, we
10 almost instantly got it.

11 We agreed at that time that we would not dig into
12 the matter on our own because the only way we could do
13 that is to start bringing all these potential interview
14 subjects together and run the risk of an allegation that
15 we had somehow tainted the investigatory process. So we
16 elected not to do that. We also muzzled ourselves in
17 responding to the press other than we are going to let the
18 investigation find its own way.

19 So we never have dug into the details of this.
20 What kind of changed the equation was the Center for
21 Biological Diversity noticed its intent to sue the
22 department over the jaguar. So they had a 60-day window.
23 That ends right about now. And so it was the Director's
24 position that, well, we're not going to be -- if they do
25 sue us, we won't be in court the next day. We are going

1 to start having to develop court filings to respond to the
2 allegations and we don't know enough to write a decent
3 court filing.

4 So we would have loved to have had -- we let it
5 go as long as we could, that 60-day window, in the hopes
6 that the Feds would finish with whatever they were going
7 to do. I have not ever asked how long it's going to take
8 because I don't want anybody to point at that and say that
9 we were bringing pressure there on getting it done fast as
10 opposed to getting it down well.

11 So that's a very long winded way of saying where
12 we are at today is trying to get at the details, the most
13 pertinent details, primarily about the original capture,
14 the things leading up to that. I'm -- I'm not as
15 interested in the recapture and the euthanization. I'm
16 not interested at all in the euthanization in the sense
17 that I was the guy that was phoned -- that was in
18 conversation with the human rights and those guys. I know
19 what they said. I was confident that they were competent
20 guys and I remain confident. They made a recommendation,
21 and I passed that recommendation and pushed it to the Fish
22 and Wildlife Services and I made the connection between
23 them. So as far as I'm concerned, obviously, the press
24 would love to set up some veterinarians, but that's going
25 to be a subjective judgment and it will probably never

1 make everybody happy.

2 MR. SMITH: Right.

3 MR. HOVATTER: So that I'm not particularly
4 interested in. I'm not particularly interested in the
5 recapture at this point. Some day down the road we
6 probably -- we've already started dissecting things out
7 like we need different satellite phones and things like
8 that.

9 So there -- there are some questions that I am
10 going to ask that are really more focused on process and
11 procedure, kind of the macro level, how did the department
12 either succeed or fail, for example, in moving
13 information up and down from between you and the guys that
14 were out on the pointy end of things and where the
15 department's perspective was on these -- on research
16 studies and on endangered species issues, because that's
17 important for us to get at, how do we need to modify
18 ourselves for the future.

19 MR. SMITH: Sure.

20 MR. HOVATTER: So having said that, what we have
21 decided to do is we're doing this under Garrity Warning.
22 I'll read that to you. You will get a copy of it. The --
23 while we remain convinced that this -- that we remain the
24 agency we thought we were on this capture, recapture,
25 because of the allegation we do have to just be prudent

1 and recognize that we may, in the course of this
2 investigation, discover something about ourselves that we
3 didn't know. And so the best way to protect our
4 employees' rights and also protect the department's
5 interest in all this is to do this under Garrity Warning.
6 So do you have that? I've got a blank one?

7 MR. MCMULLEN: You know, I don't think I
8 completed one.

9 MR. HOVATTER: I've got one. And, Thorry, we
10 are -- we're taping all these interviews. There is just
11 no way we can take notes fast enough. Not one of us is --
12 not one of us can make a living as a transcriptionist.

13 MR. MCMULLEN: I would never be able to read my
14 writing.

15 MR. SMITH: Somebody else may be able to.

16 MR. HOVATTER: Now I have read your field notes,
17 and I actually can read your writing, for the most part.

18 MR. SMITH: I'll have to make a mess of it.

19 MR. HOVATTER: Yeah. Write it backwards or
20 something, something only you can understand.

21 Okay. This is an internal investigation.
22 Employee, Thorry Smith; Date, 7-14-09. Interviewer Gary
23 Hovatter, Marty Fabritz, and Craig McMullen.

24 We are conducting an internal investigation
25 involving matters that will be discussed shortly. This is

1 an administrative investigation. You do not have the
2 right to have legal counsel present during the interview,
3 nor will you be advised of constitutional rights. You are
4 ordered to cooperate fully with this investigation. You
5 are ordered to respond completely and truthfully to all
6 questions posed to you during the investigation, and
7 failure to respond completely and truthfully to all
8 questions will be considered misconduct. As set forth in
9 Garrity versus New Jersey, 385 US 493, and the line of
10 cases which follow, any responses given during this
11 administrative investigation cannot be used against you in
12 a subsequent criminal investigation. You are instructed
13 not to discuss your interview or this investigation with
14 any Arizona Game and Fish Department employee while the
15 investigation is pending.

16 And the statement that you and I will sign reads,
17 "I have read the above statements and I understand the
18 orders given to me about this investigation. I understand
19 my obligation to cooperate fully with the investigation.
20 I understand my obligation to include completely and
21 truthfully answer every question. I further understand
22 that I have been ordered not to discuss this investigation
23 with any Arizona Game and Fish Department employees while
24 this investigation is pending."

25 Do you have any questions about that?

1 MR. SMITH: No.

2 MR. HOVATTER: It's like saying evil e-mails real
3 fast five times or bear hare snare.

4 MR. MCMULLEN: Or large carnivore conductivity
5 habitat

6 MR. HOVATTER: You know, we do have to work on
7 the way we name things because we really -- there is a lot
8 of what we do that just doesn't roll off the tongue very
9 well.

10 MR. MCMULLEN: That acronym needed a vowel or
11 two.

12 MR. SMITH: Which one?

13 MR. MCMULLEN: LCHC.

14 MR. HOVATTER: No. That would have been okay in
15 Serbia. But, you know, it doesn't pass -- there are very
16 few vowels in Serbia. They are very sparing in the way
17 that they use their vowels.

18 MR. MCMULLEN: If we just could have added an A
19 it would have been a latch.

20 MR. HOVATTER: Thank you, sir. And I'm going to
21 run that over to you.

22

23

THORRY SMITH,

24 pursuant to Garrity Warning, was examined and testified as
25 follows:

EXAMINATION

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BY MR. HOVATTER:

Q. Thorry, part of this too is that we get at is the fact that we are asking you to kind of, in many cases, go back in time and kind of disregard everything you know since then and try to put yourself in the mind of where you were then. That's awful tough. So hindsight is going to be a big part of what goes into this.

A. Well, I've tried by ignoring the press and keeping my mind as clear as I can. I'm sure that I'm going to say some things that will surprise you. Unfortunately, that's just the way things have gone.

Q. So be it. I guess the first question, from your perspective, did the Department have the current applicable permits required for the intentional or incidental take of a jaguar?

A. Yes.

Q. I think that's --

MR. MCMULLEN: Everybody agrees.

Q. BY MR. HOVATTER: Everybody agrees.

A. That's why I asked so many questions in the beginning.

Q. Yeah.

A. Because I wanted to make sure of that. I wanted to make sure everybody knew what was going on.

1 Q. Based on what you know now, was that capture
2 incidental or intentional?

3 A. From my point of view, until the investigation,
4 it was incidental. Knowing what I know now, I know
5 something different.

6 Q. What do you know different that's caused you to
7 question that?

8 A. The day the article in the paper came out about
9 Janay Braun's accusations, our investigation started, Emil
10 had called me and said we need to talk. And Linda had
11 called me and said that Emil had called my house. I was
12 in Fort Hauchuca. And I called him and said, what's going
13 on?

14 He says, did you read the paper?

15 I said, no. What's going?

16 He said the papers says that Janay said we put
17 scat at the snare trees.

18 I said, that's bullshit.

19 He says, I know that.

20 And I said -- I realized that he had put -- when
21 I was with him, he had put scat at the upper two of the
22 south two camera sites that were two and four miles away
23 about from any of our snares, and being naive as I was, I
24 thought that was okay. I didn't question it.

25 I said, you guys didn't put any in the cameras

1 within our snare loop, did you?

2 He said, yeah, we did.

3 My heart just fell threw the floor. Right
4 there --

5 MR. MCMULLEN: You guys who?

6 THE WITNESS: Well, Janay, Emil and I went, he
7 was going to show me where the snares were in the Pajarita
8 Wilderness, and while they were doing, checking their
9 cameras, at the same time went on this bigger loop to do
10 their camera loop and hit four snares kind of on their way
11 and on their way back. And they had put scat at two
12 camera sites that were well away, I thought.

13 Q. BY MR. HOVATTER: Outside --

14 A. Outside of our ring.

15 Q. So you're talking about -- let me -- this is
16 good. I have been wondering what I would use these blank
17 sheets of paper for.

18 MR. MCMULLEN: I might have one.

19 Q. BY MR. HOVATTER: So if I can get the map right.
20 I'm going to use -- I'm trying to get kind of the sort --

21 A. Here's the Atascosas, south end, and there is
22 the, I don't know, the Ruby Road comes out. Nogales is
23 over here.

24 Q. Yeah.

25 A. Pajarita is down here. I guess the border is

1 somewhere over here. You got that Bear Valley Ranch Road
2 coming off of that and you have Bear Valley Ranch. And
3 coming off there is Atascosa Canyon, the canyon where the
4 jaguar is caught, and Penasco, which is a bigger canyon.
5 And all these run together and then come into Sycamore
6 like this, more or less.

7 Q. Yeah.

8 A. He had a snare to show me here in Atascosa
9 Canyon. He had a snare to show me --

10 MR. MCMULLEN: Can you name them with like, AC?
11 Do you guys want that detail now or not?

12 Q. BY MR. HOVATTER: Not right now because we're
13 going to go ahead and do that on the map, but I'm just
14 trying to get a sense, because I think I know what you
15 were saying and I just want to -- because that really is
16 really important for us to sort out and understand.

17 A. I know. And this is -- kept me sleepless for
18 four months.

19 MR. MCMULLEN: Hopefully, you can get some sleep
20 tonight.

21 THE WITNESS: Now Tonto Canyon is over here and
22 it runs into Mexico. We came down this canyon, hit
23 Penasco, followed it to Sycamore. He had a camera site
24 here, had a camera site here on Tonto. Made a loop, came
25 back. There was another camera on Penasco here.

1 MR. MCMULLEN: He made that loop, you didn't?

2 THE WITNESS: I did. I did. And there is
3 another camera Atascosa, I think, right where this snare
4 is right here. And so we had a snare here. We had a
5 snare here. Here. One, two, three -- there are supposed
6 to be four, I think. One, Atascosa, over into Penasco.
7 There is one down here, jumped into this canyon. There is
8 one further down. I don't think this is drawn -- there is
9 four -- two camera sites are near -- one is on top of a
10 snare. The other one is near it. The other two are a
11 good distance away. This is probably two, I don't know,
12 maybe two miles from the nearest set. And this one is
13 even farther. It's not drawn to scale.

14 Anyway, we started here, walked this loop, went
15 around the mountain and came back, set these snares, and
16 went out. Janay claims we had her, directed her, Emil
17 directed her with me standing there for her to set a scat
18 at the last snare, which is right here. I don't know the
19 name. I don't think this little canyon has a name. And
20 that's what Emil is freaked out about and that's what made
21 me stressed out too. I said, that's not true. I was
22 aware that they had placed scat here and here.

23 Q. BY MR. HOVATTER: Yeah. And that's what you
24 said.

25 A. Right. When he told me that they had placed

1 scat -- I mean I was working on a snare. This is the
2 order of it. Actually, the snare is here. On this one,
3 the snare is first, the camera is just downstream of it.
4 I worked on the snare. We walked up to the site. It was
5 littered with lion scrapes and scat. I assumed when we
6 had walked away from that site that they had used one of
7 those scats on the trail as a bait for that camera.

8 It turns out, you know, a month and a half later
9 I find out that it was actually jaguar scat. Because we
10 had talked on this canyon, we had walked up to a camera
11 site and there was a scat. He said, this is a jaguar
12 scat.

13 I said, oh.

14 He says, looks kind of small, doesn't it?

15 I go, yeah. At that point he never told me it
16 was a female jaguar in heat and all that stuff. I found
17 that out in the paper.

18 At this point he pulls out another scat. And I
19 said, where did you get that?

20 He said, from a zoo. He said -- it's kind of
21 hush hush. And I assumed that wasn't because we were
22 doing our snaring up there it was because he had published
23 a paper in the Journal of Mammology and that wasn't in the
24 methods. All right.

25 Q. Yeah.

1 A. So I thought that was related to that. I had no
2 idea. I put it together the day Janay's thing came out.
3 I said, oh, my God. I was with him when they put scat and
4 it all clicked and now we're screwed because this is right
5 on top of where we're working.

6 Q. So what he -- what he told you is that -- you
7 knew that he was using scat on these two?

8 A. Right.

9 Q. And you had that conversation?

10 A. And I knew that was bullshit, and when we split
11 up here -- we came down -- this was a canyon down here.
12 He knows the way. Came down here. They left me here to
13 set that set. Emil went here to set that set. And here
14 was the camera that Janay went to.

15 Q. So Janay went out --

16 A. She went out by herself, I thought to change film
17 out or do the disk and change the batteries out. We all
18 met back at this site where Emil was and not a word was
19 spoken about placing scat there.

20 Q. So Emil says that she placed -- he told you then
21 that she placed scat there?

22 A. Yeah.

23 Q. And then on this one?

24 A. On that one, that's the one, on this one is the
25 very first one that day I was working on the set. They

1 were working on the camera. I turned around. There was a
2 scat in the trail figuring it was one of the lion scats
3 they just put in there to get --

4 MR. MCMULLEN: Was there scat at all the sites,
5 like lion scat?

6 THE WITNESS: On some of them. On some of them.
7 There was sites for cats.

8 (Indiscernible due to multiple speakers)

9 Q. BY MR. HOVATTER: And you said there was some
10 lion scat in --

11 A. Definitely on that one. I know there was female
12 tracks here. We got a picture of a tom lion and the
13 jaguar here.

14 Q. What did you tell Emil when he told you that?

15 A. I didn't know what to say. You know, the phone
16 kept clicking out. I was in Fort Hauchuca. He was 40
17 miles away from home from Sonoyta somewhere. We kept
18 losing signal, and I don't remember. I called Terry
19 Johnson and Chasa.

20 Q. Right after that call?

21 A. Well, after either I found out -- because I'm not
22 sure. It took me a few phone calls, I think, to find out
23 that there was scat here. The first phone call I know
24 that I found out that Janay claimed there was scat at the
25 site that we actually caught the jaguar. I knew that was

1 BS. So I don't know if I called Terry Johnson and Chasa
2 right after that phone call, because we kept clicking out,
3 or after I found out the whole thing. I left them
4 messages saying, listen, Janay's accusation is wrong.
5 Call me back.

6 And that evening I got call back from Mike
7 (inaudible) and Chasa. You know, and they didn't want to
8 talk details because the investigation was starting.

9 Q. This is in Hawaii?

10 A. No. This is actually in --

11 (Indiscernible due to multiple speakers.)

12 A. This is the 31st, I think.

13 Q. End of March, beginning of April?

14 A. Right. So then, you know, oh, my God. And then
15 right away, you know, the State wants another
16 investigation. Then the Feds come in, and someone is at
17 my house on the next night. I come home at 9:30. Jeffrey
18 Odom is knocking on the door. I had the first, sheet from
19 Mike Senn saying, you know, this is going to be an
20 investigation, don't talk to anybody outside the
21 department. So I sent Jeffrey Odom on his way. I said,
22 sorry, I can't talk to you. I was kind of ordered not to,
23 and I found out the next day from Frank --

24 Q. What had you heard about --

25 A. I hadn't heard about the other one yet. So then

1 Frank Solis calls and now what, so I tell Mike, I said,
2 I'm getting people showing up and what's going on?

3 He said, you can talk to those guys. I
4 said (inaudible)

5 Q. So your memory of that conversation with Emil is
6 31 March?

7 A. I have it in my notes.

8 MR. MCMULLEN: That would be helpful.

9 THE WITNESS: It gets worse, guys.

10 Q. BY MR. HOVATTER: Well, I mean, yeah. That's
11 what we're here to just sort it out.

12 A. March 31st.

13 MR. FABRITZ: We're here to find out what
14 happened.

15 Q. BY MR. HOVATTER: Now did you call -- did you let
16 Chasa or anybody else, did you tell them about that
17 conversation or did that --

18 A. In a message.

19 Q. I mean about that you and Emil had had that
20 conversation and --

21 A. Probably not. I don't think so. I think that --
22 I knew and I know Michelle Crabb knows too and Emil that
23 that accusation by Janay is wrong. I went back and put
24 more snares out. And for her to pick the one that
25 actually caught the jaguar, that's just -- she just made

1 that up. I know that. And I know Michelle knows that
2 because she did the loop with me a bunch of times.

3 MR. MCMULLEN: Was there, just so I know, was
4 there -- there was lion scat at least at all of them,
5 right?

6 THE WITNESS: I don't know about at all of them,
7 but all those -- all those snare sites are places that
8 Emil has seen cat signs.

9 MR. MCMULLEN: Or scrapes?

10 THE WITNESS: This one is for sure. Yeah, or
11 scrapes or good snag trees.

12 Q. BY MR. HOVATTER: Let me ask you this, was this
13 the one where the cat was caught?

14 A. Yes. Actually, yeah. Yeah, that one.

15 Q. And the question, when Emil tumbled to this and
16 this but specifically said that's not true, she did not
17 put any there?

18 A. Right. We all agreed on that, that there was no
19 scat put --

20 MR. MCMULLEN: At the tree where the cat was
21 caught?

22 Q. BY MR. HOVATTER: And what I'm going -- this is
23 the first time you have been able to tell us --

24 A. Yeah. Exactly. This has been killing me.

25 (Indiscernible.)

1 A. Well, I lied to the Feds about it. Scared to
2 death. You know, Emil and I came up with, this is bad.
3 The department is going to look so bad. You know, he --
4 he -- I said, listen, Mike told me not to talk to
5 anybody. He says, oh, we'll just have dinner. He drove
6 up. We had dinner in Sierra Vista. We end up talking way
7 to night. What the hell is going on. I never asked him.
8 Well, I didn't want to know. I kind of -- either he
9 wanted a picture real bad or he was doing something behind
10 my back.

11 MR. MCMULLEN: This is Emil?

12 THE WITNESS: Yeah.

13 MR. MCMULLEN: Yeah.

14 THE WITNESS: And I can only think now that he
15 did it behind my back on purpose, so, you know, it just --
16 I don't know. I don't know that but that is just the way
17 I feel. For him to show me all this other stuff we have
18 been doing, catching lions, trying to catch lions in the
19 Patagonias and all that stuff and have him not to tell me
20 he's putting jaguar scat 10 meters, 15, 20 meters from
21 where I'm working, you know, snares that he had actually
22 set up before, I mean --

23 MR. MCMULLEN: For lions, for lions and bears?

24 Q. BY MR. HOVATTER: He told you after Macho B was
25 caught that he had jaguar scat at that camera that was

1 next to the snare set, is that what I get?

2 A. Well, yeah. Our first -- we had four snares in
3 that loop. Okay. The first one we actually activated,
4 you know, had to rebuild. It was scattered. It had been
5 deactivated since October, November. I think in November
6 he caught that female down this way. And so I was
7 rebuilding that. It was taking a few minutes. And they
8 were working on the camera. But we came together in
9 forest, you know, an entry putting brush --

10 (Indiscernible.)

11 A. We did that together. I turned around and there
12 is that scat, and I can only assume it was a lion scat
13 that I had seen walking into there. I didn't question
14 it. I didn't question it even if after he told me that
15 that was jaguar scat down at Sycamore. It didn't dawn on
16 me to ask was that other one? I didn't think he would be
17 naive to do that.

18 Q. So the 31st, was that a phone call or --

19 A. That was a phone call. Then we met in person,
20 and then things get worse. We meet and we talk about what
21 we're going to do.

22 MR. MCMULLEN: When did you meet in person, on
23 the 31st?

24 THE WITNESS: On the 31st, yeah.

25 Q. BY MR. HOVATTER: So you talked to him on the

1 phone first?

2 A. Talked to him on the phone, and yeah. Before I
3 knew all this, I was going to swing by his place on the
4 way home the next day because we hadn't seen each other.
5 You know, I trusted him.

6 Q. We're not getting into -- we're trying to keep
7 what we're doing and the Federal stuff completely
8 separate, but you did say that -- did I hear you say that
9 you feel that you had lied to the Feds?

10 A. Yeah.

11 Q. I mean was that knowingly?

12 A. Yeah. Yeah. We came up with a story and it's
13 just been eating on me and I just couldn't live with it.
14 Whether or not I had Garrity, I was going to come out and
15 tell you guys. I can't lie to you guys.

16 MR. MCMULLEN: I appreciate that. I knew that
17 you would be in here and be forthright. I knew it.

18 THE WITNESS: I wish I felt that way with the
19 Feds. I was so scared at that point.

20 MR. MCMULLEN: Let's just flesh it out. Let's go
21 through this. And then you can go home and sleep good.

22 Q. BY MR. HOVATTER: I need to ask this, what do
23 you -- what you lied to them about then was not
24 knowing -- well, what did you lie to them about?

25 A. We made a different story to protect the

1 department, to protect Emil, to protect my association
2 with Emil about, you know, not leaving jaguar scat but
3 (inaudible) there was no scat at all placed anywhere. The
4 one scat I did find and pointed out was an old one, which
5 it was. But, you know, I can't live with that. You know,
6 I did it.

7 Q. Can I?

8 A. Yeah, please.

9 Q. And you know, I just want to tell you that I
10 really do respect you doing that. I am disappointed. I
11 am disappointed for you and I'm disappointed for the
12 Department, but I really do respect you given this
13 opportunity.

14 A. I want things to go right.

15 Q. I mean, I have a personal and professional
16 respect for someone who has got that sense of things.

17 A. Well, it took the initial shock of it all to come
18 around and right the way. You know, I had two interviews
19 with the Feds, but before the second one I was locked into
20 this. I didn't have a lawyer yet. I finally got a lawyer
21 and he's, like, oh, you shouldn't have been talking to
22 them at all. Don't tell the truth now. You're going to
23 get messed up. Wait for this to say something. It's just
24 too long, months and months and months.

25 MR. MCMULLEN: Did you guys concoct that story on

1 the 31st?

2 THE WITNESS: Yeah.

3 MR. MCMULLEN: When you were physically with
4 Emil?

5 THE WITNESS: Yeah. And he went in and removed
6 whatever scat he left, whatever it was. You know, I don't
7 know what got eaten. Because by the time we actually
8 caught, you know, the jaguar, the scat by the camera had
9 been kicked over and knocked. I don't know what was
10 left. He went in and cleaned it up, made it look like our
11 story.

12 Q. BY MR. HOVATTER: Well, and I don't mean this
13 facetiously at all, but this may be one of the shorter
14 interviews in the sense that --

15 A. Yeah.

16 Q. Because that kind of answers --

17 A. I know it does.

18 Q. -- the questions.

19 A. I have been wanting to talk to people before and
20 I wish I could have said something before it became all
21 official investigation. I would have loved to have been
22 able to sit down with somebody. It just wasn't offered.

23 Q. Well, and now --

24 A. That's where fear gets you. That's where fear
25 gets you. It's just stupid. It's so -- I mean all the

1 press, all the hype, I just knew. I was walking on pins
2 and needles.

3 MR. MCMULLEN: Did he -- I mean, did he just,
4 when you guys got together and started chit chatting about
5 it, say, you know, dude, what happened? You know, why?
6 How did that -- I mean, did he just already have his plan
7 hatched?

8 THE WITNESS: No.

9 MR. MCMULLEN: I'm curious.

10 Q. BY MR. HOVATTER: A little different though, a
11 little different question, a little different because this
12 goes to different aspects of this. Because see
13 that's -- that doesn't change what -- doesn't, de facto,
14 change what the Department intended.

15 A. That's my -- never was --

16 Q. Department, our intent wasn't that.

17 A. No. Good point. We never -- it wasn't part of
18 the -- if I had known scat was there it wouldn't have
19 happened. I think that's why he didn't tell me.

20 Q. If you had known, what would you have done?

21 A. I wouldn't have let it happen, first of all.
22 Guys, you can't do that. This down here, you know, this
23 guy is the, you know, the scientific advisory group guy.
24 He's the jaguar -- I figured he thought this out and it
25 was okay to put scat out on cameras down there. Find out

1 now it's a huge secret. I didn't know any of this. Some
2 of the stuff he told me, some he doesn't, you know, and
3 the important stuff he didn't. You know, I'm mad now. I
4 was scared at first, but now it's just -- I mean this
5 might have killed my career.

6 Q. Well, on all of the -- looking at this knowing
7 what we know on this now, I'm going to ask the question,
8 and I think I know the answer, so was it your intent to
9 catch a jaguar?

10 A. No. No.

11 Q. Do you think it was Emil's intent to catch a
12 jaguar? I understand you're not him, you're not in his
13 head but --

14 A. Up until this point, no. He never let on that.
15 And I want you to understand this is what frustrates me is
16 I don't know now, but it certainly looks more like --

17 Q. What is your explanation for why he would set
18 scat like that?

19 A. I don't think he needed a picture that bad to do
20 it so close to a setting. Seemed like it would only be
21 to -- and it's a silly thing because you realize the
22 jaguar was caught, had nothing to do with scat anywhere.
23 It came from the north. There was no scat that way. It
24 came and hit that first -- that second set because the
25 first one was pulled out, hit the first set, there was no

1 scat there. You know, so it was just -- it was stupid to
2 even put turds out there. Could have had -- did no good.
3 All it does is jeopardize your whole thing.

4 Q. What I see on that where he has admitted putting
5 scat was at the camera sites, not at the trap sites; is
6 that correct?

7 A. Well, right. One camera is --

8 Q. One of the cameras is right next to --

9 A. 15, 20 yards.

10 MR. MCMULLEN: And number one was caught, right?

11 THE WITNESS: I don't know. He got a female down
12 somewhere. I thought it was over here. But this is
13 where -- he could have caught a female and a tom. There
14 was a scat there and there was female tracks going
15 through.

16 Q. BY MR. HOVATTER: And, Thorry, I got to ask you
17 this, did Michelle know about that?

18 A. No. No. And I kept her out of it because after
19 this whole thing got -- you know, Michelle went with Emil
20 I think when they caught that female down here --

21 Q. Yeah. She was on that --

22 A. I don't know if she knows about -- because she
23 went through some of these areas and I don't know if she
24 knows from before. We never -- but I didn't think these
25 were important enough to talk about with anybody. I just

1 never mentioned it.

2 MR. MCMULLEN: Did you guys talk about jaguars at
3 all with Michelle, I mean?

4 THE WITNESS: Probably some. You know, I said,
5 oh, there is a possibility, you know. That's why I went
6 through all this protocol trying to get ready.

7 Q. BY MR. HOVATTER: And, Thorry, on that, what was
8 it in your mind that triggered the need to take -- to make
9 those preparations?

10 A. You know, we had been waiting for collars since
11 December, maybe before, and right away all the sudden it
12 was happening. The collars were going to show up. Emil
13 tells me -- I knew he caught a cat here. I guess I wasn't
14 aware that the traps were still out that way. And so,
15 well, that's right where the jaguar is, you know, stand a
16 chance of catching one, I better know what I'm doing or
17 I'm going to look like --

18 Q. And that was from the photographs that he -- what
19 had you -- what was your knowledge of jaguars in that
20 area?

21 A. I guess just the word of Emil. He has been
22 getting pictures down here for a long time, not at least
23 in three years, but the newest one was coming from the
24 north. Then we found that picture down here was actually
25 going to the north, but the more recent one was in

1 Tumacacoris. That was the most recent one. So when we
2 found that track, it was already three weeks old and he
3 was already two mountain ranges to the north.

4 MR. MCMULLEN: Okay. So when you found that
5 track on the 5th --

6 THE WITNESS: 4th or 5th.

7 MR. MCMULLEN: Based on the track you thought it
8 was two weeks old and the most recent picture was 12 miles
9 north?

10 THE WITNESS: Well, this camera had him coming to
11 the north.

12 MR. MCMULLEN: Yeah. Was that -- was that from
13 December?

14 THE WITNESS: No. That was actually from three
15 weeks before.

16 Q. BY MR. HOVATTER: And that --

17 A. And there was a newer one further north, so we
18 assumed that it went through, made that track and came --
19 and then he was up here somewhere, two mountain ranges
20 away.

21 MR. MCMULLEN: Oh.

22 THE WITNESS: The first picture of him, I don't
23 know, December, was coming out of the north from
24 somewhere, and everybody was like, wow, where did he come
25 from the north from? And then the next, you know, picture

1 found was here, but it was not -- but it was newer than
2 this one that we found because he had checked that camera
3 before we made that loop. So the jaguar actually came
4 from the north, came down, I guess went back up north, and
5 that's where he was by the time we found the track and the
6 picture.

7 MR. MCMULLEN: Okay.

8 Q. BY MR. HOVATTER: Kind of like he was going --

9 A. I guess, yes.

10 MR. MCMULLEN: That's what led you to believe he
11 was two mountain ranges away at that time?

12 THE WITNESS: Right. Right.

13 MR. MCMULLEN: Okay.

14 THE WITNESS: And it sounds to me like he's
15 always two mountain ranges away from there, either in
16 Mexico or whether he is in the Balacabrese (phonetic) or
17 Calabrese (phonetic) or whatever, but you know.

18 Q. BY MR. HOVATTER: And so your -- when
19 you're -- was the 4th when you -- when started it, was
20 that the restart of the bear and lion trapping essentially
21 ?

22 A. Yeah. yeah.

23 Q. When did you get the collars?

24 A. I got actually the collars on the 5th. I had
25 Michelle bring down a collar on the 5th. No, it might

1 have been the 6th because the 4th -- was that the day we
2 went for that hike or the 3rd?

3 Q. The 4th is when you went out.

4 A. Okay. The 4th then. I was actually here the
5 night of the 3rd. Kirby said the collars are coming. I
6 said we'll probably be there by the 3rd. I went and they
7 weren't here. So I stayed at the bunkhouse I think for a
8 few hours and then I went to meet Emil at the junction of
9 Ruby Road and I-19 down there, and I didn't have a collar
10 except for his jaguar collar. So I called Michelle up and
11 said, well, bring down that female one that was harvested
12 here and an extension if you need to. At least we will
13 have a collar for a bear or a lion, you know, if we need
14 it. And by then, that afternoon I guess the collars came
15 in, and Dave Grandmaisson brought them down to give
16 to Michelle, because they were roommates at the time, and
17 she brought them down.

18 They were all initialized or whatever after that
19 so we had something to work with. It was kind of all
20 rushed because, you know, things were on hold forever
21 because we had no collars.

22 Q. Emil was leaving, getting out of the country?

23 A. He was leaving the 5th, so we had to get this
24 stuff done together. I don't know anything about what to
25 do if we catch one. What do we do, you know. So that's

1 when he, I know this guy Roberto, and Roberto knew Sharon
2 Deem, so we got ahold of that Wildlife Health Manual which
3 actually Ted McKinney gave me before he passed either a
4 year ago or after. I don't remember. Had it on file
5 somewhere but I never read it because it just never
6 applied.

7 Anyway, we get that health manual and it jived
8 with whatever the jag conservation team had as far as
9 dosages and whatnot, so I knew we were on the same page.
10 And Telazol is relatively forgiving. So I was just trying
11 to get -- you know, I didn't want to get down there and
12 have something like that happen. You know, think about if
13 I didn't prepare and it happened, you know we're already
14 in enough trouble. If I hadn't prepared it would have
15 been that much worse. So this way at least we tried. It
16 might have looked like we're aiming at it but to me it's
17 just being prepared.

18 Q. Is that why you went and got that rifle?

19 A. That rifle too, yeah. Emil said he had, I think
20 it was in Mexico, he didn't have the right equipment, had
21 to fashion some kind of jab stick.

22 Q. Using a jab stick.

23 A. Something like that. He said the thing just
24 ripped itself apart because you invade its personal space
25 and it just flips out, killed himself. So I said, what's

1 that personal space?

2 He said, 20, 30 yards.

3 I said, well, I got a pistol but I wouldn't want
4 to -- I like to shoot it five yards. I will get my dart
5 rifle.

6 MR. MCMULLEN: Did he share that with the crew,
7 the crew of you guys, you and Michelle?

8 THE WITNESS: Probably -- I don't know when he
9 said that. He might have said that the day we went and
10 made the first round check.

11 Q. BY MR. HOVATTER: On the 4th, on the 4th when --

12 A. Or the 5th is when we (indiscernible). He might
13 have said that on the 5th or the 4th. I'm not sure what
14 day it was.

15 Q. I need to take a quick break. So I'll be right
16 back.

17 (Break.)

18 THE WITNESS: Are you okay?

19 Q. BY MR. HOVATTER: Yeah. Are you okay?

20 A. I'm going to find out.

21 Q. Okay. We're going to continue on with -- let's
22 see where do we want to back up to and start into?

23 MR. MCMULLEN: We were talking last about, I
24 think if I got it right, we were talking about the collar,
25 getting the collars, having the collars

1 Q. BY MR. HOVATTER: Well, I was -- we went back.
2 Now you had gone out there on the 4th?

3 A. Yeah.

4 Q. And I'm going through your field notes and all
5 this here.

6 A. Right. Uh-huh.

7 Q. Thorry, I got to, in light, I got to ask you, are
8 your field notes accurate?

9 A. Yes. There it is.

10 Q. No. I've got a copy and all. I'm sorry I had to
11 ask that question.

12 A. You mean date wise?

13 Q. And content wise.

14 A. Yeah. Well, you know, for time sheet purposes I
15 actually had to fudge the day in my time sheets on when I
16 went to get the rifle and back because there wasn't a full
17 day to go do that. It actually was a Friday but I put it
18 on the next week's pay.

19 Q. I understand. Again, it seemed to me that where
20 we got to it that the -- what changed for you in your
21 perception of this was what happened on the 31st; is that
22 an accurate assessment?

23 A. Yes.

24 Q. Up til then, theoretically on the 30th --

25 A. I felt clean on this whole thing. I felt fine

1 with this. I felt the Department acted in the way it
2 should have.

3 Q. And that's the 30 March time? Okay. And let me
4 ask you this, and this is kind of really switching gears
5 rather, rather violently but the decision -- we caught
6 Macho B. We were watching him on -- this is getting kind
7 of process stuff. We're watching him through the GPS
8 system. And it's unclear. Is he slowing down? Is he
9 hurt? Is he on a kill? Is he just -- never having had a
10 collared jaguar in awhile before we didn't have a lot of
11 data sets to go on and we were trying to figure out what's
12 normal U.S. jaguar behavior. How ultimately did we
13 come -- did you guys come to the decision to go and check
14 on the animal?

15 A. I'm not sure how that all came together. I knew
16 that the static wave points was causing some concerns. I
17 guess there was talk about going in on a Thursday. It got
18 bumped to a Saturday. You know, I remember Ole Alcumbrac
19 calling me and asking me, were you in on that jaguar
20 catch?

21 I said, yeah, I was.

22 He said, how's he doing?

23 I said, well, it doesn't look like he's moving
24 much. I don't know.

25 He said, well, that's a point of concern. I know

1 that Emil was concerned and Bill Van Pelt called and said,
2 well, we will make a plan for Thursday. He cancelled it
3 and then called me Friday, said, tomorrow morning we're
4 going to go in. I'm not sure how it all came about -- it
5 was synergy from lots of different people getting
6 concerned.

7 Q. Because, you know, I was kind of wondering
8 because I'm thinking about the supervisory chain. In my
9 mind as I read the notes and everything, it seems to me
10 that you were pretty clear in your mind on what the
11 supervisory -- on who your was supervisor? Is that an
12 accurate assessment?

13 A. Well, you know, I'm actually under, at that point
14 was under Bill Persons, who is the fishery biologist. Ted
15 McKinney was my supervisor who passed away.

16 Q. I understand.

17 A. So I'm still under Bill but Kirby is the project
18 leader, so I sent my time sheets to Bill but I go to Kirby
19 for, you know, money, supplies or what to do about if I
20 need --

21 Q. Where was Kirby in the mix on getting at -- on
22 the supervisory role on this?

23 A. He was the one that said go get the collars and
24 start activating snares. I think he was included in the
25 e-mails as far as the Macho B news and whatnot, but I

1 don't think he was -- I don't think I made the call
2 actually to go in and go it was time to go and get this
3 cat. I think I was maybe voicing my concern about it.
4 But Kirby was kind of out of that, I think.

5 Q. You know, it's just kind of -- and, again, I
6 apologize for -- I want to go back to talk about the --
7 when you and Emil had your conversation on the 31st, and I
8 need to ask the -- was Michelle -- do you know if Michelle
9 was aware prior to that time about Emil and Janay's
10 activities?

11 A. I don't believe she was. But like I say, you
12 know, Emil and Michelle had caught a female together.

13 Q. Yeah.

14 A. And I don't know what she learned then.

15 Q. Yeah.

16 A. About what Emil did out there. I don't think she
17 did.

18 Q. Our young man, oh, I don't know because you
19 weren't even there then. So on -- now was -- on the day
20 of -- well, no. He was out there for that. Will Carroll,
21 the intern, was out there for a couple days. Was he there
22 when this was going on?

23 A. No. Well, Will came by and ran the set with us
24 once.

25 Q. Yeah. But this was after that time?

1 A. This was before. This was before we caught
2 Macho B.

3 Q. I mean, did he -- you did all of this on the 4th
4 or this was all done on the 4th?

5 A. Setting the snares?

6 Q. Yeah. And then the scat being dropped?

7 A. Yeah, that was the 4th.

8 Q. So he showed up after that?

9 A. Yeah. That was -- that was a --

10 MR. MCMULLEN: That was a couple, three days
11 later, I think.

12 Q. BY MR. HOVATTER: Yeah. If you have got when
13 exactly because you are apparently, of our department
14 guys, the only one who takes field notes.

15 A. Oh, really. Well, I don't know. Let's see. I
16 thought I had something that said Will Carroll. The 8th.
17 I think the 7th he came up and stayed in Ruby. The 8th we
18 ran the set together and he took off. So February 8th.

19 Q. Did Ron's involvement in this, did Ron have any
20 awareness of this?

21 A. I tell you what, I don't know if I trusted Emil's
22 word on this or not, but when we were discussing on the
23 31st about the scat being out there, I knew that Emil and
24 Ron had been to Mexico previously. I don't know if it was
25 the week before or two weeks before, but I said, did you

1 talk to Ron about this?

2 He said, yeah.

3 I said, what did he say?

4 He said, deny it. That scared me some. You
5 know, I hope I'm wrong about that because I love that
6 man. He's been a good help with me on lions and all that
7 and I hope I'm wrong about that.

8 Q. Okay. And that would have -- that would have
9 been earlier in March?

10 A. Well, that was the 31st.

11 Q. But I mean the trip, the alleged trip?

12 A. To Mexico, I suppose it would have been, yeah.

13 MR. MCMULLEN: But it was between, obviously, the
14 capture and the 31st?

15 THE WITNESS: I believe so. I believe so. And
16 guys, I hope I am absolutely wrong on that. I hope he was
17 just feeding me a line.

18 Q. BY MR. HOVATTER: Thorry, I need to ask you this
19 and, you know, it sounds to me like you did everything
20 exactly right up until the 31st?

21 A. I did.

22 Q. How did people talk you into doing this?

23 A. Just my own fear. I don't know. I was concerned
24 for the department. I didn't think about him betraying me
25 like that, I guess. I felt that he went and did it behind

1 my back but I still felt -- I guess that didn't kick in as
2 much as him still being a friend and I got to look out for
3 you. And that was something in the next few days, you
4 know, turned 180, and it was already too late. I had
5 already talked to the Feds. And I was totally confused.
6 By the time I did talk to legal counsel it was, you know,
7 don't talk to the Feds and you will have your chance to
8 tell the truth, you know. But that was probably one of
9 the biggest mistakes of my life, clearly, you know.

10 Q. You know, and I just I digress just on this, I
11 think, you know, you know, I'm just now whatever it is
12 going to be. You're manning up to it and that's probably
13 about the best you can do on that. And that's done. And
14 we're going to continue working through a few more pieces
15 of this but that's done so --

16 A. I understand.

17 Q. And the way to look now is looking ahead.

18 A. That's what I'm trying to do.

19 Q. Things that start happening next.

20 A. I looked side to side a little too much and it
21 should have been straight ahead right away. It's a bit
22 late to learn that lesson.

23 Q. Are there any other department folks that you
24 have any knowledge of being involved in that?

25 A. Will, Michelle, I don't think were aware of any

1 of the scat. I was aware of the two first furthest to the
2 south. I didn't think they were an issue, and then I
3 found out on the 31st of, you know, the other two camera
4 sites. Emil says Ron was aware of them. I don't know
5 whether to believe that or not.

6 MR. MCMULLEN: Was Michelle aware of the lion
7 scat at the snare sites?

8 THE WITNESS: You know, I don't know because when
9 we went the day after that happened we ran them together.
10 Michelle was with Emil and I. I don't know it was pointed
11 out, oh, here's a lion scat. I don't remember talking
12 about it, but I assume she must have seen it, but I don't
13 know because after time that thing got kicked around so
14 much, it just disappeared. And I don't remember seeing
15 that scat that Janay supposedly put out. Because there is
16 a trail you can't walk on to get to that camera or you can
17 just stay in the creek bottom. I did both. But I don't
18 remember seeing a scat there, but I assume that they did
19 put one there.

20 Q. BY MR. HOVATTER: Do Michelle -- Thorry, does
21 Michelle and Emil, do they have any kind of relationship?

22 A. You know, they caught that cat together, but from
23 what I got out of Emil was that she was really kind of
24 quiet. I don't think they called each other much. I
25 don't know. I don't get the feeling that there is any --

1 Q. Let's see. I need to do some thinking here for a
2 second. Where do you guys want to go?

3 A. There is one other thing.

4 Q. Yeah. Go ahead.

5 A. Before I forget. Emil's trip to Spain was
6 planned so far in advance that, you know, we just thought
7 it was timing. And I still believe that. As soon as we
8 got the collars, he left. That was just fate. I didn't
9 think he planned it like that. But I think there was an
10 e-mail sent to Christina Akins that, I don't know if it
11 was making light of that or not that he might --

12 MR. MCMULLEN: Sent to who?

13 THE WITNESS: Christina Akins. I don't know if
14 she's an intern or not, non game. I think they had some
15 kind of relationship. I don't want to talk about.
16 Anyhow, anyway, there is an e-mail going that way that
17 says that they found out that night of the 31st that might
18 lead to a different conclusion. I don't know.

19 Q. BY MR. HOVATTER: How did you find out about that
20 e-mail?

21 A. He said, I made an e-mail to Christina and was
22 going to see if she can delete it or something.

23 MR. MCMULLEN: Akins?

24 THE WITNESS: Akins, A-I-K-N-S (sic).

25 MR. MCMULLEN: She's an intern for our

1 department?

2 THE WITNESS: Yeah. She's been with us more year
3 round, I guess. But I don't, you know, if -- I can't see
4 how his trip to Spain was planned when I was going -- I
5 don't know. Just to me it's just -- everything happened
6 so chaotically, that's just how it worked out.

7 Q. BY MR. HOVATTER: But on the 31st Emil said that
8 he intended to ask Christina to try to eliminate an
9 e-mail?

10 A. Yeah.

11 Q. Do you have any idea about when that e-mail may
12 have been sent?

13 A. I don't know.

14 MR. MCMULLEN: Did he say what the content of it
15 was?

16 THE WITNESS: She might have e-mailed him about
17 the capture of the jaguar, and he said, oh, why do you
18 think I went to Spain, something like that.

19 MR. MCMULLEN: Oh.

20 THE WITNESS: But realistically I don't think
21 that trip to Spain was planned like that, but maybe he can
22 explain that better.

23 Q. BY MR. HOVATTER: Yeah. Well, it may be the
24 appearance that he was concerned about because it sure
25 seems like that's part of what was driving his approach to

1 things.

2 A. I don't know.

3 MR. MCMULLEN: I did have a --

4 Q. Yeah. Go ahead.

5 MR. MCMULLEN: As far as the general orders that
6 you had gotten down the chain of command or sideways, we
7 talked about how the people who all had an interest in
8 some fashion for management of jaguars was WMD, Research,
9 non-game, and Terry, who is kind of a separate entity,
10 separate program from himself, and how that is all
11 segmented, but what sort of general orders did you have or
12 direction for down the chain of command or sideways with
13 regard to what we are supposed to do if we caught a
14 jaguar, or what were the general orders in terms of -- are
15 we supposed to try to catch one or what, but if we did on
16 accident, what we're supposed to do with it is kind of
17 what --

18 THE WITNESS: What I read in the 2000, I guess it
19 was the summary of what happened with the jaguar
20 conservation team in the years since the last one, catch
21 it was protocol, real general, and then collar it.

22 MR. MCMULLEN: So the guidance you had was from
23 what you read out of the --

24 THE WITNESS: Right. And I had talked to Chasa,
25 and I had talked to Dean. And Dean, I had seen Dean talk

1 to Bill Van Pelt, so I thought there was communication
2 there about what was going on because Dean knew where we
3 would be working and Bill Van Pelt generally knew, I
4 guess, the latest of everyone was knowing about the jaguar
5 locations. Because I think Emil sends Bill Van Pelt and
6 Terry Johnson whatever tracks or pictures he gets.

7 MR. MCMULLEN: Were there general orders about
8 what to do if you were trapping and you knew you were in
9 the process of snaring bears and lions and then you
10 detected jaguar signs?

11 THE WITNESS: I didn't -- I never got much input
12 from folks. You know, I never -- early on, bringing this
13 up about, well, we're going to be snaring so I need to
14 know what's going on. I talked to Chasa. And she said,
15 well, if you do catch one, don't collar it.

16 And I thought that was odd because I was aware of
17 the permit and I don't think she was. I told her about
18 Emil's collar and then talked to Ray Schweinsburg and him
19 and I went up and approached Larry himself once, and you
20 guys pretty much just sent us back to Terry. It was 5:00,
21 after 5:00 by then. I didn't get a chance to talk to
22 Terry. Next time I was in the office I saw Dean talking
23 to Bill Van Pelt. I thought things were getting
24 coordinated then about the jaguar.

25 MR. MCMULLEN: When was that about?

1 THE WITNESS: Probably late January sometime.

2 Q. BY MR. HOVATTER: And that was the conversation
3 with Chasa at that time?

4 A. Yeah. It kind of went from, I don't know --
5 well, Kirby was aware that we carrying around that jaguar
6 collar in the Patagonias back last fall. We didn't get a
7 jaguar then but the collars ran -- we ran out of collars,
8 so the whole thing was kind of shut down until February
9 again when we started to turn the collars on again.

10 But I remember there was a Region 5 coordination
11 meeting. Ron Thompson, he conference called in, and the
12 question came up, you know, the J word we called it back
13 then. And I don't remember what his response was, you
14 know, what do we do? We're doing this big border land
15 project down here, what happens with jaguar stuff? I
16 don't remember what his response was but it might have
17 involved something.

18 Q. That was that 8-9 December meetings on border
19 carnivore?

20 A. Yeah. There was one one day and one the next
21 with fish and wildlife with a bunch of different
22 government agencies were involved.

23 Q. Did you participate in both of those?

24 A. I was in both of those, but I was just
25 listening. Yeah, a lot of different interest groups were

1 at the second one. And then I think when things --
2 started talking about collars started to show up is when I
3 started asking, what does happen when we catch one?

4 Q. Now did you bring that up during the meeting?

5 A. I didn't bring that up during those meetings.

6 Q. So you started talking with different folks that
7 had seen -- would have some input?

8 A. Yeah. Yeah. I didn't want to go catch one
9 mysteriously. That's the last thing I wanted. I wanted
10 everybody to know that this was a possibility now. Now
11 what? And I never said -- you know, when I got the collar
12 it was never mentioned openly on there, it wasn't
13 mentioned, go try to go down there and get one. It was
14 just, you know, do what you do and if you get one then I
15 guess try to collar it.

16 Q. So in that, I guess then late December up through
17 the beginning of February you had had a series of
18 conversations, some e-mail, probably some walk ins and
19 discussions with Chasa --

20 A. Maybe walk ins.

21 Q. With Kirby, with Dean. How did Ray get into
22 this, by the way?

23 A. I don't know. He is interested in our White Tank
24 lion work, so I just asked him. He's one of our
25 supervisors, research supervisors, and since we were

1 missing Orot (phonetic) and Bill was on the fish side of
2 things, he was -- so I asked him, do you think we should
3 go? Got no real direction much except you have a collar
4 and we thought the odds --

5 Q. The odds of catching --

6 A. You know.

7 MR. MCMULLEN: What was Kirby's input? Did he
8 say anything?

9 THE WITNESS: I think he was okay. But I don't
10 think he was -- I think he thought something like this
11 might happen, turn into this. You know, he wasn't against
12 it. He wasn't -- he twisted his ankles. He wasn't even
13 in the field at all at that point. I think he was hunting
14 with his kid and he twisted his ankles.

15 Q. BY MR. HOVATTER: It sounds like the country down
16 there beats up a lot of folks?

17 A. Yeah. He was aware what we were doing but, I
18 mean, he was, you know, aware of it all fall, really,
19 because we had that collar all fall too, as far as I
20 know. I'm pretty sure we talked about it.

21 Q. Yeah. Looking back on that time frame up to
22 let's say the end of January, knowing what we know now,
23 what should have happened?

24 A. You probably all should have had a conference
25 like this with all these different work units and figure

1 out what the stumbling blocks were and if there were any,
2 were we prepared. This whole bit is chaos to me. I don't
3 know how it happened. To be honest, we got one card.
4 After all that, how that actually got through, you know, I
5 think there would be a lot more communication on
6 everybody's part.

7 Q. Would the -- the --

8 MR. MCMULLEN: The mind is a terrible thing to
9 waste. Want me to give you a stall, ask a question?

10 Q. BY MR. HOVATTER: Just let me have just a second
11 to think about it. Part of what I wanted to get at and I
12 was talking about the vacations, this stuff. It's gone.
13 Go ahead.

14 MR. MCMULLEN: As far as the notifications go,
15 there was -- like there was some notification about the --
16 Emil notified people about those pictures in January, the
17 pictures from January that you guys recovered about the
18 jaguar. He sent e-mails all over the place, fish and
19 wildlife, here, Bill Van Pelt, Terry, but there was never
20 a notification made on the track that you guys found that
21 you believed to be the jaguar on February 4th and 5th in
22 the snare loop.

23 THE WITNESS: Well, during the Federal
24 investigation I was, at least they told me, that it was
25 sent like five days after that. Maybe not. When I asked

1 him about the track, they said -- they told me Emil had
2 pictures and he said the tracks too are sent to Game and
3 Fish and Fish and Wildlife to Bill Van Pelt, Terry Johnson
4 about where the tracks and picture are. I assumed he was
5 running with that. And then I find out --

6 MR. MCMULLEN: You thought Emil was running all
7 the notifications?

8 THE WITNESS: Actually, yeah. I thought that was
9 his line of the work. I really should have called Kirby
10 too knowing what I know now. I think there is a big lapse
11 right there. That was a three-week-old track that I had
12 trouble with. I knew it was jaguar track but it wasn't
13 obvious to me at all. He had to point it out. I wouldn't
14 have recognized it myself. It was two mountain ranges
15 away last we knew. You know, I was going to let Emil run
16 with it. And if Terry and Bill had concerns I would find
17 out. We would pull the sets or safety zone or whatever.

18 MR. MCMULLEN: Okay. So when that all went down
19 you were thinking that the coordination was going on about
20 the jaguar through Bill Van Pelt and Terry Johnson, and
21 that if there were going to be orders to cease trapping,
22 that coordination was going to result in that order?

23 THE WITNESS: I thought so. And I realize now
24 that I actually should have included Kirby. It seems
25 obvious now. At the time it seemed like Emil was on top

1 of things. He had the direct line right into Bill Van
2 Pelt and Terry. They talked quite a bit so I thought I
3 would have heard something if there was something.

4 Q. BY MR. HOVATTER: I see that.

5 A. You know, and the same with the scat, I should
6 have made someone aware of the scat, but Emil doing what
7 he did for so long, I just figured he was on top of that
8 situation.

9 Q. You're talking about the scat at the two
10 cameras --

11 A. The two cameras way down south, yeah. And I
12 realize now that I've got to be more aware, and you know,
13 even though that's not my snare loop, that's my study
14 area, and I should have probably been more honed in on it
15 more than I was.

16 Q. When Macho B was captured, how did you -- I know
17 you talked to Ron. How did that, your notification to the
18 outside world about that capture, how did that work?

19 A. Well, you know, I knew it had to get up top
20 somehow. I assumed it was going to be a pretty big deal
21 and I was right. I called Emil, and him being in Spain, I
22 figured I wouldn't talk to him, I would leave a message.
23 I knew he was the only one, him and Jack Childs maybe with
24 access to that collar, even to the computer.

25 MR. MCMULLEN: You didn't have that website

1 password?

2 THE WITNESS: I don't have that website. I never
3 did have that website, you know. As far as unit command,
4 I was going to call Kirby regardless, but I wanted to make
5 sure that -- I called Ron because I know he does some --
6 you know, just a big cat guy for us and he does some stuff
7 in Mexico.

8 I said, Ron, who do I talk to about this?

9 He said, do chain of command.

10 So I said all right. He said, don't tell anybody
11 else. Let Kirby run with it and that's the way it went.
12 And I didn't know if I should call the director first or
13 what but Ron said do that, on that chain, and I went on
14 that chain and probably should have called Kirby first,
15 but regardless, he was going to get a phone call.

16 Q. BY MR. HOVATTER: I mean, it seemed clear to me
17 that you saw Kirby to be your field supervisory link and
18 that seemed like the appropriate way for you to do your
19 notification?

20 A. Well, maybe I should have let Kirby call Emil.
21 That might have been more -- I don't know. Maybe Kirby is
22 the only person I should I have talked to. But I
23 figured --

24 MR. MCMULLEN: Chain of command is chain of
25 command. You talk to your boss and --

1 THE WITNESS: Maybe. You know, research is
2 bizarre because we don't, being in law enforcement you
3 guys, you understand why chain of command is so
4 important. Research, you know, you tell him this, that
5 and if it gets there great, and you know, you have
6 something like this and you realize --

7 Q. BY MR. HOVATTER: And, you know, I do see that.
8 The question I would ask you is, granted we have a sample
9 size of one thing like this, but is there -- is -- to the
10 extent there is such a thing as culture in an
11 organization, do we -- do we need to look at migrating the
12 current culture of research branch in a different
13 direction?

14 A. As far as communication you mean?

15 Q. Yeah.

16 A. I don't think most -- I don't think there is
17 usually issues. You know, I probably handled that one,
18 maybe I handled it wrong but I think people communicate
19 rather well. I don't think there is a lot of rush issues
20 in the branch like there are from in law enforcement or
21 game branch or anything like that. I don't know.

22 Q. Well, I'm thinking of the communications in the
23 overall sense too, not just that notification. That's
24 kind of where we segued into this from. Just the idea of
25 cross talk with other working --

1 A. I think it can help. I think the more
2 communication the better. I feel -- I had more -- I knew
3 more about the department, if Marty remembers, I was the
4 regional assistant in Region 6, 10, 12 years ago.

5 MR. FABRITZ: Long time ago.

6 A. I used come to the office. I used to know more
7 people in Phoenix in regions than I do now. I am way off
8 on my own doing some weird things in some corner of the
9 state. So I think communication is great. I think there
10 are ways to overload it. I think there is effective
11 communication. I think certainly with an issue like this
12 that there should have been cross division communication
13 more than there was.

14 Q. I'm trying to get at, you alluded to it too,
15 there is such a thing that we can burden so much, burden
16 things so much that little work is done in the field.

17 A. I agree.

18 Q. Having said that, it does seem that there were
19 opportunities during the course of our lead up, several
20 months lead up to this, where we brushed up against
21 opportunities in different parts of the department to have
22 gotten a different outcome.

23 A. Yeah. Maybe. You know, I was just a little bit
24 surprised when I was a technician, I wasn't really -- no
25 one really asked any questions. I don't know why other

1 folks weren't as concerned about -- I don't know if that's
2 true or not, but that's kind of the impression I got. You
3 may catch one.

4 Q. That's your impression. I think it's important
5 that we note that that is your impression on that.

6 A. I don't know if that's accurate because I don't
7 know what's said when I'm gone or what but --

8 Q. At one point Chasa back in, I think it was
9 December, had explored, there was a couple of brief flurry
10 of e-mails where she said, do we need to look at doing an
11 EA checklist on this. And I think you were a part of, a
12 very peripheral part of a couple of e-mails that went out
13 that that was discussed on. The question, do you have any
14 memory of that and how come -- I'm trying to figure out
15 why ultimately that kind of start down that path didn't
16 end up in us actually doing that?

17 A. I don't know. I was kind of involved in that
18 conversation when she told me not to put the collar on it
19 if we did catch it. In the middle of her going to do an
20 EA or talking about doing an EA or something about an EA,
21 and I never heard either way. By the time the collars
22 came we were running snares, I guess. But I guess I was
23 still going under the impression -- because I don't think
24 she was still fully aware of the permit we had. So it
25 wasn't really my call to say we don't need an EA, but I

1 don't know. I was letting her go to Kirby to meet with
2 that or how that worked. Never heard a go or a no or a
3 what. I don't know.

4 Q. No. No. I understand that. I can --

5 A. Was one ever made? It sounds like not.

6 MR. MCMULLEN: What?

7 THE WITNESS: An EA?

8 Q. BY MR. HOVATTER: No.

9 MR. MCMULLEN: The permit was there.

10 THE WITNESS: The permit was there. Did we need
11 a checklist?

12 Q. BY MR. HOVATTER: Well, I think -- I think the
13 thing that we're thinking about or that I'm kind of
14 thinking about a checklist that what it may have done, it
15 may have been generating this inherently cross --

16 A. Right. It might have had everybody --

17 Q. It might have inherently kind of gotten the loops
18 that it goes through, gone to major species, gone to
19 habitat, so there would have been at least the greater
20 likelihood that potentially we would have said we need to
21 have a discussion before we get into this and maybe
22 establish some sort of bright lines that say, okay, this
23 is too close in space and time for us to continue snaring
24 in an area where we might have this species, this many
25 miles or this many days or something along that. At least

1 there is the possibility we might have gotten to that and
2 then there would have been that broader discussion. And
3 while it would have been kind of heavy on the front end
4 administratively, once we were through it, the opportunity
5 everybody is kind -- kind of everybody is on the same page
6 at one time.

7 A. Right. And we had no guidelines on how far from
8 a known jaguar location you could or couldn't or when, how
9 far.

10 Q. And let's see. What else do you want --

11 MR. MCMULLEN: Well, here's the thing, during the
12 break Thorry had asked me, where do these investigations
13 go? And I said we approach them with an unjaundiced eye
14 and we just kind of let the information lead us to
15 wherever the information is going to and through the
16 course of this investigation, and so we're not setting out
17 with a predetermined goal other than to figure out what
18 happened I think is kind of how I said it, and we're kind
19 of not -- no predetermined resolution, but through the
20 course of doing this investigation there is a series of
21 events that when you look at them together really speak
22 loudly of preparing to catch a jaguar. And I wanted to
23 just throw them out to you, the things that were we were
24 aware of through the course of this investigation, so just
25 so you can have a chance to frame them in the context in

1 which you working at the time.

2 And those things are: We know you were
3 figuring the drug dosages early in February for a jaguar,
4 and you talked about that; we know we had the photos of
5 Macho B in late January from Tumacacoris and then the one
6 from earlier in Tonto Canyon; we know we had the track in
7 the wash on February 4th or 5th that was believed to be a
8 jaguar track; and then we know that some snares were added
9 after the jaguar track was found kind of in that same
10 area, in that same loop at the same time; and we know that
11 the VFH was removed from the jaguar collar at that same
12 time; and that the jaguar was activated, kept activated
13 during that tracking period during the middle of February,
14 during which time, and if some of this is not accurate or
15 you need me to go back over it, please do, and again, I'm
16 just wanting you to know what we have heard and the state
17 of information we've got so you can frame it in
18 contract -- context, and then the testing the collars, and
19 I think that's -- oh, and then the one, the part where you
20 left to go get a different dart rifle to Flag. And so
21 through the course of the investigation as we looked at
22 all those things together, while it didn't lead us to a
23 definitive conclusion, it's circumstantial where it looks
24 like, it could look to someone like there is -- we're
25 preparing --

1 THE WITNESS: An intent?

2 MR. MCMULLEN: Yeah. We're preparing to or we're
3 intending to catch a jaguar?

4 THE WITNESS: Intending to or preparing to and
5 preparing for I think are different things.

6 MR. MCMULLEN: Yeah.

7 THE WITNESS: I prepared for situations the best
8 I could given the time I had. I could have drug that out
9 over months if I had more knowledge of where we were going
10 or when the collars were coming in or whatnot. But it was
11 kind of all slammed in together. It looks like I got a
12 hot tip and I'm going go in and I'm going to -- I could
13 see how it could look like that. But, you know, I don't
14 think there was ever intent to, you know, target that
15 jaguar. I was just being prepared for it. You know,
16 initializing those collars in the canyon, it will be hard
17 to initialize. It won't initially contact the satellite
18 and work, so you do it remotely. I did it, I think, at
19 the house, and I did it for the lion and bear collars as
20 well.

21 MR. MCMULLEN: You activated all the lion and
22 bear collars.

23 THE WITNESS: And Ruby.

24 MR. MCMULLEN: And Ruby. For that same reason.

25 Q. BY MR. HOVATTER: For that same reason. You

1 know, getting the dosages worked up, it seems like you
2 want to do that ahead of time rather than while you're
3 down in the snares thrashing around.

4 MR. MCMULLEN: You said it earlier, if you don't
5 you look like a fool.

6 THE WITNESS: Right. You know, and then
7 e-mailing back and forth to those vets trying to get the
8 best word on what to do. I had ten-year-old data almost.
9 I wanted the latest. It might look to some like we were
10 going at it, but to me it was just, hey, I need to know if
11 it's going to happen. If it doesn't happen, it doesn't
12 happen. But if it does I don't want to look like I was
13 slacking two weeks ago when I could have been prepared for
14 it.

15 MR. FABRITZ: Question about actually the
16 location, was that loop made just because of the density
17 of lion? I mean why was that site selected?

18 THE WITNESS: I think Emil in the past had
19 cameras throughout there and just knew where cats and
20 bears were.

21 MR. FABRITZ: So that's basically based off of
22 Emil's historically knowledge?

23 THE WITNESS: He chose those sites. These were
24 built in the fall.

25 MR. FABRITZ: That's right.

1 THE WITNESS: That was him. I had three or four
2 extra snares in the back of my truck, and I learned from
3 Ron that sometimes you double them up because you miss one
4 and you catch them in the second one. So I put two pretty
5 much in each of those spots just to use them up. Put one
6 in Ruby and just to get them out so they weren't wasted.
7 If I did not do that I might have -- you know, when we
8 caught Macho B, that first set was actually picked up out
9 of the ground still active, not even a safety on it, put
10 to the side, by an illegal or what, but that could have
11 been that one.

12 MR. MCMULLEN: When you went to get the rifle was
13 it because -- was it because it was a better tool?

14 THE WITNESS: It's a better tool to use. I
15 didn't want to have to get close enough with that pistol.

16 MR. MCMULLEN: To a jaguar?

17 THE WITNESS: To a jaguar. If they are going to
18 need their personal space and thrash around, I would
19 rather be barely visible for them so I can just lob one
20 and not worry about it.

21 MR. MCMULLEN: Did you share the reason to go get
22 the dart rifle with Michelle?

23 THE WITNESS: I believe so. Yeah. I assume so.
24 I think she might have even be present when Emil discussed
25 that, I think. I don't know. I don't remember if she was

1 there or not.

2 MR. MCMULLEN: When he discussed what, the fact
3 that, what, jaguars --

4 (Indiscernible due to multiple speakers.)

5 THE WITNESS: Yeah. I imagine I told her --

6 Q. BY MR. HOVATTER: When -- was that conversation
7 at that same time frame in early February before he went
8 to Spain, was that when that conversation was?

9 A. I think it was probably the day, the 4th or the
10 5th.

11 MR. MCMULLEN: And Michelle was there for that?

12 THE WITNESS: She was there for both those days.
13 No. She's was there --

14 MR. FABRITZ: She was there for the 5th.

15 THE WITNESS: She was there for the 5th, not the
16 4th. So it may have happened the 4th. But I'm sure it
17 wasn't a secret why I had that rifle from her. I think I
18 might have told her.

19 MR. MCMULLEN: Then the last thing that was --
20 that weighed on our conscious some was the decision to
21 add, I think, three snares after the track was found. Is
22 that two or three?

23 THE WITNESS: I tell you what, going down the
24 canyon, you know, there was a snare in Atascosa Canyon.

25 MR. MCMULLEN: Yeah.

1 THE WITNESS: Okay. And there was another good
2 snare spot below that. Emil and I talked about that
3 before we ever saw the track, this might be another good
4 spot. And I wish I had sooner because a female did skip
5 the first one, came out of the saddle and went through
6 that.

7 MR. MCMULLEN: A female lion?

8 THE WITNESS: Yeah.

9 MR. MCMULLEN: Oh, you missed a lion during that
10 time?

11 THE WITNESS: Well, it didn't go through the set,
12 so yeah. There was a female in the area that we didn't
13 catch because she came down and went into the canyon
14 downstream and I had talked to Emil --

15 MR. MCMULLEN: That went in between?

16 THE WITNESS: But I didn't have that built yet.
17 So I said -- you know, and I don't know if that -- that
18 track that I saw, that might have happened after Emil
19 left. But I knew that there was a second spot that was a
20 lot like the first spot that would have been good to catch
21 anything, so I talked about it with him, I think, right
22 there. There was one -- there were two already in
23 Penasco. There was coming out from the set from --

24 MR. MCMULLEN: Yeah.

25 THE WITNESS: The 5th, there was the set that

1 actually caught Macho B, and another couple hundred yards
2 on the trail there was a good snare tree in the open. It
3 was right after that. We had noticed this tree and said
4 that would be a good snare tree if we needed more. And
5 then we found the track. Then we went up and set one up
6 here.

7 MR. MCMULLEN: Up --

8 THE WITNESS: The track came up here and turned
9 up that way.

10 MR. MCMULLEN: This is a lion or a jaguar, the
11 track?

12 THE WITNESS: This is the jaguar track. So we
13 actually discussed the tree before, before we saw the
14 track. After that we came back and put one in. There was
15 another --

16 MR. MCMULLEN: Because you thought the jaguar had
17 left the country?

18 THE WITNESS: Two mountain ranges to the north
19 three weeks ago. It's been three years since it had been
20 in here. It disappeared for a year.

21 Q. BY MR. HOVATTER: So you put one --

22 A. We put one up here. He saw a boar track. We saw
23 a big boar track here, another boar here, and a sub adult
24 lion track here in this canyon that kind of goes into that
25 ranch. We put one there. And then there was, the night

1 of the 4th, when I was in Ruby, Emil mentioned that there
2 was a site he had across from the camera, there is a
3 camera just downstream or upstream, I guess, there was a
4 snare he had set. And he wanted me to go, and showed me
5 this camera part to go change it out or something,
6 activate that set if I wanted to.

7 And I put these in and thought about it and a few
8 days before we caught Macho B I did end up going up
9 there. The set was stolen. So I put my last snare in
10 there and then put his camera in.

11 Q. So this would have probably -- that would have
12 been also in that fall '08 time frame we probably we
13 established that site?

14 A. I think so. And it was gone. Somebody had
15 stolen it. So I had to use my last one for that rather
16 than put two here or whatever.

17 MR. MCMULLEN: That's why I wanted to ask you
18 those questions so you could frame it in context.

19 THE WITNESS: I appreciate that. It wasn't the
20 jaguar track, throw them all in there. It was more spread
21 these out and use them. I got them. You know, a lot of
22 times a lion will walk around it or through it or
23 whatever, and you just tend to miss them. So to double
24 them up, the better.

25 MR. MCMULLEN: Sounds like had one walk right

1 through there anyway.

2 THE WITNESS: Yeah. I miss them all the time.
3 Yeah. You know, and it looks like, yeah, we saw a jaguar
4 track and wanted to come back and put one right on the
5 track.

6 MR. MCMULLEN: I don't remember but I think we
7 asked you earlier, and I don't remember, but on the -- for
8 the use of lures or whatever on your lion and bear sets,
9 do you guy use --

10 THE WITNESS: I tend not to. I tend to set them
11 up where there are already scratches or already known
12 signs. But I know that Ron Thompson sometimes put a --
13 you know, have a set here, there is a scratch and a turd
14 on either side of the set to get them coming in like
15 that.

16 MR. MCMULLEN: Okay.

17 THE WITNESS: But I've tried it and I can't tell
18 if it works. I don't catch enough. Honestly. Honestly.
19 I don't catch enough. Because also when I came back to
20 set this set that was just above the set that actually
21 caught Macho B, I think the same sub adult tom track was
22 right by that tree. I did see a lion track by that tree.
23 That is something that we parked far enough away from it
24 on the way up the canyon. We said, that looks like a good
25 tree. I might come back and set one there too. When I

1 came back there was a track right at the base of it. And
2 I had to block it, so I covered it to get them funneled in
3 right. But I knew that --

4 Q. BY MR. HOVATTER: Thorry, there is an e-mail from
5 6 February and it's with Mike Pastor and the thing is
6 you're in the field. Now you didn't have e-mail
7 conductivity out in the -- when you were out there in that
8 Ruby area?

9 A. No. But I probably e-mailed him back when I --

10 Q. Well, part of this is to my mind -- let me have
11 you read that and tell me what that meant.

12 A. He talked about a sighting recently, and I
13 thought it was either the Tumacacori sighting or the one
14 we had just seen, the picture we just seen, the track we
15 had just seen. I couldn't find Lobos Well on a map. I
16 didn't know where that was.

17 Q. Okay. So this was actually probably a physical
18 sighting that --

19 A. I don't know. I am still not sure what sighting
20 that was. I assumed it was this picture and that track.
21 That was -- well, that would have been the day after if
22 Emil had done that on the 5th, the night of the 5th, that
23 would have been the sighting. That's what I thought when
24 he mentioned that because I didn't know -- he never spoke
25 of Los Lobos Well. I didn't know. If it wasn't that

1 maybe it was this --

2 Q. I was just trying to, because the -- I wasn't
3 sure if that related to the photos, to those little
4 January photos?

5 A. That's what I wandered to but the Feds told me
6 Emil didn't send that photo to anybody until five days
7 after that track was found. I don't know if that's true
8 or not, but that was news to me. I figured he would have
9 done that. But he went to Spain and was seeing his
10 girlfriend. Maybe he was sidetracked. Who knows? I
11 don't know what his requirements are. I thought they
12 would be quicker. That's why I should have contacted
13 Kirby myself.

14 MR. MCMULLEN: Gary, while you're looking through
15 that, do we want to have him just mark the map?

16 Q. BY MR. HOVATTER: Yeah. That would be really
17 helpful, in kind of a physical sense. In fact, if you
18 want, I actually have one, two, three, four, five colors.

19 MR. MCMULLEN: Do you want to have him do it --

20 MR. FABRITZ: Well, we would have to recode.

21 Q. BY MR. HOVATTER: No. Actually still just us
22 four colors. Whatever. Go ahead. Stay with what you
23 got.

24 MR. MCMULLEN: All right. What we would like to
25 have, if you could on that map, is with the yellow one

1 mark the location where Macho B's track was found, I think
2 it was February 5th.

3 (Difficult to hear due to location to
4 microphone.)

5 THE WITNESS: Penasco. This track might have
6 been --

7 MR. FABRITZ: What's next, Craig?

8 MR. MCMULLEN: With the red one, location where
9 Macho B was captured. With blue mark the locations of
10 snares that existed prior to finding the jaguar track on
11 February 5th. And then with the green, location of snares
12 added between when the jaguar tracks were found, that were
13 added between when the jaguar track was found on
14 February 5th and when Macho B was captured.

15 THE WITNESS: I don't know if that is the right
16 canyon because somewhere right here.

17 MR. MCMULLEN: And then just locations of the
18 cameras probably with --

19 Q. BY MR. HOVATTER: Use that pink right there.

20 A. Blue was the first wave of the snare sets?

21 MR. MCMULLEN: Blue was the location of snares
22 that existed prior to finding the jaguar track.

23 MR. FABRITZ: That is snares when you first got
24 in there.

25 MR. MCMULLEN: Yeah.

1 THE WITNESS: Oh, my gosh, that's why I felt
2 these were so far away. Start at 3:00 in the morning for
3 me just driving there. Yeah. It was a long day.

4 Q. BY MR. HOVATTER: What else?

5 MR. MCMULLEN: I don't -- oh, what sorts of
6 discussions during the course of the early February
7 traffic session or field week and then the mid February
8 field week prior to when Macho B was captured, what sorts
9 of discussions were you aware of that you had either
10 between you and Michelle or Emil and Michelle about
11 jaguars, vicinity, pictures, any of it, presence of the
12 jaguar, the fact that the jaguar had been recently
13 photographed, any of that stuff?

14 THE WITNESS: I didn't talk to Emil directly much
15 after he left because I forget how many hours off.

16 Q. BY MR. HOVATTER: Eight hours.

17 A. You know, he would leave phone messages, how's it
18 going? Did you catch anything? No.

19 But you know, Michelle and I were just -- we knew
20 it was a possibility. We talked about it some but just
21 expecting more of a lion. We saw two bear tracks,
22 different bears and three different lions at least in
23 there. We expected to catch one of those rather than this
24 guy. We were tuned in more to lions and bears.

25 MR. MCMULLEN: Let me just ask you this way, it

1 could have been characterized that you essentially had no
2 discussions about jaguars, the presence of jaguars with
3 Michelle or the possibility of catching jaguars or jaguar
4 behavior, any of that?

5 THE WITNESS: I'm sure we talked about --

6 MR. MCMULLEN: Is that an accurate statement from
7 Michelle or not?

8 THE WITNESS: That we never talked about it?

9 MR. MCMULLEN: Yeah.

10 THE WITNESS: I don't think we talked about it a
11 ton. I'm sure it was mentioned. She saw the track too.
12 She was aware of, I think, the possibility. I don't think
13 we dwelled on it much, but I'm sure it came up. I don't
14 remember, really.

15 Q. BY MR. HOVATTER: Other than Emil's allegation,
16 do you have any reason to believe that Ron had knowledge
17 about this?

18 A. I was surprised when he told me that. No. No.
19 I hope I'm wrong.

20 Q. Marty, you got anything?

21 MR. FABRITZ: On the process for the recapture,
22 are we satisfied of where we were with how it kind of went
23 from --

24 Q. BY MR. HOVATTER: The way that Thorry describes
25 that --

1 MR. MCMULLEN: It fits.

2 Q. BY MR. HOVATTER: It fits with everything else I
3 looked at.

4 MR. MCMULLEN: Absolutely.

5 Q. BY MR. HOVATTER: It's one of those things where
6 we --

7 MR. FABRITZ: It kind of vaporized.

8 Q. BY MR. HOVATTER: There should have been ways we
9 added clarity to the process. The guy that I hold
10 accountable for adding clarity to that part of the process
11 is not you.

12 A. Well, I don't know. I think everybody got real
13 concerned. I wish it would have went smoother too. I
14 mean I think, you know, after Ole and I went in there and
15 saw him, things got real smooth after that. I mean it
16 seemed like a fine tuned machine. To that point it was,
17 do we go, do we not go, who's involved in this. I didn't
18 know I was going to be involved in this. Michelle
19 wasn't. I didn't know if she would be upset that she
20 wasn't included in going in or not but she wasn't included
21 in that e-mail and I wasn't going to do anything about
22 that.

23 Q. Well, I mean part of this is that you get the
24 sense from some of Emil's comments that he didn't want
25 anybody to go in and look at the jaguar. Just let him be.

1 A. He, I think, was -- you know, I guess they do
2 fold up in caves quite a bit from time to time, but the
3 point you got to know, and I think that's just his opinion
4 versus other people's opinions.

5 Q. Yeah.

6 A. I don't think it was because --

7 Q. I should have asked, how did Ole get involved in
8 this process? I know you have a relationship because you
9 have been working with Ole to get drug supplies months and
10 months before this.

11 A. He has been involved in a bunch of big horn sheep
12 captures. He has done amputations and stitched up things
13 and all that stuff. And we went to him because we didn't
14 have a contract for our drugs. So I went to Ole and put
15 in a request for some drugs. And I didn't -- after
16 catching Macho B, I pretty much didn't tell anybody.
17 Neighbors suspected it and I said, yeah, but we're not
18 supposed to talk about anything so keep it kind of quiet.

19 Ole called and asked, were you in and on that,
20 and I said yes.

21 How is he doing?

22 I said, I don't know. He's not too mobile.

23 He said, well, I'm here if you need me. I'm
24 (indiscernible) capture in the bus, and you know, I would
25 be happy to come down there if you need me or not,

1 whatever. I can come down.

2 And I think I spoke to him later in the week and
3 told him we were going in.

4 I'll just come and meet you down there.

5 Bill Van Pelt said, call him off. We don't need
6 him.

7 I said, well, he's on his way. He's out of cell
8 phone service. He's in New Mexico. He is going to be
9 here (indiscernible). Ends up Bill and I and Kurt Bahti
10 go in and can't find him. Looked for signs, found some
11 tracks. Ole was coming in. It would be nice to go get a
12 better look. So he was there and so --

13 (Indiscernible.)

14 A. Achilles's tendon, so that's how Ole got
15 involved.

16 Q. Do you know how Ole found out that the jaguar had
17 been -- how you were in on that or --

18 A. I think he suspected. I used snares.

19 Q. He knew you worked in that area?

20 A. Yeah.

21 Q. I presume that's how Jim the boss got involved in
22 this thing?

23 A. Jim was with Ole.

24 Q. With Ole. And Kurt got, I mean that's his
25 sector, so but it was -- was there any particular reason

1 why he was down in that area for that?

2 MR. FABRITZ: Kurt?

3 Q. Yes. It's his sector. Was it just that he
4 was --

5 A. I think. I didn't set up who was going in on
6 that. Could have been, you know.

7 Q. Just, again, a lot of this is just getting
8 clarity of how we made the decision because part of the
9 question was, it sounded like there was -- part of the
10 plan was to dart him, take a blood sample, and then let
11 him go. And the question, part of the question was if we
12 had darted him and found out he was in really bad shape,
13 letting him go might not have been a very good option and
14 yet we would have -- the thought of you guys trying to
15 haul that thing out by hand.

16 A. I don't know, if you keep him on drugs and all
17 this. I think maybe Ole's thought was, get blood, see
18 what's going and do what we did like we did it. He wanted
19 to get a physical assessment of it, probably got to look
20 at --

21 Q. But you see that's kind of the stuff we're
22 gaining aspect of kind of how we got to -- what were the
23 pieces that you needed and for all of us to put it in
24 place so that when you actually did the recapture and then
25 the withdraw of the animal from the area.

1 You got anything else? You got anything else,

2 Marty? Marty, on that?

3 (Tape ended.)

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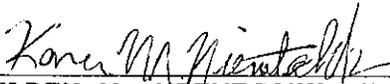
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CERTIFICATE

I, Karen M. Niemtschk, do hereby certify that the foregoing 78 pages constitute a full, true, and accurate transcript of all the taped proceedings had in the above matter, all done to the best of my skill and ability.

DATED at Phoenix, Arizona, this 22nd day of July 2009.



KAREN M. NIEMTSCHK, No. 50447
Certified Court Reporter

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

TRANSCRIPT OF INTERVIEW
JULY 15, 2009
THORRY SMITH
VOLUME II

Individuals present at the Interview on 7-15-09:

- 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
- Thorry Smith

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Transcribed by:
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No. 50447

1 THORRY SMITH,
2 pursuant to Garrity Warning, was examined and continued to
3 testify as follows:
4

5 EXAMINATION

6 BY MR. HOVATTER:

7 Q. Gary Hovatter, Marty Fabritz, and Craig McMullen
8 and it's on Wednesday, the 15th of July. We have got
9 Thorry Smith. And, Thorry, as you know we're -- just want
10 to remind you that we are still doing this under Garrity
11 conditions and I had some additional questions that I
12 wanted to ask but you had something you wanted to talk
13 about, so I'm going to turn this over to you.

14 A. Okay. 31st, after Emil had been on the phone and
15 told me what he had done, Janay, he also told me that he
16 had called Terry Johnson and told him that he had placed
17 him scat in those locations. And they had a discussion on
18 whether that was too close or not, I guess, and then it
19 sounds like Terry went to the director, to Larry, and Emil
20 called and wanted to retract his statement about putting
21 scat there and said he had a notebook. He said, oh, no, I
22 didn't have scat there, but I don't think that notebook
23 existed. He told me that notebook did not exist.

24 MR. MCMULLEN: Wait. Who had a notebook?

25 THE WITNESS: Emil, documenting where he put scat

1 on which cameras and all this stuff.

2 Q. BY MR. HOVATTER: So Emil, that was in, what, a
3 second conversation with Terry?

4 A. Yeah. He talked to Terry before he had talked to
5 me. And I think at that point Terry went to the director,
6 investigation must have started because no one was
7 answering phones after that point. So Emil called Terry
8 back to say, actually, no, we didn't put scat there. He
9 didn't get an answer but he left a message, I guess.

10 Q. Okay.

11 A. So this is where my mind set was, I should have
12 head flashes, all gone bad, I was just hitting from every
13 angle and I was just out of my mind to go along with
14 that. And when the -- in the evening I got a call from
15 Mike and Chasa, and they called Chasa and let her know
16 that scat was not at the snare site, which it wasn't,
17 where we caught Macho B. And they had recommended that I
18 don't talk to anybody at that point. Emil was already on
19 his way over. We didn't have a plan at that point.

20 Q. Who told Chasa there was no scat up there?

21 A. I did. I left a message for her earlier in the
22 day, there was no scat at the site that Macho B was
23 caught, and that's the truth as far as I --

24 Q. Right.

25 A. I had been up and down that thing for two weeks.

1 Q. Did you address the other scat with her?

2 A. I don't think I did at that point. But I'm not
3 sure. I don't remember. I know that I made a point that
4 there was no scat at --

5 MR. MCMULLEN: But you had conversation with her
6 or you left her a message?

7 THE WITNESS: I left her a message in the
8 morning. And I was going to talk them again, Mike and
9 Chasa, on phone in the conference call, and they said,
10 well, we got this investigation. We can't talk.

11 Q. BY MR. HOVATTER: Yeah.

12 A. At that point, but they had recommended that I
13 didn't talk to anybody else, and then I got the official
14 notice of investigation that directed me not to so I don't
15 know where I am as far as talking to somebody when it was
16 recommended this is what the director said.

17 Q. Let me -- here are some of the questions, did
18 Janay know the specifics on where those snare sites were?

19 A. Yes.

20 Q. She had walked them?

21 A. Yeah.

22 Q. When had she seen those? When do you know that
23 she had seen those?

24 A. Those snare sites?

25 Q. Uh-huh.

1 A. The 4th when we took --

2 Q. So she was with --

3 A. We were together.

4 Q. So you walked that camera, you were all together
5 when you were walking the camera loop and --

6 A. Right. The last part of the day she split off
7 from us and we each did something. I rebuilt a snare.
8 Emil rebuilt a snare. She dealt with the camera. And no
9 word at all about placing scat there. So and then we all
10 met back at Emil's snares and from there it was getting
11 pretty dark so he headed up to the last snare and we all
12 built that together in the dark with our head lamps. But
13 that together and left. That's the one she said she
14 placed the scat at Emil's direction.

15 Q. Do you know if she was ever out there again
16 after? Do you have any idea?

17 A. Yeah. Emil told me she was at the site where
18 Macho B was caught. I don't know when, sometime after the
19 capture.

20 Q. Oh, after the capture.

21 A. All heart broke about it and looking for males
22 caught in the tree stump and all this stuff. I don't
23 know.

24 Q. So looking for signs --

25 A. A lot of this is what Emil tells me. I don't

1 know what is truth, so, you know, this is just what I
2 heard, so I think she had been back. And from what Emil
3 says a bunch of people went down there. I think a lot of
4 people in that jaguar clique knew the general area of that
5 place and a lot of people would walk down just to see the
6 area.

7 Q. So he said Janay went there after the recapture
8 euthanization or after the original capture.

9 A. I got to think it was after the euthanization but
10 I don't know that for sure.

11 Q. So to the best of your memory?

12 A. I don't think she would have been all broke up
13 because he was still alive at that point. I think it was
14 after that. And I, you know, I think it was February 10th
15 that Janay had offered to show me where she knew a Tom
16 lion was kind of south of Arivaca kind of by the Buenos
17 Aires in those hills over there. So I went after doing
18 the loop and met her at the juncture in Arivaca there and
19 she jumped in the work truck and we went and checked out a
20 spot. She had a camera that catches toms quite
21 regularly.

22 No mention still of the past, I put scats out,
23 nothing. And you know, she said this is where we get a
24 tom. There was one good snare spot to do it but there was
25 so much cattle I didn't feel comfortable working that

1 area. So I didn't put a --

2 Q. Where was that?

3 A. That was north of Ruby and southwest of Arivaca.

4 Q. And during the at course of that there was no
5 conversation about the jaguar or --

6 A. Not about the scat being placed there, anything
7 like that. Still, I don't know, I just have a feeling
8 that they kept that to themselves.

9 Q. Did Janay know -- she was the snares were -- did
10 she know which one was the one Macho B was captured in?

11 A. I'm sure that --

12 MR. MCMULLEN: Emil told her.

13 THE WITNESS: Because she actually had access to
14 that website for the collar.

15 MR. MCMULLEN: Oh, she did?

16 THE WITNESS: For a little while.

17 MR. FABRITZ: I think I remember reading
18 something about that.

19 THE WITNESS: And then Emil and I said, I don't
20 know who has this stuff, and Jack and him talked about
21 switching the password. They had it. The Game and Fish
22 never had that.

23 Q. BY MR. HOVATTER: Yeah.

24 A. I never was privy to it, so I never knew it. I
25 always had to go through Emil or Jack or even Emil's

1 father had that password, but I sure didn't. Every time I
2 needed to know something, where it was, I was on the
3 phone, call where it was on that recapture, it was a big
4 pain in butt, but it's just the way it worked, I guess.

5 Q. I want to make, I'm pretty sure but I thought I
6 would go ahead and nail this down. Whose idea was it to
7 make up that story?

8 A. I don't know. It was -- you know, we were both
9 part of it. You know, I think he drove all the way from
10 wherever he was, outside of Sonoyta to come make something
11 happen, I suppose. I think we were both on the fence.
12 And I remember saying, you know, I would rather tell the
13 truth. And I remember him saying sometimes you can't tell
14 the truth. I remember him say again, well, what do you
15 want to do? I remember it going back and forth, you
16 know.

17 Q. Well, how did the idea of -- how did the idea of
18 not -- of changing from what you knew to be true, how did
19 you get to that? Because it doesn't sound like it was
20 just one -- one decision. It sounds like it was --

21 A. It was a long conversation.

22 Q. How long did the conversation go on?

23 A. Oh, from evening until probably late in the
24 night.

25 Q. Two, three, four hours?

1 A. Yeah. Probably. You know, I don't -- back and
2 forth. I don't know what to do. I don't know what to do.

3 Q. What was causing the dilemma?

4 A. Having the department be in a bad spot. We had
5 our whole foundation was it was an inadvertent capture.
6 Suddenly it's like -- it's like when you're a kid in
7 junior high and someone pulls your shorts, you cover up.
8 That was my reaction.

9 Q. Yeah.

10 A. That was my reaction --

11 Q. Let me ask you this, for you, that was true, it
12 was an unintentional tag?

13 A. Right. And I feel stupid now because I had no
14 part. Emil went to go clean up this mess by himself. I
15 shouldn't have been involved in that conversation at all.
16 You know, I guess he always said no, we are in trouble. I
17 never thought it was we. I had no part of that. But I
18 felt bad for him. I felt bad for the department and since
19 I was tied with all this, I didn't nowhere to go with all
20 this. Because right away, you know, the papers were on
21 us. The public hates us. You know, all these things
22 getting said in the department and then Janay's statement
23 and then Emil the same say coming out with something else
24 I was just blind sided on all sides. I just caved.

25 Q. When were the snares removed, physically pulled

1 out?

2 A. I removed two the day of the capture. Emil
3 removed the rest when I was on vacation.

4 Q. So was it just -- when did you start on vacation?

5 A. Probably like March 2nd. It was put down --

6 Q. Yeah. Yeah.

7 A. Let me see. That whole thing was just a moment
8 of weakness and I've regretted it ever since. I got a
9 clear head in the days after and I just saw, what did I do
10 and then I was already talking to the Feds. I couldn't
11 clearly say. I have a big blank from the 2nd to the
12 17th.

13 Q. Well, I mean I could always check. We have it in
14 the --

15 A. I think I was gone two or three days after the --

16 Q. Do you have any memory of when Emil got back from
17 Spain?

18 A. Yeah. He got back when I think I was in Hawaii.
19 He was gone for about a month or so.

20 Q. You mentioned something about Chasa saying that
21 if you capture the jaguar to not snare it?

22 A. Not to collar it.

23 Q. Not to collar it. Here's the question, why do we
24 end up collaring it?

25 A. I remember seeing in that permit that we had the

1 green light to do that, the permit to do it, to collar it
2 if the opportunity came up.

3 Q. Yeah.

4 A. And after that, you know, I've got an e-mail from
5 her saying we did a great job.

6 Q. Yeah. Yeah.

7 A. So I mean, I guess the last word I heard from her
8 was not to but then when the collars came in and we're
9 going down there to set snares, I heard no different.

10 Q. And see what I'm really trying to get at on that
11 is just the issue I'm real interested in --

12 A. Communication --

13 Q. How the supervisory, you know, kind of matrix in
14 which you should have been able to operate?

15 A. Right. I think she was --

16 Q. How that worked so that guy at the very point of
17 all of this thing had the right information and was
18 appropriately informed about what the department intent
19 was. And I mean there are a whole bunch of folks outside
20 of your immediate piece of ground that I'm interested in
21 how that worked.

22 A. What I remember, the last conversation I remember
23 with Chasa was in her office, I think with Dean, talking
24 about this. And I said, well, we have a collar and I
25 think there are permits out there, and she wasn't aware of

1 the permit. She was in the process of the EA. She said,
2 don't collar it, and that was probably sometime in January
3 I would imagine. And then the collars came in, we started
4 getting prepared for it, went down there and went to
5 work. And, you know, I had had a permit. I had stuff if
6 one was a caught to collar it.

7 But I don't think anybody was on the same page on
8 what was to go and what wasn't. To me it sounds like
9 Chasa was aware of some things. EA was probably a great
10 idea but was unaware of what the jag conservation team had
11 already come up with so --

12 MR. MCMULLEN: Well, I think I remember hearing
13 or knowing at least somebody in your chain of command knew
14 you guys were packing a collar around.

15 THE WITNESS: Yeah. I was open with that last
16 fall.

17 MR. FABRITZ: Well, Kirby was up on that. He
18 said yesterday Kirby was aware you guys were packing a
19 collar around. I remember that.

20 THE WITNESS: I remember him, I think he even
21 gave it to him, because he only checked snares for a
22 little in there, but I think he even had it for a short
23 time.

24 Q. BY MR. HOVATTER: What's your opinion about why
25 Janay lied?

1 A. I think she was heartbroken that things didn't
2 work out for Macho B and she wanted to make sure that no
3 one ever dealt with a jaguar like that again. I think she
4 read things about snares, and I have had minimal trouble
5 with snares. I have had sore feet with animals and
6 whatnot. I think Macho B ended up pretty well. He walked
7 three miles, which is further than any lion I've ever
8 snared had done, but it might have been hard on the old
9 cat. I don't know. But I think that she is -- I think
10 she was -- she had first seen that cat up in I think in
11 the Coyote Mountains back in '99 or something, way back
12 then.

13 MR. MCMULLEN: Macho B?

14 THE WITNESS: Yeah. And she kind of kept it to
15 herself until she heard about Jack Childs' project and
16 then she got in on that and she had been helping with
17 cameras. I think she was just infatuated with the animal
18 and she was really tied to it emotionally.

19 MR. MCMULLEN: She actually saw it?

20 THE WITNESS: She saw it in the field. It
21 growled and did that stuff at her. But you know, I think
22 that she was emotionally tied to it and when she found out
23 things went south and that article in the paper from Tony
24 Davis about when Macho B did he have to die, that one, it
25 just put her over the edge and she made up -- concocted a

1 story to make sure that it never would happen. To drag
2 Game and Fish into it she said I was in there watching
3 this whole thing go down with her and Emil putting scat
4 there.

5 Q. BY MR. HOVATTER: A fine human being.

6 A. You know, the feeling I get from her is she has a
7 good heart but I think she was willing to do that to
8 somebody, to lie like that, it's tainted too. Yeah.
9 There are problems there for sure.

10 Q. I'm going to ask you something, methodology wise,
11 you're, you know, you're not a jaguar guy. Was there ever
12 a discussion on the methodology about, you know, we know
13 that there is scat stations that line, scat stations and
14 that they -- that among the ways that they will to be
15 attracted to something with all the senses that they bring
16 into play, that scat probably is one of those things that
17 attract their tension. Was there ever a discussion of
18 whether or not that same methodology is, in fact,
19 effective for jaguars?

20 A. I don't remember a conversation but I just
21 assumed so because they put them by the cameras.

22 Q. And that's bait?

23 A. I don't think it would have happened before the
24 capture but afterwards I'm trying to think if I talked to
25 Emil about -- I assumed so. I assumed so.

1 Q. And I'm just curious as to -- again, you're not a
2 jaguar expert and I know that.

3 A. A cat is a cat.

4 Q. So I guess is that kind of the basis for that
5 belief without having the opportunity to really dig into
6 the literature and all the --

7 A. I would assume that scat would work for a jaguar
8 like it would work for a lion.

9 Q. But you never had any conversations with Emil
10 about the methodology from the standpoint of sort of the
11 scientific background of the methodology?

12 A. I don't remember one. I'm trying to remember if
13 there was one that any that we talked. We must have
14 talked about it some, you know.

15 Q. It's again, it's a bigger issue. It's broader
16 than. It's just kind of something -- and part of it was
17 kind of sparked by my memory of you saying that you had a
18 thought that, at least my memory is of you saying that you
19 thought part of what Emil might have been concerned about
20 was the fact that he had not articulated that methodology
21 in that Journal of Mammology article.

22 A. I think that's why it was so quiet. I don't
23 think that, I haven't read the paper in awhile, but I
24 don't think in his methodology he said he was putting
25 female jaguar scat in heat out there. His point in that

1 paper was that there was a male jaguar that may have been
2 residential to the United States. He didn't say that he
3 put female jaguar there maybe to keep him that way. So
4 that might blow that paper out of the water. I mean, if i
5 was an editor and I located that paper and I realized
6 this, I mean, that's definitely something that he should
7 include in that.

8 Q. Did Emil ever say specifically that he had that
9 concern?

10 A. No.

11 Q. And so I assume --

12 A. That's kind of my thought.

13 Q. Yeah. Now did you and he ever discuss his paper
14 that he did?

15 A. Oh, way back when, last fall I said I read it and
16 I said, pretty real neat paper. I thought it was
17 interesting. But you know, until, you know, out there in
18 the field in Sycamore Canyon I never knew scat was
19 involved in this. And then I find out in the papers that
20 since 2004 off and on. It seemed like a bunch of people
21 knew. So I was surprised it wasn't in the journal because
22 it certainly was going to come out sometime. I'm
23 surprised that he had the balls to not put it in the
24 paper, but I guess he knew it wouldn't fly if he did. I
25 don't think it would have.

1 Q. You know, it's just a thought that was
2 interesting.

3 A. Another point about Janay, I know she's trying to
4 write a book about the underworld of Arivaca. So I don't
5 know if she wrote this to try to get herself famous
6 because people.

7 MR. MCMULLEN: The underworld of Arivaca?

8 THE WITNESS: Yeah. There is one.

9 Q. BY MR. HOVATTER: Frankly, I wouldn't buy that
10 book.

11 A. You know, I didn't know Janay was going to be
12 there that day. I didn't know Emil had scats for that day
13 out there. The whole thing just went south.

14 Q. Well, it's, you know, as I look through this, I
15 mean, from the standpoint of methodology, we had a very,
16 very robust methodology for deliberate take. There is a
17 quite a bit of energy went into the protocols for
18 deliberate take, talks about the types of the people you
19 have on scene, the --

20 A. Yeah, fed helpers.

21 Q. When you start looking at what about this --
22 about incidental or working in circumstances where it may
23 not be your intent but it is a possibility. You know,
24 when does a possibility become a likelihood. What's the
25 degree of likelihood. You know, so the assessment of, you

1 know, is this -- when does likelihood become -- when does
2 possibility become very likely? Is it this many miles
3 away and this many days?

4 A. I don't know if you ever really hammer that
5 down. I mean people can argue that forever. Tucson
6 will. They will come down and say you should not even be
7 in that country. But you when is catching and killing a
8 jaguar by accident, you know, outweighed by the need to
9 get data for all those species crossing the border? I
10 mean that is going to be -- the Game and Fish has already
11 been forever. I mean we got to get our work done.

12 Q. Well, I think there is, in fact, a debate between
13 people, both reasonable and unreasonable, about what the
14 appropriate methodology and the degree of actual hands on
15 technique you use. And I mean, that's not just an Arizona
16 thing, that's across probably the whole spectrum of large
17 animal research around the world. So, you know, we're
18 kind of caught up in some of that same -- you see that in
19 some of the minutes from the various jaguar conservation
20 teams.

21 Okay. Did you have -- is there anything else
22 that you think we ought to know that we haven't --

23 A. I can't -- I thought about that as soon as I
24 pulled into, oh, man. I apologize for having to come back
25 and make you late for your next --

1 Q. No. Don't apologize.

2 MR. MCMULLEN: We appreciate your willingness to
3 do that.

4 THE WITNESS: I wasn't trying to hide anything.
5 I just spaced that. Maybe you guys already know Terry
6 Johnson's story. I don't know. But, you know, the fact,
7 you know, Emil had talked to him and said one thing and
8 called back. I think by then the investigation started.
9 No one was answering their phone. I couldn't get ahold of
10 Chasa. I couldn't get ahold of Terry Johnson either. So
11 it must have started by then, and you guys must have been
12 having a plan before calling people back.

13 Q. BY MR. HOVATTER: Marty, you got anything you
14 want to ask?

15 MR. FABRITZ: I actually do. Yesterday you were
16 telling us about how all the calls came in and all this
17 stuff was at the last second. You were talking about
18 Emil's trip and everything. And I was going to go back
19 and check the tape and I couldn't remember but I think, I
20 think you mentioned that you had -- was it the refurbished
21 jaguar collar?

22 THE WITNESS: Actually that one just came in to.
23 That was sent out -- if you don't deploy these thing the
24 year sometimes that they are programmed, they get all
25 messed up. Like when we did Pelonics ones, if you don't

1 deploy it the same year that it was programmed, not just
2 built but programmed, you put it out a year later, the
3 upload window changes and you might be a day off so all
4 your cats might be uploaded on Wednesday and you got this
5 one weird one that opens Tuesday. So Emil had sent that
6 back maybe even for a new battery and you know --

7 MR. FABRITZ: During the down time?

8 THE WITNESS: Right. Right. I think probably he
9 sent it off to get refurbished and we got it back about
10 that same time too.

11 MR. FABRITZ: Now did he get that? Did they send
12 it back to him or --

13 THE WITNESS: I think so.

14 MR. FABRITZ: Did that come with other the ones?

15 THE WITNESS: No. That came with him.

16 Q. BY MR. HOVATTER: And then he handed that off to
17 you then when he left, before he left so on the 5th he
18 probably handed --

19 MR. FABRITZ: So when -- you also said that you
20 guys did all the bear and lion and activated them all?

21 THE WITNESS: In Ruby.

22 MR. FABRITZ: Did you -- when did do you that?
23 Was that in that first couple days?

24 THE WITNESS: I think it was somewhere into that
25 week. You know when --

1 MR. FABRITZ: Between the 5th and the 9th?

2 THE WITNESS: I don't remember. I remember there
3 is e-mails going back and forth from the owner of
4 Northstar about, you know, that collar. Emil said, we
5 should probably turn that thing on, make sure it turns on
6 to activate the canyon.

7 Q. BY MR. HOVATTER: Yeah.

8 (Indistinguishable due to multiple speakers.)

9 MR. FABRITZ: What I'm trying to figure out is --

10 THE WITNESS: Should have done that for our
11 collars too. I don't know if I did that --

12 MR. FABRITZ: Well, I'm still trying to figure
13 out if he had -- if you guys had the collar or whatever on
14 the 4th or 5th, and then all the sudden Emil goes to Spain
15 and then just out of the -- if you look at the e-mails
16 then out of the blue on the 13th, it's like, oh, gee I
17 guess we ought to activate the collar and all that
18 started. I'm just trying to figure out, was that the same
19 time as the other collars? It's just not clear to me.

20 THE WITNESS: I think around then I activated
21 them all. I said it's probably a good idea for that I
22 might as well do it for them all. I should probably have
23 done that day one. I just felt like to leave them on not
24 knowing what I'm going to catch is going to waste
25 batteries but it's better than not having them click on

1 when you're in the canyon.

2 Q. BY MR. HOVATTER: Thorry, I know that you -- you
3 took the VHF transmitter off of that. Was that -- did
4 Emil take it off or you take it off?

5 A. I took it off. We had discussed it. I was
6 concerned that people are starting to track collared
7 animals.

8 Q. Yeah. I can understand the rationale for doing
9 it.

10 A. Yeah. I think he had -- he didn't -- he knew
11 that people knew that jaguar was there. He feels that
12 people from Montana came down and were hunting for him
13 saying they were lion hunters and all this stuff, and I
14 don't know whose tricks got -- who has tricks, so we
15 decided to take that -- that turned out to be a pain in
16 the butt trying to recapture him, but we just felt that
17 might have been the safest thing for him. I don't know if
18 that was our call or not but --

19 Q. Well, that's and on the ground decision that you
20 make. That wasn't a -- was Emil with you when you took
21 that off?

22 A. I think he was already gone.

23 Q. He was already gone?

24 A. Yeah, I think so. Yeah. Just had the screws on
25 the side of that battery VVHG compartment, took them off.

1 Q. Since he left on 5th so that would have been
2 sometime after the 5th?

3 A. Probably the 6th or 7th.

4 Q. Yeah. I hadn't thought about that when we were
5 doing that recapture.

6 A. Oh, I could have used that VHF.

7 Q. That would have been handy.

8 A. That really would have. No. I realized -- if I
9 would have realized then that if we had to do something,
10 you know --

11 Q. Yeah. I'm sure there's -- I don't, you know,
12 that's one that is just not worth second guessing.

13 A. I just feel that, you know, that would have been
14 a pretty high profile animal to go after if you're a
15 poacher probably -- but to have his hide would have been
16 priceless. So I don't know if people would have tried or
17 not and I just figured to take.

18 Q. Were you aware in all the ranch lands and all
19 down there, you know, you're not in the law enforcement
20 side of this thing but moving around in that ground, were
21 you aware of anybody who was routinely doing depredation,
22 snaring on private lane for --

23 A. No. No. I think I heard that, who was that, out
24 of Arivaca, was she Commissioner at one point?

25 Q. Oh, Chilton.

1 A. Yeah. I thought they had -- I don't know, I
2 heard somebody out in Mexico way may have been taking a
3 lot of cats on the other side. Word of mouth from Emil,
4 though. But I don't know where or how many or who it was
5 or what, but I don't even if it was snares. I just heard
6 there were a lot of cats if you move south as well. You
7 still got risk I guess. What are you going to do?

8 Q. Yeah. Marty, you got anything else?

9 MR. FABRITZ: Yeah. I think we had one follow
10 up.

11 Q. BY MR. HOVATTER: I was going to ask, do you have
12 any memory when you took that VHF transmitter off, was
13 that something -- was that would have been the time that
14 you and Michelle were working out there then?

15 A. Probably so. I can't find that thing. Emil
16 wanted it back to do something and I actually can't find
17 it.

18 Q. The VHF?

19 A. Yeah. It's this big. I don't know where it
20 went. I don't know where it is. I think probably -- she
21 might have not have been there when I did it but I
22 remember unscrewing it. I think I was in the truck doing
23 it. She was in and out running that group with me.

24 MR. FABRITZ: Yeah. Understood. Did you talk to
25 her about taking the VHF off?

1 THE WITNESS: I think maybe. Yeah. I don't
2 think it was -- I mean I think even wrote on the data
3 sheet, I think, that it was taken off. But yeah, it
4 wasn't a secret to anybody.

5 Q. BY MR. HOVATTER: I was going ask, when your
6 field data sheet gets transferred or those capture sheets
7 gets transferred then to electronic data base.

8 A. I know they are different.

9 Q. To some extent that doesn't surprise me. Because
10 as I update things I fill in blanks that -- because some
11 of the things I noticed were different. There was no real
12 reason for you to fill some of that in, like who were the
13 observers. But it did need to be in the sheet later. But
14 who actually did -- do you know who actually did the
15 electronic inputting?

16 A. I did that one.

17 Q. You did that?

18 A. Yeah.

19 Q. So, and again, the example would be on your field
20 data sheet doesn't note the observers. Well you know who
21 the observers were, you were there. I understand that.
22 You make a -- you talk about -- you make the note about
23 incidental take in that?

24 A. Uh-huh.

25 Q. But that's -- I thought that you probably were

1 the guy that was doing the input but I also know that from
2 the way we operate sometimes with you guys out in the
3 field it could have also been faxed or sent to somebody
4 and it could have been inputted and you could have talked
5 them through it on the telephone or something. Okay.
6 That's just a tying up a -- dotting an I on something that
7 I was interested in. Anything else from you guys?

8 MR. FABRITZ: I don't, no.

9 THE WITNESS: Thanks again for your time.

10 MR. FABRITZ: Thank you.

11 Q. BY MR. HOVATTER: Thank you. I'm sorry you had
12 to make the trip. I appreciate it. This does need to be
13 done in person as opposed to --

14 A. Okay. That's fine. I don't have a problem with
15 that at all.

16 (Tape ended.)

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I, Karen M. Niemtschk, do hereby certify that the foregoing 26 pages constitute a full, true, and accurate transcript of all proceedings had in the above matter, all done to the best of my skill and ability.

DATED at Phoenix, Arizona, this 22nd day of July 2009.

KAREN M. NIEMTSCHK, No. 50447
Certified Court Reporter

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

TRANSCRIPT OF INTERVIEW
THORRY SMITH
AUGUST 4, 2009

Individuals present at the Interview on 8/4/09:

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
Thorry Smith, Employee

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PROCEEDINGS

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MR. HOVATTER: Thorry, we got kind of probably two days' worth of interviews left. It is kind of back to clean up a lot of odds and ends, and there is some things on this, most of this is kind of filling in the blanks on some of the questions we have already talked about. Well, not filling in the blanks, but some of this is just that there are some questions in retrospect I just wanted to get more detail.

MR. SMITH: Are we still on the record?

MR. HOVATTER: Oh, yeah. I am sorry, we are still on the record. Do you want me to reread that?

THE WITNESS: No, no, that is fine.

MR. HOVATTER: But you are right. I apologize. I should have said that right up front. This is still under Garrity. So it is an administrative investigation. Anything that you provide here during the course of this is not -- cannot be used in a criminal proceeding, and I think those are kind of the same rules.

EXAMINATION

BY MR. HOVATTER:

Q. But when, and again, I factor in, we are asking you to go way back in your memory, and we are also factoring in the hindsight aspects of this.

When you were gathering documentation back before, you know, getting protocols and things, those sorts of

1 things, now, when Ron sent you, this is just a detail thing,
2 is he sent you on that -- I couldn't tell for sure if he
3 just sent you that jaguar section out of that or did he send
4 you the whole thing?

5 A. He sent me the whole thing.

6 Q. He sent you the whole thing. Okay. That is --
7 for some reason, because of the way that Bill sent it back,
8 the way he labeled that, he labeled that Section 6 --

9 A. Right.

10 Q. -- part of it, but that was just the one piece,
11 but I wanted to make sure. I got an impression later that
12 you probably got the whole thing, not that it matters. None
13 of the rest of it was really particularly germane, but I was
14 just trying to make sure that I had it clear in my mind.

15 Did you gather other documents as a part of that?
16 I know that is what you got from Ron, but did you gather
17 other documents when you were getting, you know, in that
18 preparatory phase of being prepared in case that you had
19 that eventuality?

20 A. I had something from the Jag Team, a 2000
21 document --

22 Q. Yeah.

23 A. -- summarizing things. Terry Johnson asked for it
24 after the capture, so I don't know where it is now.

25 Q. Well, now, do you remember who you got that from?

1 A. I think I had that floating around. It was
2 something I might have found on a shelf. I have had it
3 for --

4 Q. See, that is important, because we are now getting
5 at process on that, because I think the document that -- you
6 refer to the document, and it would have been an older one.
7 There was newer stuff out there I am wondering about,
8 because, you know, part of it goes to how do we make sure
9 that our folks hit the ground with the most current
10 information?

11 A. I didn't find stuff on the Jag Team site that was
12 current. Those things, I forget how many years old, at
13 least two or three.

14 Q. But you went to the Jag site on some of that stuff
15 to find --

16 A. Yeah, I couldn't find the most latest. I noticed
17 that a lot of it has been put on since this whole thing has
18 been happening.

19 Q. You know, in reaching back and looking, was there
20 any -- was there kind of -- was there a moment in time or
21 something that triggered you thinking that, you know, I
22 ought to get ready for this?

23 A. There must have been, you know, I knew it was
24 common knowledge pretty much that a jaguar was in that area,
25 you know, and when Emil said the snares are still there,

1 that is where we were working. We had always been
2 questioning that, what about a mistake? What happens then?
3 We had the collar for that, you know, for that purpose if it
4 ever happened.

5 Knowing that we were going to be in that area, I
6 guess that is why I needed protocol and needed to find out.
7 That was actually real late when we got that drug
8 information handling protocol. And as far as permits,
9 whatnot, I heard they were out there, and everything seemed,
10 you know --

11 Q. You are not the only person. In fact, there's
12 only, I guess, Jack Childs and Warner Glenn are probably the
13 only -- at least the only people we know up until the time
14 we caught that animal who have actually seen one as opposed
15 to seeing pictures of one.

16 A. I meant seeing the permit itself. I knew the
17 Department had them for an incidental capture and also an
18 intentional capture.

19 Q. Now, you first connect with Emil by e-mail on 5
20 October. That's a note. You just said, hi, I am Thorry
21 Smith?

22 A. Right. I had -- Kirby and -- Kirby and Michelle,
23 I think, had bumped into -- no, Kirby and maybe Julie Young,
24 I forget, saw him at the gas station, I think, and, you
25 know, I guess they had talked something about the area and

1 whatnot, and Ron had contact with him, I think. And I
2 figured, well, you know -- (indistinguishable).

3 Q. You are thinking it was Ron that was
4 working the -- that got Emil under the subcontractor
5 Statewide Lion Contract?

6 A. Right.

7 Q. Now, you were talking here about we got to get
8 together. There is no indication or reply from Emil. Did
9 he ever reply back to you or did you guys have that meeting?
10 I know you ultimately did meet. Did you ever have that
11 meeting that you were talking about?

12 A. He sent me another e-mail back saying he was
13 interested or call him. I remember hearing that. I thought
14 it was an e-mail form. Then when I got down there, I called
15 him. We had met in Patagonia. He had a girlfriend there,
16 and I showed up (indistinguishable), you know, we went for a
17 walk, and we approved on some locations. He had cameras in
18 that area as well. He said, we've been getting lots of cats
19 coming through here in this set. I was just poking around
20 in a rush to set some, move some, add some, whatnot.

21 Q. At that time when you were having that discussion,
22 you know, in hindsight as you look at that discussion, was
23 there anything that you think about then that you see
24 differently about that, going around and looking at sets and
25 kind of comparing notes, I imagine, kind of talking shop, is

1 there anything about that, that looks different to you now
2 looking back at it?

3 A. Not in that early stage, you know, you know,
4 setting those snares before we caught the jaguar. Those
5 things had changed. Back then, you know, I think he got his
6 master's from, you know, lion DNA, stuff from scats, or
7 (indistinguishable) I wasn't sure, but he was interested in
8 helping out. And I think he was part of that, I don't know,
9 I guess he had worked something out with passing Jaguar --

10 Q. DJDP?

11 A. Yeah, protection project. You know, it seemed
12 pretty simple back then. We worked together. He helped me
13 out. He was paid for helping out, for jaguar and different
14 things, within, you know, the mountain range. I had been
15 going to Patagonia since the '60s, so I really wasn't
16 focused on the jaguar.

17 Q. You know, it is pretty clear from your stuff that
18 you had that Kirby was in your mind the supervisor for this
19 project. Did you, you know, the only way to ask it is do
20 you think Kirby saw himself in the same way that -- did he
21 see himself as being in charge of that from your
22 perspective?

23 A. I believe so. I think he was spread pretty thin,
24 a few projects, he kind of just let go, so if you want to
25 snare, you snare. So, you know, but yeah, Kirby was in

1 charge of that. I told him we were going to Patagonia to
2 set snares. I didn't tell him where. He didn't ask.

3 Q. No, it is just -- it relates to some other things
4 that I have been thinking about process wise.

5 A. Yeah. I mean, I don't know. It is crazy,
6 I think, when you get past that three level, you have just
7 got so much underneath you, you are spread so thin. I am
8 probably going to make that step some day, but I dread it at
9 the same time. It is just if you have got a problem, he's
10 tied up with sheep stuff, he has got this. This is a big
11 one. This is probably big enough by itself for a full-time
12 biologist, so I don't know.

13 Q. Thorry, this next question, this is probably a
14 hard question for you to hear. It is a hard one to ask, but
15 I have got to ask you. Are you sacrificing yourself to
16 protect anyone in this?

17 A. Not anymore. I did when I left, yeah.

18 Q. Julie Young, what was her involvement in that Bear
19 and Lion Study from your perspective? You weren't the
20 supervisor. What was your perspective on it?

21 A. She was a co-team member, I guess, you know, it
22 took several entities to put this together. She was one
23 that would write grants to try to get funding for collars
24 and whatnot, and she had a bunch of products she was working
25 on. This was one of them. She would try to come down and

1 take a look at it once in a while, but she helped out for a
2 couple of weeks checking the hair snags.

3 Q. Again, this is, like I said, this is getting
4 cleanup on this. I think I know what this is, but I don't
5 want to surmise. I want you to go ahead and ask it. When
6 you send this note, the other project, do you recall what
7 that other project was?

8 A. The other project was the Lion Big Horn
9 interaction thing that was being done in the Santans.

10 Q. Okay.

11 A. Then when Ted passed, rather than continue with
12 the Pronghorn, I think they just scrapped it.

13 Q. Again, like I said, I am trying to just tidy up as
14 much as anything else on some of this. Can you remember how
15 specifically, I mean, looking at your notes and looking at
16 e-mails, and not just you, but some of the other folks that
17 are involved in the project, you are almost kind of like a
18 gypsy, you are popping from one project to the next, to the
19 next, to the next, to the next.

20 A. Yeah.

21 Q. Do you recall how you specifically got tagged for
22 this thing? I know it was after Ted died that you kind of
23 had some time freed up, unfortunately, as a result of that.

24 A. Yeah. Well, it started with the hair snags, some
25 in August, and I think -- I am trying to remember. Some

1 collars came in before that next wave or something. I just
2 remember --

3 Q. Well, part of the question I am interested in is
4 how did -- this is really more a process question. How did
5 the -- inside the Research Branch, how did the process work
6 to get you so that you knew, okay, we are going to put you
7 on that? I mean, was that somebody specifically that you
8 recall said, okay, you are here?

9 A. It must have been, you know, Jeff Gagnon talking
10 to Chasa about lining me up or something. That started --
11 construction really started in December, and then Kirby
12 needed help. Michelle, at that point, you know, didn't know
13 much about snaring. That was pretty much all we had. And I
14 guess we had bucket snares, I guess, but that was -- those
15 were for the White Mountains, for the lions.

16 Q. Yeah.

17 A. The snares that I had -- by that time, I had a
18 little bit of experience. And so I don't know if Kirby -- I
19 imagine Kirby went to Chasa and asked if I had the time to
20 do it and I did.

21 Q. Had you guys discussed using hounds in that?

22 A. Yeah, you know, I think we have. Seriously, you
23 know, I think it is if somebody would like to volunteer and
24 help us, that is great, but some of them want to get paid.
25 And it was such a headache to work out and the hounds are

1 hired, so I am not sure if that is ever going to happen.

2 Q. You know, at some point, you had both, you had
3 Emil, Michelle, and yourself and Kirby were all kind of
4 involved in different pieces of this thing. Did you guys --
5 was there any sort of conscience mechanism you guys used for
6 sorting out who was going to do what where?

7 A. Not much. I don't remember much. I don't think
8 we actually all got together at the same time. I don't
9 remember. I don't think we ever have.

10 Q. I don't think I have ever seen anything that
11 said you did that?

12 A. Yeah. I think it was the collars come in. I
13 built more snare stuff, got the green light, you know,
14 Emil's helping us locate places. We trade off checking
15 them. Michelle would tag along trying to get her
16 experienced on the capture and harness, so she would try to
17 make them whenever she could. Kirby didn't come because he
18 traded, you know, the capture pack. He had to leave a
19 couple of days, but he was just pretty busy with office
20 work. So at that point, Emil was, you know, he needed a
21 hand to get these things checked every day, so we would
22 leave those snares running.

23 Q. And, again, we have talked about some of this
24 before, but I am just, in light of how, you know, with
25 Emil's -- am I right in my assessment that Emil was probably

1 more familiar with the geography down there than anybody
2 else who was working on that?

3 A. I would say.

4 Q. So when he would give advice about where he
5 might -- where the group might want to look to set up snares
6 for bears and lions, did you get into any detail about what
7 that advice was based on? Because some of this goes to how
8 he may have used the camera data.

9 A. Oh, I think he based a lot of this on the camera
10 data. I mean, he is a good tracker. He can see the signs,
11 but the cameras, he's got a lot of those. So I am sure it
12 was based on those, I am sure. We were trying to stay out
13 of -- we sloped the roost as best we could, but it is real
14 hard in that country.

15 Q. I think if you are using natural lines and
16 particularly in that country, by definition, you are using
17 the slope.

18 A. Yeah. So, you know, your wash -- you know, it is
19 hard, if you are not going to use a wash to catch a cat, you
20 know, there's ridges that are hard to get to. You need
21 something you can access to tie them in or make it loop.
22 So, you know, we took mostly the west side of Tucson. There
23 is still activity down there as well.

24 Q. Do you know -- do you have any firsthand knowledge
25 as to whether Michelle ever helped Emil check on any of the

1 cameras that he was using?

2 A. I know that Michelle and Emil had caught that
3 female down there.

4 Q. That first one, Lion No. 1?

5 A. I don't know the numbers. There was a couple in
6 the Patagonias, and one, you know, south of Ruby down there.
7 I can't remember. I don't know what they did. They must
8 have been checking snares for some time. I don't know if
9 they checked cameras along there. I don't know, but there
10 were cameras. I don't remember Michelle coming with us in
11 Patagonia. I think she probably did.

12 Q. Do we -- I got some more of your field notes, I
13 think, didn't I?

14 A. Yeah. Yeah. Yeah.

15 Q. I got field notes.

16 A. I brought them all. You know, this is not
17 something I just started last year.

18 Q. I understand. I understand. Well, you know, you
19 are, oddly or sadly, you are one of the few people that we
20 have talked to that seems to keep field notes.

21 A. I always jump back in. If I don't keep data in a
22 form, I can sometimes get it back by field notes.

23 Q. Other than one time when you were working on that
24 4 February time frame, did you ever help out, visit any of
25 those cameras or work any of those cameras with Emil?

1 A. Which cameras now?

2 Q. I think it was the 4th, that was when you were
3 walking the snares and the cameras.

4 A. I had never been there before. I went down as far
5 as Sycamore Canyon just looking at the country, this was
6 back in the fall, and say, this looks like good lion and
7 bear country, came back, and we never went to Sycamore
8 again, never.

9 Q. You know, we got the collars in late January.
10 Well, actually, you come up here to try and get those
11 collars?

12 A. I don't think they were here.

13 Q. And they weren't here yet, and you had gone back
14 down. But the question is, we knew the collars were coming
15 or we had been told they were coming. We had been out of
16 the collaring, by that time, about two months, wasn't it? I
17 think we stopped the end of November or sometime like that.
18 With the collars we had --

19 A. We had that female collar.

20 MR. MCMULLEN: Yeah.

21 THE WITNESS: We had the jaguar collar. We had a
22 bunch of extensions if we caught a bear.

23 Q. BY MR. HOVATTER: Yes. So the question is what is
24 your memory of why we decided, because we weren't just going
25 to trap them there, there were any number of places where we

1 could be trapping for lions. Why start -- why did we start
2 in the Atascosas?

3 A. They were there for the fall. They were already
4 in place.

5 Q. Snare sites were already located?

6 A. Emil just left them. He caught that last cat and
7 left them there. So rather than go back and pick them all
8 up and find new places, we still knew there were still cats
9 there.

10 Q. From the standpoint of when you are going out,
11 Thorry, and working to -- if you are working a new area, a
12 place we have never established snares before, from your
13 approach to that, how long -- is there some kind of rule of
14 thumb that you have for how long it takes you to assess an
15 area well enough to know where you may productively put in a
16 snare? Is it days, or I mean --

17 A. Depends on how big the area is. I walk canyons, I
18 look, I drive the area. I get out a map, a topo map, and
19 you look at it, there is a fork there, there is a canyon
20 here, and funnels and things. It will take some time. But
21 if I was going to go out that way with seven or eight snares
22 and start poking around, it would take -- I don't want to
23 just throw them out the first day. I would want to see
24 signs, telltales signs that there are lions there.

25 Q. That is your technique. I mean, everybody has

1 their personal technique, I am sure.

2 A. I think without having the camera work that Emil
3 had, it would take longer. I think he knows exactly where
4 there is to catch things. So he has been down there and has
5 cameras. And Jack probably set them up. Jack set them up
6 way before, so he had, you know, however many years' worth
7 of knowledge of where to go, I guess.

8 Q. Did Kirby have any role in your memory with making
9 the decision, yeah, we are going to do it? I mean, I can
10 understand. You have a sight. You are going to get
11 started. You just got the collars and you are hitting the
12 field.

13 A. I don't remember. Kirby must have gave the green
14 light or I wouldn't have gone get the collars and go start
15 setting those snares.

16 Q. This is an old -- this is from back in -- this is
17 January. So this is a few days before you guys got going.
18 This is a -- the string on this, this is a Travis Perry
19 sends out a note to a bunch of folks, and it is just about a
20 museum display. So it had nothing to do with any of that,
21 but the question I had on this, do you remember how you
22 became aware Chasa was considering or working on,
23 potentially working on an EA for this?

24 A. I had talked to her. I approached Dean at one
25 point. I said, what do you know if we can do this or not,

1 go down there and work, you know, this might happen? He
2 said, I don't know, let's go to talk to Chasa. Chasa, we
3 talked to her a few minutes, she says, well, you know, if
4 you catch one, I don't want you to collar it. Probably
5 should write an EA for this. I don't know the date.

6 Q. This is January 28th?

7 A. I was going to say it was probably done by the
8 time Kirby sent me down.

9 Q. Okay.

10 A. Yeah.

11 Q. But that was a conversation. Did you get a sense,
12 and again, this is subjective, I know, but did you get a
13 sense Chasa was already thinking along those lines or was it
14 that conversation that seemed to generate that?

15 A. I don't remember exactly. It might have been the
16 first one like that, but I can't say that is true or not.
17 I think -- well, I don't know.

18 Q. Have you done any EA checklists? Because part of
19 what I was going to ask if you are experienced with those --

20 A. No.

21 Q. -- if that might have gotten us to have, as a
22 Department, have, you know, had the whole Department kind of
23 focused, had their head in the gate, but if you haven't done
24 one --

25 A. I hadn't. I was about to prepare one for the

1 Bighorn capture, but I handed that off among office duties.
2 So I was about to get my feet wet, but no, I don't know how.

3 Q. One of the things, you know, we had, if you look
4 at the preparation that you started to put together that
5 late January, early February time frame, when you start, you
6 know, collecting things, kind of getting your head into the
7 possibility that, you know, knowing that you are working in
8 the jaguar country, you don't see -- we don't see any of
9 that from the November captures when Emil was down there
10 working with Michelle. I mean, and yet the only thing that
11 is really different, it is the same ground, it is
12 essentially the same snares, it is roughly the same
13 situation, and yet, there is none of that preparation.

14 And, again, it is -- did you -- do you have any --
15 you weren't in charge. You are not the supervisor, but do
16 you have any sense of why when we get into that January,
17 February time frame, that that, you know, that we put
18 considerable energy goes into being ready in case something
19 like that happens but nothing happens like that?

20 A. Yeah. I think, you know, you had the Patagonias,
21 you know, east of I-19, Pajarita Wilderness on the west
22 side, you know, we had continued from the years of
23 occupation of jaguar sightings, nothing over here since the
24 '60s, I guess that is why I wasn't -- it could happen any
25 time, in the Chiricahuas or anywhere. I guess that is why

1 we had the collar with us, but I had a vague idea of, you
2 know, I had my capture book which said, you know, I forget
3 how much Tela we used, but if we were going to be where it
4 really might happen, but who knows, but I dealt with the
5 latest.

6 Q. Part of what, and as I looked at that, you know,
7 you were just kind of getting into that area in November?

8 A. Yeah, I wasn't expecting him to be there.

9 Q. Did you have any, on one of those stops in
10 October, was your head in that -- in the idea of that jaguar
11 being a part of that dynamic on that front end of that?

12 A. In the Patagonias part?

13 Q. Because, again, you are coming straight out of one
14 thing going straight into another?

15 A. No, I didn't think about it much, because it was
16 bears. You know, working with Emil, he talks about it, so
17 we start thinking about it, you know, but then when he
18 started putting snares out that way, you know, it is more of
19 a reality, a possibility anyway.

20 Q. Thorry, and, again, this is, you are the only
21 person I really can ask this question, in retrospect, do you
22 get any sense that -- you know, what you have told us that
23 Emil -- it is clear that Emil acted with some intent?

24 A. I would think. I don't know if he's --

25 Q. Do you have any sense of how far back that intent

1 may have started?

2 A. I know that he's voiced his opinion on capturing
3 jaguars in the past. I did not know before. I don't know
4 if he expected that his employment would last as long as it
5 did, go into wintertime or whatnot. He certainly -- I don't
6 think he was trying to catch one in the Patagonias, but I
7 was surprised as hell when he told me he put scat where he
8 did. So, you know, it is hard for me to say. I don't think
9 there was intent in the Patagonias.

10 Q. Yeah. You don't know what you don't know. I
11 understand that, too.

12 A. Yeah. Right. He might have been careful in what
13 he told me.

14 Q. That first e-mail that got launched asking for
15 updated information for drugs, for the drug stuff --

16 A. I think I asked him what the latest was, and he
17 forwarded it to the vet, and he forwarded it to Sharon Deem,
18 and Sharon Deem wrote us all back with this conservation
19 security health e-mail.

20 Q. Do you remember how that came about, that he
21 launched that first e-mail? I mean, he references what you
22 are doing?

23 A. Well, I think that all of a sudden I realized we
24 were -- I don't know. I must have been aware that there
25 were snares out there then. In the fall, I know that there

1 were snares in Pajarita. He already caught one. I think
2 maybe January I found out, again, oh, they are still there.
3 If we start catching them, the collar date arrival kept
4 getting pushed back. So, finally, they were going to show
5 up in a few days. I think that is when I said, well, I got
6 to go. So that's when I started asking around, and, you
7 know, Emil started asking around, so we had an e-mail chain
8 started thing.

9 Q. Well, he announced in that -- in that e-mail, that
10 first e-mail that he launches, he says, let's see, he says
11 in this that I already set the snares in the most jag
12 friendly way possible?

13 A. That doesn't mean --

14 Q. What does -- I mean, how do you set snares
15 differently for --

16 A. Well, a short lead. You don't want -- I guess he
17 has had problems where if you had a long leash on that cat,
18 it would just break his arms or he could destroy himself.
19 So he had anchors that were probably two or three feet long,
20 short ones that he can't get the inertia to fight and run.

21 Q. Well, they don't get momentum behind what they are
22 doing?

23 A. Right. Right. You know, he put down bungee cords
24 and taped up the -- I always did that. Some bear guys told
25 me to tape the snare up, so it grabs and doesn't cut. And,

1 actually, the tape will actually stop the snare from getting
2 too tight. We talked about all this. I said that is a good
3 idea to do.

4 Q. That is -- it doesn't -- I presume that that has
5 no negative effect on its effectiveness for lions?

6 A. No, it is good. I just think, you know, a
7 powerful animal like that, you know, you better make sure
8 that it happens. Whereas, you know, a lion, a female lion,
9 she is not that strong. She is not really going to get
10 herself hurt with a longer leash.

11 Q. Was Kirby aware of this kind of level of concern,
12 this level of preparedness? Was Kirby, I mean, because, for
13 example, he is not in the loop for this e-mail?

14 A. No, I don't think he was.

15 Q. Was he aware of your wanting to take this kind of
16 prudent approach to being prepared in case something like
17 this happened?

18 A. I don't remember anything in the e-mail. I don't
19 remember talking to him about it. It certainly was not
20 something I was hiding from him. It is just we didn't talk
21 very much. I just, you know, I think maybe not.

22 Q. Okay.

23 A. Maybe Michelle had told him. I don't know.

24 Q. Do you remember, when that VHF transmitter was
25 removed, and, again, I know we talked about this, but I

1 didn't ask a question to see -- to try and pin this down.
2 Do you have any memory of about when that was removed? I
3 mean, clearly, it had to be -- by the way, was that collar
4 on the same bunch that you picked -- that came from Phoenix?
5 I know you didn't pick them up. Was that already in the --
6 did Emil already have that or was that in the same batch?

7 A. No, that collar was one that Emil had gotten from
8 North Star even in 2007 or something.

9 Q. Well, I know he had sent it in to North Star to
10 get it refurbished, but it came back --

11 A. We were talking about all these drugs, probably
12 setting those snares, we were talking about maybe it would
13 be best to take that VHF off because there is a bunch of
14 people actually hunting, he thought, maybe jaguar hunters or
15 something. So I had issues where I think there has been
16 houndsmen out there with receivers, too. I can't prove it,
17 but I just, I don't know, so we --

18 Q. If they got radios on their hounds, they have got
19 a receiver antennae. It is hard to tell what it is
20 receiving?

21 A. Exactly. I mean, I don't know. I think it was
22 one thing people might be after. I thought it would be the
23 best idea. It turned out to be a bite in the butt, but, you
24 know, we thought it would be in the jaguar's best interest
25 really. We knew we would get the collar back if it popped

1 off.

2 Q. It was already out there. It wasn't in that batch
3 of collars that North Star sent back?

4 A. It was one Emil had held onto over the winter.

5 MR. MCMULLEN: Do you remember when you guys took
6 that off, do you remember?

7 THE WITNESS: I am trying to think. It must have
8 been pretty early in the week there. Emil went to Spain. I
9 probably went to Ruby, took it off.

10 MR. MCMULLEN: Was Michelle with you?

11 THE WITNESS: She was there. Let's see, I don't
12 know what date she was there. She could have been. I don't
13 know if she was there when I took it off or not. It was in
14 my truck. I think I took it off when I was in my truck.
15 Sometimes, you know, I had it with Michelle, this and that.
16 Sometimes I spaced it, too, you know. So she was there the
17 5th. She had to bring that bear collar, that female collar.
18 I don't see her on the 6th, but the 7th, she was there as
19 well, the 8th, the 9th, the 10th. Probably the 11th she
20 went home. The 15th, the 15th, I came back probably alone.
21 The 16th Michelle joined me. The 18th she was definitely
22 there. I don't know about the 17th.

23 Q. BY MR. HOVATTER: I think she left on the 17th and
24 came back on the 18th?

25 A. Yes, she went home. She had her dog. I don't

1 know really. It's something that would only take me five
2 minutes to do. I don't remember.

3 Q. In February, you had an e-mail communication with
4 Mike Pastor. You were asking him about a jaguar sighting in
5 36-D. Do you remember what that --

6 A. I saw him, he was patrolling. I was on my way out
7 going to go get that rifle.

8 Q. Yeah.

9 A. There was a Game and Fish truck there, a guy
10 standing there talking to somebody. There was the truck.
11 Mike was just getting out of the truck. So I pulled up,
12 introduced myself. He said he was an investigator, and we
13 started talking a bit. I forget if I mentioned
14 (indistinguishable) but sighting popped up, and I didn't
15 know where that well was. Where was that well?

16 Q. Globus Well?

17 A. Globus Well. I thought it might have been the
18 track of a bear, too. It was just supposedly turned into
19 Game and Fish and Fish and Wildlife Service that Emil got
20 it.

21 Q. Had you gotten -- now, Emil sent out an e-mail
22 about that photo on the 3rd of February, and it had a photo
23 from the 21st of January?

24 A. Right, right. So that might have been the one way
25 up north, Globus Well. I guess I was confused. It could

1 have been, you know, what was it? Macho B first came from
2 the north?

3 Q. Yeah.

4 A. Then there was the one where he was coming back to
5 the north. That was there when he was looking through the
6 camera.

7 Q. Because I was wondering, looking at your notes,
8 you know, you are moving around an awful lot, and so while
9 this is, you know, being sent to you doesn't mean you got it
10 if you were on the move. That's when I saw this, this is
11 really just kind of tying up loose ends. I mean, you are
12 out there on the 4th and on the 5th, and on the 6th, you are
13 hitting the road. I think the day before the 4th, you were
14 running to Phoenix in that time frame. And part of me
15 wondered if you ever saw this before, if this was what
16 was --

17 A. I can't remember that. I remember that, and that
18 is probably what this is --

19 Q. Yeah.

20 A. -- because Emil might have even gone to Spain
21 before he reported the track and the picture he got with me,
22 which I am guessing that is probably what happened. I don't
23 know that, but --

24 Q. Okay.

25 A. -- I am guessing. I imagine this is that, but I

1 could see --

2 Q. Because, see, I was wondering if maybe there was
3 some rumor floating around because sometimes there were. I
4 have seen some other notes from other folks who operated
5 down there that somebody had seen one?

6 A. Right. I didn't know if that was just something
7 new that nobody else even knew about it yet. It said it was
8 reported, so I went through Game. I probably had to come
9 here first, and it might have been a little bit of time. So
10 I didn't know if it was freshened up or not.

11 Q. Does Michelle -- do you know if Michelle takes
12 field notes?

13 A. I don't. I don't.

14 MR. HOVATTER: That's the thing. That's kind of
15 it for me.

16 MR. MCMULLEN: I did have a couple of follow-ups
17 that I wanted to just tie up on loose ends, Thorry.
18 Michelle got a phone call from Emil around the time that she
19 was -- I think it was around the time that the Department
20 called you and her. It was after Janay Brun's allegations,
21 around the time.

22 THE WITNESS: After the 31st or so?

23 MR. MCMULLEN: After the lion or jaguar was
24 recaptured. And she reported that Emil asked her or told
25 her that she needed to get her stories straight with you,

1 that you and she needed to get your stories straight.

2 THE WITNESS: It must have been when I was in
3 Hawaii, and there was four or five people that called me in
4 Hawaii and asked if had I seen tracks or pictures or
5 whatnot. And I got nervous right away when I got that phone
6 call because I was on vacation. I had no hint there was --

7 MR. MCMULLEN: Which phone call?

8 THE WITNESS: It was from Chasa, from Terry
9 Johnson.

10 MR. MCMULLEN: Okay.

11 THE WITNESS: Mike Senn was there and some more,
12 you know, they asked if I had seen the track, you know. I
13 said, assuming that they already had known about Emil's
14 picture and track, I said, you know, no, I had nothing to do
15 with it. Well, Michelle said she saw that track. Yeah, I
16 wasn't sure about that. It was unclear to me. I am a
17 little bit doubtful about it, but I guess I did think it
18 was, you know, Emil is a better tracker than me. He knows
19 what a jaguar track is. So I guess I was a bit vague, but I
20 was kind of, ah, my stomach there, too. So I came in --
21 Terry Johnson said, come back and see me, you know, as soon
22 you get back. I got back Monday night. I got home by 2:00
23 in the morning. I was here by 8:00 in the morning. I saw
24 Mike Senn, you know, I want to clarify, you know, when I
25 talked to you, sorry, you guys totally took me off guard.

1 Q. BY MR. HOVATTER: I doubt you took your field
2 notes with you in Hawaii?

3 A. No, no. So I had said, Mike, yeah, there was a
4 picture that was from, you know, whenever that gap where I
5 was here, but it was actually here by then. So it was from
6 two mountain ranges north. The track we saw, you know, I
7 didn't know what it was. Emil said, it is what you think it
8 is. I said, well, I am not sure what I think it is, you
9 know. He said, well, look, it is a jaguar track. It must
10 be three weeks old. It was a jag with that picture. I said
11 I probably wouldn't have made that call myself, but I guess
12 I believe it was a track.

13 When I was in Hawaii after that call, I called
14 Michelle. I said, you know, did you get a call from
15 anybody? She said, yeah, I got a call, and from the same
16 group, I guess --

17 Q. Okay. Okay.

18 A. -- and asked about that track. Before, I guess, I
19 got a hold of Michelle, I called Emil. I said, Emil, I am
20 kind of scared because they are calling me. The jaguar is
21 dead now. The heat is coming down and they are asking me
22 out on tracks and stuff. I thought you had sent that stuff.
23 Am I right? He goes, yeah. I said, what am I scared of,
24 you know? So, then, I called Michelle. Finally she called
25 back and she had said that, yeah, I had talked to them on

1 the phone about that track. Okay.

2 Q. So that conversation you had with Emil, that was
3 before the 31st?

4 A. Yeah.

5 Q. That was after you got back from Hawaii. Was
6 there any -- was that pretty much just a straightforward
7 conversation? Did you get into anything squirrely from him
8 at that point, from Emil?

9 A. I think I was a bit squirrely because I was
10 wondering what was coming down on me from just seeing a
11 track. Those tracks in that picture were reported; right,
12 Emil, you know? The Feds told me he took a long time to
13 report those. I don't know if that's the case or not.

14 Q. Took what a while?

15 A. I am wondering why, because I also heard it was
16 supposed to be done in 24 hours. I didn't know any of this
17 yet. I am getting a little bit nervous. It sounds like
18 people were asking questions. I thought we were clear, but
19 then I got a little bit spooked, and I was a little bit
20 vague on the phone with the group. I came through the next
21 Tuesday and explained where I was on this.

22 MR. MCMULLEN: So when you talked to Emil, I am
23 trying to figure out, follow the line here, and then you
24 called Michelle about the track, Michelle said -- did you
25 guys talk about the fact that Michelle said there was a

1 track and you didn't, with Michelle or --

2 THE WITNESS: Well, I did, you know, we were --
3 right, I was wondering what track they were talking about.
4 They should have known about this one. They are asking me
5 if I saw a sign, you know, nothing you don't know about? I
6 said, yeah, I saw the track Michelle saw.

7 MR. FABRITZ: The one.

8 THE WITNESS: The one, yeah, the one track, the
9 one with the small set. So I was just kind of baffled on
10 who knew what. You guys are asking me, don't you know this
11 yet? So I was just being a little bit, I guess, just
12 ruffled, I guess.

13 MR. MCMULLEN: Yes, it is understandable for sure.
14 Do you remember what the nature of your conversation was
15 with Michelle on that?

16 THE WITNESS: I don't specifically. I remember
17 being at the beach and just, hey, did you get a call? Did
18 they ask you, or, you know, I kind of felt, you know, I
19 wasn't really sure that was a jaguar. I don't want anybody
20 mad at me for seeing a track that I really didn't raise my
21 hand up. Emil will take it. He could have been right. It
22 could have been a track. It could have been anything. On
23 another day, I might have thought it was a bear with a toe
24 missing. So, you know, I was, I guess, a bit vague because
25 I wasn't sure where that was going.

1 MR. HOVATTER: I understand.

2 MR. MCMULLEN: I understand.

3 Q. BY MR. HOVATTER: I think your field notes
4 actually make that point, you know, that you had Emil's
5 perspective, and you don't sound convinced. You sound --

6 A. Well, I was excited, you know, it could be.

7 Q. Potentially.

8 A. But I didn't know what a jaguar track was until we
9 caught one, and I can see his feet and the tracks and that's
10 why I know, you know.

11 Q. You said -- well, did Michelle call you while you
12 were in Hawaii?

13 A. I called her. She called back. She called me
14 back, I guess.

15 Q. Okay. The phone call on the 31st, now, he called
16 you that evening, Emil did, on the 31st?

17 A. Morning, too, I think.

18 Q. He called you in the morning, also. Now, you
19 got -- did you get -- you got Mike Senn's memo about --

20 A. I didn't get the memo, but I got a message. I
21 talked to Mike and Chasa. They were on the speaker phone
22 together in the evening.

23 Q. Okay. Was that, and I have to ask this, was that
24 before Emil called you that evening?

25 A. I don't know because he called me. We were in a

1 phone conversation in the morning, actually, late morning,
2 maybe 11:00 or 12:00.

3 Q. When was the one that he finally decided to ask
4 you to change your story?

5 A. I don't know because I think we -- I think he told
6 me what he did earlier in the day, and I don't think he
7 decided what to do until the night.

8 Q. Again, what I am wondering is if you talked with
9 Mike, and you had that guidance, it is just something that
10 you were not to talk about the situation?

11 A. I was recommended I don't talk.

12 Q. Why did you talk to Thorry? Or why did you talk
13 to Emil again?

14 A. Scared and overwhelmed. I needed somebody to talk
15 to. I wish it was somebody from the Department. I got kind
16 of shut off. I talked to Mike and Chasa. I said, I want to
17 tell you about scat. We need to talk about scat. He said,
18 well, we can't talk with you. There is going to be an
19 investigation. They stopped me right there. So it went bad
20 from there.

21 Q. Okay. I mean, I had to ask that.

22 A. Yeah.

23 Q. It is not -- I am not doing it to try to --

24 A. No, I understand.

25 MR. HOVATTER: I know how painful that has got to

1 be for you. Guys, I didn't have anything else. That was
2 just -- like I said, I was trying to make sure that I had
3 all these I's dotted and T's crossed on some things I wanted
4 to know about.

5 MR. MCMULLEN: When you talked to Michelle when
6 you were in Hawaii after Emil called Michelle and said you
7 two need to get your stories straight, did Michelle talk to
8 you about the fact that Emil had called her and said you
9 guys need to get your stories straight?

10 THE WITNESS: I don't remember. I don't remember.
11 I remember being flustered about the whole thing. It sounds
12 like, you know, I thought, you know, it was good to forward
13 all that information on the radio. It sounds like people
14 here were kind of at a loss. They didn't know what was seen
15 or what. It sounds like, I don't know, I guess it is a
16 touchy subject.

17 MR. HOVATTER: I will tell you, Thorry, just so
18 you know, I mean, what you told everybody while you were
19 there in Hawaii, it may not have felt that way to you, but
20 it assuaged everybody's concern on this. Once we had
21 talked -- once we had talked with you, we felt it was, you
22 know, there was something that -- it was another call one of
23 our folks had gotten that said we need to ask these
24 questions, because until then, we were quite happy to leave
25 you alone on the beach in Hawaii.

1 THE WITNESS: No, I understand that. I understand
2 you guys were in a tough position. I even remember then
3 asking about, you know, did you see tracks or kills? Or I
4 mean, not kills, but jaguar scat. And it didn't even snap
5 to my mind to even mention that scat that I did see placed,
6 you know, in the Sycamore Canyon. That wasn't jaguar scat
7 placed there by jaguar. It was put there. It just didn't
8 even cross my mind to even mention that because it wasn't a
9 piece of data, but it was something someone put there. I
10 wish I had expected that phone call. I would have had a lot
11 more to talk about instead of, oh, shit, so --

12 MR. HOVATTER: Guys, anything else?

13 MR. MCMULLEN: No.

14 MR. FABRITZ: No.

15 MR. MCMULLEN: Thank you.

16 THE WITNESS: I hope that clears up some of that.

17 MR. MCMULLEN: It does.

18 THE WITNESS: Well, I hope -- yeah, okay.

19 MR. HOVATTER: All right, sir. Thorry, thank you.
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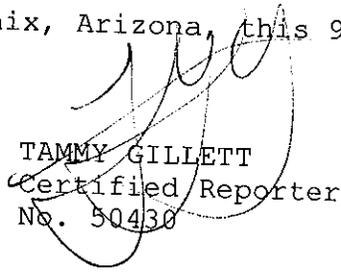
CERTIFICATE

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I, Tammy Gillett, do hereby certify that the foregoing 35 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 9th day of September, 2009.


TAMMY GILLETT
Certified Reporter
No. 50430

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TRANSCRIPT OF INTERVIEWS
THORRY SMITH
10-14-09, 12-22-09, 12-23-09
1-6-10, 1-25-10

Individuals present at Interviews:

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
Thorry Smith, Employee

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1 Any responses given during this Administrative

2 Investigation cannot be used against you in a subsequent

3 criminal investigation. You are instructed not to discuss

4 your interview or this investigation with any Arizona Game

5 and Fish Department employees while the investigation is

6 pending.

7 Any questions on that?

8 MR. SMITH: No.

9 THORRY SMITH,

10 pursuant to Garrity Warning, was examined and testified as

11 follows:

12 EXAMINATION

13 BY MR. HOVATTER:

14 Q. Okay. Thorry, right now, this is just rumor, but

15 I wanted to -- I have been told that Emil McCain is going to

16 come back -- he is coming back from Spain in early January,

17 and that on the advice of his attorney, he is going to sit

18 down with the U.S. Attorney's Office to talk with them. It

19 is my understanding, and I don't know this to be fact, but

20 it has been my understanding that he probably hadn't talked

21 to the U.S. Attorney's Office before this, or at least sat

22 down and really talked to them.

23 So what I wanted to do, and I looked at all of the

24 folks we have talked to previous to this, and it seems that

25 one possibility is that it is his intention to take a

1 PROCEEDINGS

2 December 22, 2009, Interview

3 MR. HOVATTER: This is Gary Hovatter, Marty

4 Fabritz, Craig McMullen, and Thorry Smith, and this is a

5 continuation -- it is the 22nd of December. This is just a

6 continuation of our Internal Administrative Review and

7 Investigation on the Department's activities surrounding the

8 capture, recapture, and euthanization of Macho B.

9 I just wanted to revisit with Thorry the Garrity

10 rights, that we have -- that we worked under previously on

11 this. Since it has been some time, I thought it would be

12 useful for us to go through this.

13 MR. SMITH: Sure.

14 MR. HOVATTER: It says, we are conducting an

15 Internal Investigation involving matters that will be

16 discussed shortly. This is an Administrative Investigation.

17 You do not have a right to have legal counsel present during

18 the interview, nor will you be advised of Constitutional

19 rights. You are to cooperate fully with this investigation.

20 You are ordered to respond completely and

21 truthfully to all questions posed to you during the

22 investigation. Failure to respond completely and truthfully

23 to all questions will be considered misconduct as set forth

24 in Garrity versus New Jersey 385 US 493 and the line of

25 cases which follow.

1 position to lay any criticism that may be derived from this

2 thing at the Department's feet. So I wanted to call you in

3 and just ask if there is -- is there -- is there any aspect

4 of this situation or this case that we have -- because I

5 never thought to ask you this in this way -- is there any

6 part of this thing we have not asked about or failed to ask

7 about that you think might be of any value as we try to

8 figure out what may be going on with this? It may be a long

9 trip for a very short answer to a question.

10 A. No. No. I haven't heard that one. I heard he

11 was in Spain I think.

12 Q. That's what I had understood.

13 A. I don't know.

14 Q. So, as I said, I am treating this as rumor,

15 because, you know, we are not -- we are not in coordination

16 with Mr. McCain. So I don't have a way to verify that.

17 A. Right. Right. I told you when he had called me,

18 and I was real short with him about it, but I didn't even

19 ask where he was, but -- this might take some thought. I

20 should go through it and see where he is going to take it

21 apart from what I know about --

22 Q. Well, if you want to take some time and think

23 about this, and if something does occur to you that you

24 think it would be, you know, valuable for us to know, please

25 give me or Marty or Craig a call.

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1 A. Sure. I am trying to run through my notes real
2 quick.
3 Q. That would be fine, too. I am good with that.
4 Okay.
5 A. I will do that. I try not to think about this too
6 much anymore.
7 Q. I would imagine. I understand that.
8 MR. FABRITZ: No, we understand that.
9 THE WITNESS: Let's see. We started on the 4th of
10 February, I guess. That's the day we went and set those
11 snares.
12 Q. BY MR. HOVATTER: Yeah.
13 A. He knows that I know two of those places he put
14 bait.
15 Q. Let me ask you something. I know, I think Marty
16 had a conversation, you know, there's a point in that one
17 e-mail that McCain sent where he -- when he sent out his
18 note to -- oh, what was the Hispanic guy -- asking questions
19 about what is the best drug protocol to use, and then Sharon
20 Deem got in that, and he uses that term. I could set the
21 snares in the most jag friendly way possible.
22 That was sent out, of course, a couple days before
23 you were even on the ground. So I know -- I know Marty
24 asked you if you -- I mean, one interpretation of that is
25 that he had already set snares out there, which he would

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1 not -- he wouldn't have the authority to do. I just wanted
2 to know if you had -- those snares were not set when you got
3 out there was my understanding?
4 A. No. I thought that -- I remember Craig asked that
5 question. I thought that might have been the fall before
6 where they caught -- Michelle, Emil, and his father had
7 caught that female cougar that was killed in January. I
8 think that is what he meant. The placement and the length
9 of the set, the length of the, you know --
10 Q. Have you -- let me ask, have you seen that e-mail
11 that I am referring to, because I don't know that you were
12 in that original string on that?
13 A. It was at least read to me. I am familiar with
14 it.
15 Q. Okay. Because that was from a couple of days
16 before the 4th. That was from about the 2nd, I think?
17 A. It was probably when we started asking about that
18 drug combo, went back and forth.
19 Q. It makes it sound in that thing like he had
20 already set the snares?
21 A. They were in place, we added some, and I added
22 some after he went to Spain. But for the most part, at
23 least four of them were there.
24 MR. FABRITZ: You mean just mechanically sitting
25 there but not set?

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1 Q. BY MR. HOVATTER: There weren't set?
2 A. Actually, some of them got ripped off. I had to
3 go bring a bunch of stuff in. The location was there. That
4 was left over from the previous fall, I think. That is my
5 understanding.
6 Q. Okay. But as far as the actual snares being
7 actually set to capture anything, they were not set?
8 A. That was done on the --
9 Q. That is what you did on the 4th?
10 A. -- 4th. Right.
11 Q. Were they, in fact, were they set up with, you
12 know, the way that he had -- and I don't know this. You
13 know I am not a lion trapper. I am sure as hell not a
14 jaguar trapper. He refers to that for jaguar that you use
15 shorter leads. You use shop cords at different lengths?
16 A. You know, some of us do that anyway, the shop
17 cords. I don't think anybody would do it with bears, but
18 less trauma is better for anything you catch. You certainly
19 don't have to with bears, if you are going to catch bears or
20 lions or --
21 Q. So that doesn't make it jaguar specific?
22 A. No. No. There is nothing different about the
23 set.
24 Q. Yeah.
25 A. It is just that the amount of play that you have

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1 where the animal is going to get hurt, such a strong animal.
2 Being a cat, it is going to be a little more fragile than a
3 bear. So you want to have a shorter leash, so it wouldn't
4 ruffle up so much. But I don't think there is anything else
5 that is special until, you know, until the scat was placed.
6 Q. So from the standpoint, the way those snares were
7 set, was there anything, you know, when the three of you on
8 that day walked around, was there, from your perspective,
9 anything different about the way you set those than you
10 would normally have set for lion?
11 A. No, except for the scat that they put out.
12 Q. Yeah, understood. Understood.
13 A. They are saying, you know, the straddle is about
14 the same, you have got a little play there, so it is just
15 not that much different. You know, I wasn't even sure about
16 the straddle. I know it had shorter legs, you know.
17 Q. So from your perspective, the way you set those
18 snares on the 4th was the way you set lion snares?
19 A. Yes.
20 Q. That is an accurate statement?
21 A. Yes.
22 MR. FABRITZ: It's trail sets.
23 Q. BY MR. HOVATTER: With regard to the scat, and
24 I think in our conversation before, I may have made an
25 assumption on this, but I want to make sure in light of the

1 possibility we are going to be dealing with this in January,
2 did you -- did you know that the bait they were using was
3 jaguar scat on the 4th when you guys were walking around and
4 visiting the trail cameras and the set?

5 A. The first sets, the first snare we set, I was not
6 aware of it. I wasn't aware of anything. I thought the
7 scat we found, which I assumed was lion scat, I thought was
8 the scat they had put in the middle of the trail to keep the
9 cat in view of the camera. It wasn't until the second, I
10 guess the first or the second camera, which was not a snare
11 set, this is jaguar scat. I wasn't even aware that it was
12 female jaguar scat, and I didn't find that out until the
13 papers.

14 Q. Is that the first time that you knew that he
15 used --

16 A. Yeah, I was unaware of that completely --

17 Q. Yeah.

18 A. -- until that day.

19 Q. Because, you know, that was one of the things that
20 I have been wondering about is how the hell long he had been
21 using that on cameras. Had he been using it at every of
22 camera?

23 A. It sounds like years. It sounds like from that
24 one lady --

25 Q. From Janay?

1 A. No, from -- oh, friends of the Mesquite Forest or
2 Ironwood Forest Ranch or Ironwood --

3 Q. Shiloh?

4 A. Shiloh, yeah. She said that she -- I remember
5 that article in the paper said that went back a while.

6 Q. Yeah. There is that, that. So what was -- that
7 day on the -- because I know when we talked through, on that
8 one trap where the camera and the trap were very close
9 together?

10 A. The first one?

11 Q. Yeah. We talked about your memory that you would
12 set the snare, what Janay or may or may not have been doing
13 was not something that was registering on your --

14 A. No.

15 Q. -- on your head space because of what you were
16 focused on. Did you ask or did it cross your mind to ask,
17 have you -- did you use that near the -- at the camera near
18 that snare set?

19 A. I didn't ask that question until Janay came out
20 with her article.

21 Q. And, then, you had the conversation with Emil?

22 A. What did happen with those other two? Did you
23 bait those? He said, yeah. That is kind of when I
24 went ooh, so --

25 MR. MCMULLEN: Those two were the snares --

1 THE WITNESS: I should have asked those questions
2 that day. It didn't cross my mind. We were just in new
3 terrain, covering a lot of ground. Everything was new. I
4 didn't think back. I didn't think that, since he didn't
5 mention it, why would he have -- he would have told me. I
6 thought we were good like that. I thought he would have
7 told me what he was doing. And, then, after the second to
8 the last one where I set the set, he went to set another
9 set, and Janay went to the camera, she put another scat at
10 that camera.

11 Q. BY MR. HOVATTER: She was going to set another
12 trap or set another camera?

13 A. He was setting a trap. I was setting trap. And
14 she was doing the camera. And that wasn't even mentioned
15 then either. So I just assumed they weren't doing that.
16 Since they showed me the two, why wouldn't they tell me
17 about all of them? I think that was because of the synergy
18 of where the snares were. So I didn't think to ask until,
19 you know, Janay made the accusation about the final thing
20 where Macho B was --

21 Q. In light of what he told you after Janay made her
22 allegation and all, what is your interpretation of him
23 showing you that he was using jaguar scat at those camera
24 sets, and then not making the point of telling you that he
25 did on those others?

1 A. See, I don't know, you know, if he was trying to
2 get pictures a little bit too close for my comfort or
3 whether he was just trying to catch a cat. I never asked
4 him that directly. I don't recall.

5 Q. Did you ever ask him if he was deliberately -- if
6 he tried to use this opportunity to shape a deliberate
7 capture? Did you ever think to ask him?

8 A. I never asked him, but I didn't, you know, we
9 talked about bears and lions, and if it happened, it
10 happened. He was just, you know, stroking me the right way,
11 I don't know. Yeah, I don't know.

12 Q. Do you guys have anything? I hate to -- again, I
13 thought -- I suspected this was going to be a short
14 conversation. Go through your notes and see if there's any
15 other thoughts you had.

16 A. The track set we found, you know, I didn't know
17 what it was at first. He says, it is what you think it is.
18 I don't know what I think it is. But, you know, eventually,
19 he kind of convinced me it was.

20 Q. I look at those pictures of that in the sand.

21 A. It was the ugliest thing I ever saw, you know, it
22 is just an imprint, you know. So when you folks called when
23 I was on my trip asking about a track, there were two people
24 in the room that should have heard about it. I got a little
25 nervous because he was supposed to report those tracks to

1 Fish and Wildlife and Terry and Bill, and it didn't sound
2 like he did. Or I wasn't sure if they were talking about a
3 different set you are asking about. And they were asking
4 about scats that day, too. I didn't -- I thought strictly
5 jaguar scat left in the field by a jaguar. It didn't cross
6 my mind to say, oh, the camera, there was a couple. I
7 thought they meant strictly the ones --

8 Q. About that track, if Emil hadn't been there, would
9 you have -- do you think you would have keyed that as a
10 jaguar track?

11 A. It is one of those ones I look at and go, that's
12 pretty neat, but the age on it, you know, it's fat enough to
13 be a bear, the heel, you know, was long enough to be a bear,
14 missing a toe, but there was no good track. I probably
15 looked at and said, oh, maybe, I don't know. I wouldn't
16 have convincingly thought so.

17 Q. Okay. But, I mean, you have got quite a bit of
18 experience, you know, with seeing bear and lion tracks in
19 the field and I don't. But I have got to say, you know,
20 looking at that track, that picture in that sand like
21 that --

22 A. Yeah. Emil, he sat there and pointed it out. I
23 guess Macho B had a left front paw with a pinky that went
24 way out here. He broke it or something. You could see
25 that. It was so spread out. It was wider than it was long.

1 It was bizarre. I don't know what I would have thought
2 without it, but, you know, he explained it. Yeah, I guess I
3 could recognize it. So, sure, I guess. I thought it was
4 neat, but it wasn't something I would probably -- it wasn't
5 clear enough for me really to, you know, make a mold of it
6 and put it on the wall, you know.

7 Q. I don't know how you would have in the substrate
8 the way it was.

9 A. Yeah.

10 Q. Did that day he tell you that it looked to him
11 like a Macho B track? I can't remember if we asked you
12 that.

13 A. I don't know if he -- he might have mentioned the
14 pinky's wide enough, far enough out to be, but he wasn't
15 sure. We were talking about that picture. It looked like
16 the picture was taken south. The cat moved to the north,
17 you know, he couldn't decide if it was Macho B or not
18 because he couldn't see testicles or the spot. But, I
19 guess, eventually he guessed it was, but I don't know if he
20 could tell it from that track. He said it might be. I
21 don't know.

22 Q. Well, is there anything else from your notes that
23 you think we ought to revisit or talk about?

24 A. No. He said that if that was a track that
25 Michelle and I were the first Game and Fish folks to ever

1 see it.

2 Q. I remember him telling us that.

3 A. I don't know if he is pissed about that or what.

4 I thought it was kind of bizarre. I don't know. It seemed
5 like somebody would have seen the track by then.

6 MR. MCMULLEN: You would think at WM or --

7 THE WITNESS: Yeah, I would think.

8 Q. BY MR. HOVATTER: Well, by the same token, though,
9 I mean, if you think about it, I mean, theoretically,
10 depending on the substrate and everything, you could have
11 seen the track, and I wonder how many of our guys would have
12 thought that is a lion track or --

13 A. Yeah. I mean, you never know they are jaguar
14 tracks until, you know, the day we caught him, that's the
15 freshest track I ever saw. That was definitely one.

16 Q. When you saw his track, did he have that -- did
17 you have a chance to see whether there was that identifying,
18 that sort of broken toe thing when you saw that?

19 A. I don't remember that day. I don't remember that
20 day.

21 Q. I mean, you were off -- you had a lot of things to
22 do that day?

23 A. Yeah, we did come back the next day and made some
24 casts that turned out like crap, you know. I guess I am
25 trying to think if I remember that left front foot.

1 Q. It's not important.

2 A. I don't know.

3 Q. I am just more curious than anything else.

4 A. Oh, he was in Spain right there. This is just
5 being cooperative with the mapping then, because he had the
6 Web site. We kept asking him, you know --

7 Q. You know, let me ask you something else on that.

8 You know, if we had gone on -- if this had gone on long
9 enough, eventually, we would had to have a conversation with
10 McCain about access, having direct access to that collar
11 data.

12 A. Uh-huh.

13 Q. I mean, quite frankly, the only reason he had any
14 ability to put the collar on that animal is through our
15 authority. He had no authority to do that. Did you have
16 any conversation with him on that? I mean, I know you were
17 working a lot of different things at that point.

18 A. Well, I remember being pretty clear that, you
19 know, there was definitely a permit was available. And that
20 collar was given to him from North Star. There was nothing
21 we could do about it. So I figured it was all legit.

22 Q. Did you have -- did it give you any -- I mean, you
23 are going to be out in the field. So your ability to access
24 that Web site was always going to be intermittent even if
25 you had direct access.

1 A. Yeah.

2 Q. But did you have any conversation with him at all

3 about having more direct access to that collar data?

4 A. No, I never thought he would put that collar out.

5 I don't know.

6 Q. Again, I think more at the Department level, we

7 would have had to have a conversation with him about needing

8 to have direct access.

9 A. I got a call from Jack after it was caught saying

10 that, I guess, him and Emil would be privy to it for

11 whatever reasons, you know, that was fine, because --

12 MR. MCMULLEN: I think those decisions were made,

13 obviously, above your level.

14 THE WITNESS: Right. Right. Right. No, I think

15 he was just trying to be nice and explain to me, you know,

16 that is fine.

17 Q. BY MR. HOVATTER: Do you have any knowledge -- do

18 you know if besides Jack and Emil whether there were any

19 other of their folks that they were giving access to that

20 information?

21 A. Janay had it for a while. And then these guys,

22 either Jack or Emil, changed the password, so she wouldn't.

23 Q. Do you know why?

24 A. Do I know why?

25 Q. Do you have any idea why they did that?

1 A. I don't know. I don't remember. It seems to

2 me --

3 Q. Well, it wasn't in your lane. I mean, it wasn't

4 in your lane.

5 A. I don't know. She comes up with some stuff.

6 Well, because she went down there, I don't know if I told

7 you this before, but she had went down to where we caught

8 it, took pictures, found whatever, tried to go find it when

9 it was sick and feed it. I never found the meat. I don't

10 know how close she got. Emil doesn't think she actually did

11 that. She sounds like she had been down there between the

12 time it was caught, so I don't know. I think that bothered

13 them so they changed the password. That might be the reason

14 right there.

15 Q. It could, yeah.

16 A. That might be it.

17 Q. Yeah, if she was using that to go and potentially

18 interfere with the animal's behavior --

19 A. That might have been why they changed the

20 password, but I am not sure if that was before or after all

21 that.

22 Q. Anything else?

23 A. I can't think of anything. If I do, I will let

24 you know.

25 Q. The night that you were measuring out dosages, was

1 that measured -- I think I know this, but I want to make

2 sure, because in your field notes, we had talked about or we

3 had a conversation, you had talked about measuring out drug

4 doses. Was that for lion or was that for --

5 A. All three I think.

6 Q. Yeah.

7 A. Because I had Ketamine Medetomidine which I could

8 use for a lion. I had Telazol, which I could use for a bear

9 or lion. And Ketamine I could use on a bear, too. So,

10 actually, we ended up using Ketamine on a bear, like I told

11 you, it woke up all of a sudden. It warns you in the book,

12 be careful of sudden arousal because it was --

13 Q. Do you have a reversal for Ketamine?

14 A. Ketamine wears off. Medetomidine reverses. But

15 he come out of it so bizarre. They are totally out and on

16 their feet three seconds later. It takes you by surprise.

17 Q. That could be.

18 A. Well, that was. Michelle and I were, thank God,

19 we had the directions, but we were too close. So that was

20 probably figuring out, you know, dosages for all three using

21 the different drugs. I planned on using Telazol for --

22 Q. So you were measuring out doses for bear, lion,

23 and --

24 A. I had some of those worked out from our previous

25 lion study, you know, probably for lions anyway, maybe even

1 for bears in case we caught one.

2 Q. But you set some dosages -- some just-in-case

3 dosages for jaguar?

4 A. I don't remember, but I imagine that I might have

5 even done that days before.

6 Q. Based on that coordination that Emil did to try

7 and get the most current information, what is the

8 difference, dosage wise, size wise, what is the difference

9 between a jaguar and a lion? You base that on an estimated

10 weight too, right?

11 A. Probably weight. Well, I think that -- I don't

12 know, maybe this was from reading the stuff afterwards. On

13 the ground, you know, they want to use Telazol if it was

14 caught in a snare --

15 Q. Yeah. Yeah.

16 A. -- if it was on the ground. If it is in a tree,

17 you want to use Ketamine, because Telazol will fully knock

18 an animal out and they fall. Whereas Ketamine, if you try

19 to take a lion out of a tree when it is on Ketamine, it

20 latches onto you, it doesn't quite know how to let go, and

21 it just won't fully let go.

22 Q. So you had the opportunity to, then, kind of

23 unwind it from the tree?

24 A. Right, instead of falling out. I think that is

25 probably why somebody was thinking that Telazol would be

1 dangerous in the tree probably because they will probably
2 fall --

3 Q. Yeah.

4 A. -- where it is safe in the snare.

5 Q. Yeah. I mean, it is clear from reading Sharon
6 Deem's stuff, I mean, she still believes for folks who don't
7 have experience with jaguars in the field where you are not
8 going to have immediate access to vets and everything, then
9 Telazol seems to have the best history with jaguars.

10 A. It would have worked either way with that. He was
11 docile enough, you know, he was just -- it worried me, you
12 know.

13 Q. Hey, let me, and this is going to the recapture,
14 when you guys -- and I don't think I thought to ask this
15 question before. When you guys went in, because, you know,
16 I got involved on Sunday, when you guys went in and just
17 take a look, see if you could get a look at it and find out
18 what -- whether we could get a feel for whether he was
19 really in trouble or not?

20 A. This was Ole?

21 Q. Yeah. And Ole took a shot, didn't get a hit on
22 him. The question I have is if you guys had gotten a hit
23 and gotten that animal down, do you know, was he shooting
24 Telazol, also, do you know?

25 A. I think he was doing Ketamine.

1 Q. Ketamine. If you found that he was in really bad
2 shape, what was the thinking about what we were going to do
3 with that animal?

4 A. I think Ole and I had talked about having to make
5 sure we had to go in and do what we did. I am not sure if I
6 had another collar. I could have switched it out that had a
7 VHF beacon or not. That would have been wise. That would
8 be a good thing we did. But we definitely were going to
9 take blood, take it to the lab, where, I guess, he knew he
10 could get it analyzed pretty quick.

11 Q. The idea being that we would have to --

12 A. We would know if he was sick or not and know what
13 to do.

14 Q. Was there some thought that you might find the
15 animal in bad enough condition that the idea of releasing
16 it, in other words, look at it and say, this animal doesn't
17 have much longer, we need to get him treatment? Was there
18 any discussion on that?

19 A. I guess not.

20 Q. I mean, this is hindsight. This is clearly
21 hindsight.

22 A. Yes. I guess we were just going in there to look.
23 Since he didn't look wonderful because he was moving off so
24 slow and got up sluggish, and we knew he was in trouble.

25 Q. The reason I am asking, I was thinking about this,

1 again, in retrospect, about how long it took you to walk in
2 there, thinking about you guys as you decided we can't let
3 this animal go.

4 A. Well, there was talk about staying overnight,
5 except those two vet techs were underclothed probably for
6 it. That is probably why we didn't. We didn't wait for the
7 next GPS location I remember, and we kept falling out of
8 phone contact.

9 Q. Yeah.

10 A. So we decided rather than shoot him at dusk and
11 dealing with it, we would come back the next day. That is
12 kind of where we notified them. But I guess we could have
13 stayed. We talked about it, I guess, staying overnight.

14 Q. Would you try to keep him under overnight?

15 A. I don't know. I imagine --

16 Q. The thing is, you are not the vet?

17 A. Yeah.

18 Q. I mean, so that is why you have a vet on scene. I
19 just wondered, because I look at it, I compare what your
20 guys' circumstances were with the shitty Comms, you know,
21 all the other things, and what we had to put together, that
22 worked out quite well, worked out pretty successfully. But
23 the resources we had to put together to make that thing
24 successful --

25 A. Yeah.

1 Q. -- and I kind of wonder if it wasn't really a gift
2 that we didn't get him that day before?

3 A. I am glad. That ricochet might have been a good
4 thing, because then we would have been -- he was weak
5 enough, he might have just died overnight being drugged. I
6 don't know. I don't know how strong he was.

7 Q. Well, the thing is, I think trying to keep the
8 animal under -- I remember Ole had gas, and of course, we
9 used gas in the helicopter getting back because he didn't
10 want to have to keep pumping him with that drug and have the
11 metabolization issues and all with the drug. At least
12 that's how it was explained to me.

13 A. Right.

14 Q. And, of course, gas isn't anything that we are
15 going to routinely carry in the field or that we were
16 trained in using?

17 A. And oxygen, right.

18 Q. Anything else?

19 A. I think they might -- Emil's letter after, you
20 know, the euthanization, you know, he was real supportive of
21 the Department on their efforts. But a lot of people are
22 saying we should have been carrying antibiotics, and they
23 are probably right, things like that, you know, they can
24 come back and give us something.

25 Q. You are talking about because of the possibility

1 of that infection --
 2 A. Yeah.
 3 Q. -- was caused by the dart?
 4 A. I don't think it was caused by the dart, but I
 5 think it was caused maybe by the capture, I don't know. But
 6 there was a couple holes in his side, you know, I tried to
 7 clean, put that topical and some iodine on.
 8 Q. Do we normally carry antibiotics?
 9 A. Not that I am aware of.
 10 MR. FABRITZ: You mean for injection, Gary?
 11 Q. BY MR. HOVATTER: Well, that was part of the
 12 criticism, you know, that something in the capture site had
 13 caused that animal to have that, and that if we had
 14 antibiotics, if we had used antibiotics, it might have
 15 headed that off. By the same token, you know, I know
 16 healthy cats, or at least I am led to believe, healthy cats
 17 fight off some horrendous infections with success, but this
 18 was a very old cat.
 19 A. Yeah. Yeah.
 20 Q. Anything else, sir, that you can think of?
 21 A. Not at the moment.
 22 Q. Okay.
 23 A. I will let you know. I will go through it again,
 24 you know.
 25 MR. FABRITZ: I am going to shut this thing off.

1 ***
 2 December 23, 2010, Telephone Interview
 3 MR. SMITH: Hello.
 4 MR. FABRITZ: Thorry.
 5 MR. SMITH: Yes.
 6 MR. FABRITZ: This is Marty.
 7 MR. SMITH: Hey, Marty, how are you?
 8 MR. FABRITZ: I am good, sir. Hey, you got a few
 9 minutes?
 10 MR. SMITH: I will make a few minutes. What you
 11 got?
 12 EXAMINATION CONTINUED
 13 BY MR. HOVATTER:
 14 Q. Hey, Thorry. This is Gary, too. It is Marty and
 15 I. This is still some things I was just going back through
 16 our materials again, and I should have asked you about some
 17 of this yesterday.
 18 A. Uh-huh.
 19 Q. And a couple of things, and, frankly, I think
 20 most, maybe even all of this, we had already asked you about
 21 before, but I think -- I don't think I ever sat down and
 22 kind of worked through the line on this in this sequence on
 23 it.
 24 A. Okay.
 25 Q. So what I wanted to ask, you know, now, Emil had

1 that -- the collar was Emil's?
 2 A. Right. He was given that, I guess, as part of the
 3 Jaguar Project by North Star.
 4 Q. They are not real, real clear. The question I
 5 have on, you know, I don't know that I did ever ask you,
 6 when was the first time you knew that that collar existed,
 7 because, I mean, you weren't part of the Jag Conservation
 8 effort?
 9 A. We were setting snares in the Patagonias is when I
 10 was aware of that. It might have been the first day I met
 11 him, first or second day I met him, I guess, I found out, I
 12 think. It was pretty early on.
 13 Q. So that would have been back in that
 14 October/November time frame?
 15 A. Right. Right. Yeah.
 16 Q. You guys are backing out --
 17 A. I think we had it with us then.
 18 Q. And was that -- was he carrying it with him?
 19 A. He was carrying it with us when we were setting
 20 snares in Patagonias, yes.
 21 Q. Okay. All right. You know, did you -- now,
 22 clearly, you know, the snare is something he had. You
 23 hadn't been part of the Jag Conservation effort.
 24 A. No, the snares were actually Game and Fish's.
 25 That was stuff I brought down under Kirby's project, left

1 over from our lion project, too.
 2 Q. Well, was your thought on that on the -- now, was
 3 this for one of the three lions you were trapping for, you
 4 know, to put the three large carnivore --
 5 A. Yes.
 6 Q. -- collars on?
 7 A. I think I remember I caught two bears and he
 8 caught the two lions over that way. There was a Tom. I
 9 can't remember if there was a female, too, but yeah, he had
 10 caught the lions in the Patagonias.
 11 Q. All right. But this was part of -- this was the
 12 same thing -- part of the same study as when they caught
 13 the -- when he and Michelle caught that first lion in the
 14 Atascosas?
 15 A. That's right. That's right.
 16 Q. So this was part of that -- so, and, again, I am
 17 asking you, this is over a year --
 18 A. Yeah.
 19 Q. -- but do you have -- do you have any memory of
 20 how that came up? I mean, because, again, you wouldn't have
 21 known to ask him about that.
 22 A. Oh, no. I knew he was associated with the Jaguar
 23 Project, and I knew he probably knew where cats were and
 24 bears were from his pictures, I guess. I think maybe Ron
 25 knew that, too. I don't know if either one of us knew he

1 had a collar until we actually started working with him.
 2 I showed him our collars. He had one of his own
 3 that, you know, he thought would make sense to bring in case
 4 we did ever catch one. I wouldn't have known to ask him if
 5 he had it. I guess reading in the old, I don't know, the
 6 old transcripts from the Jaguar Conservation Team Meeting
 7 Minutes, I guess, I read over the summer, I guess I read
 8 that it was announced he had a collar, but I never did much
 9 with it.

10 Q. Of course. So he was carrying that with him
 11 during that study, and that -- do you know if Kirby was
 12 aware he was carrying that collar with him?

13 A. I believe so. He might have actually -- I
 14 remember he checked snares for us once. He might have
 15 brought with him because I gave him my bag, and I must have
 16 explained if it was in there what it was. Yeah, it was no
 17 secret from him.

18 Q. Do you recall, did that ever generate any
 19 discussion among you guys, because, you know, later on in
 20 February, you know, you were asking, you gathered some
 21 information about current permits and things like that. The
 22 question I have is, is did that generate any conversation?
 23 You guys didn't ask -- I guess I am presuming. Nobody asked
 24 him to bring that collar from the Department as far as you
 25 are aware, did they?

1 A. Oh, right, yeah. As far as I am aware, no one
 2 asked him to. There was some discussion in the Tucson
 3 Regional Office. Like Ron was on the phone and Kirby and I
 4 and some internal folks were in the office with Leonard,
 5 and, you know, they mentioned catching a jaguar. You know,
 6 I don't know where it went. I don't remember what the
 7 actual substance was, but it was just brought to the table
 8 that it might happen.

9 And a day later, we had that Forest Service -- we
 10 had that Fish and Wildlife Meeting at the Fish and Wildlife
 11 place at the border. I learned all about the border wall
 12 and the fence and where it was and whatnot. I don't think
 13 it was mentioned that day, but the day before it was.

14 Q. When was that meeting?

15 A. In December.

16 Q. That was in December?

17 A. I don't have my notebook with me, but --

18 Q. Okay. So that was in December?

19 A. That's the day after we were at the one in Tucson.
 20 It was kind of back to back, one at the regional office so
 21 internal folks would know what to bring to the table as far
 22 as the border wall the next day with the Federal agencies
 23 involved. You know, the Forest Service was there. The Fish
 24 and Wildlife Service was there. Tohono O'odham Tribe was
 25 there.

1 Q. So there was -- I understand, was the conversation
 2 during that meeting in December about jaguar, was that an
 3 extensive conversation or rather peripheral?

4 A. It was pretty quick, you know, it was mostly
 5 about, you know, how are going to make the study work? You
 6 know, the Wildlife Conservation Society was, I think,
 7 sitting in on that as well. Emil was there and maybe Jack,
 8 I am not sure. And, then, you know, it was just mentioned
 9 that, because it was a possibility we are going to be down
 10 south that it might happen. I don't know if it was brought
 11 up that Emil had the collar or not, but I am pretty sure
 12 that Kirby was aware of it anyway by that point.

13 Q. Kirby was at that meeting?

14 A. Yes, he was.

15 Q. So do you have any at this, removed from this,
 16 being a year ago now, do you have any memory about who
 17 brought up the jaguar issue at that meeting?

18 A. Well, I think I might have mentioned it to Kirby,
 19 you know, at some point, maybe even October, November, that
 20 you know, we could potentially catch a jaguar down south. I
 21 think that he brought it up at the meeting. We were kind of
 22 late and he --

23 Q. He had leave from the Department for getting that
 24 meeting together, yeah.

25 A. Yeah. And I think it was just mentioned briefly

1 on that. I think Ron was there telephoning in or something.
 2 I think it was mentioned, you know, was there any issues
 3 there? I am not sure we ever got it resolved that day or
 4 not. I don't remember.

5 Q. Okay. So our sense, then, was you became aware
 6 and Kirby became aware about that same time. Were you and
 7 Kirby and Emil ever together in the Patagonias for part of
 8 that project back in that October/November time?

9 A. No. We never were there at the same time. We
 10 never did have a sit-down or anything. It was, I remember,
 11 Michelle and Kirby had bumped into Emil, I think -- oh, not
 12 Arivaca, but what is that town he lives in?

13 MR. FABRITZ: Sonoita.

14 Q. BY MR. HOVATTER: Sonoita?

15 A. Sonoita. Sonoita. I think they bumped into him
 16 at a gas station in Sonoita right around the time we all had
 17 met.

18 Q. Yeah.

19 A. I think it was after that I sent the e-mail out
 20 saying, well, maybe we should get together. Maybe you can
 21 help us catching these animals since you know kind of where
 22 the travel corridors are and stuff, so --

23 Q. So, in the field, your memory is in the field by
 24 that October/November time frame when we are doing the
 25 trapping for lions for that Large Carnivore Habitat

1 Connectivity Study that Emil told you that he had that
 2 collar and was carrying it around with him?
 3 A. Yeah. Yeah. I think it was probably within the
 4 first few days we met really, because I was already setting
 5 snares, I believe. You are right. It has been a year. I
 6 can't remember an exact date, but I remember it being early
 7 on.
 8 Q. Not important an exact date. Again, Kirby, was it
 9 your belief that at the time that Kirby also knew he was
 10 carrying that collar?
 11 A. I believe so.
 12 Q. Yeah.
 13 A. I believe so. I remember giving Kirby the
 14 backpack to go -- to go, you know, check snares once. So it
 15 must have been in there unless Emil took it back. I don't
 16 know at what point he had sent that out to get refurbished.
 17 I don't know how long that took. I don't remember that
 18 part.
 19 Q. So as far as that collar being in the field, when
 20 you became aware that he had that, how did that -- how did
 21 that collar change hands so that it would be available if a
 22 jaguar had been captured? I mean, it sounds like you had it
 23 in your pack sometimes or you had it, and Kirby probably
 24 carried it on at least a couple of occasions, so --
 25 A. I think, you know, Emil's place was on the way

1 home or on the way to work from where I lived wherever. So
 2 I would either just pick up the backpack and bring it with
 3 me or drop it off when I was leaving, you know, so he would
 4 have his collars and the equipment and whatnot. It was
 5 actually --
 6 Q. I have got it. So it was just that because of the
 7 study area, that was something that was doable to make that
 8 kind of a stop on the way back and forth?
 9 A. Yeah. Right. It was just on the way down to
 10 Patagonia, just head south, then cut to the east, and you
 11 are in. I might have picked it up at his place or dropped
 12 it off when I was leaving or whatnot, but yeah, it was
 13 always available.
 14 Q. Thorry, knowing this was a Bear and Lion Study,
 15 part of the question is, did you guys have a discussion at
 16 that time, in that October/November time frame, about since
 17 it is, you know, it is an endangered species about the
 18 permitting aspects of this if we had it captured?
 19 A. Well, that was my first question was, was there a
 20 permit? He assured me there was.
 21 Q. Who assured you?
 22 A. I am sorry. Emil knew of a permit.
 23 Q. Okay. So that -- so you asked that because you
 24 are an experienced guy. You recognized that possibility?
 25 A. I don't -- I guess, you know, if we had a jaguar

1 collar, you know, and if we weren't allowed to catch it, you
 2 know, I don't know what we would do if we did catch it and
 3 then had to release it, but that was, I guess, an option we
 4 had. But I was assured that he had been aware of a permit.
 5 I had never heard of a permit. But I said, Game and Fish is
 6 aware of that? He said, yeah, with the Feds and the Fish
 7 and Wildlife, Game and Fish, and the Jaguar Conservation
 8 Team.
 9 Q. And that was Emil was the source of the
 10 information on that?
 11 A. Right.
 12 Q. Did you ever discuss that with Kirby?
 13 A. I thought I must have because it would have
 14 been -- I don't recall, but I must have.
 15 Q. Well, the thing is, of course, you know, we still
 16 believe we had a permit, and we all believe we had a permit
 17 at the time. So I am just as interested in how that came up
 18 at that time frame. The refurbishment of the collar,
 19 whatever that was, because I have heard, you know, different
 20 things, that there was a reprogramming of it for the
 21 number of records it would keep during the day or that the
 22 battery was redone.
 23 But do you have any memory of -- let me ask you
 24 this. At the end, towards the end of November, we have
 25 captured the third lion. Emil is no longer working under

1 that contract because there was no longer any lion work for
 2 him. Did we give the collar back to him then or we just
 3 didn't pick it up anymore from his house?
 4 A. It must have been in his possession. I wouldn't
 5 have had that with me after we were done snaring. I think
 6 we ran out of collars.
 7 Q. Yeah, you did. You got the three lions?
 8 A. I think he would have taken that collar back with
 9 him at that point.
 10 Q. Okay. The drug e-mails that Emil sent out to
 11 Roberto and all on the 2nd of February --
 12 A. Uh-huh.
 13 Q. -- again, I don't think I thought to ask you this
 14 at the time. Do you know whose idea it was to connect up
 15 and ask that question of them?
 16 A. I believe it was mine, but I am not positive. I
 17 just was, you know, Emil was going to leave town. Emil was
 18 going to leave town. And I had old, you know, I had a drug
 19 book with a dosage on it, and that book had not proved very
 20 reliable as far as lions. So I asked, you know, what is the
 21 latest and greatest, because, you know, this is the stuff I
 22 had from the Game and Fish record, you know, the old
 23 Conservation Team Minutes was, you know, 2000 or 2002. I
 24 wanted to -- I asked him, well, is this the latest? He
 25 said, well, I will find out. So he started that e-mail

1 chain, I guess.
 2 Q. Yeah. I mean, he outlines why you guys are
 3 looking for that. One of the questions I have is this, you
 4 know, there's not a similar set of questions from back in
 5 October/November when you guys were operating down in that
 6 area. I was kind of wondering what was different about late
 7 January, early February, as opposed to back in
 8 October/November that caused you and Emil to have that -- to
 9 decide you needed to get updated information?
 10 A. Yeah. I probably should have done it back in
 11 October/November, but I don't think there had been a jaguar
 12 in that area since '63 or something. But knowing that there
 13 had been pictures relatively recently in the Atascosas and
 14 the Pajaritas, I guess, made me a little bit more nervous
 15 about, you know, the chances of catching one without having
 16 the proper drug doses, I guess. It is probably something I
 17 should have asked in the fall, but I guess since there had
 18 been activity in the past, you know, more recent --
 19 MR. FABRITZ: So, Thorry, was it the photos from
 20 November then, or the ones that you learned about in
 21 November, is that what kind of clued in your brain to start
 22 looking into that?
 23 THE WITNESS: Well, I guess there was a photo from
 24 July that he didn't get until later that was further north
 25 somewhere.

1 Q. BY MR. HOVATTER: Yeah.
 2 A. You know, east -- I guess, west of I-19, I think,
 3 and, then, I am trying to remember the number of photos. I
 4 don't remember how many photos there were. I know the one
 5 we picked up that day, and on the 4th, you know, we wouldn't
 6 have known about that. I had already asked the question
 7 about the drugs then. So, you know, it probably was the
 8 fact, I think, I don't remember when Emil told me that he
 9 had got that picture. Was it December? Because the cat had
 10 disappeared for a while.
 11 And maybe the fact that it reappeared, I started
 12 asking about the drug question, because it was alive. I
 13 don't remember if in October or November that -- I don't
 14 remember if there was a fresh picture. If there was, maybe
 15 I have been clued in then, too.
 16 Q. Well, do you remember, when you talk about
 17 December, Thorry, is it your thinking that that is when you
 18 were told about the photos or that is when a photo was
 19 taken?
 20 A. I think the photo was taken in July, but he didn't
 21 pick it up from the camera until later. I don't know if
 22 that was December or before. If it was December, then that
 23 may have been, you know, the reason why I asked the
 24 questions, but, you know, the cat had just kind of faded
 25 away for a while. I don't think he had a picture of it for

1 a year or more.
 2 And, you know, knowing how old it was, I thought
 3 it had died or just left or something. Maybe that is why it
 4 wasn't pressing in October/November, but I think the fact
 5 also that the jaguar had frequented the Atascosas in the
 6 past so much that this is probably why, I was, you know --
 7 Q. Actually, it was -- it was actually he had found
 8 some photos, the photos he found from that late July and
 9 August in '08, he now shows in late November. So that is
 10 why I think that lines -- I mean, I know you are talking off
 11 of memory. So, I mean, that all lines up in my mind. So is
 12 your memory of those photos that when we -- because we were
 13 by -- pretty quickly after that, we were out of the trapping
 14 business?
 15 A. Yeah. Right. So I don't even think I was
 16 really -- I caught some in October. I think November it was
 17 more working with sheep time of year for me then. I don't
 18 quite remember fully, but --
 19 Q. But your memory is it was -- then it was those
 20 summer, those July and August of '08 photos when we
 21 started -- restarted in the Atascosas, because that is where
 22 we lost that -- had that lion taken, that sport lion, that
 23 those photos when you started in that were what prompted you
 24 to think that you might want to get updated drug
 25 information?

1 A. It must have been, because, you know, he wasn't
 2 gone. He was in the area, you know, six months ago, but,
 3 you know, he could be anywhere. He is always going to be a
 4 couple mountain ranges away it seemed like. I know he could
 5 be back in Mexico. He could be further down in the coyotes.
 6 I didn't have a clue there.
 7 Q. Well, given on how far he can move in a day?
 8 A. Yeah, really.
 9 Q. Hey, so your -- I have in my mind the logical
 10 reason why McCain would have been the one to send those
 11 e-mails, but rather than to put words in your mouth, why
 12 did -- why was Emil the one who made that -- made those
 13 calls or sent those notes out?
 14 A. About the drug dosages?
 15 Q. Yeah.
 16 A. He knew those -- well, he knew -- he knew them. I
 17 didn't know anybody really.
 18 Q. Well, I would have assumed that, but, again, I
 19 didn't want to put words in your mouth. I mean, that's the
 20 logical thing is he has been working in the jaguar business
 21 for quite a while, and that was not something that was --
 22 A. Yeah. I didn't know who to call about it, you
 23 know, I could have looked somebody up, and I figured he
 24 would know who to talk to and all. And Aguilar kind of
 25 forwarded it to Deem, Sharon Deem, and she was, you know,

1 sounded like the preeminent one. So we kind of took her
2 advice on it.

3 Q. Hey, on the day after that, on the 3rd, Ron had
4 sent a note to Bill and asked him for the latest protocols
5 on jaguar. And, then, he sent those on to you, and I was
6 just, do you know why Ron approached Bill?

7 A. Bill Van Pelt?

8 Q. Yeah.

9 A. No. I remember -- I remember talking to Ron
10 briefly asking him, again, about a permit and what the
11 latest and greatest -- I don't know if I asked him about the
12 latest and greatest on drugs or not, and he kind of just
13 sent me to Section 6 stuff from the Non Game that Non Game
14 had put together.

15 Q. I think -- well, there wasn't an e-mail that
16 started this. The start of that string was just Ron asking
17 Bill about that. And I kind of made a presumption that that
18 was probably because you may have asked Ron if he knew any
19 of the information, and Ron went and --

20 A. I imagine maybe so. Maybe Emil and Ron had
21 talked. I know that those guys had talked some back then,
22 too. I think, actually, Emil had worked more with Ron on
23 getting on the contract than with me and Kirby. So I don't
24 know what they had talked about. It might have been a
25 conversation they had. I do remember asking Ron if he had

1 the information about the situation and the potential.

2 Q. And what you were trying to get from him, because,
3 you know, there's a lot of different bits. There is the
4 term protocol is used for a couple of different things that
5 exist out there in the Jaguar Conservation effort, and when
6 you were looking for those, what were you actually looking
7 for? I mean, what was it you wanted to make sure or what
8 was it you were trying to make sure you knew about that?

9 A. I never had -- see, I still had not seen that
10 permit. So I was kind of curious about that. At that
11 point, I don't know if I had drug dosages, the latest and
12 greatest there either. So it was probably just, you know, a
13 couple things. It was a whole new world to me. I wasn't
14 even sure what I was up against. Probably any information
15 would have been helpful.

16 Q. Yeah. Yeah. Again, that is kind of how I
17 interpreted that, and I think I realized, Thorry, that I
18 kind of connected dots myself on some of this information as
19 opposed to -- and made some assumptions. I am just trying
20 to make sure that, and pretty much this lines up with what I
21 had thought, but I had thought -- I didn't want to make
22 those assumptions when I had the opportunity to ask you more
23 specifically.

24 A. No, I understand. Yeah, you have got to be real
25 clear about this for sure. I guess the pictures, the most

1 recent pictures, kind of clued us in that that cat has not
2 gone, that the potential was there, you know, better start
3 by looking into it. If this was going to happen, we better
4 do it right.

5 Q. Understood. Hey, I am trying to think if there
6 was anything else because I don't know want to keep calling
7 you.

8 A. No, that is fine. I am here for you, so --

9 Q. No, I think -- Marty, is there any -- does that
10 elicit anything else from you? I think that all lines up
11 the way I was -- kind of the way I thought. I just realized
12 today that I kind of assumed things, and I shouldn't be
13 doing that in this. No, I think that's it. I think that is
14 very good.

15 Let me ask you this one thing. On the 31st when
16 you and Emil talked, you know, clearly, you were aware that
17 they had put jaguar scat at those two cameras, but then we
18 had Janay's allegation that she had put it elsewhere and
19 that we knew about that.

20 The question I had, was it Emil's contention
21 that -- that Janay was absolutely lying or was it that she
22 was -- that some of what she said was truth, but that she
23 expanded on it, and she lied about other parts of it?

24 A. I think it is the second, because Emil admitted to
25 me that scat was put at the two camera sites within my snare

1 loop, which I was unaware of. So I knew he was aware of
2 that, which backs what Janay said partially, but the fact
3 that Janay said, you know, we had her put scat at the snare
4 site that the cat was actually caught, you know, that part
5 was a lie. Emil knows that, too.

6 But, you know, the part about the scat being at
7 all camera sites was unknown to me, but I think he did know
8 that was true. He admitted that. I saw him put it at two
9 places, and he admitted to me that the other two, they did
10 put scat out while I was there.

11 Q. So the two were -- the one was down south. Those
12 two that were down south, the one was almost straight south,
13 the other southwest, those were the two that he acknowledged
14 as you guys were going around and checking that he was using
15 jaguar scat?

16 A. Yeah. That's where he -- quiet, please -- I had
17 seen him, he had pointed out an old scat, and I saw him pull
18 out of a bag the newer scat. That was down at Sycamore
19 Creek, the one the south, and then the Tonto Creek one was
20 the one furthest away, and he put it there again. And that
21 was the first and only two I was aware of that day.

22 Q. On the 31st, what Emil told you is that he
23 actually put them at those other two snares that were in the
24 loop or at those other two cameras that were in the snare
25 loop?

1 A. Right. That was the first I was aware that it was
2 that close to our sets.

3 Q. And the other question, do you know what his
4 source was? Did you have, I mean, in some respects, it is
5 not particularly important for what happened on that from
6 your perspective, but did you happen -- did he happen to
7 tell you or did you happen to ask what his source of jaguar
8 scat was?

9 A. He said a zoo. That's as far as I asked. I must
10 have asked, where did you get it? He said, a zoo. I didn't
11 think he found it. I didn't know a lion scat from a jaguar
12 scat. He said he got it from a zoo.

13 Q. Given his track record of identifying jaguar scat
14 so far, I wouldn't -- any jaguar scat he picked up off the
15 ground would be suspect.

16 A. Yeah. You know, it is hard to tell the
17 difference, you know, unless you do that genetic stuff.
18 But, you know, he got it from a zoo. And knowing in the
19 papers from Shiloh, Marty mentioned that lady yesterday,
20 Shiloh, I forget her last name, but I guess she pointed out
21 which zoo and how often and that it was a female jaguar scat
22 he uses in estrus. But I wasn't aware of the female in
23 estrus part the day we put them out or the day he told me
24 that he put them at the other two until I read the paper
25 that it was a female jaguar scat in estrus.

1 Q. Marty, anything from you? Thorry, thanks again.
2 I just -- I tried not to nickel and dime you on this, but I
3 appreciate it.

4 A. No, no. We have got to get through this. So
5 whatever you need, you know, this isn't going to go away.

6 Q. All right, sir.

7 A. Okay. Take care. Let me know if you have any
8 more questions. Thank you. See you, Marty.

9 * * *

10 January 25, 2010, Interview

11 MR. FABRITZ: January 25th at about 2:35. Craig
12 McMullen, Marty Fabritz, and Thorry Smith with a follow-up
13 question for Thorry.

14 EXAMINATION CONTINUED

15 BY MR. MCMULLEN:

16 Q. Okay. We are still operating under Garrity. You
17 remember all the Garrity instructions? Do we need to go
18 through that again?

19 A. No, we are fine.

20 Q. Okay. We are just wrapping a few loose ends today
21 with a few people, and we interviewed Ray Schweinsburg
22 recently. He recalled that you had come to him when he was
23 Acting Branch Chief, and it was probably somewhere around
24 January 2009, and asked him if we caught a jaguar, should we
25 put a collar on it? Do you recall that conversation?

1 A. I have talked to him maybe a couple times. I
2 don't remember that time, but I remember asking him, I asked
3 Dean, I asked Chasa, I asked Ray. I always bounce ideas off
4 Ray what to do if, you know, and one time he came down here
5 and we talked to these guys here.

6 Q. Ray did or you did?

7 A. Both of us did.

8 Q. Okay. So that was probably that time. So who did
9 you talk to then?

10 A. We came down here and we talked to, it was five
11 until 5:00, just kind of squeeze in the last -- I don't
12 think Chasa was in or Chasa didn't have specific direction.
13 I knew collars were coming in soon, I needed to know. So we
14 went here, and Ray and I found Larry and Gary --

15 Q. Uh-huh.

16 A. -- and asked them.

17 MR. FABRITZ: Right here in the Director's Office
18 somewhere?

19 THE WITNESS: Yes, out in the open.

20 Q. BY MR. MCMULLEN: Yeah.

21 A. And they, you know, it was kind of off the cuff,
22 better go talk to Terry. You know, it was after 5:00, so we
23 never got a chance to do that, so --

24 Q. Okay.

25 A. Yeah.

1 Q. So they said you better go to talk to Terry?

2 A. They mentioned, you know, well, we don't have
3 specifics on them. So go talk to Terry, being the
4 endangered guy. I think they were kidding around about
5 their -- your phone go off?

6 Q. What is that?

7 A. It sounds like the picture.

8 MR. FABRITZ: The what?

9 THE WITNESS: It sounded like someone's camera,
10 phone camera.

11 MR. MCMULLEN: Yeah, it did. You got your phone?

12 MR. FABRITZ: My phone is over there somewhere.
13 It doesn't matter.

14 THE WITNESS: Yeah.

15 MR. FABRITZ: It's in your pocket. So they
16 basically said to double-check with Terry on --

17 THE WITNESS: Probably, you know, go to Terry. He
18 was the Jaguar person for that.

19 Q. BY MR. MCMULLEN: Okay. So the question, do you
20 recall the question you asked Larry and Gary?

21 A. Just, you know, this might happen, you know, we
22 might catch this jaguar, we are down there, and what
23 direction do you guys have?

24 Q. In terms of putting the collar on him?

25 A. Whether we should even be there, you know --

1 Q. Yeah.

2 A. You know, they didn't see a problem, but go talk

3 to Terry, you know, and we never got a chance. By that

4 time, it was after 5:00. The next time I went into the

5 office, I saw Dean and Bill Van Pelt talking, so I thought

6 everybody was on the same page.

7 MR. FABRITZ: I remember you saying that before.

8 Q. BY MR. MCMULLEN: Okay. So the question you asked

9 him was about put the collar on or not?

10 A. I don't know if it was the collar or not, or we

11 might catch a jaguar, what should we even, you know, what do

12 we do?

13 Q. Do you remember the guidance you got from them

14 specifically?

15 A. Not so much. It was very vague because it was

16 kind of off the cuff anyway. They didn't have much

17 paperwork for me, so they just passed it off to Terry.

18 Q. Said go talk to Terry?

19 A. Yeah.

20 Q. Do you remember talking to Terry?

21 A. I never talked to him. I never met him until

22 after this whole thing.

23 Q. Oh.

24 A. I never met Bill Van Pelt until I went to his

25 house to go down to start looking into recapturing Macho B.

1 Q. Okay.

2 A. I kind of went within the Branch trying to figure

3 out what to do hoping the answer would come that way, you

4 know, and Ray just said, let's just go talk to Larry, and

5 Gary was there, too. So that is why it kind of struck me,

6 Gary sat next me, and I said, well, I had met him before,

7 you know, I don't know if he remembered, but, you know, I

8 was out there talking for a few minutes with Ray.

9 MR. FABRITZ: Well, the other thing, Gary was new

10 and met a whole bunch of people.

11 THE WITNESS: I am sure, you know. Yeah, who am

12 I? I am just, you know, some guy with Ray three minutes to

13 5:00 when he wants to get home. So, you know, exactly. So,

14 you know, I remember them, I think they were kidding about

15 it being endangered or not, but when they sent me to Terry,

16 who is the endangered species guy, so they must have

17 known --

18 Q. BY MR. MCMULLEN: You thought they were kidding.

19 Why?

20 A. I wasn't sure at first. You know, I was like,

21 well, it is not endangered, is it? And Ray and I are going,

22 it kind of is.

23 Q. So they did ask that?

24 A. Yeah. You know, I think they were just goofing

25 because they sent me to the Endangered Species Coordinator.

1 Q. Yeah.

2 A. So, you know.

3 Q. And Terry wasn't in that day. So I think you left

4 Ray -- or Ray was left to figure out that or --

5 A. Right. Yeah. It was close to 5:00 o'clock.

6 Nobody was going to be around anyway. I don't know if he

7 was there or not.

8 Q. Whatever guidance did you get on the backside of

9 that, do you recall?

10 A. No. The next time I was in, I remember seeing,

11 like I say, Dean and Bill Van Pelt talking about they were

12 going to be down there snaring, and I heard jaguar. I

13 lifted my head up from cubicle, and they are talking about,

14 you know, capture efforts down south, and I figure, well,

15 good. Those guys will let me know. It was just, you know,

16 it was before Kirby gave me the call that the collars were

17 in. So I don't know who talked to who. It was the whole

18 mess of this whole thing. So I am not sure where it got.

19 Q. Yeah.

20 A. I don't know.

21 Q. Yeah. Okay. Well, I think where it got was they

22 talked to Bill Van Pelt. The question eventually got to

23 Bill, and Bill said, yeah, we have got the permit, you know.

24 A. All right. Yeah.

25 MR. MCMULLEN: Give us five.

1 THE WITNESS: Okay.

2 MR. FABRITZ: Well, can I just have an update on

3 the dates?

4 THE WITNESS: Yeah, I don't know. I just, I

5 guess, I never heard really either way. I just everyone

6 knew I was going to get the collars and go. So I assumed it

7 was still a green light, you know.

8 MR. MCMULLEN: Okay. Got you. I think that is

9 all we had. We wanted to just, like I say, we were just

10 trying to connect loose ends and that kind of stuff, so --

11 THE WITNESS: Yeah. It seems like things are

12 churning. I don't know what is going to happen.

13 MR. MCMULLEN: I think we are all done. Anything

14 else, Thorry?

15 THE WITNESS: No, not at the moment.

16 January 6, 2010, Interview

17 EXAMINATION CONTINUED

18 BY MR. HOVATTER:

19 Q. Thorry, we are doing some -- I have refrained from

20 saying that these are our last re-interviews.

21 A. Oh, I understand --

22 Q. Okay.

23 A. -- it's a work in progress.

24 Q. There's some things I need to get at. Some of

25 these are -- most of this is questions we have already

1 discussed previously, but I am trying to nail some of this
2 stuff down as tight as I can preparatory to us making a
3 decision as to whether we want to potentially do an interim
4 announcement to the public on our findings as opposed to
5 waiting until the Feds get done. And then we have to do it
6 again after the Feds have made their announcements. We are
7 doing this under Garrity, the same Garrity Administrative
8 Advisory that you got before. Do you need us to reread
9 that?

10 A. No, I have read it.

11 Q. My first question is were you aware that the
12 Department had stored a jaguar collar at the time that we
13 were doing all this, essentially, that October/November '08
14 through the capture of Macho B in February '09. Were you
15 aware the Department had stored a jaguar collar in the
16 Region 5 Headquarters in Tucson for use should we ever
17 accidentally catch a jaguar?

18 A. No, I wasn't aware of that collar.

19 Q. When you went to get that rifle in Flag, did you
20 coordinate with someone to go get that or is that one you
21 knew where it was and you had access up there?

22 A. I called Jeff Gagnon to see if I could borrow his.
23 He wasn't available. So I called Bob Waddell. He had one
24 from our old Lion Study that he went up and got.

25 MR. FABRITZ: Who?

1 THE WITNESS: Bob Waddell. He is a Spec 2 in
2 Research. He was on the Lion Project with us in the river
3 bottom for a while. It is under him, the equipment I was
4 finding.

5 MR. MCMULLEN: Was it a particular dart rifle you
6 were after or just a dart rifle?

7 THE WITNESS: I have a dart rifle. I wanted a
8 C-02 gas-powered one.

9 Q. BY MR. HOVATTER: More range.

10 (Multiple speakers. Cannot distinguish speakers.)

11 THE WITNESS: Yeah, I don't like those. I don't
12 trust them. I would rather have the air-powered one. I was
13 used to that rifle. You can dial it in, you know.

14 MR. MCMULLEN: That is how come you didn't get
15 Kirby's probably?

16 THE WITNESS: I have one. I can't stand it. I
17 just won't use it. I don't like it. I am just used to that
18 one. I mean, I would have to go sight that in. We had the
19 yardage pin for certain size darts, certain pressures. It
20 was all pretty much dialed in.

21 Q. BY MR. HOVATTER: The one that Waddell had?

22 A. Yeah. So I had a cheat sheet, you know, ten yards
23 is three bars, boom, you are done, you know. Hit this size
24 dart, bigger dart, more power. We spent some time on the
25 Lion Project picking that stuff out, distance and trees and

1 whatever. So I was familiar with that one.

2 Q. When you were carrying that McCain's collar during
3 that October/November time frame, had you had time or
4 had you had the opportunity to review the capture protocols,
5 those Jag Capture Protocols that address drugs and things
6 like that?

7 A. At that time, I don't think I have. I had that
8 Bible, that Wildlife Capture Handbook, I keep with my
9 capture pack, so if it did happen, I could look something
10 up. I trouble with that book with lions because they had us
11 underdose with Ketamine. So these cats weren't going to
12 sleep. So I was kind of leery of that. That was probably
13 why later on I wanted to make sure about the latest and
14 greatest.

15 Q. Did that book have jaguar in it?

16 A. It does.

17 Q. Yeah, it does?

18 A. Yes. It's got a pretty wide --

19 Q. But you had your suspicions about that book's
20 reliability, even for common species that you were using to
21 dealing with?

22 A. I think it is a great book. I just think it might
23 be a typo or slipped up. I mean, enough cats had been
24 drugged, you know, mountain lions, it should have been
25 right. It must have been a typo. I have got faith in the

1 book. It just didn't work for us.

2 Q. Now, did you discuss with Emil about if you had
3 prior -- if you had to put that collar into place, since it
4 was his collar, how the access to the data was going to
5 work?

6 A. Not really.

7 Q. This is that October/November time frame.

8 A. Probably not because I wasn't even sure about it
9 when we caught it in February. I figured it would be shared
10 at higher levels anyway at some point.

11 MR. FABRITZ: Can I ask a follow-up question?

12 MR. HOVATTER: Yeah, sure. Go ahead.

13 MR. FABRITZ: We were poking around yesterday or
14 the day before in your old notes and somewhere between, I
15 think it was after Emil left --

16 THE WITNESS: Uh-huh.

17 MR. FABRITZ: -- to Spain and before he came back
18 on like the 16th, there's some e-mails that, I believe,
19 between you and Blake about access to the data stuff. Did
20 you guys ever end up hooking up on that?

21 THE WITNESS: I don't know if I ever talked to him
22 directly. He is from North Star?

23 MR. FABRITZ: I can't remember if Emil was
24 involved in those.

25 THE WITNESS: Yes. What happened, he called me

1 and said -- I spaced it -- but he had initialized these
2 collars. If you don't do that and you are in a canyon, then
3 it won't initialize.

4 Q. BY MR. HOVATTER: The initialization, what? It
5 keys, it gets a read on all the satellite?

6 A. Right. It can get its almanac and it is ready to
7 go. Then it can lose sight of it, again, but it is still
8 active until it comes out in the open. If you don't -- I
9 don't know about with North Star, but with Telonics, if you
10 don't do that, it might not initialize ever. So you want to
11 make sure -- at that point, I initialized all the lion
12 collars, too. I spaced out on that, too. So we put them
13 all around that cabin in Ruby, the jag collar, and the other
14 ones, Michelle or Kirby, I forget which, checked on-line to
15 see if our collars are working, and the jaguar one, too.

16 MR. FABRITZ: So to initialize and do all that,
17 does that need a password and all that as well?

18 THE WITNESS: Yes.

19 MR. FABRITZ: Okay. I just wasn't clear on that.

20 Q. BY MR. HOVATTER: Thorry, before we get -- I kind
21 of -- you know, I have been so focused on the jaguar process
22 and the jaguar stuff that I walked past something that I do
23 need to ask you about, and that is during the course of our
24 initial interview and when we were talking about you going
25 to Flag, you had said that you had -- I am paraphrasing --

1 that you had to adjust your T & T because of the hours, and
2 you had pushed those hours --

3 A. I think I had to add it to the next week or
4 something.

5 Q. The question -- the question I have to ask on that
6 is that the -- what guidance did you have about or what was
7 your understanding about the use of T & T? You said the
8 necessity for having T & Ts accurately reflect the hours
9 you worked so that you were appropriately compensated?

10 A. Right. I probably handled that poorly. You know,
11 working under Ted, you know, he's pretty lenient. You could
12 work a bunch of hours one week and count them towards the
13 next as long as you were honest about how many total hours
14 you had. And I probably fudged it just to get something
15 done to make something work that probably should have waited
16 until the next pay period a day or two.

17 Q. Had Kirby or anybody else provided you any
18 guidance on that area?

19 A. I never mentioned it to him.

20 Q. Okay. So if I understand what you say, you
21 essentially -- you kind of carried over a practice that had
22 been a part of the way you had operated with Ted --

23 A. Yeah.

24 Q. -- into that?

25 A. I don't want to blame anybody but myself.

1 Q. No, I understand. You have always -- you have
2 always taken on ownership on that. I understand that.

3 A. You know, with Research, there is chunks of time
4 where you need to get your work done, and then there is slow
5 times. I certainly wanted to be prepared while I was
6 running them. I guess rather than having to turn the snares
7 off, then go get them, and turn around, and we're wasting
8 time, you know. I just had experience where you turn your
9 snares off, you come down to Ben Avery, and you come back
10 the next day, and the stuff is right where you want it to
11 be. I just didn't want to waste time, I guess, not policy
12 but just how I ran it.

13 Q. Understood. And, again, I knew this was going to
14 be a pretty short interview from my perspective. I know you
15 have to travel. I am sorry about that.

16 A. That's just fine. Whatever you need.

17 MR. HOVATTER: Guys, you got -- what do you got?

18 MR. MCMULLEN: There is a chance that at some
19 point, media, we have had dozens of Freedom of Information
20 Act requests. There's a chance that most of this or all of
21 this will reach the media at some time.

22 THE WITNESS: I expected that.

23 MR. MCMULLEN: And so part of our preparing is
24 anticipating what sorts questions people would have if they
25 had the whole entire suite of information we have. And so

1 in doing -- looking at the information we have got, from
2 that perspective, there are a couple things that we wanted
3 to clear up.

4 I think we know the answers to them, but one of
5 them that occurred to us was that during your going back
6 through the report that was generated after your March 11th
7 phone interview while you were in Hawaii, you stated that
8 you weren't aware of any jaguars in that area at the time of
9 Macho B's capture. At least that is how it is characterized
10 in the report of that interview.

11 There's an e-mail string from February 2nd that
12 involves Robert Aguilar, and this is when you guys were
13 trying to figure out drug dosages, where Aguilar states in
14 an e-mail to Sharon Deem that you are cc'd on that you guys
15 are trapping right now and that there are jaguars in the
16 area.

17 THE WITNESS: That was Emil had wrote that as
18 well?

19 MR. MCMULLEN: Then on February 13th, there is an
20 e-mail from Emil cc'd to you that says Emil said that there
21 is fresh jaguar scent in the area?

22 THE WITNESS: Well, I guess that's an
23 interpretation of what is near, you know. To me, two
24 mountain ranges to the north is as far as you can get and
25 still work, you know. I don't know. I guess Emil, maybe he

1 knew he would move quicker than I thought. I don't know. I
2 guess, it's his interpretation of it. To me, that's two
3 mountain ranges away and distant.

4 MR. SMITH: So from your perspective, it was just,
5 you knew --

6 THE WITNESS: I knew a cat had come through.
7 Yeah, he was, you know, saw tracks of a jaguar. You know, I
8 didn't know if it was him or not. I talked with you last
9 time. You asked me if Emil had talked about whether that
10 was Macho B's track at that time.

11 Q. BY MR. HOVATTER: Yeah, because of that toe?

12 A. I think I remember him pointing out the wide toe
13 that could have been, you know --

14 Q. That was your -- my understanding is that was your
15 first knowledge, though, that Macho B had that kind of a
16 footprint --

17 A. Right. Right. Right. Right.

18 Q. -- was that conversation?

19 A. At that point, that cat was in the Tumacacori's.
20 I think that is the mountain range north of the Atascosas,
21 so I don't know. Where do you draw the line on when you can
22 catch an animal?

23 MR. MCMULLEN: No.

24 THE WITNESS: That's how I saw it.

25 MR. FABRITZ: We are just anticipating --

1 MR. MCMULLEN: These are questions that we want to
2 be prepared for.

3 THE WITNESS: Sure. That's Emil's perspective and
4 Aguilar's, and Aguilar didn't know anything but what Emil
5 told him, you know. So, I guess, that's just Aguilar
6 talking through Emil.

7 MR. MCMULLEN: Those e-mails, March 11th -- or no,
8 February 2nd and 13th, do you think -- do you think you had
9 a chance to look at those before February 13th?

10 THE WITNESS: I don't know. I am trying to think
11 because I was in the field from eight days straight. I
12 think I might have checked on them when I got the rifle. I
13 think I did. I got an e-mail about a sighting from one of
14 the investigators in Tucson, I think, but I don't know
15 whether I checked him out. I don't recall the timing of all
16 that. Probably if I did respond to them. There was a lot
17 of e-mails after the capture, maybe even after the
18 euthanization.

19 Those guys, Deem and Aguilar wanted to get
20 together and talk about this whole thing. I kept kind of
21 pushing it back. I didn't want to get into that with them.
22 This whole thing was turning kind of sour. Emil, I actually
23 called him, too. I said, we probably ought not do this
24 until we get things straight.

25 Q. BY MR. HOVATTER: I just thought of something

1 actually, and I don't know why I had forgotten to ask. When
2 you found that photo on the 4th --

3 MR. MCMULLEN: Tonto Canyon.

4 Q. BY MR. HOVATTER: -- when Emil showed you that
5 time. Now, you know, we have clearly established from
6 everybody that Comms sucked from out there. That satellite
7 phone was iffy at best. So most of the communications we
8 see are late in the evening or at night and all after you
9 guys -- when you had the opportunity to get out of the field
10 is when almost everybody that worked down there, that is
11 kind of that same rhythm.

12 A. Right.

13 Q. The question I had was did you, when you saw that
14 photo, somewhat distant in time, but, obviously, close in
15 geography, did you -- did you inform Kirby or let Kirby know
16 that we had -- that you had that situation occur there?

17 A. I don't believe so, probably only because the
18 picture in the Tumacacori's was more recent than it was. I
19 don't even know if Kirby knew about that, but Emil, I think
20 he e-mailed me that whole picture. I don't know if he
21 copied that on Kirby's or not.

22 Q. As far as the next day when you had the track, did
23 you -- did that trigger any communication with Kirby to let
24 him know about that?

25 A. It should have. It should have. Emil told me he

1 would take the picture and the track and report it to the
2 Fish and Wildlife and to Game and Fish, I think, Bill Van
3 Pelt and Terry Johnson about this.

4 Q. Okay.

5 A. That is probably something I should have forwarded
6 to Kirby as well.

7 Q. So that was while you were at that -- while you
8 were out there, then, because, of course, then Emil left the
9 5th or 6th?

10 A. Yeah.

11 Q. So he had said he was going to make notification
12 on the track and the photo to Game and Fish and to Fish and
13 Wildlife Service?

14 A. Right. You know, when I was with Frank Saliz and
15 the Federal Agents, they had told me, I don't know if this
16 is true or not, but they told me Emil did not do that until
17 five days after he got to Spain. It kind of put me in a bad
18 spot, too. Higher ups should have known about those
19 pictures and tracks before that.

20 MR. FABRITZ: But you knew that Kirby wasn't on
21 that chain. You knew it was just Terry and Bill?

22 THE WITNESS: I figured that they would find out,
23 since they were the jaguar guys, they would trickle us down
24 to our project and tell us to pull the plug or not say
25 anything or whatever. I didn't hear from them, so I just

1 kept going. It is something I should have talked to Kirby
2 about honestly. I figured Emil was taking care of that, and
3 there I went.

4 Q. BY MR. HOVATTER: We talked about this before, but
5 I want to ask this. I am going to ask this again anyway.
6 When you had been -- the day that Emil called you and worked
7 on you to convince you to come up with a story to tell the
8 Feds about the jaguar -- use of jaguar scat. You had, when
9 we previously talked about this, and these aren't intended
10 to be trick questions, when we previously talked to you, you
11 said you had, in fact, already had been in receipt of the
12 guidance not to talk to anyone?

13 A. I read that it was a directive. I talked to Mike.
14 He said he recommended I didn't talk about it. So I should
15 have taken his recommendation.

16 Q. It comes down to this, and, again, we have
17 discussed this before, and I am not trying to -- I am really
18 not trying to beat you up over this.

19 A. No, that is all right.

20 Q. But, I mean, at the end of the day, why didn't you
21 follow the guidance when he called you, when Emil called
22 you, and not talk to him?

23 A. Well, I wasn't allowed to talk to anybody, you
24 know. Chasa and Mike had called back, and I told them -- I
25 started telling them about Janay's comment. They said, we

1 really can't talk about this at all. I felt threatened and
2 I needed to talk to someone to figure out for me what the
3 hell did happen out there, what was going on.

4 I wasn't sure. I just knew it was coming down
5 hard, you know. I don't think I knew about the Federal
6 investigation yet, but I knew there was going to be an
7 internal one. I could only guess that would come down next
8 and I was scared. I just buckled under pressure and did the
9 wrong thing.

10 Q. Okay.

11 A. I really wish I had chose differently.

12 Q. I know. And I know that is -- I know that is
13 sincere. I know that. Guys, you got anything else?

14 MR. MCMULLEN: What drugs did you use on the
15 recapture or what drug were you using?

16 THE WITNESS: We only used Ketamine Medetomidine.
17 That's what we used on the Lion Project. And, you know,
18 that was -- when I told Ole that we had darted him with
19 Telazol, he was a little harsh. You know, we are friends,
20 but he was like, why did you used that? I told you guys to
21 use this on cats. You know what, I know that. This is way
22 up from me. I am doing what protocol says.

23 MR. FABRITZ: Ketamine and what?

24 THE WITNESS: Medetomidine.
25

EXAMINATION

1 BY MR. MCMULLEN:
2
3 Q. Now, in some of the documentation we read that
4 there are a suite of contraindications with Telazol, one of
5 which is renal failure.

6 A. Oh.

7 Q. And so I -- and, then, we also read that when Ole
8 had the chance to do a visual, get a visual on Macho B
9 during the first recapture attempt, his assessment, visual
10 assessment, was potential renal distress. Is that accurate?

11 A. Yeah. That is what he guessed.

12 Q. Okay. And, then, so is this Ketamine
13 Medetomidine, is that okay on kidneys, do you know, or why
14 did he choose that?

15 A. You know, the Medetomidine is reversible. They
16 don't have to metabolize that. The Ketamine you still do.
17 It is a lighter drug. They can snap out of it quicker.
18 They are not there for four or five hours. You can get them
19 there to burn that off in 45 minutes, and they are up
20 walking within an hour, versus Telazol, they have to run the
21 whole thing out and --

22 Q. They have to metabolize?

23 A. -- five hours later, you are -- yeah. They still
24 stagger for a bit, but it's a quicker wake-up. Telazol, the
25 cat was wobbly all the way out of view, getting a little

1 better, but -- it is your first choice, especially when a
2 cat, you know, he didn't look in top shape when we found him
3 in the snares. So I was really like Telazol, really? But,
4 you know, what are you going to do? I didn't want to go
5 against protocol.

6 Q. So you are not familiar with if it is a liver or
7 kidney metabolized, Ketamine?

8 A. No, I mean --

9 Q. It is just a question that we are going to have to
10 answer in this. No. 1, did the original capture contribute
11 to his death? No. 2, did the recapture contribute to his
12 death?

13 A. That recapture, he was already going.

14 MR. HOVATTER: Well, you know, the thing is when
15 you have got an animal that is in decline, any additional
16 stress on his system is unlikely to be --

17 THE WITNESS: That cat could barely get up, let
18 alone catch anything. He walked away from us. He didn't
19 run. He wasn't going to catch anything, so unless he
20 stumbled across something dead. He looked like he didn't
21 drink, you know. Ole said, you know, that cat hadn't drank
22 in days, you know, he was probably hallucinating and
23 desiccated and skinny and all.

24 MR. MCMULLEN: Oh, really. Okay.

25 THE WITNESS: Oh, yeah. He looked at the cat, you

1 know, he could tell by its wobbliness, you know. The object
2 was to go take blood and make sure of that, you know, see if
3 we could tell if it was kidney failure versus just maybe a
4 sore tooth and couldn't eat or drink or sore paw, but he was
5 walking on it. I don't think the snare affected his
6 movement watching him out that night, but who knows with an
7 old cat's liver or kidneys, you know, I don't know.

8 MR. MCMULLEN: Yeah.

9 MR. HOVATTER: Of course, we won't know until
10 we can -- because right now, we don't have access --

11 MR. FABRITZ: It's all speculation.

12 MR. HOVATTER: -- to the USGS and UC data stuff
13 until the Feds are done, so --

14 THE WITNESS: And the bloat, whatever, the cat
15 looked like it was full. I mentioned he looked like he ate.
16 But I guess there are other issues that make an animal swell
17 like that in decline of health. Maybe I was wrong about him
18 having a full tummy. It could have been an over-sized liver
19 or whatever.

20 MR. HOVATTER: As you know, and I am not trying to
21 give anybody through the course of this a pass, an honorary
22 pass on anything, but in field conditions like that, your
23 ability to assess is limited by the tools available, and --

24 THE WITNESS: That's why I was glad Ole was next
25 to me, you know, that second attempt, anyway, the first

1 attempt to recapture. His eye for that stuff, he's seen a
2 million sick cats, you know, house cats, you know, some
3 lions. He had some jaguar experience, I guess, down south.
4 But, I mean, I would look at it, yeah, it is sick. He would
5 look at it and say, oh, yeah, it's kidney failure. I just
6 felt better about having him beside me.

7 Q. BY MR. MCMULLEN: During the March 11th phone
8 interview, one of the things we wanted to flesh out, you
9 were asked if you had any cameras in the area where Macho B
10 was captured, at least as characterized in the report, that
11 you said you weren't sure. You said you didn't have any,
12 and you also weren't sure if Emil had any cameras in that
13 area. Then we have learned over the course of time that you
14 walked the loop, the camera loop?

15 A. Yeah, there's two of them. There is two in the
16 area that we had snares, and there is two more I consider
17 out of range, but anybody can argue that putting scat
18 anywhere near the whole study area is trouble.

19 Q. But this was specific to the cameras, not scat.

20 A. Right.

21 Q. Do you recall that question, or I know -- I
22 recognize you were --

23 MR. HOVATTER: This is when you were being
24 interviewed telephonically.

25 THE WITNESS: Right. Right. I remember that, you

1 know, those guys were in the car ready to go to the beach,
2 and I was on the balcony, I could hear everybody talking,
3 but no, I remember some of that, but I don't remember
4 answering that question specifically.

5 Q. BY MR. MCMULLEN: Yeah, that makes sense. The
6 last question we had that we thought might occur to people
7 that ask, at least if they were offered the opportunity to
8 look at the map, is the density of snares that we have got
9 here, seven snares, in, you know, roughly a square mile, a
10 little bit more, is that something that might be expected to
11 occur normally in the course of a routine study?

12 A. I would think. I mean, I would have done it just
13 like that. Yeah, we hit three different canyons. It was
14 ideal. Cats moving in that country are going to move
15 through there. It was just blocked in like this. You could
16 make a loop and be done, and you wouldn't have to -- I put
17 some of them a little bit further out just because I had
18 extra time and extra snares. It wasn't that long of a loop
19 around. Yeah, I figured if I had that in Payson, I would
20 have been happy with that, too.

21 Q. Okay. That is just a question that we had and we
22 wanted to nail down.

23 A. No. I mean, there was cat sign, bear sign. We
24 didn't want to miss it. So we just put them in the canyon.

25 Q. We thought it was interesting that the bears were

1 moving in jaguar territory.

2 A. I know. You know what, that's why we wanted to
3 catch a bear, I was curious to see if they ever went under
4 or not. I don't know if they do. I don't know. It sounds
5 like the ones we had in the Patagonias maybe not have, you
6 know, it was more localized, but certainly not hibernating,
7 I don't think. Ask Kirby. He knows more about that.

8 Q. Yeah, we have talked to some people who have, you
9 know, seen more bears who are living under just a Juniper or
10 something. Their movements are pretty localized, but they
11 are not really truly in a --

12 MR. HOVATTER: The thing about that is, though, if
13 you look at that habitat, the vegetation types in there, if
14 you are going to find a place where year round you are
15 likely to find something to eat --

16 THE WITNESS: Well, you have got acorns.

17 MR. HOVATTER: Yeah, I mean, the density for an
18 omnivore, I mean, that is --

19 THE WITNESS: There is just rich, rich species and
20 density all over that part of the state. It is amazing.

21 MR. FABRITZ: Hey, I had a follow-up. This is
22 probably not even that relevant, but I was curious, on the
23 refurbish, the jaguar collar that got refurbished, what
24 exactly was done?

25 THE WITNESS: I don't know.

1 MR. FABRITZ: You don't know?
2 THE WITNESS: I think maybe the batteries, they
3 waited to long, they changed the batteries out.

4 MR. FABRITZ: You used the term refurbished, and
5 the other day, I was like, I couldn't -- I didn't know what
6 it was.

7 THE WITNESS: It might be if you let them sit too
8 long -- well, with Telonics, anyway, if you don't deploy
9 them the year that they are programmed, your upload day that
10 they are expecting you to fly over and upload them, changes,
11 but that is not the case since this is going to a satellite
12 to a base station, a relay data center. Something might
13 change program wise in a different year. I don't know what
14 the glitches are, but it might have been just the battery.
15 I don't know.

16 MR. FABRITZ: That is fine. I was just curious.

17 THE WITNESS: Me, too.

18 MR. HOVATTER: Anything else, guys? Thorry, I
19 have been asking this of some of the folks that we have
20 reinterviewed, which is given what we have gone through with
21 this, from your personal perspective, what lessons should we
22 learn from this for the future? Because we are ultimately
23 going to have to restart that study. We have got to know
24 what is going on down there with these large animals.

25 THE WITNESS: Yeah, I agree.

1 MR. HOVATTER: So what do you think are the most
2 important things we have learned that we should not forget
3 when we restart this thing when we move forward on it?

4 THE WITNESS: I think communication is the biggest
5 one. I think everybody is on a different page, you know.
6 And I see it now, like why didn't I tell Kirby about that
7 track, even though it was three weeks old and the cat was 20
8 miles north, but on paper, if you don't say it, it looks
9 terrible. It looks like an omission, you know. So I think
10 communication is a big thing between Branches, between even
11 supervisor and employee, you know.

12 MR. HOVATTER: Yeah.

13 THE WITNESS: I guess, you know, that protocol was
14 almost voted on by the Jag Committee. I don't know if it
15 was approved. Maybe that should have been approved by them.
16 I don't know. It seems like that stuff just trickles
17 around. I don't know really where they are and stuff. I
18 think multiple agencies were aware of the potential, but
19 no one -- I don't know. It just seems like it was such a
20 far, far chance of actually happening, but it wasn't even
21 played with. I don't think it was --

22 MR. HOVATTER: From the standpoint of your access
23 to the supervisor in the field, Kirby, did you feel that if
24 you had issues or concerns that Kirby was prepared to work
25 for you?

1 THE WITNESS: Oh, I think the chain of command
2 was, yeah, if he wasn't, then he would pass it on to Chasa.
3 I should have talked more. We should have talked more. I
4 know he was busy with Pronghorn stuff, and he wasn't real
5 savvy at that point with snaring and whatnot. So, you know,
6 he just kind of cut me loose and went out to work.

7 But, yeah, I probably should have told him more
8 details just in case if I had to get pulled out, he would
9 know where they were. I don't even know if I pointed out
10 the snares, I must have, but maybe I didn't. I don't even
11 remember. So, yeah, I think he would have been there if I
12 had talked more.

13 He is a good person to work with. I don't -- I
14 hadn't worked with him that much at that point. I feel more
15 comfortable as we go through time, but I probably should
16 have used that as a resource more for sure.

17 MR. HOVATTER: Guys, anything else?

18 MR. MCMULLEN: No.

19 MR. HOVATTER: Again, short, but we did need to
20 dig into some of this stuff to make sure we had this down.

21 THE WITNESS: That is fine. Call me back.

22 MR. FABRITZ: All right. Thank you, Thorry.

23 * * *

24 10-14-09 Telephone Interview

25 MR. SMITH: Hello.

1 MR. MCMULLEN: Thorry.

2 MR. SMITH: What's up?

3 MR. MCMULLEN: Hey, it's Craig McMullen. How are
4 you doing?

5 MR. SMITH: Craig, how you are you?

6 MR. MCMULLEN: Good. I have got Marty here in the
7 office. I have got you on the speaker phone. Hey, we had
8 just a quick follow-up question for you.

9 MR. SMITH: Shoot.

10 MR. MCMULLEN: And it just had to do with an
11 e-mail, and, actually, we never really pinged on it until
12 later, but it was -- it was an e-mail that had to do -- it
13 was from Emil.

14 MR. SMITH: Okay.

15 MR. MCMULLEN: And it was sent over to -- had to
16 do with when he was trying to figure out drug dosages. And
17 it was dated February 2nd, I believe, which was before you
18 had shown up in the field down there at -- down south.

19 MR. SMITH: Yeah.

20 MR. MCMULLEN: And it talked about he mentioned in
21 the e-mail that he had already set the snares in a jag
22 friendly way. And based on what we knew, you hadn't been
23 down there yet. So we were curious if you knew if Emil had
24 already set the snares before that February 4th trip into
25 the field with you and Janay?

1 MR. SMITH: I think what he meant was he was (tape
2 cut out) November time frame.

3 MR. MCMULLEN: Yeah. Okay. That is kind of what
4 we thought, but we just wanted to close that loop. So you
5 think he was referring back to when he was snaring in
6 November and not that he was actively snaring in late
7 January or early February?

8 MR. SMITH: No, he was not actively snaring. He
9 had -- he had built snares (recording cut out).

10 MR. FABRITZ: He is cutting out.

11 MR. MCMULLEN: Yeah, you are cutting out. Can you
12 try that again? Can you hear me?

13 MR. SMITH: -- that whole Beaver Valley, so --

14 MR. MCMULLEN: Yeah.

15 MR. SMITH: I think he meant from the previous
16 fall.

17 MR. MCMULLEN: Yeah. That is kind of what we
18 thought, but we just wanted to check up and close that loop.
19 So, all right. That is all we have got.

20 MR. SMITH: Okay. Craig, congratulations. I am
21 proud of you.

22 MR. MCMULLEN: Thanks, Thorry.

23 MR. SMITH: Okay. You guys take care.

24 MR. SMITH: All right.
25

1 CERTIFICATE

2 I, Tammy Gillett, do hereby certify that the
3 foregoing 78 pages were transcribed by me; that I was then
4 and there a Certified Reporter in and for the County of
5 Maricopa, State of Arizona, and that the foregoing pages
6 contain a full, true, and accurate transcript of all the
7 digitally recorded and/or taped proceedings, all to the best
8 of my skill and ability.

9 I FURTHER CERTIFY that I am not related to nor
10 employed by any of the parties hereto, and have no interest
11 in the outcome.

12 DATED at Phoenix, Arizona, this 4th day of March,
13 2010.

14 TAMMY GILLETT
15 Certified Reporter
16 No. 50430
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