

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

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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 :

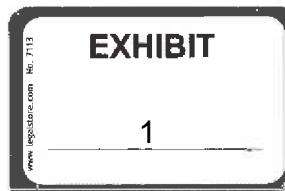
DEPOSITION OF: DAVID J. PUTNAM
TAKEN BY: DEFENDANTS
BEFORE: DIANE F. FOLTZ, RDR
NOTARY PUBLIC

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

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

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APPEARANCES:

U.S. DEPARTMENT OF JUSTICE
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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 BY MR. KOGAN:

2 Q Once there was a case assigned to you.

3 A Yes, I would have conferred with everybody that's
4 on that list there.

5 Q And that would include Mr. Andy Martin of the
6 Pennsylvania Game Commission?

7 A Andy Martin, James Pabody, James Butch?

8 Q James Pabody of the --

9 A The Corps of Engineers.

10 Q Which district?

11 A Buffalo.

12 Q Okay. Mr. -- and who else did you say?

13 Mr. D'Alfonso also?

14 A D'Alfonso and Butch, J. Butch.

15 Q And what agency was he from?

16 A EPA.

17 Q Okay. How about Mr. James Carter of the
18 Pennsylvania Fish Commission?

19 A I think Carter -- yeah, Carter's on here, too.

20 MR. KOGAN: Let's add into evidence for Exhibit
21 2, Putnam 2, a May 11, 1987, letter correspondence authored
22 by Mr. Charles Kulp of Fish and Wildlife directed to
23 Colonel Daniel J. Clark of the Army Corps of Engineers.

24 (Letter dated May 11, 1987, to Colonel Clark from
25 Mr. Kulp produced and marked Putnam Deposition Exhibit No.

1 2.)

2 MS. BUCKLEY: I'll take a look at this first.
3 All right. Counsel, I do think that this has been produced
4 one way or another, but I'll note --

5 MR. KOGAN: It has in prior depositions.

6 MS. BUCKLEY: -- it's not been Bates stamped.

7 BY MR. KOGAN:

8 Q You don't need to read the entire thing. Just
9 for the record, Mr. Putnam, did you not testify earlier
10 that you would pen at least in draft form certain
11 correspondences for your supervisors including Mr. Kulp?

12 A Yes.

13 Q Do you recall whether this might be one of those
14 correspondences?

15 A I would have to look at it a little. I would
16 have to look at it a bit, but I'm telling you I don't
17 recognize the font or the -- this doesn't look like an
18 official letter from the Fish and Wildlife Service.
19 There's no logo on it.

20 Q Well, this is one of the things that -- one of
21 the documents that were produced during discovery by the
22 Department of Justice, so --

23 A I wonder --

24 Q -- if there's another form, I don't believe we
25 have it.

1 A Is the letter signed?

2 MS. BUCKLEY: Counsel, I would -- for the record,
3 I think I have seen this document before, but I cannot
4 confirm, and I wouldn't agree necessarily with the
5 representation that the United States produced this. We
6 may have seen it in your production.

7 MR. KOGAN: We manufactured it? Are you --

8 MS. BUCKLEY: I'm just saying there's no Bates
9 stamp, so it's not --

10 MR. KOGAN: We wouldn't have enough creativity --
11 we wouldn't have enough creativity to manufacture something
12 like that, Counsel.

13 MS. BUCKLEY: It might have been in your custody
14 is what I'm saying.

15 THE WITNESS: Let me just look at it for a
16 minute. I would agree this is the form that -- and the
17 type, the type of letter I would write, but I don't -- I
18 just never saw -- it almost acts like -- almost looks like
19 it's been retyped or something. I just -- it is a mystery
20 to me that we would ever have produced a letter that wasn't
21 on letterhead, it wasn't signed, and used this font. We
22 would always used Times New Roman font. So, I mean, I'm
23 not arguing that it's a fake document, but it's just a
24 mystery to me that we would --

25 BY MR. KOGAN:

1 Q I think that -- I venture to say that there were
2 perhaps draft forms of letters that were circulated along
3 with the finals, because there can be no other explanation.

4 A Yes, and I understand that, too, but I -- just
5 the whole format of this thing and the font, we never used
6 anything but Times New Roman font. That was just the way
7 we did it.

8 Q Okay.

9 A And 12 point.

10 Q But suffice it to say there was -- Mr. Kulp is
11 referring to a May 5th on-site visit at the Brace farm in
12 the first paragraph?

13 A Yes.

14 Q Do you recall that on-site visit at all?

15 A I do recall an on-site visit. I --

16 MR. KOGAN: Okay. Then I won't press you on
17 that. Okay. I'd like to introduce as Exhibit Putnam 3 a
18 June 16th, 1987, correspondence signed by Mr. David J.
19 Putnam, Acting Field Supervisor, U.S. Fish and Wildlife
20 Service, directed to Mr. James -- Jim Pabody, U.S. Army
21 Corps of Engineers, referencing a draft wetland map that
22 apparently Mr. Putnam had prepared indicating a potential
23 impact of Mr. Brace's activities upon 200 acres of
24 wetlands.

25 (Letter dated June 16, 1987, to Mr. Pabody from

1 MS. BUCKLEY: Objection to form.

2 BY MR. KOGAN:

3 Q What the significance of 1984 was?

4 A I see a number of other typos. It could even be
5 a typo. Let's see. All wetland since October 5th, 1984.
6 What was the date of our original meeting? The D'Alfonso
7 memo, that was --

8 Q That was May, '87.

9 A Oh, that was May, yeah.

10 Q That was '87, so we're talking three years after
11 that point.

12 A There may have been -- yeah, there may have been
13 some other -- maybe there was something done in the
14 interim. I don't know.

15 MR. KOGAN: Okay. Let's move on then.

16 Putnam Exhibit No. 8, I believe, is a July 17, 1987,
17 reproduction of a letter that was sent by Edward Perry
18 of Fish and Wildlife to Mr. Brace in that funny font.

19 (Letter to Mr. Brace from Mr. Perry received
20 July 17, 1987, produced and marked Putnam Deposition
21 Exhibit No. 8.)

22 THE WITNESS: Huh. Isn't it funny? Everyone
23 uses the same funny font.

24 MS. BUCKLEY: And for the record, this was a
25 document that was in defendants' custody.

1 MR. KOGAN: I'm sorry?

2 MS. BUCKLEY: The document that's being offered
3 as Exhibit Putnam 8.

4 MR. KOGAN: Actually this -- I mean, there's no
5 Bates number on this, but this could have come through from
6 the government itself, and there have been documents which
7 you have admitted in prior depositions that were not Bates
8 numbered, so I don't know.

9 MS. BUCKLEY: I'm not contesting that you can use
10 it as an exhibit here. I'm just trying to state for the
11 record --

12 MR. KOGAN: I don't know.

13 MS. BUCKLEY: -- as best we know what the
14 document is.

15 MR. KOGAN: The answer is I don't know.

16 MS. BUCKLEY: Okay.

17 MR. KOGAN: I don't know whether you gave it to
18 us or whether we got it from archive or whatever, though it
19 has been submitted in prior depositions.

20 THE WITNESS: Is there any reason that these
21 would have been converted to electronic files by --

22 MR. KOGAN: I have no idea. I wasn't working
23 with the personnel from the government at that period of
24 time.

25 THE WITNESS: It says received --

1 MS. BUCKLEY: I just want to put on the record
2 that I don't think that there is any --

3 MR. KOGAN: Impropriety.

4 MS. BUCKLEY: -- any basis, any basis for
5 representing that the government created this document.

6 MR. KOGAN: And I would stipulate for the record
7 that there is no basis for insinuating that the defendants
8 created that document.

9 MS. BUCKLEY: Right. Well, I'm just going to
10 object on foundation grounds.

11 THE WITNESS: Yeah.

12 MR. KOGAN: Objection to objection.

13 THE WITNESS: Okay.

14 BY MR. KOGAN:

15 Q Mr. Putnam, would you have been the person to
16 have drafted that letter for Mr. Perry?

17 A I probably would have been, but again I'll tell
18 you this is not -- this is some kind of reproduction that I
19 think maybe it even had been narrated by somebody. It may
20 have been read through a voice conversion.

21 Q Did they use dictaphones back then?

22 A No. This is not -- this is not an original
23 letter from the Fish and Wildlife Service. The wording is
24 very consistent with what we would have done or what I
25 would have wrote, but we would never send a letter to

1 Mr. Brace without having his address on it. We'd never
2 send a letter out without our letterhead on it. I mean, we
3 just don't do that.

4 I mean, there could have been a draft out of the
5 file. There's not four drafts out of the file that all
6 have the same --

7 Q Well, it must have been customary practice then?

8 A Somebody -- somebody must have. It looks like
9 somebody dictated these letters.

10 Q But having not been there, I can't --

11 A Okay. I'm not going to argue with you. I would
12 stipulate that it's a real letter, but it's not ours, and
13 it did not come from the government.

14 Q Well, that's not for us to decide here. But the
15 question I have for you is the subject matter of that
16 letter is the Food Security Act of '85, is it not?

17 A Yes.

18 Q How would Mr. Perry be qualified or you be
19 qualified as the letter's author for Mr. Perry to opine on
20 the Food Security Act of '85 if it wasn't within your
21 jurisdiction?

22 MS. BUCKLEY: Objection to form.

23 THE WITNESS: It was our -- it was our customary
24 practice to advise -- this is -- you know, Mr. Brace is an
25 exception as far as not working with us I guess, but I

1 mean, generally we would advise landowners of these types
2 of things, and probably -- it doesn't say who the copy list
3 is here. We probably would have copied the ASCS as well.

4 BY MR. KOGAN:

5 Q Now, you mentioned advise. Was it Fish and
6 Wildlife Service's role in dealing with wetlands cases to
7 advise the other agencies?

8 A Yes.

9 Q Okay. Can you elaborate? And advise is the same
10 as make recommendations?

11 A Yes.

12 Q Were these recommendations at all binding --

13 A No.

14 Q -- as a matter of law at all to the best of your
15 understanding?

16 A There's a whole bunch of different agencies and a
17 whole bunch of different rules. In some cases we may have
18 had more of a say in the matter than others, but as a
19 general rule the Fish and Wildlife Service especially at
20 this time was the wetland expert for the U.S. government.

21 Q The EPA was not at this time?

22 A No. We -- the Fish and Wildlife Service had more
23 experience, more on-the-ground experience, and EPA was
24 coming up. Maybe at this time EPA had a fair amount of
25 experience, but we were mapping the wetlands of the

1 kind of be in different categories. The land developers
2 were pretty -- you know, they wouldn't argue, but -- and
3 really in most of the farming community, we didn't -- we
4 weren't like after farmers.

5 I mean, we felt that the development -- the
6 people who were dumping the fill in and, you know, like
7 PennDOT, we had very specific training for PennDOT, because
8 they're hauling fill up and down and dumping it in every
9 low spot they could find.

10 Q Right.

11 A By stopping PennDOT from dumping them in, that
12 saves a lot of people a lot of trouble, but I don't recall
13 any agricultural meetings being, you know, egregious.

14 MR. KOGAN: Okay. Putnam 10, and this is two
15 versions of this letter. Okay. One you can see the
16 authorized font and then the funny font. A March 1st,
17 1988, letter signed by Charles Kulp directed to James Butch
18 of EPA, and I believe there's discussion here of the
19 restoration plan. So I'm going to submit both documents
20 together so you can see them juxtaposed.

21 (Letters dated March 1, 1988, to Mr. Butch from
22 Mr. Kulp produced and marked Putnam Deposition Exhibit No.
23 10.)

24 MS. BUCKLEY: And, Counsel, do you know --

25 MR. KOGAN: Again --

1 MS. BUCKLEY: -- whether either of these copies
2 was in your custody? You don't know where -- do you know
3 where these documents came from?

4 MR. KOGAN: I don't see a Bates -- I don't see a
5 Bates number on that letter though. There should be one,
6 but I don't see that.

7 MS. BUCKLEY: Okay. I'm just going to state for
8 the record objection to foundation, but go ahead.

9 MR. KOGAN: We've been creative. We would have
10 been very creative to make those up.

11 THE WITNESS: Yeah, I would -- somebody scanned
12 those so they could have access to every word in all the
13 documents. That's what -- that's what these had to come
14 from.

15 BY MR. KOGAN:

16 Q A word search?

17 A Yes. So it was one of the other law firms would
18 have done that so they could do a word search on it because
19 there -- this is all of our documents. We would never send
20 anything like that out. This -- this came from this, and
21 it was probably somebody just read it in, just based on the
22 typos that I see, like a minimum and aluminum. Draft plan.

23 Q Would this have been a letter that you would have
24 written for Mr. Kulp?

25 A Yes, my name's at the bottom of it.

1 Q And how is it signified at the bottom?

2 A You can see it.

3 Q Can you read that into -- just for the record,
4 how would you -- do you know --

5 A The final line says ES semi -- or colon SCFO,
6 State College Field Office colon D. Putnam colon FAB which
7 was Faith A. Brown 3/1/88.

8 Q So if you had -- is it normal practice if you had
9 authored a letter for your supervisor though you were not
10 the signer of the letter, it would be indicated that way in
11 all such letters?

12 A Yes, only on the copies that were retained in our
13 reader's file. This copy would have come from our file, I
14 believe.

15 Q Right. But if it was from your file --

16 A Mr. Butch would not have gotten the last part of
17 that. Usually they don't send everything. Well, I might
18 take that back, but I know this wouldn't go to the
19 addressee.

20 Q Okay. But you really -- it can or cannot be the
21 same?

22 A Yes. Right.

23 Q Now, looking back at the restoration plan that
24 you had developed as a point of discussion for the
25 activities that Mr. Brace had engaged in, when you were