

Exhibit 12

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 ----- :
 3 UNITED STATES OF AMERICA, :
 :
 4 Plaintiff, :
 :
 5 vs. : C.A. No. :
 : 1:90-cv-00229
 6 ROBERT BRACE, et al., : 1:17-cv-00006
 :
 7 Defendants. :
 8 ----- :

9
10 DEPOSITION OF PETER STOKELY

11
12 DATE: Thursday, February 22, 2018
 13 TIME: 10:30 a.m.
 14 LOCATION: United States Department of Justice
 Environmental & Natural
 15 Resources Division
 601 D Street, Northwest, Suite 8000
 16 Washington, D.C. 20004
 17
 18 REPORTED BY: Shari R. Broussard, RPR, CSR
 Reporter, Notary

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20 VERITEXT LEGAL SOLUTIONS
 MID-ATLANTIC REGION
 21 1801 Market Street - Suite 1800
 Philadelphia, PA 19103
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A P P E A R A N C E S

On behalf of Plaintiff:

SARAH A. BUCKLEY, ESQUIRE
LAURA J. BROWN, ESQUIRE
United States Department of Justice
Environmental & Natural Resources Division
601 D Street, Northwest
Suite 8000
Washington, D.C. 20004
(202) 305-0733
sarah.buckley@usdoj.gov
laura.j.s.brown@usdoj.gov

On behalf of Defendant Defendants:

LAWRENCE A. KOGAN, ESQUIRE
The Kogan Law Group
100 United Nations Plaza, Suite 14F
New York, New York 10017
(212) 644-9420
lkogan@koganlawgroup.com

ALSO PRESENT:

Robert Brace
Randall Brace

1 2005. Is that a photo with a lot of growth on it?

2 A Yes.

3 Q Is that a photo, 1983, the same -- has
4 the same growth in that photo in the same exact
5 area?

6 A Not as much.

7 Q Where do you see the growth in that
8 area? I just want to see.

9 A See the -- in the -- in the ditch -- the
10 old ditch lines the vegetation that's growing up
11 (indicating). Do you see that vegetation growing
12 up here, vegetation growing in here (indicating),
13 the texture? Contrast that to that field --

14 Q Do you realize --

15 A -- that field and that field --

16 Q You realize that you're making a
17 statement under penalty of perjury. I just want
18 to make sure that you are actually truthfully
19 making that statement because it will be held
20 against you if you're not.

21 A I'm --

22 MS. BUCKLEY: Objection.

1 BY MR. KOGAN:

2 Q I just want to see how you can make a
3 comparison.

4 Let the record be known that Dr. Stokely
5 is comparing Figure 8a with extensive growth along
6 the Marsh site area with Stokely Exhibit 4, which
7 has no growth, or if there is any growth, along
8 the periphery, and Dr. Stokely is stating, and
9 please tell if I'm wrong, are you stating, sir,
10 that both photos shows no cultivation?

11 MS. BUCKLEY: Just a moment. One, is it
12 possible to mark a portion of the transcript as we
13 go?

14 THE REPORTER: Uh-huh.

15 MS. BUCKLEY: Can you mark this portion,
16 please. Thank you.

17 Second, objection on the basis of
18 counsel's characterization of the exhibits as
19 described and also objection to counsel's
20 threatening of the witness.

21 MR. KOGAN: What threatening? Are we
22 going to now interpolate the word "threat,"

1 Counsel? What does threat mean to you?

2 MS. BUCKLEY: It means --

3 MR. KOGAN: Let's define it for the
4 record. Did I threaten anybody --

5 MS. BUCKLEY: This is not --

6 MR. KOGAN: -- or did I say he's making
7 a statement under penalties of perjury? That's
8 what I said.

9 MS. BUCKLEY: Counsel, you stated it in
10 a way that was abusive and threatening towards the
11 witness.

12 MR. KOGAN: Abusive and threatening. To
13 state what the law is is abusive and threatening?

14 I guess then when the EPA writes a
15 letter to my client stating that you have violated
16 the Clean Water Act, is that threatening?

17 MS. BUCKLEY: I am not going to get into
18 an argument about that.

19 MR. KOGAN: I know that. You don't want
20 to get into that because you can't get your way
21 out of it.

22 BY MR. KOGAN:

1 Q So, Dr. Stokely --

2 MS. BUCKLEY: Counsel, I would ask that
3 you cease such abusive --

4 BY MR. KOGAN:

5 Q Dr. Stokely --

6 MS. BUCKLEY: -- conduct towards the
7 witness.

8 MR. KOGAN: This is not abusive and it's
9 not threatening. You have a slanted definition of
10 these terms.

11 BY MR. KOGAN:

12 Q Now, Dr. Stokely, please explain to me
13 how, if you were to make a comparison of your
14 Figure 8a to the Exhibit 4 Stokely, how you can
15 draw the conclusion that there's equal growth on
16 both those properties.

17 A I didn't draw that conclusion.

18 Q What conclusion did you draw --

19 A I --

20 Q -- for the record?

21 A My conclusion was, in my report, that
22 it's my opinion that agricultural activity or

1 conclusion.

2 MR. KOGAN: No, there is no legal
3 conclusion.

4 MS. BUCKLEY: I'd appreciate it if you'd
5 let me state my objection and you can respond the
6 way that you want.

7 MR. KOGAN: You just like to interrupt
8 trains of thought.

9 BY MR. KOGAN:

10 Q Now --

11 MS. BUCKLEY: I object to the
12 characterization.

13 BY MR. KOGAN:

14 Q You read from that Section 1222 in the
15 Food Security Act dealing with commenced
16 conversion.

17 There's a legal significance to that
18 provision, is there not?

19 MS. BUCKLEY: I object to the extent it
20 calls for a legal conclusion.

21 BY MR. KOGAN:

22 Q I'm just trying to figure out why the

1 Government did not present you with this
2 information. The Government has failed to present
3 other witnesses with information to keep their
4 framework of a narrow argument, but I didn't think
5 they would do it with you being a government
6 employee.

7 MS. BUCKLEY: Objection. First, I don't
8 believe there is a question pending; however, I
9 object to the characterization and I object to the
10 extent that something you said earlier was a
11 question that called for privileged information.

12 MR. KOGAN: The overall evidence that's
13 been presented, and this being the third
14 deposition in three successive, consecutive days,
15 shows that the Government has withheld information
16 from their experts before their experts have
17 prepared their studies.

18 MS. BUCKLEY: I object to the
19 characterization and I object to counsel's
20 testimony.

21 BY MR. KOGAN:

22 Q So I'm just trying to ask you if you had