



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX TO WITNESS

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Andrew Martin	4	77	78	

ANDREW MARTIN,

having been first duly placed under oath, was examined and testified as follows:

MR. WARD: For the record, this is March 17, 1992--18th, I am sorry. Depositions are being taken in Erie, PA, pursuant to notice in the matter of U.S.A. versus Robert Brace, filed with the U.S. District Court, Western District of Pennsylvania.

My name is John Ward and I am representing the Defendant, Robert Brace and Robert Brace Farms, Inc. United States is represented today by David Dana of the United States Department of Justice.

Also present are Robert Brace and his daughter, Rhonda Mcatee.

First deponent is Andrew Martin.

And, also, we should note for the record the objections are reserved except as to form pursuant to federal rules.

MR. DANA: Right, the only stipulation is that we will do it in accordance with federal rules.

DIRECT-EXAMINATION

1
2
3 BY MR. WARD:

4 Q Please state your name and address for the record?

5 A Andrew C. Martin, and address--home address is 2805
6 Athens--A. T. H. E. N. S.--Road, Erie, PA, 16510.

7 Q And where are you presently employed, Mr. Martin?

8 A I am president at Andrew Martin and Associates--

9 Q And--

10 A --Incorporated, here in Erie.

11 Q What does Andrew Martin and Associates do?

12 A Environmental consulting firm.

13 Q How long in that business?

14 A Two years.

15 Q And so that would--you started the business in 1990?

16 A 1990.

17 Q And prior to your current job, where did you work?

18 A Two years prior to that I worked for Microbac
19 Laboratories. M. I. C. R. O. B. A. C. Laboratories.

20 Q Where are they?

21 A I worked out of the Erie office. Headquartered in
22 Pittsburgh. I worked in the Erie office or lab.

23 Q What does Microbac do?

24 A Environmental analytical testing.

25 Q Any particular field of the environment?

1 A Occupational health and safety. I did wetland
2 consultation, identification and permitting, asbestos training,
3 the AHERA--Asbestos Hazardous Emergency Response Act.

4 Q How long with Microbac?

5 A Two years.

6 Q We are down to 1988?

7 A Yes.

8 Q And prior to Microbac where were you?

9 A With the State Game Commission.

10 Q You left the Game Commission?

11 A In 1987. I was with them for 17 and a-half years, almost
12 18 years.

13 Q And prior to the State Game Commission, where did you
14 work?

15 A I was an industrial engineer for Armstrong Cork Company
16 in Pittsburgh. I was with Armstrong for seven years, and prior
17 to that was a four year hitch with the U.S. Coast Guard.

18 That takes me back a number of years.

19 Q And prior to--Coast Guard was it?

20 A High school.

21 Q And what is your educational background, please?

22 A I have a Bachelor's and Master's in environmental
23 science.

24 Q Master's?

25 A Yes.

1 Q And where did you obtain that?

2 A Bachelor's at Mercyhurst College in Erie, PA.

3 Q Okay.

4 A Master's at Gannon University in Erie. G. A. N. N. O. N.

5 Q And particularly what is your Master's expertise?

6 A Environmental science.

7 Q And does environmental science--is that a broad

8 umbrella-like description of an expertise?

9 Does it involve all aspects of the environment or any

10 specialty?

11 A It is somewhat broad. It is a multi-disciplinary field

12 that includes virtually all earth sciences and nature sciences.

13 Q And the first school you went to was Mercyhurst?

14 A Yes.

15 Q Is that an accredited four year college?

16 A Oh, yes.

17 Q And when did you receive your Master's, what year?

18 A June of 1978.

19 Q In June of '78, or during your time there, what was some

20 of the courses that you recall taking for your Master's?

21 A They were geology courses, industrial--technical/

22 industrial related courses, environmental problems and

23 environmental systems.

24 Q In 1978, were wetland identification a part of the

25 curriculum?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A No.

Q Now, when you worked with the Fish and Game Commission--did you for 17 and a-half years?

A Yes.

Q Can you please take us through, approximately, the times in terms of years, when you first went on; what your roles were, and as you--the different jobs you held?

A Yes.

I started with the Game Commission in March of 1970. I graduated the Game Commission training school in '71. It was a one year resident school. I was stationed in '71 then here in Erie County as a field officer.

Q In 1971?

A Yes. '71, yes.

Q Okay.

A And in those days we were called District Game Protectors and I remained in that role through most of that time; in fact, until 1987, when in early '87 I was assigned as the northwest unit supervisor. My area of jurisdiction was Erie/Crawford County and basically that--the job duties provide direct supervision to field officers, which at that time had become known as Wildlife Conservation Officers.

Q What does a field officer do?

A Essentially they promote the programs that the State Game Commission administered toward wildlife conservation.

1 Very broad. Duties include law enforcement work, public
2 relations work, environmental education--it is a very broad
3 group of responsibilities.

4 Q You have arrest powers?

5 A Yes.

6 Q Do you carry weapons?

7 A Yes.

8 Q The weapons visible?

9 A Yes.

10 Q Weapons being guns?

11 A Yes.

12 Q Now, you were a field officer, I believe you said, in
13 the--from '71 up until '87. Sixteen years I guess?

14 A That is correct.

15 Q And to whom did you report?

16 Can you describe the structure, the reporting structure,
17 operational structure of a field officer?



18 A When I was a District Game Protector I reported to--I had
19 at least four distinct supervisors at the division level in
20 Franklin, Pennsylvania. Each of the supervisors represent a
21 specific entity in the programs of the Commission; one was law
22 enforcement, one was public relations, another was land
23 management, and another was game propagation and stocking of
24 wildlife.

25 Then, when I moved in the role of supervisor, my--the

1 chain of command was directly to the regional supervisor, also
2 in Franklin.

3 Q Did this work also include, say, the removal of beavers?

4 A Yes.

5 Q Trapping?

6 A Trapping/snaring, removal, yes.

7 Q Now you said that you took a training school in 1971?

8 A Yes.

9 Q Resident school?

10 A Yes.

11 Q Is that required of all new employees?

12 A Yes, state owned and operated school. The only entry to
13 the school is acceptance by the State Game Commission
14 anticipating a commission.

15 Q And what course is that school?

16 A Wildlife management related courses. That is as well as
17 specific courses focusing on game propagation aspects; law
18 enforcement aspects, et cetera. Essentially a management
19 school.

20 Q In addition to the school while employed with the Game
21 Commission, did you receive any other special training of any
22 kind; courses, schooling?

23 A In-service ongoing training that was provided by the
24 State, yes.

25 Q By the Game Commission?

1 A Yes, by the Game Commission. Yes.

2 Q And do you recall what kind of courses might they have
3 been?

4 A They were not courses in the traditional sense; they
5 were--more accurately describe them as workshops. They were
6 annual workshops focusing on each one of the areas that the
7 agency participated in or had responsibilities in.

8 Q And where did you live during this whole period of time?

9 A During the training school?

10 Q When you were with the Game Commission?

11 A Well, I--when I was in the field, I lived here in Erie.
12 Relocated my family to Erie.

13 When in the training school, that was a kind of a quasi
14 military setting. You live--we were in barracks style housing
15 apart from the family for one year.

16 Q Where was that?

17 A At that time, Jefferson County, Pennsylvania.

18 Q When did you move to the Erie area?

19 A 1971.

20 Q In other words, you knew where you were going to be
21 assigned prior to school?

22 A No. No. No, I didn't know until graduation day when you
23 get your diploma and get your assignment.

24 Q You got out in '71?

25 A Yes.

1 Q And then they make field assignments?

2 A Yes.

3 Q By the Erie area, where; something more precisely?

4 A Present address is 2805 Athens Road.

5 Q You lived there 20 years?

6 A Coming up on 21 years. '71 to '92.

7 Q As part of your work I think you named four different
8 specific branches in the division level in Franklin which
9 include game management, I believe you said land management,
10 game propagation, and law enforcement and public relations?

11 A Yes.

12 Q Tell us about public relations, how did it work?

13 A I taught at schools, various schools. Go into schools as
14 a guest speaker. Everything from elementary through college,
15 that is, to lecture on wildlife conservation.

16 I was the administrator of the Seagull Marsh Wildlife
17 Management Area, a visitor center facility the State Game
18 Commission owns and manages. And we conduct programs to schools
19 and other groups that come to the facility relating to wildlife
20 issues. It is located here in the Seagull Marsh in Erie County.

21 I did programs with the media, television, newspaper,
22 radio. It was a--they were all focused on wildlife
23 conservation. That is how I characterize the public relations.

24 Q But that did not include--as you traveled around your
25 assigned area, did you visit with the local farmers, business

1 people, tell them about what is going on with the Game
2 Commission?

3 A Yes, very definitely. If there was an opportunity to
4 meet and have a high contact with the local public, yes, that
5 was part of the job.

6 Q And what--how did you--I hate this word but I will use
7 it--interrelate, say, with the Fish Commission and some of the
8 federal agencies located out here, not particularly in game, but
9 other aspects, the E.P.A.?

10 MR. DANA: Asking how he personally--

11 MR. WARD: How did the Game Commission
12 relate.

13 THE WITNESS: Enjoyed a very good, close
14 working relation.

15

16 BY MR. WARD:

17 Q And did you, all of you, you know, have occasional
18 meetings and sit down and say, what is going on with you
19 fellows, and what is going on with you fellows?

20 A Infrequently, yes.

21 Q And did they ever--say the E.P.A.--ever conduct a
22 workshop of any environmental problems with people from the Game
23 and Fish Commission and D. E. R.?

24 A No.

25 MR. DANA: If you know?

1 THE WITNESS: I don't know as that specific
2 agency--not E.P.A, no. I think the working relation was
3 probably closest between the two state agencies, the Fish
4 and Game.

5 And incidentally, in this state the Game and
6 Fish are separate agencies, unlike virtually every other
7 state. But there was a very close working relationship
8 between the two state agencies; and also would have
9 federal agencies, U.S. Fish and Wildlife, and work very
10 closely with them and they would--we did have mutual
11 training sessions with that agency.

12
13 BY MR. WARD:

14 Q Now, people in your work with the Game Commission, you
15 are directed by regulation pertaining to your jurisdiction,
16 correct?

17 A Yes.

18 Q Does the Game Commission also issue to its employees,
19 particularly the field employees, what might be termed guidance
20 or policy papers on how to conduct or implement the regulations,
21 if you will?

22 A Yes.

23 Q They do?

24 A They do.

25 Q Do you have those with you today?

1 A No.

2 Q Where would they be available?

3 A The northwest regional office, I assume. I don't have
4 personal control or access to that at this point.

5 Q What are they designated as or termed, this policy or
6 guidance papers?

7 MR. DANA: If you know.

8 THE WITNESS: I am sorry, I don't remember.

9 Administrative directives.

10

11 BY MR. WARD:

12 Q Okay.

13 A It has been a while.

14 Q And are these administrative directives issued out of the
15 head office in Harrisburg?

16 A Yes.

17 Q Generally what do they do?

18 What is the function of the administrative director?

19 A They are to provide uniformity in enforcement and/or, in
20 the activities of the Game Commission, in the application of the
21 Game Commission programs.

22 Q And these are directly a guidance part of the regulation?

23 A Yes.

24 Q And do you know Robert Brace?

25 A They are regulated--I am sorry, they are guidance, not

1 regulation formulated by the State agency.

2 Q Do you know Robert Brace?

3 A I do know Mr. Brace, yes.

4 Q And how long have you known Mr. Brace?

5 A My first recollection of meeting him was incidentally,
6 ironically associated with the incident in 1987.

7 Q Early 87?

8 A No, it was the day of this incident.

9 Q All right.

10 A To my knowledge and recollection, I had never had any
11 dealings or contact with Mr. Brace prior to that.

12 Q You ever heard of him?

13 A I recognize the family name, yes, not necessarily Mr. Bob
14 Brace.

15 Q But the Brace name?

16 A The family name in the area, yes.

17 Q And the Brace property, as you came to know the Brace
18 property, was not part of your regular jurisdiction in your work
19 with the Game Commission, was it?

20 A As supervisor it was, yes.

21 Q This is when you took--earlier on before you became a
22 supervisor?

23 A No, sir, it wasn't.

24 Q And can you in terms of miles say, and recalling your
25 jurisdictional area, how close were you to the Brace property

1 outside of Waterford?

2 A I had the adjoining township.

3 Q So in terms of miles, ten miles away?

4 A I don't think it is that far. I don't honestly know what
5 the distance is. It is very close.

6 Q All right. You mentioned about the incident in question
7 here and I believe it is early May of 19--in fact, May one of
8 1987?

9 A That is correct.

10 Q You had never before been on what you came to know as the
11 Brace property?

12 A That is correct.

13 Q And drive by any of the areas?

14 A I have no recollection of doing that. There had been no
15 reason to associate any recognition of the farm.

16 Q Prior to that time, you do not recall any occasion to
17 have been, say, at the intersection of Greenlee Road and South
18 Hill Road before May one?

19 A Not specifically, no.

20 Q Can you tell us what the circumstances were and what the
21 purpose was for your having come to the Brace property?

22 And, again, I am going to have to use the map just for
23 location purposes.

24 Mr. Martin, we are using a U. S. G. S. topo map.

25 MR. DANA: Off the record for a second.

1 (Whereupon, a brief discussion was held off the record.)

2

3 BY MR. WARD:

4 Q I will ask you, although it has been marked previously--
5 ask you if you are familiar with the map?

6 And take your time to orient yourself as to what we are
7 calling the site or the area in concern with that lawsuit.

8 A If you can help me, is that Greenlee running north and
9 south here?

10 Q No, Greenlee is here. And here is the South Hill Road
11 and here is the intersection.

12 Now, 19 is out here, right?

13 A Vaguely familiar with the general area, yes.

14 Q And having been oriented now, do you recognize that
15 as--with the roads--as the area which you first came known as
16 the Brace property?

17 A Yes.

18 Q Now, again, I think I interrupted you.

19 What were the circumstances for that visit and for what
20 purpose?

21 A At that time I was the northwest unit supervisor, as I
22 mentioned, and one of the functions of the supervisor was to
23 spend time with the field officers in giving direct supervision.
24 That was the intent of the program was to provide a closer
25 working relationship between the field force and supervisory

1 level.

2 Q As of May one, how long had you been a field supervisor?

3 A Couple of months, it was a brand new program.

4 Q Okay.

5 A Perhaps--let's see, that would have been March--March of
6 '87 to May, so it was only two to three months.

7 Q Okay.

8 A On that particular day I spent time with the field
9 officer for that area, name was Wayne Lugalla, and I rode with
10 Wayne on patrol that day. And as a part of his routine duties
11 it--we were to investigate a beaver damage complaint at the
12 Brace farm, and Wayne and I both went to the farm. I didn't
13 know, of course, Wayne was familiar with the area and we drove
14 to the farm.

15 I remember pulling off the side of the road and we both
16 walked out into the area that presumably had beaver. And at
17 that time when we walked in the field, we both were surprised to
18 see a huge ditch.

19 Q Both were surprised or you were surprised?

20 A I definitely was surprised. When I asked Wayne if he
21 knew about that or what was happening here, he answered that he
22 didn't. Very definitely I was surprised and with the size of
23 it.

24 Q What size do you think it was?

25 A I would trust my memory, the bottom of the drainage ditch

1 would have been six to eight feet across--and varied, of course.

2 But from the bottom, when I stand in the bottom of it, the
3 side-cast material was anywhere from, perhaps, as much as eight
4 to ten feet high.

5 Q Eight to ten feet high?

6 A Yes.

7 Q Side-cast?

8 A Yes, the top of the side-cast from the bottom of the
9 ditch.

10 Q The bottom of the ditch?

11 A Yes.

12 Q Well, how much material--how deep was the ditch?

13 A Well, that is--I didn't take measurements.

14 Q Approximately, if you were standing in the bottom of it.
15 Was there water in the ditch?

16 A Yes.

17 Q You stood in the water?

18 A Yes.

19 Q You recollect approximately how high or how deep the
20 ditch was?

21 A I would guesstimate that it was five feet deep,
22 conservatively.

23 Q And how high did you say the side-cast material amounted
24 to?

25 A Total height, eight to ten feet.

1 Q So would be--

2 A From the ditch.

3 Q The top of the ditch?

4 A From the base of the ditch to the top of the side-cast
5 material, it would range from eight to ten feet.

6 Q So if it is a five foot ditch, it is three or four feet
7 depth of side-cast?

8 A Approximately.

9 Q And was this all along the edge of the ditch?

10 A Thank you for refreshing my memory. Actually it was more
11 than that. It would have had to have been more than that; I
12 couldn't see over it.

13 It was--well, when you were in the base of the ditch,
14 there was--it was very clearly a very deeply dug drainageway.

15 Q And it had been freshly dug?

16 A Yes.

17 Q And there were new sides to it where it had been scoured
18 and simply was subseqent removal of loose material?

19 A There was apparent new material, it had no vegetation on
20 it. Some of the material was still coming back into the stream.
21 Siltration was in evidence.

22 Q So along the side of the ditch you had to have a depth of
23 side-cast material at least four to five feet thick?

24 A At least. At least.

25 Q And was this along the entire length of the ditch?

1 A Yes.

2 Q And now, was this material--how far back from the edge of
3 the ditch had the material been pulled, so to speak, if they
4 pulled it back, or had it been dumped there?

5 A I didn't notice any distance. It was a wall of--the
6 ditch was a continuum. It was--from the area when it was
7 excavated, it appeared to be dumped immediately adjoining it.

8 Q So how far back from the edge of the ditch did the
9 side-cast material extend in terms of width?

10 I mean, we established the height of at least five feet;
11 now I am trying to get the width.

12 A Again, please accept that it is based on recollection and
13 not recorded documentation or anything I can reflect back to.

14 Again, I guesstimate it would have been at least ten to
15 perhaps 15 feet.

16 Q Fifteen feet back?

17 A That would have been the outside of the--

18 Q I understand.

19 You didn't take notes at the time?

20 A No, sir.

21 Q Did Lugalla take notes?

22 A Not to my knowledge.

23 Q What else did you see there?

24 A I observed a Canada goose nest that was inside of what
25 would have been the impoundment area and it had eggs on the nest

1 and the nest had been deserted; neither male or female were
2 present. That is unusual for Canada geese.

3 Q Where did you see it?

4 A Right immediately beside the--what would have been on
5 the--if I can use the map to orient--it would have been on the
6 south side of the ditch and it was a Canada goose nest. There
7 were at least four eggs in it or more. I am sure there were at
8 least four eggs in it and the nest had been abandoned.

9 Up until that time, the nest had been surrounded with
10 water and--which is a defense mechanism Canada geese use in
11 nesting to provide protection for the nesting site. With the
12 draw-down, the nest was now exposed to the immediate ground
13 beside it and, therefore, terrestrial predators.

14 Q The Canada geese don't generally build a nest, they find
15 a small hollowed space on the ground?

16 A That is not accurate.

17 Q They actually bring in material?

18 A Yes, grasses and sedges and virtually made of vegetation
19 and they--whatever is typical to the area. And they line the
20 cup of the nest by removing feathers.

21 Q How long did you observe the nest?

22 A I didn't study it. I recognized it in my passage in
23 walking down this drainageway. I observed it.

24 Q You walked by it?

25 A I walked by it.

1 Q How close?

2 A Twenty-five or 30 feet approximately.

3 Q And from that study, you determined it had been
4 abandoned?

5 A Yes.

6 Q I have what has been previously marked as an Exhibit 13
7 from an earlier deposition; that is aerial photograph of an area
8 which does include property belonging to Robert Brace.

9 Do we have--Mr. Martin, have you been able to--Mr.
10 Martin, we now placed before you an aerial photograph--colored
11 aerial photograph of the general area, which also includes the
12 site in question belonging to Robert Brace. And that particular
13 photograph had been marked Exhibit 13 in the previous
14 procedures.

15 And I ask you if you had time to orient yourself as to
16 the location of the property under discussion today?

17 A Very honest with you, I am not comfortable with this.
18 am not that familiar with it.

19 MR. DANA: Off the record for a second.

20

21 (Whereupon, a brief discussion was held off the record.)

22

23 BY MR. WARD:

24 Q You say that you and Mr. Lugalla on May the first got out
25 of the car.

1 Do you recognize the road where you might have come in
2 and marked--again, Route 19 is out in here and this is Greenlee;
3 this is South Hill Road--I believe it is called Lane Road out in
4 here--and then South Hill here, and this is Greenlee Road going
5 off in a more northerly direction.

6 A To the best of my recollection, we could have come in
7 over here and the ditch then would have come down through.

8 Q I will help you. There is a ditch in here and a ditch
9 here.

10 A You know what, in the interest of accuracy, I would
11 rather not trust my recollection as to this map.

12 Q Have you ever seen an aerial photograph like this?

13 A No, and I am not familiar with this area. That's why I
14 don't want to offer anything that is inaccurate or that confuses
15 the issue.

16 Q We will get into it later about subsequent meetings; but
17 for your purpose, is--this aerial photograph does not help you
18 recall?

19 A No. There are people that are more familiar and better
20 qualified than I to place the exact location of where we were.

21 Q Okay. Did you meet with the U.S. attorneys prior to
22 today to discuss your testimony?

23 A One time with Mr. Dana and it was at--day before
24 yesterday to appraise me of the meeting.

25 MR. DANA: Obviously the substance of the

1 discussion is privileged.

2 MR. WARD: I understand that.

3 MR. WARD: I just want to make sure that he
4 is not being confronted cold about what we are
5 discussing.

6 THE WITNESS: No.

7 MR. DANA: No, that is not the case; although
8 hasn't been shown the photograph by us previously.

9

10 BY MR. WARD:

11 Q You are aware that you have been listed as a potential
12 witness in this matter by the U.S. attorney?

13 A Yes.

14 Q And were you contacted by the U.S. attorneys
15 shortly--sometime before today, besides this particular
16 incident, about today's proceedings?

17 A It was relatively a short time ago. I don't remember the
18 exact dates. It was with Attorney Dana so I--he is the only one
19 and it was within the last--I--I don't know. It has been a very
20 short time. I hesitate to offer a time frame. I don't have a
21 recollection.

22 Q You had not been contacted and your involvement discussed
23 by the U.S. attorney's office prior to that, prior to Mr. Dana?

24 A That is correct.

25 Q Well, let's go back to May one again with you and Mr.

1 Lugalla on the Brace property, all right; back to the amount of
2 the side-cast material.

3 Was that on one side of the ditch, is that correct, or
4 both sides?

5 A It was both sides.

6 Q So you are unable to give us any information in relation
7 to what you see there as far as where the ditches were located
8 and their length?

9 A Completely honest with you, I don't want to confuse the
10 issue.

11 Q I will try and do it as best with a narrative.

12 Do you recall how many ditches you saw on that site?

13 A There were two. There was one very long one that
14 paralleled the road that we parked from, and then there was one
15 that was tangential to it that was more or less a long ditch--to
16 the best of my recollection, it was more or less an east/west
17 direction, with a shorter ditch and less deep ditch on a more or
18 less north/south direction.

19 Q So you correct me when I recapture what you said.

20 You saw, approximately, at least five feet of fill, five
21 feet high on the sides of the ditches, on both sides of the
22 ditches, and that the side-cast material extended approximately
23 15 feet in width from the edge of the ditch?

24 Trying to get a picture.

25 A On the main ditch. That is an accurate characterization.

1 Shorter ditch wasn't quite as deep and side-cast wasn't quite as
2 high.

3 Q You say you never had been here before?

4 A That is correct.

5 Q You say the ditches had been widened and deepened?

6 A Yes.

7 Q How would you know that?

8 A By the freshness of the fill. The earth was obviously
9 recently disturbed. It was determined by the fact that the fill
10 material had not stabilized itself as yet. There was no
11 evidence of rilling or erosion; that would have been the case if
12 it had experienced rain or snow or run-off. There was no
13 vegetation, too, which, again, would have been a function of
14 time.

15 Q How would you use erosion as a criteria that was newly
16 dug material that had been moved?

17 A The newer the material, the less evidence of erosion
18 would be present.

19 Q By color?

20 A No, by indentation and erosion.

21 Q Well, that, if it had just been removed from solid soils,
22 the erosion marks would not have occurred until sometime as they
23 were exposed, right?

24 A Correct, that is my point.

25 Q You have no way of knowing how long they--do you have any

1 way of knowing how long the material had been side-cast?

2 A I am saying that it appeared to be very fresh. It was an
3 immediate, timely fashion. It was freshly dug material.

4 Q You see any equipment there?

5 A No, I don't recall seeing equipment.

6 Q Had you had occasions to visit other farms in your
7 jurisdiction?

8 A Oh, yes.

9 Q You lived here; you are very familiar with the farming
10 practices in the Erie County area?

11 A Relatively so, yes.

12 Q Don't farmers dig ditches?

13 A Well, in a general sense, yes.

14 Q And because of the--with your background, you are very
15 familiar with the soils in the Erie area, are you not?

16 A Relatively so.

17 Q And hydrologic regions that are here?

18 A Yes.

19 Q And if drainage practices are not followed with farmers
20 in the area, what happens with the properties generally?

21 MR. DANA: Mr. Martin isn't offered as an
22 expert in drainage.

23 MR. WARD: No, but I can ask him.

24 MR. DANA: Or hydrology.

25 MR. WARD: He lived here for 20 some years

1 and visited the farms, he said.

2 MR. DANA: Just want it on for clarification.

3 MR. WARD: Fine. Fine. We are not trying to
4 establish him as an expert.

5
6 BY MR. WARD:

7 Q But you have been able in your work in traveling around
8 the countryside, to watch and observe farming operations, have
9 you not?

10 A That is correct.

11 Q And generally they all have some kind of drainage system,
12 do they not?

13 A I don't know as I characterize it as generally. They do.
14 I can tell you I never saw a ditch like this before in
15 all the 20 years I have been involved in conservation work.

16 Q Biggest ditch you ever saw?

17 A This was the biggest singular--without any hesitation
18 --the single largest ditch I ever saw associated with any
19 agricultural activity.

20 Q And you are saying it was six to eight feet deep from the
21 surface to the bottom as you stood in it?

22 A Yes.

23 Q So you are approximately six foot?

24 A Yes.

25 Q And so the surface, original surface, was over your head?

1 A That is correct. That is what I was using to approximate
2 depth.

3 Q And, again, I believe the material was at least five feet
4 thick?

5 On this particular occasion, did--you brought us up to
6 the point where you and Mr. Lugalla walked on the property and
7 you observed this ditch.

8 What did you do then?

9 A I asked Wayne if he knew what was happening here, and he
10 didn't have any explanation or know--or so he told me.

11 We continued to walk along the ditch line, I believe, in
12 a westerly direction. That was just to attempt to put some
13 reasons to this, okay. Just struck me as huge. I was--as I
14 mentioned, it was unlike anything I had ever seen before. I
15 wondered what was going on here.

16 We walked just about to the adjoining road, like I said.
17 Just about, we didn't break out onto it; I could see the road.
18 And I remember passing on the way down that corridor there was a
19 beaver dam that had been removed--pulled out--removed--in any
20 event, in whatever fashion. And this was freshly drawn down
21 also. The area had not been thoroughly--the water was still
22 cascading out of it. In the process of still draining the area.
23 It was a very deep cut into the beaver dam. It didn't wash out.
24 This was an intentional break in the beaver dam.

25 I continued on downstream and we then did make contact

1 with Mr. Brace.

2 Q On the beaver dam, again you cannot locate it, it was
3 well off the roads and some kind of waterway, is that correct?

4 A Yes.

5 Q And my recollection is you were there as a result of the
6 complaint by Mr. Brace of beaver damage?

7 A Yes, a nuisance animal complaint.

8 Q Was there a request to remove the beavers?

9 A That is what I understand from Officer Lugalla.

10 Q And then what did you do?

11 Mr. Brace walk up on the property and meet with you?

12 A We met on the property and he walked over to us. We were
13 walking in that general direction. And Mr. Brace introduced
14 himself to us; asked what we were doing there.

15 And, of course--

16 Q Well, he knew why you were there, didn't he?

17 A Ostensibly he did.

18 Q He knew Wayne Lugalla?

19 A To my knowledge he did.

20 Q If you know?

21 A Yes.

22 Q Did you know Wayne Lugalla had been on the property
23 earlier many times?

24 A I don't know. I don't know. It wasn't anything that I
25 would make a note of. I have no--

1 Q But in your conversation to go out and remove beaver this
2 particular day, didn't Wayne Lugalla ever tell you, we are going
3 out to the Brace property, I have been there many times?

4 A No, he didn't say that. He said we are going to the
5 property to investigate a nuisance animal complaint. But
6 whether it was triggered by a previous visit or a telephone
7 call, I don't know.

8 Q You don't know if Wayne Lugalla had been on the property
9 before?

10 A No, sir, I don't.

11 Q And in your job, you had not been in your job as
12 supervisor very long then?

13 A No.

14 Q You get daily reports and logs of what your field
15 officers do?

16 A Only after I took that position as supervisor. I would
17 have no reason to know what the daily activities of Officer
18 Lugalla had been. It wasn't my prerogative or in the scope of
19 my responsibilities to keep note of those or evaluate them.

20 Q Let's get back to the procedure as a field officer then.
21 Do the field officers file with their office a log
22 of--daily log of activity?

23 A Yes.

24 Q And so when we get in the files we will be able to find
25 out when and if Wayne Lugalla had been on the property earlier,

1 is that correct, under your procedures?

2 A Date and time. It is called time and activity report.
3 It is very brief. Doesn't go in a lot of detail. Not a summary
4 of the activities, just lists the date and time and location
5 that an officer was on any given date.

6 Q And now, you--Mr. Brace came up and introduced himself to
7 you?

8 A Yes.

9 Q What transpired as far as conversation among the three of
10 you?

11 A As I recall, he asked what we were doing and we explained
12 we were there for the nuisance animal complaint.

13 I asked Mr. Brace to explain what the ditch was about
14 and--it has been so long I don't remember the exact exchange of
15 words--but in effect asked what the ditch was for. And he said
16 it was self-evident, he was draining the area.

17 And he was upset that we were there. Asked us to leave
18 the property and didn't--we told him we were not going to be
19 removing the beaver at that time. I told him that, in my
20 judgement, there appeared to have been a violation.

21 Q Violation of what?

22 A Of the environmental laws.

23 Q General environmental laws?

24 A Game laws, specifically, and/or the wetland laws. My
25 authority is fairly narrow in that I was not empowered to

1 enforce the--I was the game laws primarily; however, I was also
2 a United States Deputy Game Warden with the U.S. Fish and
3 Wildlife Service. But at that time my role was acting as a
4 state officer.

5 Also, I will say Mr. Brace was upset when I informed him
6 there appeared to me to be a violation, and we were invited to
7 leave.

8 Q But you told him that there appeared to be a violation of
9 the game laws alluding, I imagine, to what you saw as a
10 destroyed or damaged beaver dam?

11 A Right.

12 Q And then you also indicated that there may be a violation
13 of what other laws?

14 A To my knowledge, we didn't really discuss the details of
15 the violation other than game law. Game law was my primary area
16 of responsibility.

17 Q But you did make reference to other environmental laws.
18 Did you say it appears to be even a violation of the
19 wetland laws?

20 A Yes. I don't know if I used that exact choice of words.
21 I did say, in effect, there appeared to be violation of
22 other--quite likely would have been wetland laws.

23 Q But you don't know?

24 A I don't have an accurate recollection of the exact choice
25 of words. It was a long time ago.

1 Q Did you issue, or Mr. Lugalla issue, a citation to Mr.
2 Brace regarding the game violation?

3 A No, sir, not at that time.

4 Q What did Mr. Brace say to you?

5 A I remember him being upset with us and, as I mentioned,
6 asking us to leave the property. And, again, I don't remember
7 the exact exchange of words, but it was obvious he was not happy
8 to see us there.

9 Understandably, our role was as enforcement officers and
10 when I told him that I believed there was a violation, it was
11 within reason and understandable that a person would not be
12 happy to see someone under the circumstances.

13 Q Just possibly now to get the picture straight, your
14 testimony is that Mr. Brace was surprised and unhappy to see you
15 there?

16 A That is correct.

17 Q You were there because of Mr. Lugalla, a fellow game
18 employee?

19 A Yes.

20 Q He had told you that there had been a complaint by Mr.
21 Brace of animal damage and a request to remove beaver?

22 A That is correct.

23 Q And yet the man was angry because you were there upon his
24 request?

25 A That is correct.

1 Q Did you ever say anything to Mr. Brace during this
2 exchange that this area would make a nice preserve of some kind
3 or sanctuary?

4 A I don't remember that, no. I could very well have; it
5 would have.

6 Q Possible you could have said that during your
7 conversation?

8 A It is possible.

9 Q Did Mr. Brace say something to the effect that, if you
10 like it so much you can buy it?

11 MR. DANA: If you remember.

12 THE WITNESS: I truly don't have a really
13 accurate or strong recollection of the exact exchange of
14 words on that day, no.

15 What stands out in my mind was that it
16 appears to have been--well, in my mind it was a violation
17 to--that is what I was focusing on as a state wildlife
18 enforcement officer, was that there was a violation of
19 the beaver dam; it had clearly impacted wildlife and that
20 is what I was primarily concerned with.

21

22 BY MR. WARD:

23 Q And the other signs or activity--or signs of activity you
24 saw were secondary to the beaver dam?

25 MR. DANA: Objection. I don't understand the

1 question.

2 MR. WARD: He said two things there; one was
3 the game or damage to the beaver dam, and the other one
4 was the possible violation of other environmental laws.
5 Then--we can read it back--he just said something to the
6 effect that his primary concern was with damage to the
7 game.

8 MR. DANA: That is fine. Trying to
9 understand the question.

10 MR. WARD: All right.

11
12 BY MR. WARD:

13 Q Did--what did Mr. Lugalla say during the exchange; was he
14 part of the conversation?

15 A I don't recall now any dialogue between Officer Lugalla
16 at the time. Don't misunderstand, I don't know that he didn't
17 say anything. I don't have a recollection of what he did say.

18 Q Mr. Brace tell you he had been working on the property
19 for ten years at least?

20 A He may have, I don't recall that.

21 Q Did you ever say to Mr. Lugalla, if Bob Brace wants
22 problems, I will show him what problems can be?

23 A No. That--again, I don't recall that or I don't believe
24 that is--problems outside of what my role or my duty to enforce
25 a game law? Certainly any time that I would arrest a person or

1 issue a citation or advise them they are in violation, that
2 sense it is inherently--there is an inherent problem that goes
3 with it, yes; but not any personal level or not in any
4 vindictive sense or--I had no contact with Mr. Brace prior to
5 that incident, so it was strictly within the limits of why I was
6 there that day and about the drainage of the wetland.

7 Q Well, would you consider yourself having been somewhat
8 quiet in your manner with Mr. Brace in discussions there with
9 him?

10 A To the best of my ability, yes. I mean, that is my--that
11 was my method of approach and confrontation was to minimize. It
12 certainly was not in my interest to escalate a situation.

13 Q All right. You came across the scene you said was the
14 worst you had ever seen in 20 some years, the size of the ditch?

15 A That is correct.

16 Q You came across the scene showing there was damage to a
17 beaver dam?

18 A Yes.

19 Q And this did not in any way influence your attitude at
20 all as to how you approached Mr. Brace?

21 MR. DANA: Objection.

22 MR. WARD: Why? I can ask him what his
23 attitudes were or state of mind. The man is coming
24 across as he was a cool cucumber and that is what he
25 wants us to believe. I want to find out.

1 MR. DANA: You asked him what his demeanor
2 was. It is asked and answered. Go ahead.

3 MR. WARD: I want to find out.
4

5 BY MR. WARD:

6 Q Were you mad and angry?

7 A No, sir, I was not mad and angry.

8 Q You saw some willful devastation to a beaver dam and you
9 saw a ditch, huge ditch, and you were not angry?

10 A I was not personally angry at the person.

11 In 20 years as a conservation officer and being
12 professional in how I approached individuals and how I would
13 enforce the law, I would not personalize it. Professionally,
14 you can't personalize it. My personal feelings are very apart
15 from my professional responsibility to accurately recognize and
16 see a violation and follow the law and the procedures for
17 initiating addressment of the violation.

18 Q In your entire career with the Game Commission, can you
19 recall any incidents as a field officer with the Game
20 Commission, or in your role, of any incidents which might be
21 considered confrontational and displaying what is known as
22 anger?

23 A Element of law enforcement, that is always there, yes,
24 there is no question of that. That goes with that kind of work.

25 I can honestly tell you, in my term, I enjoyed a very

1 successful and good career with the Game Commission. I really
2 didn't have--very few such situations. I had people in the
3 course of my duties attempt to kill me. I have been shot at.
4 Individuals attempted to stab me.

5 Q These are good relations?

6 A When these are unprovoked--it is a function of having to
7 do law enforcement today. These were incidents where there was
8 no dialogue with the individual.

9 So the point is, in law enforcement there is an element
10 of contention that is inherent with the work. But in my
11 personal case, I had very, very few of those. My cases were
12 remarkably few, in comparison with other officers. So no, I, in
13 this particular--

14 MR. DANA: He answered the question.

15

16 BY MR. WARD:

17 Q All right. When you left the property, what did you do
18 on the date of May 1, 1987?

19 A I went back, to my recollection, to the office then.

20 Q And your office was located where?

21 A In Crossingville. Crossingville, Pennsylvania, Crawford
22 County.

23 Q And with Mr. Lugalla?

24 A Yes.

25 Q He went back to your office with you?

1 A Yes. It was the central headquarters office.

2 Q And do you recall any of the conversations you had with
3 Lugalla at the time?

4 A I don't recall the exact words that were involved in the
5 conversation.

6 Q Content generally?

7 A We were discussing this, I am certain.

8 Q Did you tell him what you were going to do?

9 A I probably did. I likely did.

10 MR. DANA: If you know. Your question is
11 whether you know.

12 THE WITNESS: I don't remember the exact
13 choice of words.

14

15 BY MR. WARD:

16 Q Did you tell Mr. Lugalla to the effect you were going to
17 bring this to the attention of somebody else?

18 A I am certain that I did. In that I don't remember the
19 exact choice of words, I am sure that I told him I intended to
20 report it to my supervisor for their recommendation.

21 Q Recommendation of what?

22 A How to proceed.

23 Q Do you recall what it would be?

24 A To contact the regulatory agencies that would have an
25 interest in a wetland drainage.

1 Q So you determined it was a wetland?

2 A Yes.

3 Q A violation at that time?

4 A In my mind, I believed that it was a wetland violation,
5 yes.

6 Q How long were you on the property, all told, on May one?

7 A Maybe an hour to--maybe longer than that. Hour to two
8 hours. Guesstimating.

9 Q Pick up any samples of vegetation?

10 A I observed vegetation, aquatic, observed standing water,
11 observed hydric soils and waterways.

12 Q Where did you do all of this observation?

13 A When I was on the property. This is a function of what I
14 described.

15 Q Hydric soils were where?

16 A In the beaver impoundment.

17 Q How do you determine those were hydric soils?

18 A I could see they were mire and muck. They are organic
19 soil.

20 Q Generally is there a method or procedure for determining
21 hydric soils the agency uses?

22 A Yes.

23 Q What is that procedure?

24 MR. DANA: Well--

25 MR. WARD: If he knows, he can answer the

1 question. Obviously we are not having him as an expert.

2 How he made a determination in his own mind.

3 I am not saying it is an expert determination. I want to
4 find out.

5 MR. DANA: Of course. Ask him the question.

6 Clarifying it for the record, John.

7 MR. WARD: Do it. Fine.

8

9 BY MR. WARD:

10 Q You were there an hour?

11 A Ah-hum.

12 Q Walking around?

13 A Ah-hum.

14 Q A lot of that was--how long did you and Mr. Brace
15 actually have a conversation in terms of minutes and time?

16 A Again, I don't remember precisely. Anywhere between 15
17 minutes to a half-hour.

18 Q And did you notice in looking around at the surroundings,
19 did you notice any crops being in evidence?

20 A I didn't see any, no.

21 Q You say the water was in the ditch and there was other
22 standing water?

23 A That is correct.

24 Q In May of '87?

25 A Yes.

1 Q Had it--this is springtime conditions?

2 A Yes.

3 Q Did you actually pick up and identify any vegetation?

4 A I didn't physically pick up any. I could identify
5 vegetation, standing vegetation.

6 Q How many species of wetland vegetations are there, do you
7 know?

8 MR. DANA: If you know.

9 THE WITNESS: Possibly fifteen hundred have
10 been identified by the Fish and Wildlife Service.

11

12 BY MR. WARD:

13 Q Would seven thousand species surprise you?

14 If it does, tell me.

15 A Depends which indicated status is given, obligate or
16 facultative.

17 Depending on the status indicator, total hydrophytic
18 species, seven thousand, yes, that is very possible.

19 Q Now, we may be--your testimony may be--a lot may be based
20 on post 1987 education, is that correct?

21 A Yes.

22 Q In May of '87, how much education and training had you
23 had in identifying wetlands?

24 A Extensive. I spent virtually all of the 20 years in
25 wildlife management in wetlands.

1 I--one of the primary roles at Seagull Marsh Visitor
2 Center was to educate youngsters in the value and function of
3 wetlands. That is the single entity we promoted at Seagull
4 Marsh. The same is descriptive of the role. I had been in
5 wetlands, whether it is marshes, swamps or bogs and estuaries,
6 for 20 years.

7 Q Or more?

8 A Or more.

9 Q I am asking about formal training.

10 Did you take classes in wetland identification?

11 A At game school that is a function of wildlife management,
12 and I did after this incident as well.

13 Q And now, how many hours would you say that you took in
14 wetland identification prior to 1987, May one?

15 A I honestly don't know; it wasn't broken out into each one
16 of the ecosystems. We didn't break it out, how much time.

17 MR. DANA: If you know.

18

19 BY MR. WARD:

20 Q Generally, you would have a course and discuss different
21 game management facets, is that correct?

22 A We had one year courses.

23 Q And then part of that would be the different habitats of
24 game?

25 A That is correct.

1 Q And wetland being a particular habitat?

2 A That is correct.

3 Q Now, you say that--you wrote a recommendation to your
4 boss?

5 MR. DANA: Objection. I think that is a
6 mischaracterization of the testimony.

7 MR. WARD: Excuse me, I think we can go back.
8

9 BY MR. WARD:

10 Q Didn't you say "we"?

11 You decided to recommend to your boss certain action?

12 A To contact my supervisor to see how they wanted me to
13 follow and pursue it. It was done verbally over the phone.

14 Q Who was your supervisor at the that time?

15 A Jack Lavery. L. A. V. E. R. Y.

16 Q He still with the Game Commission?

17 A No, sir, retired.

18 Q What was he at that time?

19 A Northwest Regional Supervisor.

20 Q What was your job?

21 A Northwest Unit supervisor. Regional is divided in units.

22 Q This was verbal by phone?

23 A By phone.

24 Q And what was the result of that communication with Mr.
25 Lavery?

1 What did you do next?

2 A Essentially contacted the respective agencies,
3 Pennsylvania Fish Commission.

4 Q Who did you contact with the Pennsylvania Fish
5 Commission?

6 A Again, pressing my recollection, it would have been James
7 Carter.

8 Q Why would they be involved?

9 A Because it included a regulated waterway, and Fish
10 Commission is charged with the responsibility of managing
11 waterways of the Commonwealth.

12 Q And at that point on the Brace property, what is the
13 regulated waterway?

14 There are certain characteristics?

15 A Yes, sir, there are.

16 Q What are they?

17 A Waterways, as the name is descriptive, is path water
18 channels that have identifiable beds and banks and display macro
19 invertibrate life. Various characteristics outlined in Section
20 105 of the Clean Streams Act of Pennsylvania.

21 Q And you felt that this ditch was a regulated waterway?

22 A Yes. Yes.

23 Q Do you know how old the ditch was?

24 A No, sir, I don't. It appeared to have been freshly dug
25 to me, the ditch. But the stream, of course, was what fed and

1 sustained the beaver impoundment.

2 Q Was it your impression that this had been a natural
3 waterway, this ditch?

4 A The impoundment is, I have no idea about the ditch. The
5 ditch, as I say, appeared there was no evidence of a natural
6 occurring waterway.

7 Q Did you walk up above the ditch at all?

8 I wish I could get you oriented on it to try and make the
9 presentation a little simpler.

10 A I would welcome that, too. I don't know and hesitate to
11 speculate on where I was. If I was wrong, it only confuses the
12 issue.

13 MR. DANA: Shouldn't speculate. I am sure
14 Mr. Ward isn't asking you to.

15

16 BY MR. WARD:

17 Q All right. Who did you contact first and how did you do
18 it?

19 A Mr. Lavery by telephone.

20 Q And then?

21 A Trusting my recollection, it would have been James
22 Carter, Pennsylvania Fish Commission.

23 Q What did you say to Mr. Carter?

24 A I advised him I believed there had been a violation and
25 gave him the location.

1 Q Violation of what?

2 A Wetland. State Game Law and/or wetlands violation.

3 Q Who else?

4 A Dave Putman from U.S. Fish and Wildlife Service. P. U.

5 T. M. A. N.

6 Q Is this all by phone?

7 A By phone, yes.

8 Q Do you have any memorandum indicating the contacts?

9 A No, I don't.

10 Q Did your office have them?

11 A I don't remember that. No, to my knowledge there are
12 none.

13 Q Did you make any field notes this particular day, May
14 one?

15 A No.

16 Q Generally when a field officer goes out in the field for
17 certain functions, don't they keep field notes?

18 A Yes. I don't have a recollection of any field notes. It
19 is not to say that they weren't generated. I don't recall them
20 or doing that and I don't have access to them now. And anything
21 I would have would have been left with the agency.

22 Q So if we were to ask the agency to produce any of your
23 memorandum, they would be there; is that correct?

24 A If they existed and if they have them, they would give
25 them to you, I am sure. I don't remember writing them. I

1 wouldn't have had any.

2 MR. DANA: That is fine.

3

4 BY MR. WARD:

5 Q So it is not standard operating procedure to somehow make
6 a documented memorandum of a day's activities?

7 A Yes, in the time and activity form; where we have gone
8 with a time and who we contacted, that is correct.

9 Q Would you have done it on May one?

10 A I would have completed the time and activity report.

11 Q Would it include the contacts by phone of certain other
12 individuals?

13 A No. No, it would have listed the date and time and
14 location and in some rare cases, individuals that were
15 contacted.

16 Q Mr. Lavery, Carter or Putman ask you to give them a
17 letter to that effect or memo?

18 A I don't remember that.

19 MR. DANA: Can we take a two minute break?

20

21 (Whereupon, deposition recessed at 10:20 a.m. and
22 reconvened at 10:30 a.m.)

23

24 BY MR. WARD:

25 Q I believe, Mr. Martin, you testified that you also

1 contacted a David Putman?

2 A That is correct.

3 Q He is with the U.S. Fish and Wildlife Service.

4 What is his job?

5 A Biologist.

6 Q And?

7 A I am not sure what all his duties entail.

8 Q How long you known Mr. Putman, if you have?

9 A Approximately 15 years.

10 Q Fifteen years?

11 A Yes.

12 Q I believe you said you had been deputized as an agent for
13 the Fish and Wildlife Service?

14 A Yes.

15 Q Deputy game warden?

16 A Yes.

17 Q How does that work?

18 A Field officers that have adjoining states and/or have
19 migratory bird routes in their districts would frequently be
20 deputized by the Department of Interior through the U.S. Fish
21 and Wildlife Service to enforce the federal game laws.

22 My district happened to border--well, of course, the
23 north is Canada and to the east was New York. And very
24 definitely had a lot of migratory birds in my district and so
25 that goes with the district. More so than the officer or the

1 individual person, that goes with the district.

2 Q And is there a formal relationship of any kind as far as
3 the Fish and Wildlife's authority over you?

4 Q Could they give you direction?

5 A They could, yes.

6 MR. DANA: In his capacity as a deputy?

7 THE WITNESS: Yes.

8

9 BY MR. WARD:

10 Q You were not paid by them?

11 A That is correct, the salary was from the State.

12 Q You say you had known Mr. Putman for 15 years?

13 A Approximately, yes.

14 Q And what kind of relationship was that?

15 Did you meet over coffee?

16 A No, we didn't, strictly a professional relationship. He

17 was stationed in State College, Pennsylvania. He was one of

18 several biologists I knew with the U.S. Fish and Wildlife

19 Service

20 Q Do you not have a personal relationship or social
21 relationship at all?

22 A No.

23 Q Did you contact the Corps?

24 A Yes, I did.

25 Q Who did you contact there?

1 A I believe it was James Peabody. I am not sure--P. E. A.
2 B. O. D. Y., or some variation to that. He--it was his
3 violation and was in his jurisdictional area. And I believe
4 that was all that I can remember of the agencies. Pennsylvania
5 Fish Commision, U.S. Fish and Wildlife, and Corps of Engineers.

6 Q Did you attempt to contact D. E. R., which is a sister
7 state agency?

8 A Yes, thank you. A fellow by the name of Delaphonso
9 (sic). I don't remember his first name.

10 Q And were generally?

11 A --Tom.

12 Q These contacts, they--generally, was it the same content
13 with each of these contacts, as far as your reporting what you
14 saw?

15 A Essentially, yes.

16 Q Relating what you saw?

17 A Yes.

18 Q With recommendations?

19 A No, I was bringing it to their attention.

20 Q Again, you have no documented memos of any kind that can
21 reflect these transactions, known transactions?

22 A No.

23 Q Do you know Leroy Gross?

24 A Yes, I do.

25 Q Who is he?

1 A He is a soil scientist with the soil conservation
2 district in Erie County.

3 Q Is that federal?

4 A No. I am not sure; I don't believe that it is. I am not
5 sure.

6 Q Gary Moore?

7 A Gary Moore is with the Fish Commission.

8 Q And does he cover the same area as Carter, do you know?

9 A No. Gary was--at this time was a supervisor and was not
10 in this area. He was stationed in south-central Pennsylvania,
11 perhaps southwest.

12 Q In your work, were you aware of the responsibilities or
13 the functions of the Department of Agriculture?

14 A Remotely.

15 Q Having been with the government for 20 some years, did
16 you understand--

17 MR. DANA: Mr. Martin was with the State
18 government. You are talking about a federal department,
19 aren't you?

20 MR. WARD: Right. Okay.

21

22 BY MR. WARD:

23 Q There is--by the way--and there is a secretary of
24 agriculture for the State.

25 But it did not--in your 21 years of work, you never

1 familiarized yourself with the work of the U.S. Department of
2 Agriculture or State Department of Agriculture as they relate to
3 the farming industry?

4 A No. I have no intimate knowledge of it; only a remote
5 awareness there is an agency and they were working with the
6 farming community. I don't know the specific programs.

7 Q And can you recall, to the best of your recollection, the
8 general content and how you described to these various people by
9 phone what you saw at the Brace property and what transpired
10 between you and Mr. Brace, if you can recall?

11 A I don't have a clear recollection of the exact choice of
12 words. I remember just bringing it to their attention that I
13 believed there had been a violation. I am sure that I would
14 have described the ditch to them. And basically that was it.

15 Q What did you do about the violation regarding the game
16 regulation, the beaver dam in particular?

17 What did you do with it?

18 A Initially, nothing. There was no citation filed at that
19 immediate time as is the traditional format when multiple
20 agencies are involved in the violation. We would work them with
21 the agency, the lead agency, whichever agency had the
22 enforcement or encroachment or the violation; would have been
23 more directed or under their immediate control.

24 Q Talking about the beaver dam, that is your jurisdiction?

25 A State Game Commission. At that time a citation wasn't

1 issued.

2 Q But there was obviously, to your judgement, a violation?

3 A Clearly.

4 Q And do you know whether or not Mr. Lugalla--and only if
5 you know--would have advised Mr. Brace that he could go ahead
6 and take the dam down and they would come out and remove the
7 beavers?

8 A No. I don't have any personal knowledge of that.

9 Q You don't know who actually damaged the dam?

10 A No, sir, I don't.

11 Q In your telephone contacts with the various agencies and
12 the people, did you describe the property or did you simply
13 offer your judgement that a violation of a wetland law had been
14 found?

15 MR. DANA: Well, objection. He never
16 testified that he had found a violation of wetland law.
17 He testified, in his judgement, he thought there might be
18 a violation and brought it to their attention.

19 MR. WARD: Discovered. Found is a term
20 of art. I am not taking it as a determination; it is a
21 recommendation, right?

22 MR. DANA: I don't think he said it was a
23 recommendation. I think he said he was bringing it to
24 their attention.

25 MR. WARD: A possible violation. He didn't

1 call up and say, hey, I was out here and saw this and
2 this and leave it go at this. He had to characterize it
3 in some manner.

4 THE WITNESS: Yes, that is a fair
5 characterization. I, to my knowledge, thought that was a
6 violation of game laws at least.

7

8 BY MR. WARD:

9 Q Did you discuss with any of these people, and possibly in
10 particular with Mr. Putman, Mr. Brace's reaction and his conduct
11 and his comments?

12 A His actions that--

13 Q What he did at the property as opposed to the dialogue at
14 the time that you had with him.

15 A No, I didn't. There was--that is immaterial. It
16 wouldn't shape or have any--unfortunately, enforcement officers
17 expected that they are going to find confrontational situations
18 and that wouldn't have any bearing on the case.

19 Q In 1987 had you--were you familiar with any of the
20 manuals that were around attempting to define wetlands?

21 A Of course, the '89 manual didn't exist at that time. I
22 was remotely aware of the Corps of Engineering '87 manual.

23 Q Remotely?

24 A Yes.

25 Q Never had any courses in it?

1 A At that time I hadn't.

2 Q Okay. So by whose definition were you relying in
3 recognizing what you deemed to be or not to be a wetland?

4 A What criteria were there?

5 Initially the State game law as it pertained to
6 destruction of beaver dams. That was first and foremost, the
7 State game law.

8 Q I suppose what I am getting at is besides the beaver dam
9 you saw on the property that you identified as a wetland?

10 A Ah-hum.

11 Q And you were on the property one hour?

12 A Yes.

13 Q Correct?

14 A Approximately.

15 Q You did not pick up and examine any vegetation?

16 A I didn't pick up--I didn't need to pick up; I recognized
17 hydrophytic vegetation without physically picking it up.

18 Q You were well aware of the characteristics of hydrophytic
19 vegetation in May of '87?

20 A Yes.

21 Q And hydrophytic soils?

22 A Yes.

23 Q And where did you see hydrophytic soils?

24 A Most notably at the beaver impoundment. My role was not
25 to conduct wetland delineation; that wasn't it. But,

1 nonetheless, I, because of experience and training, was and
2 continue to be, extremely familiar with wetlands and all of
3 these aquatic ecosystems.

4 Q Can you recall the formal definition of wetland in May of
5 '87?

6 MR. DANA: Objection.

7
8 BY MR. WARD:

9 Q Under the law, were you--let me ask you this. Were you
10 familiar with the Clean Water Act of 1977 at the time?

11 A Distantly.

12 Q Distantly?

13 A Yes. Wasn't a state law.

14 MR. DANA: I know you are going to respond,
15 John, and I said it before on the record and I just want
16 to clarify once again. Mr. Martin is not an expert in
17 wetland delineation and not offered as such. Not an
18 expert in the Clean Water Act and not offered as such.

19 MR. WARD: I just want to know how
20 comfortable the man felt about carrying the message that
21 he felt there was a violation of the wetland law. He
22 can't have done it in a vacuum.

23 MR. DANA: You are entitled to ask the
24 questions. I want to make it clear.

25 MR. WARD: We stipulate, all right?

1 THE WITNESS: I will answer it. I was
 2 extremely comfortable. There was absolutely no doubt and
 3 no reservation, not a moment hesitation in my mind there
 4 was wetlands there and it had been drained.

5 MR. WARD: Fine.

6
 7 BY MR. WARD:

8 Q In your--I think we may have touched upon this earlier,
 9 but in your work with the Game Commission and your travels
 10 around your jurisdiction, did you notice other drainage type
 11 activities on other farm areas?

12 A No, sir.

13 Q You never observed farmers installing tiles?

14 A I did in the early seventies--very early seventies.
 15 There was a program at the soil conservation district and I was
 16 aware of the program. I didn't personally participate in it. I
 17 was aware there was a program, yeah, but that pre-dates this
 18 considerably.

19 Would have been very early years when I came on in the
 20 Game Commission. Really the tail-end of the program.

21 Q But your testimony is it is very early and pre-dates the
 22 '87?

23 A Right. Early seventies.

24 Q That is just a reflection of your knowledge, not the
 25 practice of installing tiles?

1 MR. DANA: Mr. Ward, you are asking him his
2 knowledge?

3 MR. WARD: Yeah, right.
4

5 BY MR. WARD:

6 Q There was--part of the reply was that he observed it.
7 But you can say that the practice of installing tiles was--only
8 occurred in the early seventies?

9 I don't think that is the case.

10 MR. WARD: He is telling me what he observed,
11 fine.
12

13 BY MR. WARD:

14 Q To your knowledge, did the installation of tiles for
15 drainage purposes, was it a fairly common practice in Erie
16 County through the seventies and early eighties?

17 A It was done. I don't know that I would be an
18 objective--can offer objective characterization. I had very
19 limited personal knowledge of it.

20 Q You say that you were aware of the S. C. S. programs?

21 A Yes.

22 Q And tell us about that awareness?

23 A The drainage tile program?

24 Q Right.

25 A Other than the tile was offered to farmers in the late

1 sixties and very early seventies, I don't know when the program
2 was phased out. Our--actually didn't have direct contact or
3 involvement in that; that is the reason I had very limited
4 personal knowledge of it.

5 Q Did you ever in your work recommend to other agencies
6 that a situation existed, other than Brace, that might be a
7 violation of wetland laws?

8 A No, sir, I don't have any recollection of that.

9 Q You never in traveling in your jurisdiction--

10 A No. No. I am very comfortable that, no, I did not.

11 Q And in your experience in Erie County and your ability to
12 recognize wetlands, would you say that there is--can you give us
13 any kind of percentage at all what you considered--okay, I will
14 strike it. It is getting clumsy, I know, you are nodding.

15 MR. DANA: Didn't say a thing.

16

17 BY MR. WARD:

18 Q Are what you consider wetlands a--strike that. I will
19 have to figure out how to come out with this.

20 Are there lots of wetlands in Erie County?

21 MR. DANA: Objection in terms of wetlands is
22 not a defined term, again.

23 MR. WARD: Wetlands is not a defined term?

24 MR. DANA: Not a defined term. You have not
25 offered a definition of it in the question.

1 I want to repeat, this is not an expert in
2 wetlands delineation or the existence or nonexistence in
3 the county.

4 MR. WARD: I understand it. This is the 4th
5 time I agreed he is not an expert.

6 But certainly the man doesn't walk in a
7 vacuum. He used the term wetlands, "I know a wetland
8 when I see one. I know a wetland when I see one." Don't
9 you?

10 THE WITNESS: Correct.

11 MR. WARD: I can ask him.

12

13 BY MR. WARD:

14 Q All right, I just don't think that maybe you are the
15 person that might help us out on this.

16 You took no samples of any kind off the Brace property
17 May one of '87?

18 A No, sir.

19 Q Now, you--on that very day you contacted five or six
20 people, I believe you said, in various agencies?

21 A Other agencies.

22 Q And I can't recall, did you also contact Delaphonso of D.
23 E. R. that same day?

24 A I believe that I did, yes.

25 Q And you do not recall having followed up these telephone

1 calls with any paperwork issued to the people?

2 A No, I don't.

3 Q And now, when were you next on the property after May
4 one?

5 A It was either the 5th or 6th of May we--I was back at the
6 property with the individuals that I mentioned that I contacted
7 from the regulatory agencies.

8 Q You don't recall who all was there?

9 A I am not sure that I remember everyone that was there.

10 Q Well, I will ask; Mr. Putman there?

11 A No, I don't believe.

12 MR. DANA: If you remember?

13 THE WITNESS: Yeah, that is the problem. I
14 don't have--I don't remember if he was there or not.

15

16 BY MR. WARD:

17 Q Can you remember anybody?

18 A Yes. I remember Carter and Delaphonso--I think Jim
19 Peabody from the Corps, also, to the best of my recollection.
20 And, of course, myself and Officer Lugalla from the State Game
21 Commission.

22 Q Well, just--and I don't want to use this as evidence at
23 all or anything, but some of the documents we were provided to
24 us by the government included a chronology that had been
25 prepared by Putman.

1 I will ask you to read the May 6th one just to refresh
2 your memory.

3 MR. DANA: You don't want to mark it?

4 MR. WARD: No, just refresh his memory.

5

6 BY MR. WARD:

7 Q Does that help?

8 A In general. And I see by this that Dave was present,
9 Dave Putman. That is fine.

10 Q Do you know who called that meeting or requested those
11 people to attend?

12 A I don't remember that. It quite possibly was myself. I
13 was the point of bringing this to their attention. I don't
14 remember the exact mechanics of how it came about.

15 Q There was no memorandum of any kind issued saying let's
16 get together?

17 A Not that I recall.

18 Q And there was no agenda as to the meeting?

19 Was Mr. Brace identified or was he--

20 A Mr. Brace, as I recall, came later and was there
21 during--sometime during that meeting, yes.

22 Q Was he told you were going to meet there?

23 A I don't know that. Not by me certainly; I had no
24 dialogue with him. I don't remember any dialogue with Mr. Brace
25 that day.

1 Q What did the group do at the Brace site that day, May
2 6th, I believe it is, of '87?

3 A Essentially examined the areas I reported to them.

4 Q What do you mean by examined?

5 A We walked the ditchway. Walked over to the beaver
6 impoundment. We examined the ditches that had been dug on the
7 site.

8 Q How long were you there?

9 A Oh, again, guesstimating an hour.

10 Q Okay.

11 A May very well may have been--approximately an hour.

12 Q Dig any holes or take any samples?

13 A No, not--we didn't. I didn't. I don't know if anyone
14 else did. I didn't see anyone else doing it. Just trying to
15 recall the details. It is a long time ago.

16 Q After an hour the group disbanded and everybody went
17 their own way?

18 MR. DANA: Objection. Mr. Martin testified
19 approximately an hour, but he can't really recall.

20 MR. WARD: Approximately an hour.

21

22 BY MR. WARD:

23 Q What occurred then as to this particular day?

24 What do you recall doing?

25 A I don't recall any specifics. We met on site and

1 examined the waterway and the ditch. And there is nothing that
2 stands in my memory of that day associated with this.

3 Q Mr. Peabody indicate his office would take any action?

4 A Again, I don't recall the mechanics of how it would be
5 resolved with the agency.

6 Q Were any memorandums created and issued reflecting this
7 meeting and what transpired, if you know?

8 A Not that I recall.

9 Q You received none?

10 A I didn't receive any that I can recall.

11 Q Did you ever have any further meetings off site with this
12 same group or people from other agencies?

13 A No.

14 Q Was this your last contact with the Brace property,
15 official contact?

16 A Yes.

17 Q On May 6th of '87?

18 A Six or--five or six. I am not sure which of the dates.
19 It was in that time frame.

20 MR. DANA: Off the record.

21
22 (Whereupon, a brief discussion was held off the record.)

23
24 BY MR. WARD:

25 Q Did you go back to your office and write up a report of

1 any kind or anything of the day's activities of the meeting?

2 A I don't recall doing that. As I say, please, accept I am
3 not--I am not trying to be evasive, I just don't recall the
4 mechanics of what took place. I am sure I discussed it at least
5 verbally with the supervisor.

6 As far as writing a report, a formal report, it is quite
7 possible that I did. I don't remember doing it. I don't have
8 access to it or have a copy of it or recall any elements of it.

9 Q If we wanted to see if there were copies of such
10 memorandum, where would the office be?

11 A It is the regional office in Franklin, northwest regional
12 office.

13 Q Did anybody in this meeting with the group May 5th or 6th
14 of '87, discuss the possibility that there may be an
15 agricultural exception applicable?

16 A No. I don't recall discussion such as that, no.

17 Q Anybody ever discuss making inquiry of the A. S. C. S. or
18 the S. C. S. about farming activity?

19 A Not that I recall.

20 Q Those agencies were never contacted, to your knowledge?

21 MR. DANA: If you know?

22 MR. WARD: All of these are to your
23 knowledge.

24 THE WITNESS: Yes, understood.

25 MR. WARD: All right.

1 BY MR. WARD:

2 Q So--all right, you say that was never discussed.

3 At that time were you aware--did anybody take
4 measurements of water flow that day?

5 A Not that I--

6 Q No measurements taken; no holes were dug, to your
7 recollection?

8 A No.

9 Q Did you--were you aware of a circumstances called a
10 nationwide permit?

11 A No.

12 Q In your work--did you have any relationship at all with
13 the Corps?

14 You said you had a relationship with Fish and Wildlife
15 Service; you have any kind of relationship in your work with the
16 Corps?

17 A Very distantly. Extremely distantly. We didn't have a
18 daily or even monthly contact with them; but would be cases
19 where--situation where we would have a mutual interest and would
20 work jointly.

21 Q Now, you say Mr. Delaphonso was there, I believe?

22 A Yes.

23 Q And at that time, to your knowledge, were there
24 regulations issued by the State that covered a wetlands
25 situation?

1 A Yes, there were.

2 Q Any conversation or was it mentioned during this meeting
3 whether or not the State would be involved?

4 A That hadn't been determined. That was the purpose of the
5 meeting, to see which agency was or had the most control in this
6 situation; whose jurisdiction that it would impact the greatest
7 and that would be the lead agency.

8 Agency--then the supportive agency would typically allow
9 that lead agency to handle the case, and other agency would not
10 file--typically would not file a citation pursuant.

11 Q Was a decision made in your presence, if you know--

12 A No.

13 Q --as to who would be the lead agency?

14 A It wasn't. It was very early, the first time the
15 agencies had been brought to the site, to my knowledge, and that
16 was the purpose, was to meet and discuss and make that kind of a
17 determination. And they didn't share that with me at that time.

18 Q You don't recall Mr. Peabody saying anything about his
19 office being involved, the Corps of Engineers?

20 A Involved in what sense?

21 Q Since they had the 404?

22 A No discussion of 404 permit with me.

23 Q There was not?

24 A No.

25 Q Prior to your visit, I believe you said you had not met

1 Mr. Brace personally?

2 A That is correct.

3 Q On May one?

4 A That is correct.

5 Q Had you ever heard of any complaints of Mr. Brace or his
6 activity from neighbors or anybody?

7 A No.

8 Q On that particular day you were--I believe you testified
9 May one, again, that you were standing in the water in the
10 ditch?

11 A Yes.

12 Q You notice any fish there?

13 A I--not that I can recall.

14 Q Did you ever offer an estimate as to the amount of
15 acreage that might be involved?

16 A No.

17 Q When was the last contact--now, after May six did you
18 have any other contact regarding the Brace matter as we know it
19 today?

20 A No, I had no recollection of that.

21 Q And nobody asked you questions about it from other
22 agencies after May six?

23 A No.

24 Q And you left the Pennsylvania Game Commission when?

25 A August 20 of 1987.

1 Q And what were the circumstances of your leaving the
2 commission?

3 A I had a very serious automobile accident and left
4 immediately after that.

5 Q Did the serious automobile accident impair you in your
6 work at all?

7 A No, that wasn't the reason that I left. It was a, quite
8 frankly, personally embarrassing situation where I had received
9 a DUI and as a function of that I was--one of the turning points
10 in my life to decide which way I was going with my life, and I
11 made a career change at that time.

12 The agency was very gracious. They extended an
13 opportunity for me to come back to the agency after any
14 suspension of driving privileges, which I had received sixty
15 days, and I didn't--I opted not to accept that.

16 Q Then I believe you stated after you left the agency you
17 went on to work for other companies?

18 A That is correct.

19 Q Environmental?

20 A Laboratory, yes.

21 Q And you currently operate a firm known as?

22 A Under my name and incorporated, Andrew Martin and
23 Associates.

24 Q What does Andrew Martin and Associates do, offer a
25 service?

1 A We are an environmental consulting firm. We work in
2 occupational health and safety doing industrial hygiene work.

3 Incidentally, we do wetland consultation and wetland
4 identification delineation and permitting.

5 Q You do them personally and have staff?

6 A We have staff of seven. I am also a certified
7 delineator.

8 Q You are a certified delineator?

9 A Yes.

10 Q When did you receive certification?

11 A It would have been in 1988. I don't remember the month.
12 I sense the summer of '88.

13 Q And who issues that?

14 A It was issued by Gannet-Flemming Engineering (sic) which
15 is a firm that was subcontracted by the regulatory agency to
16 train regulatory personnel in wetland identification and
17 delineation.

18 Q State funded or federal?

19 A State and/or federal, I am not clear on exactly what.
20 But they were all--95 percent of participants were regulatory
21 people and five percent were private consultants. Fortunate
22 enough to be one.

23 Q Have you ever testified in Court regarding wetland
24 delineation as part of your work?

25 A I have testified in environmental review board hearings.

- 1 Q As an expert?
- 2 Were you qualified as an expert?
- 3 A Yes, sir.
- 4 Q And at environmental hearing boards?
- 5 A Yes.
- 6 Q What were they, wetland matters?
- 7 A Yes.
- 8 Q And you testified on behalf of the State?
- 9 A A client.
- 10 Q On a client?
- 11 A Yes. We are an independent consulting firm, not
- 12 associated with--
- 13 Q No contracts with the state and federal?
- 14 A No, sir.
- 15 Q Do you know a Norma Kline?
- 16 A Yes.
- 17 Q She work for you?
- 18 A She did for approximately six months.
- 19 Q When did she work for you?
- 20 A It would have been--I have an approximate--I am trusting
- 21 my memory. It would have been March of '91 through
- 22 approximately August of '91.
- 23 Q Three month period?
- 24 A No, six months. March. It would have had to have
- 25 been--again, it was 1991 and approximately six months, that I am

1 sure of. The exact month, it is not clear.

2 Q Was she a full-time employee or contract employee?

3 A Full-time.

4 Q What is her expertise, if you know?

5 You must know, you hired her.

6 A Yes, she is an aquatic biologist.

7 Q And are you aware that she was contacted by E.P.A. to do
8 certain work on the Brace property?

9 A I was.

10 Q Did she work for you at that time?

11 A Yes.

12 Q And she was your employee when--did E.P.A. contract with
13 you?

14 A No. Norma told me she had been requested to participate
15 in that case and requested time to do that while she was in my
16 employ, which she did. It was totally apart and independent
17 from me. I never reviewed any of her work and we never
18 discussed it. Never any verbal exchange.

19 It was a sense of professionalism. I understood she was
20 working on this case and that was very apart in what she did
21 with us. We didn't have anything with it.

22 Q You knew at this time this case was in litigation?

23 A I did, yes.

24 Q And she was a full-time employee, but this was going to
25 be work conducted on her own time?

1 A On her own time, yes. Never paid by our firm or had
2 direct supervision from me or any involvement with our firm.
3 She happened to be coincidental to employment with us.

4 Q She was being paid by you?

5 A She was paid by us for work she did for our firm, but not
6 this project or anything related to this project.

7 Q You say she was paid by you for what she did for your
8 firm as an employee, not a contractor?

9 A That is correct.

10 Q Your testimony was she took this task on as a contractor,
11 independent?

12 A Independent, yes.

13 Q You saw no conflicts there?

14 A No, sir.

15 Q With your having been involved in the case earlier on?

16 A No.

17 Q You never discussed this case with her?

18 A No, I didn't.

19 MR. WARD: Let's have just three minutes here
20 to talk with them and see if this wraps up.

21
22 (Whereupon, Deposition recessed at 11:13 a.m. and
23 reconvened at 11:15 a.m.)

24
25 MR. WARD: Mr. Martin, we have no further

1 questions. Thank you.

2 THE WITNESS: You're welcome.

3 BY MR. DANA: I do just have a few questions.

4
5 CROSS-EXAMINATION

6
7 BY MR. DANA:

8 Q Mr. Martin, you testified that you were on what we termed
9 generally the Brace property on or about May 1st, 1987?

10 A That is correct.

11 Q And you had a conversation with Mr. Brace at that time,
12 is that correct?

13 A Yes.

14 Q And that you, in the course of that conversation, asked
15 Mr. Brace why he was doing the channelization and side-cast,
16 that is correct?

17 A Yes, I asked why, what is this for, the enormous ditch,
18 and I just wanted to know.

19 Q What did Mr. Brace say?

20 A One of the things he said was he was anticipating
21 potential development of the area and that one possibility was
22 to have put in a golf course. And we didn't discuss it in any
23 fine detail, but that does stand in my memory very clearly and--

24 Q Did you tell anyone else that?

25 A Yes, when the conversation that I had with the various

1 regulatory agencies--I don't remember the exact exchange of
2 words, but the obvious question is to what is the intent and
3 what is the purpose of why--why is it there. And I am sure that
4 I would have relayed that on.

5 Q The second time you went to the Brace property on May
6 five or May six, you and the people with you go to the same area
7 of channelization and side-cast as you had seen the first day?

8 A Yes, I was. Since I initiated the contact with them, I
9 was the one at the brief moment that knew more about the exact
10 location of the ditch than anyone else. So essentially I met
11 them and took them to the area.

12 Q That was the same location as you had given us?

13 A Same location.

14 MR. DANA: Thank you, that is it.

15
16 REDIRECT-EXAMINATION

17
18 BY MR. WARD:

19 Q In the area surrounding the Brace property, how would you
20 characterize it, rural farming?

21 A Yes, it is an agricultural or rural community.

22 Q Any signs in the immediate area of condominiums being
23 built?

24 A No, sir.

25 Q Do you live near Waterford?

- 1 A No.
- 2 Q You are familiar with Waterford town?
- 3 A Yes.
- 4 Q And would you describe it as a rural, small town?
- 5 A Yes, small town.
- 6 Q And are you around humor at all?
- 7 MR. DANA: I am sorry, what is the question?
- 8 MR. WARD: I am asking if he was around humor
- 9 at all.
- 10
- 11 BY MR. WARD:
- 12 Q Anything about Mr. Brace suggest that he might build a
- 13 golf course there?
- 14 Did you detect any humor to that?
- 15 A No, I didn't.
- 16 Q You thought he was deadly serious?
- 17 A Yes.
- 18 Q Do you play golf?
- 19 A No. I am a--yes. I hesitate in offering that, but I
- 20 play at it.
- 21 Q All right.
- 22 Do you hunt?
- 23 A Not anymore.
- 24 Q You do not hunt anymore?
- 25 A No.

1 Q Some particular reason for that?

2 A No. I used to hunt and fish and trap, too, as excuse to
3 be outdoors and enjoy the outdoors. And I am very fortunate to
4 have a job that allows me to be there today on almost a daily
5 basis without the need for recreation. My job is recreation.

6 Q You fish?

7 A Not anymore, I really don't participate.

8 Q In 1987, were you fishing actively?

9 A Very little. As a professional conservation officer,
10 interestingly a lot of the desire to participate in a sporting
11 ethic was taken away.

12 Q I am straying away from David's questions.

13 You saw no humor in the comment Mr. Brace made?

14 MR. DANA: That is asked and answered.

15 MR. WARD: Right.

16

17 BY MR. WARD:

18 Q Now, you say when you met with the group to point them
19 out--you must have asked for the meeting; did you not?

20 A Yes, sir, I did.

21 Q And on the phone?

22 A Ah-hum.

23 Q Now, having contacted these people that you described
24 earlier and bringing it to their attention, did you then at that
25 time say, I think we should all meet?

1 MR. DANA: If you recall.

2 THE WITNESS: I don't remember--I don't
3 recall the actual--I am sure in one form or another I
4 would have suggested their attention to the site, whether
5 it was a meeting or independently. There is no question
6 that I provoked the inquiry by those agencies to address
7 this.

8
9 BY MR. WARD:

10 Q What I am getting at, Mr. Martin; all of this group here
11 that we described earlier just didn't appear out of the scene,
12 somebody had to call a meeting?

13 A That is correct.

14 Q Your recollection is that you may have?

15 A Yes.

16 MR. WARD: I have no further questions.

17 MR. DANA: Thank you.

18
19
20 (Whereupon, Deposition concluded at 11:20 a.m.)
21
22
23
24
25

AMMENDMENT PAGE

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

PAGE LINE CORRECTION

SIGNATURE PAGE

I, Andrew Martin, have read the foregoing transcript of my deposition, and affix my signature in approval of the correctness of my statement, except for corrections noted on the amendment page.

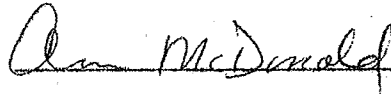
Andrew Martin

Dated: _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.



Ann McDonald, C.S.R.

Notary Public

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25