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IN THE UNITED STATES DISTRICT COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
IN AND FOR THE NINTH APPELLATE DISTRICT

DRAKE'S BAY OYSTER COMPANY,  
a California Corporation,  
and Kevin Lunny, et al.,  
Plaintiffs-Appellants,

V.

Case No. 12-CV-06134-YGR  
Appeal No. \_\_\_\_\_

SALLY JEWELL, in her Official  
Capacity as SECRETARY, U.S.  
DEPARTMENT of the INTERIOR;  
and the U.S. NATIONAL PARK  
SERVICE; and JONATHAN JARVIS,  
in his Official Capacity as  
Director of the U.S. PARK  
SERVICE,  
Defendants-Respondents.

\_\_\_\_\_ /

Proceedings held Monday, July 28th, 2014  
Point Reyes Station, in the California Republic

A P P E A R A N C E S

For the Plaintiff and Appellant:  
Kevin Lunny,  
In Pro Per

*CERTIFIED COPY*

For the Defendants and Respondents:  
(No Appearance)

Reported By: Dana Dibasilio Tognini, CSR 10118

1 Sovereign People Domiciled in the California Republic

2 Duly Sworn as Jurors:

3 Juror Melinda Leithold

4 Juror Susan Conard

5 Juror Judith Weston

6 Juror Jude Vasconcellos

7 Juror Marybeth Kremmel

8 Juror Dave Brast

9 Juror Robin Ahlgren

10 Juror Chloe Cook

11 Juror Linda Petersen

12 Juror Loretta Murphy

13 Deputy Justice Of The Peace

14 Barbara Scott, Domiciled in the California  
15 Republic

16 Also Present: Kevin Lunny, Nancy Lunny, Scott  
17 McMorrow, Sarah Rolph, Peggy Day, Robin Carpenter,  
18 Frank Gyorgy

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1 Monday, July 28, 2014

7:15 o'clock p.m.

2 ---o0o---

3 P R O C E E D I N G S

4 JUSTICE OF THE PEACE: My name is Barbara Scott.

5 I am the Acting Justice of the Peace. Chloe, will you  
6 start taping?

7 (Discussion off the record.)

8 JUSTICE OF THE PEACE: This is a Constitutional  
9 Common Law Jury Court to hear evidence, with Plaintiff  
10 DBOC, that's Drake's Bay Oyster Company, and Kevin  
11 Lunny's request to renew the leases from the State of  
12 California and the United States Department of the  
13 Interior and transfer the leases to the California  
14 Republic Department of Fish and Wildlife.

15 I would like to welcome the jurors who took  
16 the time out to be here and thank you so much. And I  
17 would like you to go around and give your names.

18 JUROR LEITHOLD: Starting here?

19 JUSTICE OF THE PEACE: Yes, please.

20 JUROR LEITHOLD: Melinda Leithold.

21 JUROR COOK: Chloe Cook.

22 JUROR CONARD: Susan Canard.

23 JUROR VASCONCELLOS: Jude Vasconcellos.

24 JUROR AHLGREN: Robin Ahlgren.

25 JUROR BRAST: Dave Brast.

1 JUROR KREMMELE: Marybeth Kremmel.

2 JUROR WESTON: Judith Hawk Weston.

3 JUROR PETERSEN: Linda Petersen.

4 JUROR MURPHY: Loretta Murphy.

5 JUSTICE OF THE PEACE: Thank you. The jurors  
6 have all signed the statement.

7 (Whereupon, other members of the audience  
8 entered the hearing room.)

9 (Discussion off the record.)

10 JUSTICE OF THE PEACE: The jurors have signed  
11 statements with their names, saying that they are one  
12 of the Sovereign People, and their domicile is in the  
13 California Republic, and all their signatures have  
14 been signed, "all rights reserved."

15 I am following in the footsteps of former  
16 non-lawyer Justice of the Peace in Point Reyes  
17 Station, that was Michael Butler, between 1891 and  
18 1895; and Frank Lamb of Inverness in 1930.  
19 So, you are sitting before a non-esquire,  
20 non-certified State Corporation Justice of the Peace.  
21 California Constitution; "Article VI, Section IX, the  
22 State Bar of California is a public corporation."

23 So many things to try to figure out. First  
24 thing to know: In the convening of this jury trial,  
25 Article VII, that's the Seventh Amendment of the Bill

1 of Rights in the Constitution for the United States  
2 reads:

3 "In suits at Common Law when the value and  
4 controversy shall exceed \$20, the right of  
5 trial by jury shall be preserved, and no fact  
6 tried by a jury shall be otherwise  
7 re-examined in any Court of the United  
8 States, than is according to the Rules of  
9 the Common Law."

10 Common law was erased in 1933. From the  
11 Senate Report on War and Emergency Powers Act, the  
12 forward to this act -- Report by the Senate was:

13 "Since March 9th, 1933, the United States has  
14 been in a state of declared national  
15 emergency...

16 In fact, there are now in effect four  
17 presidentially-proclaimed states of national  
18 emergency, and this is after the national  
19 emergency declared by President Roosevelt in  
20 1933. There were also the national  
21 emergencies proclaimed by President Truman on  
22 December 16th, during the Korean Conflict;  
23 and the states of national emergency declared  
24 by President Nixon in 1970 and 1971.

25 These proclamations give force to 470

1 provisions of Federal law and hundreds more  
2 since 1973. These hundreds of statutes  
3 delegate to the President extraordinary  
4 powers ordinarily exercised by the Congress."

5  
6 Okay. Sorry, it's going to take about five  
7 minutes to read something about the jurisdiction of  
8 the Court trial to which you are attending now.

9 In every court in the land today, which is  
10 under military jurisdiction, their flags -- that are  
11 flying a flag, there is a military flag. Army  
12 Regulations 840, blah, blah [sic], goes into that.  
13 Similarly -- more simply understood, President Dwight  
14 David Eisenhower's Executive Order in 1959, quote,  
15 "Pursuant to law, a military flag is the flag that  
16 resembles the regular flag of the United States,  
17 except that it has a yellow fringe border on three  
18 sides."

19 California Constitution, Article I, Section  
20 XVI:

21 "Trial by jury is an inviolate right and  
22 shall be secured to all, but in a civil case three  
23 quarters of the jury may render a verdict."

24 The Ninth Amendment of the Bill of Rights of  
25 the Constitution of United States of America:

1           "The powers not delegated to the United  
2 States by the Constitution, nor prohibited by it to  
3 the States, are reserved to the States respectively or  
4 to the People."

5           One more brief -- there is a lot of history  
6 involved in this. I am trying to tell you as simply  
7 as I can.

8           On February 21st, 1871, the District of  
9 Columbia was constituted as a, quote, "body corporate  
10 for municipal purposes," it was re-established in 1878  
11 saying, "the District of Columbia should remain and  
12 continue a municipal corporation, and all laws now  
13 enforced shall be deemed as taken as officers of such  
14 a corporation."

15           Further, in 1944, in the Bretton Agreements,  
16 control of our Country was given to the International  
17 Monetary Fund. Most of you know of the Federal  
18 Reserve, which was founded in 1913, which has put us  
19 in debt forever. A couple of quotes from politicians  
20 or presidents or Supreme Court officials on fully  
21 informed juries -- that's you: "I consider," says  
22 Thomas Jefferson, "trial by jury as the only anchor  
23 ever yet imagined by man which a government can be  
24 held to the principles of its Constitution."

25           Samuel Chase: "The jury has a right to

1 determine both the law and the facts."

2           Oliver Wendell Holmes: "The jury has the  
3 power to bring a verdict in teeth of both the law and  
4 the facts."

5           Byron White, as late as 1975, Supreme Court  
6 Justice: "The purpose of the jury is to guard against  
7 the exercise of arbitrary power, to make available the  
8 common sense judgment of the community as a hedge  
9 against the overzealous or mistaken prosecutor, and in  
10 preference to the professional or perhaps  
11 over-conditioned or biased response of a judge."

12           He also had a statement in the Supreme Court  
13 case, "A right to jury trial is granted to criminal  
14 defendants in order prevent oppression by the  
15 government."

16           Now, on this particular case, in January --  
17 on January 14th, 2014 of this year, the United States  
18 Court of Appeal for the 9th District Court, in the  
19 Drake's Bay Oyster Company and Kevin Lunny, Plaintiff,  
20 Appellants, versus Sally Jewell, in her Official  
21 Capacity as Secretary, U.S. Department of the Interior  
22 and U.S. National Park Service; and Jonathan Jarvis,  
23 in his Official Capacity as Director of the U.S. Park  
24 Service, Defendants, Appellees.

25           In this case, I gave notice of lack of

1 jurisdiction and order for transfer of jurisdiction to  
2 a Court of Common Law. And that is why we are here  
3 today.

4 If anybody has a quick question before I ask  
5 for witnesses to come forth?

6 (No response.)

7 JUSTICE OF THE PEACE: Maybe I could see the  
8 hands of the witnesses for the Plaintiff, Kevin Lunny.

9 THE WITNESSES: (Indicating).

10 JUSTICE OF THE PEACE: Now, is there any  
11 witnesses for the Defendants for the Department of the  
12 Interior?

13 (No response).

14 JUSTICE OF THE PEACE: There are none present.  
15 Then we will just be able to hear from the witnesses  
16 for the Plaintiff, DBOC and Kevin Lunny. And Kevin,  
17 do you want to ask someone to go first to speak? Mr.  
18 Lunny, we can leave that to you. Someone put their  
19 hand up.

20 Oh, one question, if you could try to keep  
21 the timing, let's time this to about five minutes.  
22 And Jurors, you may ask questions. Is that fair? And  
23 if you need more than five minutes, that's fine, but  
24 let's try to do that.

25 JEFF CREEK,

1           Having been duly sworn by the court reporter,  
2           gave the following testimony as hereinafter  
3           set forth.

4           JUSTICE OF THE PEACE:   And your name please?

5           MR. CREEK:   Jeff Creek.

6           So I think this is a fantastic convening --  
7           and I thank you for it -- necessitated by the failure  
8           of the existing structures of our government.  I would  
9           like to admit into evidence for the jury to examine  
10          this very interesting document, which was prepared by  
11          the National Park Service for the Point Reyes National  
12          Seashore in, I believe 1996.

13          (Whereupon, Plaintiff's Exhibits 1 and 1-A  
14          were marked for identification and received  
15          into evidence.)

16          MR. CREEK:   This is the proposed oyster  
17          processing and retail facility to replace the existing  
18          oyster shack in Drake's Estero.  And this was prepared  
19          in coordination with an environmental assessment that  
20          the National Park conducted at that time, in which a  
21          finding of no significant impact was determined on the  
22          continuation of oyster production.

23          JUROR COOK:   When was the date of this?

24          MR. CREEK:   I believe it was '96, but the FONSI  
25          came out in 1978.

1 THE REPORTER: Did you say, "the findings came  
2 out"?

3 MR. CREEK: "The FONSI," the finding of no  
4 significant impact came out in '98. And this was,  
5 mind you, 20 years after the Wilderness Act, the Point  
6 Reyes Wilderness Act had been passed.

7 So what we understand from the history in  
8 this process is essentially, that there has been a  
9 vast conspiracy; a handful of vocal environmentalists  
10 have joined forces to shut down the Oyster Farm  
11 because it doesn't fit their particular view of world.  
12 The rest of us, who rely on our local community, on  
13 our local environment for our sustenance, for our  
14 economy, for our community, have been shafted by this  
15 process.

16 And those who have opposed the Farm have very  
17 effectively, I think, deflected attention from what is  
18 really going on here, which is the theft of the rights  
19 of the People of State of California to our shellfish  
20 waters. So the Park has, by a pretention, taken over  
21 the waters of Drake's Estero, to which it has no  
22 rights. Those rights were, in fact, retained by the  
23 State when the Waters were transferred to the Feds in  
24 the 1960s.

25 And so we have been fighting a straw man for

1 the last decade, in which the opposition to the Farm  
2 has very effectively deflected attention from the real  
3 issue here, which is the theft from the People of the  
4 State of California of our shellfish production rights  
5 in Drake's Estero.

6 I will stop there, thanks.

7 JUROR COOK: I have a question. So this draft  
8 plan was intended to support the existing operation?  
9 Or was it a draft plan to replace after the Lunnys  
10 were gone?

11 MR. CREEK: No, this was long before the Lunnys  
12 had possession of the operation. This was an attempt  
13 to clean up and provide a much more appropriate  
14 facility for the Oyster Farm, ongoing.

15 JUROR COOK: Who was intended to run this, as  
16 proposed?

17 MR. CREEK: At the time, the lease was in the  
18 hands of the Johnsons, so that was the intent. And it  
19 was very clear, as clearly stated in the Point Reyes  
20 National Seashore Management Plan and in the founding  
21 -- in the Legislative history, that the intention,  
22 from the inception of Point Reyes National Seashore,  
23 was the understanding was that oyster production would  
24 continue indefinitely, that the leases held by the  
25 State of California would continue indefinitely. And

1 that's very clear in the Legislative history.

2 JUROR MURPHY: Is there any knowledge as to why  
3 that flip flopped? Do we -- does anybody know what  
4 happened there?

5 THE REPORTER: I'm sorry, could you state who you  
6 are each time you speak?

7 JUROR MURPHY: Loretta Murphy.

8 MR. CREEK: There has been a lot of speculation  
9 about what actually came down. There was an  
10 interesting article published. Ken Fox published a  
11 piece in the Tomales Bay Association newsletter a few  
12 years ago in which he reported on a meeting he had  
13 attended in about, I believe 2004, 2005, in which a  
14 group of, again, what we might call the local fringe  
15 environmental community, essentially conspired with  
16 the then Superintendent Don Neubacher to shutdown the  
17 Farm.

18 So I think, personally I believe that's where  
19 -- that's the origin of the effort to change the  
20 story.

21 JUROR AHLGREN: I am Robin Ahlgren. I forget how  
22 long ago it was when the Feds took over the land, a  
23 lot of farms were taken away. They had 100-year  
24 lease, and then they were gone. Isn't that part of  
25 the same issue?

1 MR. CREEK: No, it's not actually. Interesting  
2 enough, at issue here really, the permit, special use  
3 permit that the Secretary could decide, or apparently  
4 decided, in this case, decided not to renew, actually  
5 was for a one-and-a-half-acre onshore facility in the  
6 pastural zone, not in the wilderness area.

7 In other words, reservation of use and  
8 occupancy, which the Oyster Farm received 40 years  
9 ago, was for an onshore facility in the pastural zone,  
10 not in the wilderness area. The shellfish production  
11 waters, which were in the potential wilderness zone  
12 were, in fact, reserved by the State. So the water  
13 bottom, the leases, which currently actually does not  
14 actually expire until 2029, and it was renewed in 2004  
15 for 25 years by the State, which holds exclusive  
16 rights for the management of the water bottoms in  
17 Drake's Estero.

18 So again, the Parks and the Department [sic]  
19 have done a very good job of confusing these two  
20 issues and treating them as if they were a single  
21 issue, and they are not.

22 JUROR VASCONCELLOS: Jude Vasconcellos. So  
23 during all the court cases that have been going on  
24 recently, was this part of what was presented?

25 MR. CREEK: To the best of my knowledge, this has

1 never seen the light of day in a court.

2 JUROR VASCONCELLOS: Well, my other question is,  
3 and where was the State during all the court cases --

4 MR. CREEK: That's a great question.

5 JUROR VASCONCELLOS: -- if they own the lease?

6 MR. CREEK: That is a good question.

7 JUROR VASCONCELLOS: So those are two things  
8 missing from all those court cases?

9 MR. CREEK: Yes, which is why I think this is  
10 such an important event. Because the way the cases  
11 have been framed, this question has never had a chance  
12 to come to the table. If you carefully read the  
13 dissent of the 9th Circuit, you will see evidence of  
14 all of this. The dissenting judge in the 9th Circuit  
15 clearly understood what was at stake here. And I urge  
16 you to read that dissent to clearly understand what is  
17 going on here.

18 JUSTICE OF THE PEACE: Thank you. Can we go to  
19 the next witness please? And please give your name.

20 JANE GYORGY

21 Called as a Witness by the Plaintiff,  
22 was duly sworn by the court reporter,  
23 and testified as hereinafter set forth.

24 MS. GYORGY: Jane Gyorgy.

25 THE REPORTER: Would you please state your name

1 again?

2 MS. GYORGY: Jane Gyorgy, G-Y-O-R-G-Y.

3 (Whereupon, Plaintiff's Exhibit 2 was marked  
4 for identification and received into  
5 evidence.)

6 MS. GYORGY: This is a letter from Charlton  
7 Bonham written to Superintendent Cicely Muldoon,  
8 October 10th, 2012:

9 "I am writing to encourage continued  
10 cooperation between the National Park  
11 Service, The California Department of Fish  
12 and Game, Department, and Drake's Bay Oyster  
13 Company, as renewal of the special use permit  
14 for the Drake's Bay Oyster Company is  
15 considered. The State and Federal Government  
16 have worked together for 47 years, since the  
17 State originally conveyed the bottom lands in  
18 Drake's Estero to the United States in 1965  
19 to allow continued aquaculture operations in  
20 Drake's Estero. Correspondence between our  
21 agencies shortly after the conveyance  
22 strongly suggests that our agencies then  
23 believed that the State's reservation of  
24 fishing rights included the right to lease  
25 the bottom lands at Drake's Estero

1 indefinitely for shellfish cultivation.  
2 For almost five decades, the State has  
3 supported aquaculture in Drake's Estero. It  
4 has done so by regulating the Drake's Bay  
5 Oyster Company on an ongoing basis, by  
6 renewing the water bottom leases in 1979  
7 and in 2004, and by authorizing aquaculture  
8 in 2010, when establishing the Drake's Estero  
9 State Marine Conservation Area. Regulations  
10 implementing the California Marine Life  
11 Protection Act prohibit the cultivation of  
12 oysters in Drake's Estero without a valid  
13 water bottom lease. The current State-issued  
14 water bottom lease with Drake's Bay Oyster  
15 Company extends to 2029. It is also  
16 important to recognize that California now is  
17 second only to Washington" -- Washington  
18 State -- "in shellfish production on the West  
19 Coast, and that Drake's Bay Oyster Company  
20 represents 55 percent of the water bottoms  
21 leased and 40 percent of the oysters  
22 cultivated in the State. The continued  
23 cooperation between Drake's Bay Oyster  
24 Company, the National Park Service and the  
25 California Department of Fish and Game will

1 benefit the environment, the community, and  
2 the local economy consistent with our  
3 Agency's unique history of managing this  
4 property. Please contact me at (916)  
5 653-7667 if you have any questions or would  
6 like to discuss this matter. Sincerely,  
7 Charlton H. Bonham, Director of the State of  
8 California National Resources Agency,  
9 Department of Fish and game," and the address  
10 and everything, on State letterhead.

11  
12 The other one point I would like to make that  
13 I consider of extreme significance is, on the March  
14 [sic - May] 2014 cover of the National Geographic,  
15 it's the New Food Revolution, and there is a picture  
16 of the world (indicating), and next to it are the  
17 words, "serving seven billion every day," meaning the  
18 population of the world today is approximately seven  
19 billion.

20 Removing this oyster farm says there are no  
21 hungry people in this world, there are no starving  
22 people in this world. In the article they bring up  
23 the fact that by 2050 we will have 9 billion people, a  
24 35 percent increase in population. And the article  
25 states, "How are we going to feed all these people?"

1           Well, the fact about oyster farming is it  
2 uses no chemicals, it uses no fertilizers, it uses no  
3 additives, it does not require fresh water usage to  
4 take away from our own water supplies for drinking and  
5 everything else. It has also been proven to be  
6 ecologically and environmentally beneficial.

7           If this Oyster Farm disappears, in 20 to 25  
8 years the same group of people will come back and say,  
9 "Well, all the rainforests are gone, and we can't put  
10 in any more cattle ranches and we can't want go to --  
11 whoa, there's a place where we can have an oyster farm  
12 and then we can produce protein, sustainable,  
13 renewable, local."

14           It's -- to me it's very sad that there is  
15 anyone that would consider removing such a farm. And  
16 those are my two points. Questions?

17           JUSTICE OF THE PEACE: Next witness?

18           JUROR AHLGREN: I actually have a question. I'm  
19 not sure it's for Jane, but in all these -- not just  
20 tonight, but in all the proceedings about the Oyster  
21 Farm, we being -- I am assuming everyone has read  
22 something about the Oyster Farm -- I have heard a lot  
23 of reasons why the Oyster Farm should leave that have  
24 been disproven.

25           Have there been any reasons that it should

1 leave that are valid?

2 MS. GYORGY: No. For your information, I am also  
3 the author of oysterzone.org, and on it you will find  
4 every scientific report, every government  
5 investigation --

6 JUROR AHLGREN: What is it called again?

7 MS. GYORGY: Oysterzone.org. You will find every  
8 valid scientific report, every valid -- well, every  
9 government investigation, every legal document. And  
10 you will find that there is no evidence whatsoever  
11 that there is any environmental harm by having an  
12 oyster farm.

13 And this is significant -- and this is -- you  
14 can find it on my site -- NOAA themselves saying, "Yes  
15 it's a benefit to the environment." Congress has  
16 requested that oyster farms be put in around the  
17 coastlines to help clean the waters. And it's also a  
18 lovely form of protein production.

19 JUROR AHLGREN: So the argument is for open  
20 space, that a lot of people have, that they don't want  
21 anything there?

22 MS. GYORGY: I can't speak for them. I really  
23 can't. I don't know. I am having difficulty  
24 understanding what their argument is.

25 JUROR AHLGREN: And nobody is here to say what it

1 is.

2 MS. GYORGY: Curious.

3 JUROR LEITHOLD: Well, I think I know what it is.

4 THE REPORTER: I'm sorry, could you please state  
5 your name?

6 JUROR LEITHOLD: Melinda Leithold. I think that  
7 people believe in the idea of returning the earth to  
8 its natural state and that that will somehow rectify  
9 all the wrecking we have been doing in general, and if  
10 this is -- this is an opportunity for people who just  
11 love the coast of California, and are coming here with  
12 very ample supplies of financial wealth, and because  
13 this is the last place, or one of the last places  
14 where people believe there is actually a way to enjoy  
15 the earth the way it was 90 years ago, something like  
16 that. It's an idea. That is what I get. It's an  
17 idea.

18 And I have had people tell me, "Oh, well, you  
19 know, if we don't -- if we don't preserve that for  
20 nature, it means that all kinds of development can go  
21 on and --

22 JUSTICE OF THE PEACE: Barbara Scott. I'm sorry.  
23 I will have to interrupt you now. You are a juror.  
24 It was a question to a witness.

25 JUROR LEITHOLD: Yes.

1 JUSTICE OF THE PEACE: A question please?

2 Someone next please, another witness? Yes.

3 JUROR BRAST: My name is Dave Brast. I have a  
4 question for the two witnesses. Are you, either of  
5 you aware of the letter, I don't know the date, but it  
6 was while the Johnsons still owned the farm, a letter  
7 written by Don Neubacher to, I think it was the Bank  
8 of Oakland, supporting -- supporting of -- supporting  
9 -- yeah, right.

10 MS. GYORGY: I am not only aware of it, it's on  
11 my blog.

12 JUROR BLAST: Let me finish.

13 -- supporting an application for a loan by  
14 the Johnson Company, a loan from the bank. And in the  
15 letter, Don Neubacher gave his support for that loan,  
16 which -- so can you tell us, if you have seen the  
17 letter, can you tell us about it?

18 MS. GYORGY: I can tell you that he was asked  
19 specifically by the bank:

20 "Where is your general management plan? It  
21 says nothing here about continuing the Oyster  
22 Farm after 2012. Why should we put this  
23 money into building this in 1998 and 1999 if  
24 you are not going to renew the lease?"

25 And that his response in that letter was that

1           they have every intention of renewing the  
2           lease.

3           Don Neubacher, in case you don't know, was  
4 the then superintendent of the Point Reyes National  
5 Seashore. He is also the same person who is cited in  
6 the acknowledgements of the National Park Conservation  
7 series of booklets and pamphlets, one of which is  
8 entitled, "Stewardship Begins With People, an Atlas of  
9 People, Places and Products," in which the original,  
10 on Page 41 or 47, has a picture of Kevin Lunny and  
11 David Evans and a lovely, glowing, accolade of Kevin  
12 Lunny and Dave's stewardship.

13           Now, this is one publication that was to be  
14 made available around the Country. And out of the  
15 entire Country, Kevin Lunny is chosen and pictured and  
16 spoken about "and his expert stewardship."

17           That very year that publication came out, in  
18 2007 was the very year Don Neubacher stated that Kevin  
19 Lunny was an environmental criminal and he should be  
20 jailed and suffer monetary damages as well.

21           What happened, you ask? I don't know. You  
22 can't find that publication, all 21 publications save  
23 for that publication, Publication No. 14, are  
24 available as pdf's. That one is not. You have call  
25 Massachusetts and ask them for a copy. And if you go

1 online and try to retrieve a copy that is available --  
2 if you do a lot of Google searching you can find it --  
3 he has been airbrushed out.

4 JUROR LEITHOLD: Has all the text been brushed  
5 [sic] out as well?

6 MS. GYORGY: Anything to do with Kevin Lunny is  
7 airbrushed out. It's been expunged, I think the word  
8 is.

9 JUROR AHLGREN: Did you guys have a fight?

10 MR. LUNNY: No.

11 JUSTICE OF THE PEACE: Is there anyone else  
12 speaking as a witness for the Plaintiff? Kevin, you  
13 certainly have a right to talk about what you want to  
14 express.

15 MR. LUNNY: Thank you. I'm okay.

16 REVEREND WELDY: Can I witness to something I saw  
17 Sunday afternoon?

18 JUSTICE OF THE PEACE: Wait. Are you a member of  
19 the audience?

20 REVEREND WELDY: Yes.

21 JUSTICE OF THE PEACE: I don't think it's  
22 appropriate. If you want to be a witness, we would  
23 swear you in.

24 REVEREND WELDY: I would love to be sworn.

25 REVEREND ROBERT WELDY,

1           Called as a Witness by the Plaintiff,  
2           Was duly sworn by the court reporter,  
3           and testified as hereinafter set forth.

4           REVEREND WELDY: My name is Dr. Robert Weldy, and  
5 I am the rector the at Saint Columbus Episcopal Church  
6 and Retreat House. I have professional training in  
7 the field of counseling, marriage and family therapy.  
8 I am a trained observer of human behavior.

9           And I went out to the Oyster Company  
10 yesterday and saw quite a few of my friends out there.  
11 And while I was out there, I saw families, I saw  
12 little children running around, I saw pets, I saw  
13 people setting up picnics, I saw people eating  
14 oysters. And I thought, you know, Walt Disney always  
15 said "Disney World is the happiest place on earth."  
16 I think yesterday it was Drake's Bay Oyster Company.

17           I am also reminded that our U.S.  
18 Constitution guarantees the right of every individual  
19 to pursue happiness, life and liberty. And what I  
20 have seen with all this is a few misguided poor souls  
21 who have tried desperately to take that happiness from  
22 the vast majority of other people. And that is what I  
23 witnessed yesterday.

24           I would entertain any questions.

25           JUSTICE OF THE PEACE: Thank you.

1                   Any more witnesses?

2                   (No response.)

3                   JUSTICE OF THE PEACE:  Then I suggest that those  
4 of us who are not jurors leave the room.  I will pass  
5 around -- I'm so sorry it's not in an official-looking  
6 format -- the decision that you are asked to make in  
7 this case.

8                   (Whereupon, members of the audience  
9 adjourned.)

10                  JUROR AHLGREN:  Can you read it aloud?  Can you  
11 be quiet for a minute.

12                  JUSTICE OF THE PEACE:  "Plaintiff Drake's Bay  
13 Oyster Company and Kevin Lunny request renewal of the  
14 leases from the State of California and the United  
15 States Department of the Interior and transfer of the  
16 leases to the California Republic Department of Fish  
17 and Wildlife."

18                  Now, if there are any questions you want to  
19 ask me before you talk?

20                  JUROR VASCONCELLOS:  According to what we just  
21 heard, it already is in the jurisdiction of the  
22 California Interior Department of Fish and Game [sic].

23                  JUSTICE OF THE PEACE:  I will read this again.  
24 And if you will listen to the words carefully and  
25 still do not understand, I will give you the reason

1 behind the words.

2 "Plaintiff DBOC and Kevin Lunny request  
3 renewal of the leases from the State of  
4 California" -- which is a corporation --  
5 "and the United States Department of the  
6 Interior" -- which is a military corporation  
7 with the IMF, whatever you want to call  
8 it -- "and transfer" -- excuse me --  
9 "and transfer the leases to the California  
10 Republic Department of Fish and Game."

11 So questions?

12 JUROR KREMMELE: I thought I understood that the  
13 water rights to the Farm and the Estero was one --  
14 held by one, by the California Department of Fish and  
15 Game, and that the land lease, or the permit to do  
16 business or whatever, was a different -- held by the  
17 State of California, a different entity.

18 JUSTICE OF THE PEACE: By the Department of the  
19 Interior?

20 JUROR KREMMELE: The Department of the Interior.  
21 So it's two separate things, right? I mean, both  
22 those things go together to make the whole company,  
23 right?

24 JUROR VASCONCELLOS: Is this another juror?

25 MR. FOX: No, I was, but I recused myself because

1 I knew what I know. I am Ken Fox with the Tomales Bay  
2 Association, and although we did not make a statement  
3 beforehand, we had thought about everything. And I am  
4 Ken Fox with -- the President of the Tomales Bay  
5 Association, and I was late getting here today because  
6 I had to pick up my son.

7 JUROR VASCONCELLOS: So you are another witness?

8 MR. FOX: In a sense, another witness, yeah. I  
9 was chosen as a juror.

10 JUSTICE OF THE PEACE: Hold on. Hold on. If you  
11 want to be a witness please, she will swear you in,  
12 Dana Tognini.

13 KENNETH FOX,  
14 Called as a Witness by the Plaintiff,  
15 was duly sworn by the court reporter,  
16 and testified as hereinafter set forth.

17 MR. FOX: I am Kenneth Fox, K-E-N-N-E-T-H, F-O-X,  
18 middle name Joseph, J-O-S-E-P-H. I am the president  
19 of Tomales Bay Association. I am a resident of Point  
20 Reyes Station. I am one of the residents off of Bear  
21 Valley Road on Fox Drive for many years.

22 I know Kevin Lunny for many, many years. I  
23 have also worked with Gordon Bennett for years. And I  
24 am familiar with the case, and I can attest that the  
25 -- everything that I say is the truth and nothing but

1 the truth.

2 I was invited to a meeting. The meeting took  
3 place early February 2005. I was invited probably  
4 around late November of 2004 to this meeting. It was  
5 ostensibly a meeting of what was going to be a  
6 resurrection of the Citizen's Advisory Commission of  
7 the Point Reyes National Seashore.

8 In the last 24 hours it was also put on the  
9 agenda that the Johnson's Oyster Farm, aka Drake's Bay  
10 Oyster Farm, was going to be on the agenda. It was  
11 written in the minutes of that meeting that it was  
12 only ten minutes; however, it was about 50 minutes,  
13 closer to an hour of deliberation. At which time  
14 Gordon Bennett opined that it would be difficult to  
15 get rid of the Oyster Company if they did a good job,  
16 aka Lunny, and that we should make it so that he  
17 doesn't want to continue past 2012.

18 Mr. Don Neubacher was also present at that  
19 meeting. Don Neubacher said that Drake's Bay Oyster's  
20 Kevin Lunny was a really good operator, however he had  
21 no intention of continuing past 2012.

22 JUROR AHLGREN: Why was that?

23 MR. FOX: He told me at the time that he had  
24 talked with his advisors, the legal advisors, and they  
25 said that, quote, unquote, "that they couldn't

1 continue past 2012." Since then or after that time, I  
2 found out that there was a lease that was extendable  
3 if all parties agreed to it. And essentially, Don  
4 Neubacher told me that they couldn't continue.

5           However the lease did -- and I have seen the  
6 lease with my own eyes -- and the lease said that,  
7 "Yes if all parties agreed to it, that they could  
8 continue past 2012." Don Neubacher apparently --  
9 according to Kevin Lunny -- who has been consistent  
10 with the story -- has told me Don Neubacher tried to  
11 get him to sign a quitclaim, which means he would have  
12 nothing to do after 2012 with this lease.

13           And Kevin told him at that time -- according  
14 to Kevin -- that "I can't sign this. Could you, as a  
15 business operator, could you sign something like  
16 that?" And Don had to admit that no, he couldn't.  
17 This is according to Kevin.

18           Kevin has been consistent with his testimony  
19 to me. Don Neubacher has never been consistent. I  
20 have had many dealings with Don Neubacher. I do not  
21 trust him. I would trust Kevin Lunny with my life,  
22 that's how much I trust him. I don't trust Don  
23 Neubacher at all. He is a politician. He is a nice  
24 guy.

25           When the Inspectors General, at the request

1 of Kevin Lunny, interviewed me in, I think it was in  
2 2007, they told me that this is not a criminal trial  
3 or any criminal investigation. I said, "I don't want  
4 to get anybody in trouble." They asked me, "Did  
5 anybody say at any time that they wanted to cause the  
6 Lunnys to be" -- what's the word when you are bankrupt  
7 -- "bankrupt the Lunnys?"

8           And I said, "No," because nobody had said at  
9 that time that anybody said they wanted to bankrupt  
10 them. What happened in 2005, in early February, is I  
11 was invited to this meeting, ostensibly to be a  
12 resurrection of something to do with the Citizen's  
13 Advisory Committee, which was ordained by the  
14 Legislature, which was grandfathered, that they would  
15 try to figure out how could we do this in the future  
16 because we want to have some sort of citizen input  
17 into how the Park Service is run out here.

18           And so at that time I told this person, they  
19 interviewed me at the park headquarters, they wanted  
20 to meet with me somewhere in this area. I said, "How  
21 about somewhere in Point Reyes Station?" They opined,  
22 "Well, let's meet over at the Park Service  
23 headquarters." I said, "Let's meet outside," because  
24 I didn't feel comfortable meeting inside the Park  
25 Service headquarters, in these buildings, because I

1 figured there would be ears there.

2           When I was interviewed by the Inspectors  
3 General, many people came by, including Don -- John  
4 Del Osso (phonetic) who is with the Park Service. And  
5 I felt uncomfortable being there. However, I answered  
6 their questions as best I could. And when I was  
7 interviewed, I told her of the fact that, what Gordon  
8 Bennett said at the time, which was, "If he runs it  
9 right, it will be difficult to get rid of him, and  
10 shouldn't we make so it that he doesn't want to  
11 continue past 2012?" "He," being Kevin Lunny.

12           JUROR AHLGREN: What was there to gain by not  
13 having it run, by closing it? What was the reason for  
14 closing it or the purpose, do you think?

15           MR. FOX: I don't know. I was with the Tomales  
16 Bay Association. I was critical of the Park Service  
17 wanting to have a three-fold expansion of the cannery  
18 facilities, so that's why I was invited to that  
19 meeting because I wrote a letter that said a  
20 three-fold expansion of the cannery facilities should  
21 not have a commensurate increase in the usage of the  
22 estero by that much, that if they do increase the  
23 cannery, they should have not an increase in the  
24 amount of utilization of the estero.

25           Granted, that I knew already that Johnson's

1 oysters had already cut back. They used to have full  
2 access of the Limantour Estero, which was now in the  
3 -- not only the potential, but in the wilderness  
4 section of the park.

5 JUSTICE OF THE PEACE: Excuse me for interrupting  
6 this moment. You came in later --

7 MR. FOX: Yes, I'm sorry. I did.

8 JUSTICE OF THE PEACE: -- and I had asked the  
9 witnesses, could they try to limit it to about five  
10 minutes, and if you want to go over a little longer,  
11 fine, and that the jurors could ask you a question.  
12 Thank you. Sorry.

13 MR. FOX: Then I can stop, and you can ask me  
14 any questions you want. That's fine.

15 JUSTICE OF THE PEACE: No, I didn't mean to stop  
16 you. Okay.

17 MR. FOX: All right. Question?

18 JUROR LEITHOLD: Well, there was a question asked  
19 earlier and there was no response up there, so -- and  
20 it was, do you have any idea what the reason is of the  
21 people, the few people who apparently have put a  
22 barrier up to the continuation of that lease?

23 MR. FOX: I think it started with the fact that  
24 Johnson's Oysters did not -- were not able to run a  
25 business that was clean enough and that would respect

1 enough the estero itself and its ability and its  
2 nonability, both, to utilize the amount of withdrawal  
3 of oyster operations [sic] so in both -- I don't  
4 explain myself too well.

5           There are two things that happen with an  
6 estero. One is, there is an abundancy of fecundity;  
7 you have a certain amount of ability to produce  
8 biomass. And the estero can produce that much, and we  
9 as people can take a certain amount of that. Now, if  
10 we take too much of that, then we start to deplete the  
11 resource. And the Johnsons were throwing a lot of  
12 what I would call garbage out there.

13           I talked to Don Neubacher many years before.  
14 We went out to Boat Point and there was lots of junk  
15 out there. And Don said to me, "Nobody is trying to  
16 put Johnson's Oysters out of operation." I said, "Why  
17 not? They are soiling their nest." And so that's  
18 what happened with that.

19           And this was when he was Chief of  
20 Interpretation at the Park Service at Point Reyes  
21 National Seashore. Later on he left that job and went  
22 to, I believe to the GGNRA, and then he came back as  
23 National Park Superintendent of the Point Reyes  
24 National Seashore. And at that time he changed his  
25 tune, sometime later on. But before, when he was

1 Chief of Interpretation, he said, "No one is trying to  
2 put him out of business," and I said, "Why not?"

3 And then when he tried to do this three-fold  
4 expansion, I said at the time, "Wait a second, you  
5 can't have a three-fold expansion of this resource and  
6 then have a commensurate increase in the utilization  
7 of the seashore" -- "of the estero."

8 So that's what I said. That was well before  
9 2003.

10 JUSTICE OF THE PEACE: That's well over five  
11 minutes. Thank you.

12 MR. FOX: I'm sorry.

13 JUROR AHLGREN: That was a lot of good  
14 information. Thank you.

15 MR. FOX: And I know about this. I have known  
16 Kevin Lunny for many years. I have known Don  
17 Neubacher for many years. As I say, I trust what  
18 Kevin Lunny would do. I do not trust what Don  
19 Neubacher would do. I have dealt with him for many  
20 years. Yes, we are all nice people, but I don't trust  
21 him, and I trust Kevin Lunny to do the honest thing.

22 Sorry for taking up so much of your time.

23 UNIDENTIFIED FEMALE SPEAKER: We weren't aware  
24 that another witness was giving testimony. We were  
25 standing outside thinking you were deliberating.

1 JUROR VASCONCELLOS: Well, we were but the  
2 witness came in.

3 UNIDENTIFIED FEMALE SPEAKER: So we need to  
4 leave?

5 JUROR VASCONCELLOS: It will be in the transcript  
6 though.

7 (Whereupon, these proceedings were recessed  
8 and the jurors, having been duly sworn,  
9 deliberated from 8:15 o'clock p.m. to 8:40  
10 o'clock p.m.)

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1 July 28, 2014

8:40 o'clock p.m.

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3 (Whereupon, a verdict having been reached,  
4 was read into the record as follows):

5 FOREPERSON VASCONCELLOS: Plaintiff Drake's Bay  
6 Oyster Company and Kevin Lunny request the renewal and  
7 transfer of all leases to the California Department of  
8 Fish and Wildlife.

9 (Discussion off the record.)

10 (Whereupon, Justice of the Peace Exhibit A  
11 was marked for identification and received  
12 into evidence.)

13 JUSTICE OF THE PEACE: Hold on guys. I want to  
14 thank everybody for being here tonight with their  
15 patience and having a total different way to approach  
16 the law. It takes a village, and you are the jury.  
17 The power of the jury shall return.

18 FOREPERSON VASCONCELLOS: It was a unanimous vote  
19 that you heard.

20

21 (Discussion off the record.) .

22 (Whereupon, a verdict having been reached,  
23 was further read into the record as follows):

24 FOREPERSON VASCONCELLOS: We the jury, in the  
25 above-entitled action, find in favor of Plaintiff

1 Drake's Bay Oyster Company and Kevin Lunny's request  
2 for the renewal and transfer of all leases to the  
3 California Republic Department of Fish and Wildlife.  
4 We the jury, are in unanimous agreement with that  
5 request.

6 (Whereupon, Justice of the Peace Exhibits  
7 B through E were marked for identification  
8 and received into evidence.)

9 JUSTICE OF THE PEACE: This meeting is adjourned.

10 (Whereupon, these proceedings concluded  
11 at 8:45 o'clock p.m.)

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