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

UNITED STATES OF :
AMERICA, :
PLAINTIFF :
:
:
V : CIVIL ACTION NO. 1:17-CV-0006
:

ROBERT BRACE, ROBERT :
BRACE FARMS, INC., AND :
ROBERT BRACE AND SONS, :
INC., :
DEFENDANTS :
----- : -----

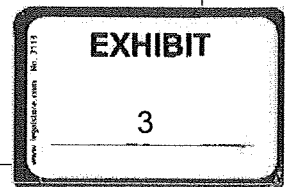
UNITED STATES OF :
AMERICA, :
PLAINTIFF :
:
V : CIVIL ACTION NO. 1:90-CV-00229
:

ROBERT BRACE AND ROBERT :
BRACE FARMS, INC., :
DEFENDANTS :
DEPOSITION OF: DAVID J. PUTNAM
TAKEN BY: DEFENDANTS
BEFORE: DIANE F. FOLTZ, RDR
NOTARY PUBLIC

DATE: JANUARY 26, 2018, 9:22 A.M.

PLACE: HAMPTON INN HARRISBURG EAST
4230 UNION DEPOSIT ROAD
HARRISBURG, PENNSYLVANIA

VERITEXT LEGAL SOLUTIONS
MID-ATLANTIC REGION
1801 Market Street - Suite 1800
Philadelphia, PA 19103



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APPEARANCES:

U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL RESOURCES DIVISION
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FOR - PLAINTIFF

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FOR - DEFENDANTS

ALSO PRESENT:

ROBERT BRACE
BEVERLY BRACE

1 Q But who was your immediate supervisor?

2 A Charles Kulp.

3 Q Okay. And did you work specifically for anyone
4 else?

5 A Edward Perry was the assistant supervisor.
6 Charles was the supervisor. Edward Perry was the assistant
7 supervisor.

8 Q And that was for the State College office?

9 A Yes.

10 Q And that's where you worked out of?

11 A Yes.

12 Q In this -- from 1979 through 2009, all 30 years?

13 A Yes.

14 Q Now, in your work for the Fish and Wildlife
15 during this 1979 to 1990 period, what types of interactions
16 did you have with Mr. Perry and Mr. Kulp concerning
17 evaluating wetlands in Erie? Did you -- did you write
18 their correspondences? Did you review what they wanted to
19 do once you've informed them of what your findings were on
20 wetland evaluations? How did you go about conveying the
21 information you found in the field to your superiors as a
22 matter of practice?

23 A First they would assign me a certain case to go
24 look at, so I would go look at it, and then I would come
25 back and probably have an oral briefing of what I found,

1 and then I would write up -- I would draft any
2 correspondence that would be associated with that, most any
3 correspondence. They might write some of their own, but
4 most of it I would draft.

5 Q Okay. And that's because you had the information
6 on the ground and that they would then shape it into
7 their --

8 A Yes.

9 Q -- understanding?

10 A Yes.

11 Q And then they would sign, ultimately sign the
12 correspondence?

13 A Yes.

14 Q Now, is that interagency correspondence, or was
15 it also correspondence intended to third parties?

16 A All correspondence. I don't -- I don't believe I
17 signed any letters. I would sign only file memos at that
18 time.

19 Q Did you ever prepare your own correspondence to
20 -- you know, to other agencies or third persons? Did you
21 have that authority?

22 A Yes. I'm just trying to remember if we had email
23 then. If we -- I mean --

24 Q In the 1980's I don't think email was --

25 A In the days of email, you know, a lot of that

1 A Yes, that's what that line is.

2 Q Right.

3 A And again I do know how that got drawn.

4 MR. KOGAN: Okay. I believe we're up to 15.

5 Exhibit Putnam 15 is a letter from Carroll Lesik of the
6 USDA Agricultural Stabilization and Conservation Service of
7 Erie County to I believe Mr. Putnam of Fish and Wildlife
8 Service dated January 19, 1989.

9 (Letter dated January 19, 1989, to Mr. Putnam
10 from Ms. Lesik produced and marked Putnam Deposition
11 Exhibit No. 15.)

12 THE WITNESS: Okay.

13 BY MR. KOGAN:

14 Q Was that letter -- was that letter authored by
15 you, Mr. Putnam?

16 A No.

17 Q Directed to you rather, even though you were
18 not --

19 A This was written by Carroll Lesik.

20 Q Yes. But it was directed to you apparently?

21 A It was directed to me, yes.

22 Q And it was -- was it that you were -- you were
23 interested in attending the ASCS Executive Committee
24 meeting?

25 A To talk about -- apparently to talk about this

1 conversion.

2 Q The commenced determination. Did you have
3 objections to the commenced determination?

4 A I must have.

5 Q Do you recall any of them?

6 A I don't really recall any specifics about it.

7 MR. KOGAN: Okay. Now we're up to 16. Exhibit
8 16 would be a letter prepared by you and signed by you,
9 Mr. Putnam, of the Fish and Wildlife Service directed to
10 Mr. James Butch of the EPA dated February 2, 1989, Bates
11 No. CD-FRC0013129.

12 (Letter dated February 2, 1989, to Mr. Butch from
13 Mr. Putnam produced and marked Putnam Deposition Exhibit
14 No. 16.)

15 THE WITNESS: Okay.

16 BY MR. KOGAN:

17 Q Mr. Putnam, would it be fair to say that that
18 letter conveys your disagreement with how the ASCS
19 committee determined on a financial basis that Mr. Brace
20 had met the statutory requirements for a commenced
21 determination --

22 A Yes.

23 Q -- of the agricultural -- of the USDA guidance
24 document requirements?

25 A Yes.

1 call somebody and say okay, what do you do? That's why we
2 have attorneys that we can consult with.

3 Q No. Of course. But these rules are rather
4 complex, are they not?

5 A Yes.

6 Q Okay. Now, let's shift subject matter now. Were
7 you, Mr. Putnam, ever from the beginning of your tenure at
8 Fish and Wildlife Service a member of a private
9 organization that contributed to the conservation and
10 preservation of wetlands?

11 A A private organization? I've been a member of
12 the Wildlife Society and a number of different --

13 Q Have you been a member for instance of Ducks
14 Unlimited?

15 A Yes.

16 Q Can you -- do you recall how long your membership
17 in Ducks Unlimited was and when?

18 A Probably ten years.

19 Q When did it begin approximately?

20 A I can't tell you. I mean, I --

21 Q Would it have begun back in the 1980's?

22 A I don't remember. We had a -- we had a chapter,
23 a local -- well, we had a local chapter of Ducks Unlimited,
24 but we also -- my job also involved restoring wetlands, and
25 we received funding from Ducks Unlimited for some period of

1 time. Four or five or six years we probably received
2 funding from Ducks Unlimited.

3 Q Okay. The reason I bring up Ducks Unlimited is
4 because another party --

5 MS. BUCKLEY: Larry -- objection.

6 BY MR. KOGAN:

7 Q Another party --

8 MS. BUCKLEY: Counsel? Counsel?

9 MR. KOGAN: Yes.

10 MS. BUCKLEY: This is exactly what I'm objecting
11 to.

12 MR. KOGAN: To what?

13 MS. BUCKLEY: It is improper for you to bring in
14 and testify about things that other people have said --

15 MR. KOGAN: No, no.

16 MS. BUCKLEY: -- and your perception --

17 MR. KOGAN: No, no.

18 MS. BUCKLEY: -- of things that are going on
19 because it is an effort to influence the testimony of the
20 witness --

21 MR. KOGAN: I'm going to --

22 MS. BUCKLEY: -- and I object to it.

23 MR. KOGAN: I'm going to make -- you can object.
24 I'm going to make the comment, Mr. Putnam --

25 MS. BUCKLEY: No, Larry.

1 Q Do you have a hat that says Ducks Unlimited on
2 it?

3 A We had a fallout with Ducks Unlimited.

4 Q But have you ever worn a hat that said --

5 A I have, yes.

6 Q Have you worn that hat into work working for the
7 Fish and Wildlife Service?

8 A I wouldn't be surprised. I mean, it's just a
9 camo hat. You know, I've got ten camo hats.

10 Q Right. But it says Ducks Unlimited. It's a camo
11 hat that says Ducks Unlimited. Did you wear a hat that
12 said Ducks Unlimited -- do you recall wearing a hat that
13 said Ducks Unlimited into work when you were working for
14 the Fish and Wildlife Service?

15 A I could not quote a specific time, but I would
16 not --

17 Q You would not rule it out is what you're saying?

18 A No, absolutely. No.

19 Q Okay. That's all that I need to know because I
20 know that there are other people that did do that.

21 MS. BUCKLEY: Objection to counsel's testimony.

22 BY MR. KOGAN:

23 Q Now -- objection noted. Have you ever been a
24 member of the National Fish and Wildlife Federation?

25 A I have to think about that. National Fish and

1 We have uniforms, and when we wear a uniform, that's what
2 you wear.

3 Q Right.

4 A Other than that, there would be --

5 Q There was no dress code?

6 A A required --

7 Q There was no dress code, no requirement --

8 A No.

9 Q -- that you followed? If you were a member of a
10 private organization such as Ducks Unlimited, you were not
11 prohibited from wearing a hat into work?

12 A In fact, you would be more likely to be
13 encouraged to wear it because they were funding a lot of
14 our habitat restoration activities.

15 Q So Ducks Unlimited was funding the Fish and
16 Wildlife Service or --

17 A Yes.

18 Q -- Fish and Wildlife funding Ducks --

19 A Well, both, both ways.

20 Q Okay.

21 A The Fish and Wildlife Service gave them millions,
22 and then they in other programs gave us back.

23 Q Did you know personnel in other federal agencies
24 that you worked with as a matter of course such as EPA and
25 U.S. Army Corps or USDA Soil Conservation Service, did

1 they -- did any of these people wear Ducks Unlimited hats
2 that you were aware of other hats of these types of
3 organizations when you met with them?

4 A I mean, I can't -- the hat had -- I don't -- I
5 don't quite -- I mean, sometimes you try to figure out
6 where you're going so I could help you answer it, but I
7 don't know. The hat just had no significance.

8 Q Well --

9 A People are just wearing hats. Like Bob's got a
10 hat on. He always wears a hat.

11 Q The significance though is if you were to go out
12 to an on-site visit, would you be wearing one of those
13 hats, or would you be wearing one of your uniforms?

14 A That would -- it almost depends on the time in
15 history, what the --

16 Q We're talking now during the time of Mr. Brace's
17 case. Would you have been --

18 A I thought --

19 Q Would you and others --

20 A I think we -- well, like if we were having a
21 formal meeting, we would probably wear a uniform. It would
22 somewhat depend on what the whole day -- what the whole day
23 might have been.

24 Q So it's possible that you could have worn a hat
25 from one of these groups at an on-site visit and

1 particularly --

2 A Probably, yeah.

3 Q -- Mr. Brace's on-site visit?

4 A Yeah.

5 Q You don't know. Okay.

6 A I got two or three hats in the truck. I don't
7 even know what they -- what they are. I mean, I have to
8 clean out my hat collection.

9 Q Was it a concern of you and others within the
10 agency that those hats could be misperceived by landowners
11 if you did walk upon their land wearing such a hat?

12 MS. BUCKLEY: Objection to form.

13 BY MR. KOGAN:

14 Q Would it -- were you sensitive to the fact that
15 it could be perceived as an implicit bias?

16 MS. BUCKLEY: Objection to form.

17 THE WITNESS: I can tell you in my 30 years that
18 never ever came up, not once. Nobody ever said anything to
19 me about a hat.

20 BY MR. KOGAN:

21 Q But the hat is symbolic. It may be more, much
22 more than the hat. Perhaps if you were a member of an
23 organization, is it -- could it not be assumed that you
24 believed in what the organization stood for?

25 A I mean, I might wear a different hat every day,

1 Q Were you involved in this program yourself?

2 A I was.

3 Q Were you a leader in this program?

4 A I was.

5 MR. KOGAN: Okay. I would like to submit as
6 Exhibit Putnam 23 apparently a Fish and Wildlife flier or
7 summary of the Partners for Fish and Wildlife Program
8 authored by Mr. David Putnam dated September, 2001.

9 (U.S. Fish and Wildlife Service flier Partners
10 for Fish and Wildlife Program dated September, 2001,
11 produced and marked Putnam Deposition Exhibit No. 23.)

12 MS. BUCKLEY: I'm going to state an objection to
13 the foundation and the characterization for a moment.
14 Mr. Putnam, have you seen this before?

15 THE WITNESS: I don't know.

16 MR. KOGAN: It has his name on the back.

17 THE WITNESS: That's a picture I took.

18 MS. BUCKLEY: Mr. Putnam, did you author this
19 document?

20 THE WITNESS: I can't tell you that I authored
21 it. I definitely would have --

22 BY MR. KOGAN:

23 Q Would you have signed off?

24 A This was probably produced by our regional
25 office, and we would have had input into producing it --

1 Q Right.

2 A -- surely, but, you know, other people on the
3 staff -- I did not write this whole thing. I would have
4 remembered it more, a little closer --

5 Q But did you --

6 A -- but definitely I probably -- I probably seen
7 it.

8 Q But did you oversee this program --

9 A Yes.

10 Q -- for the region?

11 A Yes.

12 Q You did oversee the program in Pennsylvania?

13 A I did.

14 Q Okay. And was it in part intended to restore
15 wetlands?

16 A Yes.

17 Q Okay. And if -- was this intended for a broad
18 audience, or was this just intended for an environmental
19 audience, a hunting audience? What was the -- what was the
20 scope of the --

21 A Most definitely --

22 MS. BUCKLEY: Objection to form. Go ahead.

23 THE WITNESS: That would have been for
24 landowners.

25 BY MR. KOGAN:

1 Q Landowners?

2 A People who owned large tracts of land or not
3 necessarily large, but people that owned tracts of land,
4 particularly people that owned tracts of land that had
5 prior drained wetlands.

6 Q Okay. And this is something that was intended to
7 help them understand why their land could not be used for
8 farmland?

9 MS. BUCKLEY: Objection to form. Go ahead.

10 THE WITNESS: No.

11 MS. BUCKLEY: That's fine.

12 MR. KOGAN: Now, this is an article which we will
13 enter in as Putnam Exhibit 24. It's entitled Measuring
14 Conservation Success. It's Ducks Unlimited. It appears to
15 be from their website, and it's authored by a Mark Petrie,
16 Ph.D., and Michael Anderson, Ph.D., referring to the U.S.
17 Fish and Wildlife Service 1988 pilot-biologist efforts to
18 implement the North American Waterfowl Management Plan.

19 (Ducks Unlimited article entitled Measuring
20 Conservation Success produced and marked Putnam Deposition
21 Exhibit No. 24.)

22 BY MR. KOGAN:

23 Q And I would ask you to read that and tell me
24 whether you are familiar with that document at all.

25 A Okay.

1 was --

2 BY MR. KOGAN:

3 Q But he was in the process of converting, and
4 based on the regulations we just reviewed, he had that
5 opportunity to convert --

6 MS. BUCKLEY: Objection to form.

7 BY MR. KOGAN:

8 Q -- under the Food Security Act of --

9 A I don't necessarily agree with that.

10 Q As I lawyer -- I understand you're not a lawyer.
11 I understand that. Okay.

12 A But the essence of the Partners Program was to
13 restore wetlands undoing -- a lot of it was a government
14 program undoing what prior government programs had done.
15 That was the bulk of it.

16 Q Now, undoing what prior government programs had
17 done?

18 A Yes.

19 Q How is the public supposed to deal with that when
20 they plan their business affairs and personal affairs based
21 on prior government action --

22 MS. BUCKLEY: Objection.

23 BY MR. KOGAN:

24 Q -- when the government keeps on undoing itself?

25 MS. BUCKLEY: Objection.

1 of Erie County?

2 A Yes, it would be. Yeah.

3 MR. KOGAN: Okay. Putnam Exhibit No. 28, a Ducks
4 Unlimited website read entitled Ducks Unlimited Receives
5 Great Lakes Habitat Funding, grants will go towards
6 restoration efforts in Michigan and PA.

7 (Ducks Unlimited website printout entitled
8 Ducks Unlimited Receives Great Lakes Habitat Funding
9 produced and marked Putnam Deposition Exhibit No. 28.)

10 BY MR. KOGAN:

11 Q Mr. Putnam, are you familiar at all with this
12 document?

13 A Do we have a date on this?

14 Q I don't. I just found it on the web as we found
15 it. I don't necessarily have a date, but as a member of
16 Ducks Unlimited I would assume that you could find that
17 out.

18 MS. BUCKLEY: Objection.

19 THE WITNESS: I haven't been a member of Ducks
20 Unlimited for a while, and that's another whole story. I
21 don't have time.

22 BY MR. KOGAN:

23 Q Well, is Ducks Unlimited an environmental group
24 or a hunting group?

25 A Probably -- they have more non-hunters I believe

1 as members than hunters. It's portrayed as a duck hunter
2 group, but I believe they have more non-hunters than they
3 do hunters.

4 Q And those who are non-hunters, are they
5 environmentalists?

6 MS. BUCKLEY: Objection to form.

7 THE WITNESS: It would be the whole gamut.

8 BY MR. KOGAN:

9 Q What do you mean the whole gamut?

10 A I mean, people, the whole -- as long as -- as far
11 as could you go. Hank Ingram from Pittsburgh was -- well,
12 I think he worked for you at one time, Bob, right? He was
13 a member of the Nature Conservancy, you know, and he
14 represented the coal and oil companies, so it's -- you
15 know, you can't portray them as any one.

16 Q Right.

17 A Yeah, I don't really -- I don't know. I don't
18 know anything about this one here.

19 Q Okay. We'll try this one.

20 A I don't recognize any --

21 Q We'll try this one.

22 A Nothing with this rings a bell here.

23 MR. KOGAN: Putnam Exhibit No. 29, a Ducks
24 Unlimited printout, U.S. Great Lakes System, Level II Ducks
25 Unlimited conservation priority area, the single largest

1 Putnam Deposition Exhibit No. 31.)

2 THE WITNESS: Never heard of it.

3 BY MR. KOGAN:

4 Q You've never heard of these. Did Ducks Unlimited
5 during your tenure as a member issue yearly reports for
6 given states?

7 A Yes, they issue lots of reports, yes.

8 Q And did they issue reports regarding wetland
9 restoration in the Erie County area, Erie County,
10 Pennsylvania, region?

11 A I can tell you at least I've seen them highlight
12 projects in Crawford County. I can't think of a specific
13 site in Erie County. I would not doubt that they did, but
14 I know they did -- I know they did take credit for work.

15 Q But these grant programs, were these grant
16 programs to work with landowners to restore wetlands on
17 their farmlands or other lands that they owned?

18 A Theoretically they were.

19 Q So the government was paying through a private
20 body such as Ducks Unlimited to persuade people to stop
21 using their land if there were wetlands determined to be on
22 their property?

23 MS. BUCKLEY: Objection to form.

24 BY MR. KOGAN:

25 Q Is that the way it worked, or if not, if you

1 would clarify and explain it, we would appreciate it.

2 A I would have to think about that. Depending on
3 the source of the funding, whether it was government funds
4 or settlements from environmental funds, but definitely the
5 government supported Ducks Unlimited doing conservation
6 work on the ground.

7 Q So basically they were -- they served as a
8 government agent when they --

9 MS. BUCKLEY: Objection.

10 BY MR. KOGAN:

11 Q Were they commissioned by the government
12 obviously if the government is giving millions of dollars
13 of funds to Ducks Unlimited on a regular basis?

14 MS. BUCKLEY: Objection to form to the extent
15 that's a question.

16 MR. KOGAN: We'll go back to foundation now
17 again. Okay.

18 MS. BUCKLEY: The objection wasn't on the basis
19 of foundation, Counsel. It's the fact that it was --

20 MR. KOGAN: It's the form. You don't like the
21 way I asked my question.

22 MS. BUCKLEY: It's on the basis of it's vague.

23 MR. KOGAN: Okay.

24 MS. BUCKLEY: It's vague.

25 MR. KOGAN: I'll ask the question again.

1 THE WITNESS: It helps me out. You give the
2 answer, and then I just have to agree to it. Isn't that
3 the way it's supposed to go?

4 MR. KOGAN: I'm trying to be kind to the witness,
5 and you're making me be cruel. Thank you, Counsel.

6 Mr. Putnam --

7 MS. BUCKLEY: I'm trying to help you be less
8 vague in your questions.

9 MR. KOGAN: Excuse me? What was that?

10 MS. BUCKLEY: I said I'm trying to help you be
11 less vague in your questions.

12 BY MR. KOGAN:

13 Q Oh, okay. Were you aware, Mr. Putnam, of a
14 memorandum of understanding between the Fish and Wildlife
15 Service, the U.S. Department of Agriculture and Ducks
16 Unlimited back in 1984?

17 A I -- I'm not aware of it. I mean, I wouldn't
18 know a word in it, but I would not doubt that it existed.
19 I mean, definitely there's been a lot of cooperation back
20 and forth, and sometimes it's more efficient for the
21 government to work with conservation partners like that
22 than to try to do it themselves.

23 Q Why?

24 A Just because of -- a lot of times the funding is
25 a short-term funding, so you can't staff up to spend your

1 pick up temporary help --

2 Q Right.

3 A -- than it is for the government.

4 Q But is it fair to say that the outside public was
5 aware that Ducks Unlimited worked closely with the Fish and
6 Wildlife Service to restore wetlands and wetland habitat --

7 MS. BUCKLEY: Objection to form.

8 BY MR. KOGAN:

9 Q -- during the period of your tenure at Fish and
10 Wildlife Service?

11 MS. BUCKLEY: Objection to form.

12 THE WITNESS: The interested public, people who
13 cared about wetlands or cared about wildlife habitat, they
14 would have a pretty good sense of that.

15 BY MR. KOGAN:

16 Q Right.

17 A People who could care less could care less.

18 Q What about the landowners who would be affected
19 by that?

20 A Well, we had a lot of outreach to landowners. I
21 mean, there would have been fliers in the government -- in
22 the state USDA offices. We had a whole stack of -- your
23 next witness, Mr. Isaacs, can probably help you with --
24 tell about some of the outreach-type stuff.

25 Q Right.

1 A But there was quite a bit of outreach to the
2 agricultural community because that's who -- that was our
3 main -- the main client that we worked with on those
4 things.

5 Q Did you work with Mr. Isaacs when you were in
6 Fish and Wildlife Service?

7 A Yes.

8 Q You did?

9 A Yes.

10 Q Did you work closely with Mr. Isaacs?

11 A I wouldn't say closely. He was the state
12 wildlife biologist, and I was the state Fish and Wildlife
13 biologist, but on certain programs.

14 Q Now, he was the state wildlife biologist for your
15 agency?

16 A No, for the Natural Resources Conservation
17 Service.

18 Q Beginning in '94 --

19 A I don't know what year he started.

20 Q -- or are you talking about Soil Conservation
21 Service?

22 A Oh, yeah, yeah, yeah, yeah. He was there before.
23 He was there before they changed their name.

24 Q Did you -- did you work with Lewis Steckler from
25 the Soil Conservation Service --

1 A Yes.

2 Q -- in Erie County? Did you work with him
3 closely?

4 A On projects in Erie County, yes, quite a few
5 projects. He helped us a lot with our wetland restoration
6 programs.

7 Q Oh, he did?

8 A Because they have the survey and design and the
9 knowledge and extensive knowledge of soils and also a good
10 knowledge of the agricultural landowners, so he would say
11 this guy over here's got a project. He would like
12 something done over there, and so it would be easy to go
13 work with that guy.

14 Q Was he also a member of Ducks Unlimited?

15 A I don't know.

16 Q Okay.

17 A I can't say. He could have been, but I don't
18 know.

19 MR. KOGAN: Okay. Well, Mr. Putnam, thank you so
20 much for your time, and we're actually stopping at the time
21 that I anticipated.

22 THE WITNESS: That's good even if I was 15
23 minutes late which I apologize for. I just went to the
24 other hotel.

25 MS. BUCKLEY: We're going to just take a brief