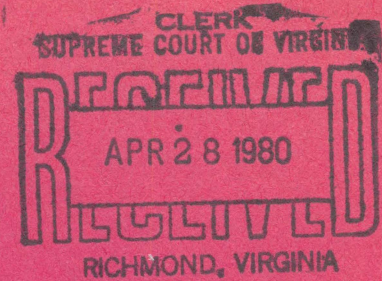


223 Va 259



IN THE SUPREME COURT OF VIRGINIA

AT RICHMOND

RECORD NO. 791388

RICHARD R. NAGEOTTE and
B. CALVIN BURNS,

APPELLANTS

VS.

BOARD OF SUPERVISORS OF KING
GEORGE COUNTY, JAMES B. HOWARD,
WOODROW SAFT and REGINALD P.
HAYDEN,

APPELLEES

APPENDIX

RICHARD R. NAGEOTTE, PRO SE
c/o Nageotte, Borinsky & Zelnick
114908 Jefferson Davis Highway
Woodbridge, Virginia 22191

JOHN P. HARRIS, III
809 William Street
Fredericksburg, Virginia 22401
Counsel for Appellees

B. CALVIN BURNS, PRO SE
P. O. Drawer AA
Woodbridge, Virginia 22194

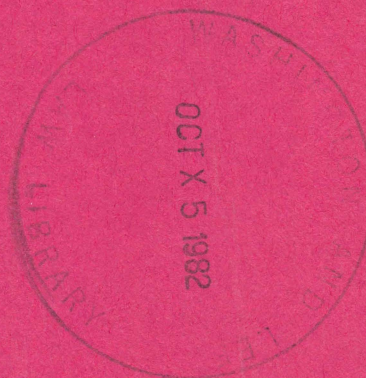


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BILL OF COMPLAINT

COMES NOW your Complainants, Richard R. Nageotte and B. Calvin Burns, and as and for their Motion for Judgment against the Defendants hereinabove set out. In accordance with the Virginia Freedom of Information Act Code of Virginia 1950, as amended, Section 2.1-340 et. seq. respectfully allege as follows:

1. That your Complainant B. Calvin Burns is a resident and domiciliary of King George County, Virginia, and that your Complainant, Richard R. Nageotte, is a resident and domiciliary of Stafford County, Virginia, and are people of the Commonwealth of Virginia given standing to bring suit under the protection and benefits of the Virginia Freedom of Information Act, Code of Virginia 1950, as amended, Section 2.1-340 et. seq.

2. That your Respondents, James B. Howard, Woodrow W. Saft and Reginald P. Hayden are members of the Board of Supervisors of King George County, Virginia, and they individually and collectively as the Board of

Supervisors of King George County, Virginia, and George L. Wallace, acting County Administrator of King George County, Virginia, are governed by the provisions of the Virginia Freedom of Information Act, Code of Virginia 1950, as amended, Section 2.1-340 et. seq.

3. That on January 26, 1979, your Complainants were lawfully within the confines of the King George County Courthouse, King George Virginia, for the purpose of non-suiting a certain civil action previously filed and pending before the Circuit Court of King George County, Virginia, pursuant to their lawful rights under the Code of Virginia 1950, as amended.

4. That upon completion of the argument before the Circuit Court of King George County, Virginia, and upon entry of an order by the Judge of the Circuit Court of King George County, Virginia, permitting your Complainants to non-suit the case hereinabove referenced, your Complainants did proceed to the office of George L. Wallace, Acting County Administrator, for King George County, Virginia, and did then and there lawfully proceed to review the formal minute books of meetings of the Board of Supervisors of King George County, Virginia, and did request from the Secretary of the Acting County Administrator and Board of Supervisors of King George County, Virginia, certain minutes of the Board of Supervisors' Meetings which were not found to be contained in the official minute books of the Board of Supervisors of King George County, Virginia. That your Complainants requested of the secretary when such minutes would be available for inspection by your Complainants and were advised that said minutes would not be provided to the Complainants as they had not yet been signed as approved by the Board of Supervisors of King George County, Virginia. While continuing to review the official minute books of the meetings of the King George County Board of Supervisors your Complainants, Richard R. Nageotte and B. Calvin Burns, were then and there in the office of the Acting County Administrator, George L. Wallace, served with process by the Sheriff of King George County, Virginia, which process was initiated by the Defendants herein, Howard, Saft and Hayden and the Defendant herein George L. Wallace and one Steven T. Foster, former County Administrator for King George County, Virginia.

5. That your Complainants are upon information and belief that the Defendants herein have violated the Virginia Freedom of Information Act,

Code of Virginia 1950, as amended, Section 2.1-340, et. seq. in that they have:

(a) Conducted meetings without proper notice to the public and without the maintenance during such meetings of official records which are required to be made available and open to inspection as provided for by Code of Virginia 2.1-342.

(b) That the Respondents have violated the requirements of Code of Virginia 1950 2.1-344 in that they have held executive or closed meetings not permitted to be held by that section and further that while holding executive or closed meetings they have not complied with the requirements of Section 2.1-344.

6. That your Complainants have standing to bring this action pursuant to Code of Virginia 1950, as amended, Section 2.1-346, and jurisdiction to hear this case rests with the Circuit Court of King George County, Virginia.

7. That the provisions of Code of Virginia 1950 as amended, Section 2.1-346 provide for injunctive relief and if the Court finds the denial to be in violation of the provisions of the Virginia Freedom of Information Act the Court may award costs and reasonable attorney's fees to the petitioning citizen, which fees are prayed for in this case.

8. That further Code of Virginia 1950, as amended, Section 2.1-346.1 provides that if this Court finds that a violation was willfully and knowingly made, shall impose upon such person or persons in their individual capacity whether the relief prayed for is awarded or not, a civil penalty of not less than \$25.00 nor more than \$500.00, which amount shall be paid into the state literary fund and which relief is prayed for by the Complainants herein upon the grounds that the Respondents willfully and knowingly violated the provisions of this act in that the act provides that a copy of the act be provided by the public bodies administrator or legal counsel within two weeks following election, reelection, appointment or reappointment as provided for in Code of Virginia Sec. 2.1-341.1.

WHEREFORE, your Complainants pray that the Circuit Court of King George County, Virginia, grant the following relief:

a. That all actions heretofore taken by the respondents which are the subject of this cause of action be adjudicated as void and of no force

and effect and issue such mandatory injunctions as may be necessary to effect such a judgment of the court and strike and remove from the official records of King George County, Virginia, any action found to be void and unlawful under the Virginia Freedom of Information Act, Code of Virginia 1950, as amended, Sec. 2.1-340 et. seq.

b. That the Circuit Court of King George County, Virginia, enter an order enjoining the respondents herein from future violations of the Virginia Freedom of Information Act, Code of Virginia 1950, as amended, Section 2.1-34 et. seq.

c. That the Circuit Court of King George County, Virginia, enter an order awarding to your complainants herein all costs and reasonable attorney's fees as are provided for by Code of Virginia 1950, as amended, Section 2.1-346.

d. That the Circuit Court of King George County, Virginia, enter an order finding that the violation of the Virginia Freedom of Information Act, Code of Virginia 1950, as amended, Section 2.1-340 et. seq. was willfully and knowingly made; that pursuant thereto the Court impose upon the respondents herein in their individual capacity a civil penalty of not less than \$25.00 nor more than \$500.00, which amount shall be paid into the state treasury fund.

e. That this court grant such further relief as this cause of action may require or as to equity may seem meet.

AFFIDAVIT REQUIRED BY CODE OF VIRGINIA
1950 AS AMENDED, SECTION 2.1-343

COME NOW your Complainants, Richard R. Nageotte, Pro Se, and B. Calvin Burns, Pro Se, and as required by Code of Virginia, 1950, as amended, Section 2.1-343, allege the following to be upon their information and belief and that upon their information and belief they verily believe that the same constituted violations of the Virginia Freedom of Information Act, Code of Virginia 1950, as amended, Section 2.1-340, et. seq.:

1. That on or about November 9, 1978, the Board of Supervisors of King George County, Virginia, convened into executive session to discuss the location of an industry in King George County, Virginia, which had already announced its intention to locate within King George County in violation of the statute. Additionally, persons other than those authorized took part in said executive session.

2. That on or about November 12, 1978, the Board of Supervisors of King George County, Virginia, met in the office of the County Administrator and again at the Homestead, which meetings were not properly called nor was any known record kept concerning said meetings.

3. That on or about November 16, 1978, the Board of Supervisors of King George County, Virginia, met improperly and your Complainants do not believe that minutes of said meeting were kept.

4. That on or about November 20, 1978, your Respondents met improperly and without notice in Richmond, Virginia, and your Complainants believe that no record was kept of this meeting.

5. That on or about January 4, 1979, your Respondents met improperly and no proper record was kept.

6. That on or about January 18, 1979, your respondents met improperly and no proper record was kept.

RICHARD R. NAGEOTTE
ATTORNEY AT LAW, LTD.
RICHARD R. NAGEOTTE
NIEL H. BORINSKY

7. That your Complainants believe that additional improper meetings were held without notice and in violation of the statute during which no records were kept for inspection by the public.

RICHARD R. NAGEOTTE, PRO SE


B. CALVIN BURNS, PRO SE

ANSWER

COMES NOW your Respondents, by their counsel and say as follows:

1. Respondents admit the allegations of paragraph 1 of the Bill of Complaint.

2. Respondents admit the allegations of paragraph 2 of the Bill of Complaint as to Woodrow W. Saft and Reginald P. Hayden. Respondents deny the allegation of paragraph 2 of the Bill of Complaint as to James B. Howard, said James B. Howard having resigned from the Board of Supervisors effective February 1, 1979.

3. Respondents admit the allegations of paragraph 3 of the Bill of Complaint.

4. Respondents admit the allegations of paragraph 4 of the Bill of Complaint except that your Respondents deny that the minutes alleged to have been requested were the meetings alleged to have occurred by the affidavit filed with the Bill of Complaints.

5. Respondents deny the allegations of paragraph 5 of the Bill of Complaint.

6. Respondents admit the allegations of paragraph 6 of the Bill of Complaint.

7. Respondents admit the allegations of paragraph 7 of the Bill of Complaint.

8. Respondents admit the recitations of Section 2.1-346.1. Respondents deny all allegations they, or any of them, willfully and knowingly violated any provision of the Freedom of Information Act.

9. WHEREFORE, your Respondents pray that the Circuit Court of King George find that the petition of the Complainants was based upon a clearly inadequate case, dismiss Complainants case, and award costs and reasonable attorney's fees to the Respondents as provided by Section 2.1-346 of the Code of Virginia of 1950 (as amended).

MEMORANDUM OF OPINION

It has been necessary for me to spend considerable time and effort not only in researching the law of the Virginia Freedom of Information Act but actually to read and make notes of the lengthy transcript in the above case consisting of four books, one being 118 pages, one 150 pages, one 142 pages and still another of 118 pages, or a total of 528 pages. I have also reviewed notes taken by me during each of the evidentiary hearings and lengthy arguments of counsel.

During the course of each of these four hearings, Mr. Nageotte was permitted to call each witness and examine each adversely. Most of these examinations were probing, searching, lengthy and pounding. The main purpose of the examinations was to elicit admissions, particularly of witnesses who were members of the Board of Supervisors and those present during Executive Sessions of the Board, that subjects were taken up in such Executive Sessions in violation of the Virginia Freedom of Information Act, Code Section 2.1-344, et seq.

Section 2.1-344 provides that executive or closed meetings of such a public body as a county board of supervisors may consider only certain exempted categories set forth therein. The exemption under the above section which most nearly fits the

situation here is subsection (6) which is, "consultation with legal counsel and briefings by staff members, consultants or attorneys, pertaining to pending litigation, or legal matters within the jurisdiction of the public body, including legal documents".

In response to questions by Mr. Nageotte, each of the Board members indicated that in any Executive Session where matters other than those which would have arisen under subsection (6) had come up, such subjects were within the exemption permitted by Section 2.1-344.

Considerable mention was made of subjects of conversations which occurred at Hot Springs where a convention of county officials was being held. Vigorous adverse examination was resorted to which resulted in an admission by Mr. Alvin Bandy, Chairman of the Board of Supervisors of Stafford County, that some jocular references were made to the "Dano problem" in King George County but no solid evidence was elicited that an Executive Session such as contemplated and prohibited by §2.1-344, was adduced. Likewise, none of the evidence elicited by the Plaintiffs convinces this court that members of the Board of Supervisors of King George County attended to any business at Hot Springs in violation of the prohibition of Virginia's Act.

(a)

Unquestionably, many Executive Sessions were held, and it must be remembered that during the segment of time covered by Plaintiffs' allegations the "Dano question" was very much in the news and under discussion at open Board meetings. Each member of the Board of Supervisors and Steven T. Foster, the then County Administrator, and Betsy Aldman, Secretary, were emphatic in their insistence that no subject was taken up except those which are exempt, and only the legal aspects of the Dano matter were discussed. Mr. Nageotte argues that the witnesses, Valentino and Coddington, who were present at open meetings of the Board, testified in effect that Mr. Harris admitted that the matter of the issuance of the permit to Southern Marine and Salvage may have been taken up in an Executive Session. I do not read the testimony cited by Mr. Nageotte as clearly making any such admission.

Another instance cited by Mr. Nageotte in argument was in testimony by the witness Coddington that, at the Homestead meeting, two supervisors met at 2:00 a.m., presumably from the viewpoint of Mr. Nageotte, to discuss the Dano permit. Vigorous, close examination of those alleged to have participated in such a meeting did not reveal sufficient evidence for the court to hold that the matter of the permit was disposed of at that time.

Mr. Nageotte takes the position that when Boards of Supervisors meet, "all Executive Sessions are illegal". This overlooks the reality of the statute which clearly permits Executive Sessions within limits set out in its six subsections. Section 2.1-344 (b) states that no meeting shall become an executive meeting unless there shall have been in open meeting an affirmative vote to that effect. The same subsection does recite that "a general reference to the provisions of this chapter or the exemptions of subsection (a) shall not be sufficient to satisfy the requirements for an executive or closed meeting". If the Plaintiffs have a point concerning the proper way to call an executive session, it is apparent from the official minutes of the Board. A more complete announcement as to the purpose of the Executive Session would appear desirable. For example, in the minutes of the meeting of November 9, 1978, the following is found, "Upon a motion by Mr. Saft, seconded by Mr. Hayden and carried unanimously, the Board went into Executive Session to confer with legal counsel". It would appear reasonably clear, that placing the above quoted action within the context of the meeting which was devoted almost entirely to the Dano matter, that the reason for the Executive Session was obvious to those in attendance, and it may be understood that the Chairman at that point did not feel that a detailed explanation of the reason for

the Executive Session was necessary. If there is no evidence of Dano matters, other than legal implications, being discussed, the Court cannot say that action affecting Dano in open meetings is null and void. Further, I believe that in considering the matter of good faith or bad faith, there is no evidence to show bad faith in this particular instance.

The same situation appears to be true with respect to the meeting of November 16, 1978, when considering the context in which the Executive Session was called. Although numerous other matters were considered at that meeting, the Executive Session was held immediately following an apparently heated discussion concerning the Dano matter, although it appears obvious from the minutes of that meeting that the closed session was held to receive legal advice concerning that uppermost question.

Again, the meeting of January 4th was referred to by Plaintiffs as being a violation of the FOI statute. The following words appear from the minutes of that meeting, apparently not in the same context as the discussion in the two preceding minutes mentioned above: "On a motion by Mr. Saft, seconded by Mr. Howard and carried unanimously, the Board went into Executive Session for legal counsel and to discuss personnel matters". It is not clear to me from the evidence as to whether anything else besides personnel matters, which is an exempted subject matter, was dis-

cussed. At that particular meeting, the resolution with respect to Southern Marine and Salvage was passed. Examination of the members of the Board present at that meeting brought out their insistence that only the legal aspects of the prospective location of the sludge plant in King George were discussed. However, the minutes quote Mr. Hayden, a supervisor, as saying that the Board had discussed legal and personnel matters and no decision had been reached. It is, therefore, difficult for the court to say that anything other than legal questions concerning the resolution passed at that ^{open} meeting was discussed in ^{the prior} Executive Session. The court cannot make such a presumption from the evidence before it.

At the next meeting, considered by the court, that of January 10, 1979, an Executive Session was voted and held without any details having been given as to why it was necessary, but upon the return of the Board to the open meeting it was again stated that the Executive Session was held "for legal counsel, and no action had been taken or decisions made". The next paragraph of those minutes do show the public discussion of an investigation of Southern Marine and Salvage. Again, the court cannot engage in speculation as to what was considered in the Executive Session and the evidence is not clear enough to raise a presumption that other than legal aspects of the "Dano matter" was taken up, as evidenced by the testimony.

No large body of law in Virginia has accumulated on its Freedom of Information Act. The case most frequently quoted by counsel for the Plaintiffs as well as the Defendants is that of WTAR Radio-T.V. Corp. vs. Virginia Beach City Council, 216 Va. 892, 223 S.E. 2d 895. That case involves a principal similar to the one at bar wherein the Plaintiff, Radio-T.V. Corporation, filed petitions against the City Council of Virginia Beach and its individual members alleging violation of Section 2.1-340, et seq. and seeking injunctive relief. City Council filed a demurrer which the trial court sustained, and the appeal followed. The action of the trial court was affirmed by the Supreme Court of Virginia. One of the allegations in WTAR's petition was that the City Council had adopted a resolution that a meeting be held "for the purpose of discussing items permitted * * * under Section 2.1-344 subparagraphs 2 and 6 of the * * * Act" and that such resolution did not state specifically the subject to be discussed in the executive session. The Supreme Court said:

"We are mindful of the high purpose the Act seeks to promote, and we have carefully considered what petitioners call 'the futility of having a Freedom of Information Act if there is no method of forcing public bodies to comply with it' * * *"

" * * * [T]he law never presumes that a man will violate the law. Rather, the ancient presumption is that every man will obey the law.

That presumption holds even when one accused of crime has been convicted of other crimes, and it prevails until rebutted by proof beyond a reasonable doubt. While charges of civil viola-

tions entail a lesser evidentiary burden, a similar presumption follows the public official into his office * * * . But the presumption itself survives, as it must, for our system of government could hardly function if the law were to presume that all public officials are scoundrels deserving continuing supervision by judicial overseers".

I am of the opinion that although there is some difference between the above case and the one at bar, the same principal prevails.

As Mr. Nageotte states in his argument, there may be some cleansing effect to be expected from a suit of this sort, but there must be more proof of violation of the Act than has been adduced in this lengthy proceeding, albeit less than proof beyond a reasonable doubt, to establish such wrongdoing as is alleged in Complainants' Bill of Complaint.

The Court is cognizant of the Plaintiffs' motion to amend its Bill to conform to the evidence, which was granted. Notwithstanding such amendment, however, I must hold that sufficient proof of the violations charged is lacking.

One thing might be said by the court without the issuance of an injunction against the Board for possible violations in the future and for whatever salutary effect it might have, is to suggest that the purpose of future Executive Sessions be spelled out in as great detail as practicable.

Accordingly, judgment will be rendered in favor of the Defendants in this cause and the Plaintiffs' Bill of Complaint and amended bill will be dismissed.

Counsel for Defendants should prepare and present an order, appropriately endorsed, carrying out the foregoing holding.

O R D E R

The Order sustaining the Demurrer in the above styled case entered on June 13, 1979, having been erroneously entered, the case having been tried on its merits and the Court being of the opinion that judgment should be for the defendants, notwithstanding the Memorandum filed by the plaintiffs herein on June 5, 1979, with plaintiffs' motion to the Court to reconsider its Memorandum of Opinion of May 22, 1979,

It is, therefore, ORDERED that judgment be and it is hereby entered in favor of the defendants and this cause is dismissed with prejudice from the docket, to which action the plaintiffs objected and excepted.

ASSIGNMENT OF ERROR

1. The trial court erred in not hearing in camera the testimony of witnesses who participated in executive sessions to determine whether the statutory privilege was properly invoked.
2. The trial court erred in not finding that the Act was violated by the Board not stating the specific purpose for going into executive session.
3. The trial court erred in finding no violation of the Act by specific meetings held without public notice and without minutes being recorded, as such finding was contrary to the evidence presented at trial.

At a special meeting of the Board of Supervisors of King George County, Virginia, held on Thursday, the 9th day of November 1978 at 7:30 p.m.

PRESENT: James B. Howard, Chairman of the Board
Woodrow W. Saft, Vice Chairman of the Board
Reginald P. Hayden, Member of the Board
John P. Harris, III, Commonwealth's Attorney
Steven T. Foster, County Administrator

The meeting was called to order by the Chairman, Mr. James B. Howard, who stated that the purpose of the special meeting was for the purpose of meeting with representatives of DANO Resource Recovery, Inc. to discuss the company's plans to locate in the county and the pertinent permits which must be obtained.

Upon a motion by Mr. Saft, seconded by Mr. Hayden, and carried unanimously, the Board went into Executive Session to confer with legal counsel.

On a motion by Mr. Hayden, seconded by Mr. Saft, and carried unanimously, the Board returned to Public Session.

Mr. Howard stated that during Executive Session the Board had received the advice of counsel and no decisions had been made by the Board.

Mr. Howard thanked the representatives of DANO for their presentation.

At a regular meeting of the Board of Supervisors of King George County, held on Thursday, the 16th day of November 1978, at 7:30 p.m.

Presentation by King George Environmental Association

Mr. Foster advised the Board that a letter had been received from the newly-formed King George Environmental Association requesting that they be placed on the agenda for this meeting. Motion was made by Mr. Saft, seconded by Mr. Hayden, and carried unanimously, to permit the representative of the King George Environmental Association to be admitted to the agenda.

On a motion by Mr. Saft, seconded by Mr. Hayden, and carried unanimously, the Board went into Executive Session to receive advice of legal counsel.

On a motion by Mr. Hayden, seconded by Mr. Saft, and carried unanimously, the Board returned to Public Session.

Mr. Howard stated that during Executive Session the Board had received the advice of counsel and no decisions were reached.

On a motion by Mr. Hayden, seconded by Mr. Saft, and carried unanimously, the Board went into Executive Session for legal counsel.

On a motion by Mr. Saft, seconded by Mr. Hayden, and carried unanimously, the Board returned to Public Session. Mr. Howard stated that no decision had been reached in Executive Session.

Motion was made by Mr. Hayden, seconded by Mr. Saft, and carried unanimously, that the Commonwealth's Attorney be instructed to contact the Attorney General's Office to arrange an appearance before the Board of Supervisors to render legal advice.

Motion was made by Mr. Hayden, seconded by Mr. Saft, and carried unanimously, that the Commonwealth's Attorney be directed to represent the defendants in Law Action No. 39 filed in King George County Circuit Court on November 16, 1978.

There being no further business, the meeting was adjourned on a motion by Mr. Hayden, seconded by Mr. Saft, and carried unanimously.

At a regular meeting of the Board of Supervisors of King George County, Virginia held on Thursday, the 4th day of January 1979 at 9:00 a.m.

On a motion by Mr. Saft, seconded by Mr. Howard, and carried unanimously, the Board went into Executive Session for legal counsel and to discuss personnel matters.

On a motion by Mr. Howard, seconded by Mr. Saft, and carried unanimously, the Board returned to Public Session. Mr. Hayden stated for the record that the Board had discussed legal and personnel matters and no decisions had been reached.

Resolution Opposing Location of Southern Marine and Salvage Company's Composting Facility in King George County

On a motion by Mr. Saft, seconded by Mr. Howard, and carried unanimously, the following resolution was adopted:

RESOLUTION

WHEREAS, Southern Marine and Salvage Company has announced plans to locate a sludge and solid waste processing plant in King George County, Virginia; and

WHEREAS, said processing plant proposed by Southern Marine and Salvage Company would be located on the historic Chatterton tract along the banks of the Potomac River; and

WHEREAS, the county's Comprehensive Plan and Land Use Map as prescribed in §15.1-466.1 to 15.1-463 of the Code of Virginia, 1950, as amended, adopted on June 16, 1977 specifically preserves the property along the Potomac River for low density development; and

WHEREAS, said processing plant proposed by Southern Marine and Salvage Company may pose a potential threat to the health, safety and welfare of the citizens of King George County as well as the citizens of the Commonwealth of Virginia due to the unproven nature of the proposed project; and

WHEREAS, the processing plant proposed by Southern Marine and Salvage Company poses a further potential threat to the quality of the Potomac River and could lead to extensive repollution and further degradation of the nation's most cherished river by threatening the shellfish and marine life as well as irreplaceable wetlands; and,

WHEREAS, the proposed use of the shoreline of the Potomac River is not compatible with plans and legislation proposed by the State for Coastal Resources Management; and

WHEREAS, such project may potentially damage the recreational value and use of the Caledon State Park and other surrounding recreational areas;

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of King George County does hereby register its opposition to the location of an industry in King George County which may threaten the health, safety and welfare of the residents of King George County; and further does oppose the location of an industry in King George County on land preserved for low density development under the county's existing Comprehensive Plan and Land Use Map.

At a regular meeting of the Board of Supervisors of King George County held on Thursday, the 18th day of January 1979 at 7:30 p.m.

On a motion by Mr. Saft, seconded by Mr. Howard, and carried unanimously, the Board went into Executive Session for legal counsel.

On a motion by Mr. Saft, seconded by Mr. Howard, and carried unanimously, the Board returned to Public Session. Mr. Hayden stated for the record that the Board had gone into Executive Session for legal counsel and no action had been taken or decisions made.

John P. Harris, III, Commonwealth's Attorney, advised the Board that he had conducted an investigation into the applications of Southern Marine & Salvage (Dano project) and had found that discrepancies existed. The permit application as submitted to the Virginia Marine Resources lacked a page denoting a "spoils area" which was provided in the report submitted to the Army Corps of Engineers, and no mention was made of an earthen dam or "spoils area" in the county's erosion and sediment control application. Mr. Harris stated this leads him to the conclusion that major land-disturbing activities had been left out of the county's application and that the Board of Supervisors has the authority to revoke the building permit issued to Southern Marine and Salvage.

Mr. Saft asked whether Mr. Harris had verified this with the Marine Resources and Army Corps of Engineers, to which

Mr. Harris responded in the affirmative. He further stated that basically the county has an invalid soil and erosion control plan; therefore the building permit can be revoked.

Mr. Saft then stated that, based on the information presented to this Board, he would move that upon the results of the investigation and advice of legal counsel the building permits of Southern Marine and Salvage Company be revoked. The motion was seconded by Mr. Howard and carried unanimously.

On a motion by Mr. Saft, seconded by Mr. Howard, and carried unanimously, the Board went into Executive Session to discuss personnel.

On a motion by Mr. Saft, seconded by Mr. Howard, and carried unanimously, the Board returned to Public Session. Mr. Hayden stated for the record that no action had been taken or decisions made in Executive Session.

TRIAL TRANSCRIPT OF MARCH 12, 1979

Testimony of Betsy Aldman

18

Q

In that capacity, are you responsible

19

for the taking of minutes at the Board of Supervisors'

20

meetings, typographically transcribing those minutes, and

21

seeing to their approval and insertion in the official minute

book of the King George County Board of Supervisors?

[P. 17]

A

Yes, sir.

*

*

*

[P. 18]

[P. 21]

16

Q

Did I request of you, ma'am, whether

17

or not you had meetings -- minutes of a meeting held on or

18

about November 12th, 1978?

19

A

I believe so.

20

Q

Were you able to find minutes of

21

such a meeting?

[P. 22]

1

A

November 12? No.

2

Q

Did I inquire as to whether or not

*

*

*

[P. 23]

7

Q

Did I inquire of you, ma'am, as to

8

whether or not there were minutes for a meeting on or about

9

November 20th, 1978?

10

A

Yes.

23
11 Q Were you able to find any such
12 minutes?

13 A No.

14 Q Did I inquire of you as to whether

* * *

26
7 Q Now, ma'am, calling your attention
8 to the meeting of November 9th, 1978, which is Complainant's
9 Exhibit Number One, on the last page of those minutes are
10 contained the following notation, "Upon a motion by Mr.
11 Saft, seconded by Mr. Hayden, and carried unanimously, the
12 Board went in to executive session to confer with legal
13 counsel."

20 Q "Mr. Howard stated that during exec-
21 utive session the Board had received the advice of counsel,

27
1 and no decisions had been made by the Board." Did you
2 type that ma'am?

3 A Yes.

4 Q Is that a typical notation on the
5 Board of Supervisors of King George County minutes when the
6 Board goes into executive session?

7 A Yes, it is.

8 Q Do you find that consistently
9 appearing in any Board minutes when the Board goes into
10 executive session?

11 A Yes.

[P. 32]

11 Q But, is this a standard clause that
12 you typed in many of your minutes, "The Board went into
13 executive session to receive advice of legal counsel."

14 A It is one of the reasons for going
15 into executive session. They don't all say that.

[32]

16 Q What do some of the other ones say?

17 A They may go to discuss personnel
18 matters.

19 Q Do they ever discuss anything more
20 than to go into take legal advice or go in to discuss
21 personnel matters?

* * *

[33]

1 A That is all I can think of at the
2 moment.

3 Q Is it your testimony, then, that
4 they don't elaborate on what specifically they go in to
5 discuss, they just discuss legal matters, or personnel
6 matters?

7 A That is two of the things they
8 can go into executive sessions for.

9 Q You keep saying two of the things

TRIAL TRANSCRIPT OF MARCH 12, 1979

Testimony of Robert Picardat

[Pg. 44]

8 A I met with Mr. Foster and Mr. John
9 Harris on a Friday in November, and it was a legal holiday
10 in the County. I think they were the only two people in the
11 Courthouse.

12 Q Was this the day after the public
13 meeting, or within several days of the public meeting?

14 A Within several days.

15 Q That was a Friday, you say?

16 A Yes.

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[Pg 46]

7 Q What did Mr. Foster and Mr. Harris,
8 that is John Harris, advise you concerning that letter?

9 A They were going to write the letter
10 for us, my understanding was, and the letter would be de-
11 livered by them with us at a meeting on Monday, the following
12 Monday, in the District, stating that the building permits
13 would be issued. I think they stated we were going to
14 state the building permits were going to be issued by
15 Wednesday.

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1 Q What, if any, discussion occurred
2 at this meeting with Mr. Foster and Mr. John Harris on
3 Friday concerning the payment of monies by your company to
4 King George County, or any of its representatives?

5 A If we discussed it, it was on the
6 general terms of what happened in Stafford County, and that
7 there would probably be no legal way for us to pay taxes
8 beyond the normal tax basis.

9 Q Did you specifically advise him
10 at this meeting that you would not make any such payment
11 as you had offered in Stafford County?

12 A I think so, yes, sir.

13 Q When you left the meeting with Mr.
14 Harris, that is Mr. John Harris, and Mr. Foster on Friday,
15 what did you expect was next going to happen?

16 A We expected that on Monday morning,
17 we would have a meeting at eleven o'clock in the District of
18 Columbia with Starvin, who is the officer in charge of
19 contracting, with a letter saying the building permits would
20 be issued.

21 Q Now, was that letter forthcoming?

[Pg. 48]

1 A

No.

2 Q

3 Would you tell the Court, please,
4 what occurred.

5 A

6 To my best recollection, on -- there
7 was some telephone conversations on Sunday, and I
8 think I spoke to Mr. Foster on Monday morning, and he told
9 me that he couldn't write a letter like that, and I said
10 that without the letter, there wouldn't be any use of having
11 a meeting with the people in the District, and after I talked
12 to our attorney, he said, "Well, a meeting would be of
13 some value -- or it would be of some value if we could get
14 it to just to say that the permits would be issued, but
15 not on a specific date, and I called Mr. Foster back and he
16 said he was busy and didn't have a chance to complete the
17 letter that day.

18 Q

19 Did Mr. Foster advise you as to why
20 he and Mr. John Harris had changed their position in
21 regard to the letter?

A

Not in the conversations that I
had with him.

Q

Have you -- let me ask you, has it

Testimony of Henry Valentino

[Pg. 56]

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Q

And, did there come a time when you had occasion to have a conversation with a representative of King George County's Government concerning that letter?

A

Yes.

Q

Would you tell the Court, please, when that conversation occurred, and who it was with.

A

It was on a Sunday evening. I believe it was November 12th, it was November 12th, and I spoke, by phone, with Mr. Harris.

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[Pg. 57]

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Q

You asked for Mr. John Harris?

A

Yes.

Q

And, did someone take the phone who identified themselves as Mr. John Harris?

A

Yes.

Q

And, then what conversation did you then have with Mr. John Harris?

[B. 58]

1 A I told him that I had just become
2 aware of the fact that they were not going to issue a letter,
3 that I was under the impression they were going to
4 issue, concerning the permits for the facility in King
5 George County, building permits, and that I wanted to get the
6 information directly from him as to their reason for chang-
7 ing their mind about issuing a permit. He told me he couldn't
8 give me the exact reason, but that apparently there had been
9 a meeting of the Board of Supervisors, and they had discussed
10 this matter, and had issued instructions not to issue this
11 letter, and I said, "But we were under the impression
12 this was all agreed to on Friday, and there were no
13 problems, and this had been cleared by everyone," and he
14 stated something to the effect that it is out of my hands, this
15 was a political decision, and I said, "But we were told
16 this was strictly an administrative matter," and he
17 said he was sorry, that that was about the extent of what
18 they could do.
19

MR. NAGEOTTE: All right, sir.

TRIAL TRANSCRIPT OF MARCH 12, 1979

Testimony of Fred H. Coddington

[P. 73]

2 Q Mr. Coddington, did you have conversa-
3 tion with Mr. Harris in which you discussed the writing of
4 this letter to the District of Columbia?

5 A Yes, I did.

6 Q And, did he agree to write the
7 letter?

8 A Yes, he did. We discussed the con-
9 tents of the letter. There were three items in the letter
10 that we discussed. There was one contingency that Mr.
11 Harris requested be included in the letter, which was,
12 in essence, that the building -- King George County had no
13 zoning ordinance -- that the building permits had been
14 provided for in King George County, and they would be issued
15 by the close of business November 15th, the following
16 Wednesday. The condition that Mr. Harris wanted to include
17 in the letter, was that we also submitted a soil erosion
18 plan, which he wanted to include as a contingency in the
19 permits that were issued; that the soil erosion plan had
20 been submitted in tri-county, here in Fredericksburg, for
21 review, that an approval was expected in fourteen days.

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Q Was this the Friday -- was this as a result of the Friday meeting of Mr. Picardat?

A To my knowledge, my conversation with Mr. Harris on the Sunday, resulted from a meeting, which I assumed Mr. Harris had with Mr. Picardat, and Mr. Foster, I understand, was at that meeting on Friday.

Q What was the date of that Sunday?

A November 12th.

Q Then, what would the date of that Friday have been?

A November 9th, 10th.

Q Did you subsequent to that conversation with Mr. Harris, have a conversation with Mr. Harris or Mr. Foster which changed all of this?

A I had at least two conversations with John Harris that Sunday. The last conversation that I had with him was in connection with the letter itself. There had been, according to Mr. Harris, a meeting at the Homestead where two of the supervisors did meet at 2:00 a.m. in the morning.

* * *

Testimony of James B. Howard

[Pg. 82]

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Q

Now, Mr. Howard, on November 1st, 1978, were you aware of the existence of the Freedom of -- Virginia Freedom of Information Act, known as Section 2.1-340, Code of Virginia(1950), as amended?

A

Yes, sir.

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[Pg. 86]

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Q

Did there come a time that you attended, as a member of the King George County Board of Supervisors, a meeting of that body on the 9th day of November, 1978?

A

Yes, sir.

Q

And, what was the purpose of that meeting?

A

As I understand it, the representatives of Dano requested to come before the Board to present their plans for developing or bringing an industry into the County.

Q

And, did they do so at that meeting?

A

Yes, sir.

Q

And, upon conclusion of their public announcement that they intended to locate in King George County, did the Board of Supervisors go into executive session?

g.87]

1 A Yes, sir.

2 Q Would you tell the Court, please,

3 who was present in that executive session?

4 A Yes, sir, the three board members,

5 John Harris, and William Harris.

6 Q Would you tell the Court, please,

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g.90]

21 A The purpose of the executive session
was to consult with legal counsel regarding any actions of

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g.91]

1 the Board of Supervisors. I just don't recall any specific

2 things about Dano or -- but it was an executive session for

3 legal counsel for the Board of Supervisors.

4 Q Well, I understand what the minutes

5 say it was, Mr. Howard. Let's talk about what it really was,

6 A That is what it really was.

7 Q It really was that?

8 A Yes, sir.

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[Pg. 92]

1 THE COURT: Well, of course, one
2 of the purposes of this section here is to
3 ascertain whether or not any items other than
4 legal advice were discussed in executive session,
5 so I don't see how the complainants can ascertain
6 that without asking what did take place. If
7 legal advice were given, of course, that is, but
8 he now is asking what else was talked about,
9 and I don't know any other way he can ascertain
10 it. I don't know the answer to the question.
11 The question generally was: What else did you
12 talk about in executive session other than legal
13 advice from Mr. Harris, William Harris, or John
14 Harris, if you know, if you recall?

15 THE WITNESS: That was the purpose
16 of the meeting, of the executive session, and that
17 is what it was. The Board did not know what
18 its responsibilities were, and we wanted legal
19 counsel, and we received legal counsel.

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[Pg. 93]

1 BY MR. NAGEOTTE: (continuing)

2 Q All right, what types of responsi-
3 bilities was the Board concerned about?

4 A Well, we didn't know if the Board
5 had to act on the Board now as opposed to Administrative --
6 if the Board -- if there were policy decisions that the
7 Board had to make, the Board itself, regarding -- there
8 had been discussions about whether this was a sewage
9 treatment plant, whether it was sludge or exactly what it was.
10 We did not know if the Board had any responsibility of a
11 policy nature. We were advised that we had none.

12 Q All right, so you questioned
13 some people about whether or not you had any policy making
14 requirements for this industrial location, is that
15 correct?

16 A If there were any decisions or
17 any -- I don't know if policy is a correct word, but
18 if the Board had to do anything, or had to act on anything,

19 Q And, you didn't spend any time at all
20 discussing the industry itself, is that correct?

21 A Well, sir, I tell you I don't recall
exactly.

(Pg 94)

1 Well, you just told the Court that
2 you discussed whether or not it was a sludge facility or
3 some other type of facility, isn't that right?

4 No, sir, I did not.

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[Pg. 95]

1 BY MR. NAGEOTTE: (continuing)

2 All right, now, Mr. Howard, would
3 you tell the Court, please, how you perceive trying to figure
4 out what type of industry this is as having anything at all
5 to do with receiving legal counsel of any sort.

6 A Well, as I said, all we wanted to
7 do was to find out if the Board had any responsibilities
8 with regard to -- well, any matters at all. We knew from
9 a legal standpoint --

10 Q Well, you just said that you needed
11 to inquire as to whether or not it was a sludge plant or some
12 other kind of plant, right?

13 A No, sir, what I said was that we
14 had, you know -- leading up to this meeting, there had been
15 stories in the paper, there had been various information
16 that perhaps these sludge permits, or whatever, was necessary,
17 that the County itself may have to act on some of these, and
18 what we did not know was the role that the County played,
19 or that the government played in with the State, with the
20 other agencies. We did not know, and we needed to have that
21 information.

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[Pg. 96]

1 Q So, you didn't know that maybe there
2 might be some permits that would be required, and things
3 like that, is that correct?

4 A Yes, sir, we didn't know.

5 Q And, did you ask about whether there
6 were permits required for this, and that -- did you ask
7 Mr. William Harris what type of operation this was, what
8 kind of permits it required?

9 A I don't recall asking him, sir.

10 Q Do you recall anyone else asking
11 him?

12 A Not specifically. I don't recall
13 a specific question as to what it was.

14 Q Well, apparently this was of some

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[Pg. 97]

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back: "Q Well, apparently this was of
some concern because you had a terrible time
remembering this, and you remembered this one
specific area, right, so let's explore that.
How do you remember that that was one of the
specific areas that you discussed in executive
session?"

A The only thing -- what I said was
that we needed to know from the Board whether or not the
Board had to act on any of these things, or how it inter-
acted with the State Agencies, or any other permit. We
did not know from a legal standpoint whether the Board had
anything to do, so what we merely went into executive
session for was to find out the role of the Board of
Supervisors from a legal standpoint.

* * *

[Pg. 98]

4 Q You say that Mr. William Harris was
5 in this executive session, is that right?

6 A Yes, sir.

7 Q And, you were aware at this execu-
8 tive session that he had prior experience with this situa-
9 tion at Stafford County, isn't that correct?

10 A Yes, sir.

11 Q Now, let me ask you, why, if you
12 were only discussing permits or the Board of Supervisors'
13 responsibilities in this, why was it necessary to have Mr.
14 Harris in the executive session, why couldn't Mr. John
15 Harris adequately advise you? He was there, wasn't he?

16 A Yes, sir.

17 Q Did he advise you?

18 A Yes, sir.

19 Q All right, why did you need Mr.
20 William Harris in there to advise you?

21 A I don't know, sir.

[Pg. 99]

1 Q Well, did anyone tell you who
2 invited Mr. William Harris into executive session?

3 A I don't know.

4 Q You don't know?

5 A No, sir.

6 Q Well, didn't -- I believe you just
7 testified that he never had been in executive session with

[Pg. 99]

8 the King George Board of Supervisors before, to your
9 knowledge, isn't that correct?

10 A That is correct.

11 Q Well, didn't you say to somebody,
12 "What is this man doing in our executive session?"

13 A No, sir, I didn't.
14

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[Pg. 102]

1 A The only thing I was interested in
2 was the role of the Board of Supervisors in the permitting
3 process, the interrelationship of these things, and
4 I needed to know from a legal standpoint.

5 Q That is the only thing you were
6 interested in, is that correct?

7 A Yes.

8 Q What were the other Board members,
9 Mr. Haden and Mr. Saft, what were they interested in?

10 A The same thing, I assume.

11 Q Now, what did they express in the
12 meeting that they were interested in?

13 A That they wanted to know what the
14 role of the County was. That was the purpose of our going
15 into executive session.

16 Q Why did you have to go into execu-
17 tive session to determine what the role of the County was?

[Pg. 102]

18

A We determined that it was -- that we should go into executive session for legal counsel.

19

20

21

Q I understand why you did it, sir, but why was it necessary to go into executive session for

[Pg. 103]

1

legal counsel, just to find out what your role was?

2

Couldn't you ask your counsel right out in front of the public what your role was?

3

4

A I suppose we could have.

5

Q Why didn't you?

6

A Well, sir, I can't answer that. I

7

don't know. A motion was made to go into executive session

8

for legal counsel. There was a second, there was a vote,

9

I went into executive session for legal counsel, and the

10

purpose of which was to determine what the policy, or what

11

the role of the County was, or for the Board of Supervisors.

12

Q Let me ask you a question, Mr.

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[Pg. 104]

11 Q You questioned about going into
12 executive session in the past? That is you, personally,
13 did question about whether or not the King George Board of
14 Supervisors should have gone into executive session on some
15 occasions in the past, isn't that correct?

16 A Well, when the motion was made for
17 a specific purpose to go into executive session, we wanted
18 to make sure that we were going into executive session for
19 the right reason, that we were not going in there for another
20 reason, that it was one that was permitted, and there
21 were discussions as to what was the reason for going into
executive session, that type of thing.



[Pg. 110]

7 Q Did you receive any telephone calls
8 from either of those two gentlemen while they were at the
9 Homestead?

10 A No, sir.

11 Q Did you receive any telephone calls
12 from Mr. Foster at any time these two gentlemen were at the
13 Homestead?

14 A No, sir, I don't believe so.

15 Q You don't believe so, or you don't know,
16 or you did, or you didn't?

[Pg 110]

17

A

I don't think I did.

18

Q

You don't think you did?

19

A

No, sir.

20

Q

Did you receive any phone calls from Mr. Harris during the period of time that Mr. Saft and Mr. Hayden were at the Homestead?

21

[Pg 111]

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A

No, sir, not that I can recall.

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[Pg 112]

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Q

When did you next hear from either Mr. Hayden or Mr. Saft, or Mr. Foster, or Mr. Harris concerning this letter?

10

11

12

A

I called Steve's office on Monday, and asked him if he was going to go, or had gone, and he said no.

13

14

15

Q

Did he tell you why?

[Pg 112]

16

A

Well, he said that he had decided

17

not to write a letter, or that it had been decided.

18

Q

It had been decided?

19

A

Yes, sir.

20

Q

It had been decided by who?

21

A

I don't know, sir. He told me that

[Pg 113]

1

he was not going to write a letter, and that the Dano officials had called it off. Without the letter, there was no reason for the meeting.

2

3

4

Q

Did he tell you that he had also

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[Pg 119]

1

Q

Well, now, let me ask you a

2

question, Mr. Howard: Are you aware that the Virginia

3

Freedom of Information Act requires you to set out specifically

4

the reason why you are going into executive session?

5

A

I was under the impression that,

6

for legal counsel was reason enough.

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9134

11 Q I will call your attention to:
12 on or about the 20th day of November, 1978, did you and the
13 other members of the King George County Board of Supervisors
14 meet in Richmond, Virginia?

15 A Yes, sir.

16 Q Would you tell the Court when
17 that meeting occurred?

18 A Yes, sir. When?

19 Q Yes, sir. Yes.

20 A As to time of day, or -- at 11:00 a.m.

21 Q Date, sir.

9135

1 A Didn't you just say the 20th?

2 Q I said on or about the 20th.

3 A I don't have any notes on my
4 calendar pad about that, it could have been on the 20th.

5 Q And, you met in Richmond, isn't
6 that right?

7 A We did meet in Richmond, yes, sir.

8 Q Were any minutes kept to that
9 meeting?

10 A Not to my knowledge.

11 Q Was any notice given to that meeting
12 to the public?

g.135

13 A Not that I know of, sir, other than --

14 Q Now, --

15
16 THE COURT: Other than what?

17 THE WITNESS: I was thinking that
18 we had advised, in a meeting, that we were
19 trying to set up a meeting with the Attorney
20 General's office in Richmond, and that informa-
21 tion, I don't know if it was in the papers or
if it was in our minutes.

g.136

1 BY MR. NAGEOTTE: (continuing)

2 Q As a matter of fact, whether there
3 was some mention about the fact in your minutes that you
4 were trying to set up such a meeting, and there was some
5 mention in the newspaper that you were trying to set up some
6 meeting, there was no actual notice to the public that a
7 meeting had been set up, was there, and the time and place
8 that the people could attend, was there?

9 A Not to my knowledge.

10 Q Who was in attendance at that
11 meeting?

12 A From the County?

13 Q Yes.

Pg. 136]

14 A Three Board members, Mr. Foster, and
15 Mr. Harris.

16 Q Would you name the Board members?

17 A Mr. Hayden, Mr. Saft, and myself.

18 Q Mr. Harris, and Mr. Foster were also
19 there, is that correct?

20 A Yes, sir.

21 Q And, who else was at that meeting?

g. 137]
1 A I don't know all their names. I
2 know Assistant Attorney General Vance, that is the only one
3 I can recall the name of them.

4 Q Well, identify them by other than
5 name.

6 A Well, there were a number of attorneys
7 in presence. Like I say, they may have been from the
8 Health Department, may have been from the -- I just don't
9 remember. There were, like I say, four or five or six dif-
10 ferent people representing different agencies of the State.

11 Q Were many of these non-attorneys?

12 A Many?

13 Q Yes.

14 A Maybe one or two.

15 Q Tell the Court who the non-attorneys
16 were who were present.

pg. 136]

14 A Three Board members, Mr. Foster, and
15 Mr. Harris.

16 Q Would you name the Board members?

17 A Mr. Hayden, Mr. Saft, and myself.

18 Q Mr. Harris, and Mr. Foster were also
19 there, is that correct?

20 A Yes, sir.

21 Q And, who else was at that meeting?

pg. 137]
1 A I don't know all their names. I
2 know Assistant Attorney General Vance, that is the only one
3 I can recall the name of them.

4 Q Well, identify them by other than
5 name.

6 A Well, there were a number of attorneys
7 in presence. Like I say, they may have been from the
8 Health Department, may have been from the -- I just don't
9 remember. There were, like I say, four or five or six dif-
10 ferent people representing different agencies of the State.

11 Q Were many of these non-attorneys?

12 A Many?

13 Q Yes.

14 A Maybe one or two.

15 Q Tell the Court who the non-attorneys
16 were who were present.

[Pg. 137]

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A
Q

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Q

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Q

A
Q

A

I don't know.
But, there were some non-attorneys
there, right?
Yes, sir.
What was the purpose of this meeting?
What we were interested in here was
trying to find out again the role of the County meshing with
the State Agencies in this process.
What did you tell the people from
the State, and what did the people from the State
tell you that your role was in meshing this process?
They told us that we didn't have
a role in it.
And, who did they tell you did have
a role in it?
They did.
The State people had the role in it,
is that right?
Yes, sir.

[Pg. 138]

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[Pg. 140]

15 Q Calling your attention, Mr. Howard,
16 to the meeting of the 4th day of January, 1979, were you
17 present at that meeting?

18 A Yes, sir.

19 Q At that meeting, did you pass a
20 resolution concerning -- I'm sorry, did you go into executive
21 session at that meeting?

Pg 141

1 A Yes, sir, I believe so.

2 Q At that meeting, Mr. Saft again
3 made the motion for executive session and seconded by you,
4 is that correct, and you went into executive session?

5 A Yes, sir.

6 Q All right, now, immediately following
7 that executive session, you passed two resolutions, is
8 that correct? One is a resolution on a Post Office matter,
9 and the other is a resolution on an opposing Dano, opposing
10 this industry, is that correct?

11 A That is correct.

12 Q Now, were these resolutions already
13 prepared before that executive session?

14 A Yes, sir, I believe they were.

15 Q And, did you look at one -- did you
16 look at both of them in executive session?

17 A I tell you the honest truth, I don't
18 remember.

19 Q Do you remember anyone else --
20 I'm sorry, you were going to say something?

21 A I say we may have, but I don't recall
whether both or one.

[Pg. 142]

1 Q Pardon?

2 A I don't recall.

3 Q But, you may have looked at one
4 or both of those in executive session, those resolutions,
5 is that right?

6 A Yes, sir.

7 Q And, what discussion did you have
8 concerning those two resolutions in executive session?

9 A I don't recall discussing at all
10 the resolutions on the Post Office, the location. I believe
11 we discussed this resolution regarding the Southern Marine
12 and Salvage Company.

13 Q You did discuss that resolution
14 in executive session, is that correct?

15 A Yes, sir.

16 Q Now, would you tell the Court, please,
17 why you discussed that resolution in executive session?

18 A Well, sir, here again we were looking
19 at trying to get legal counsel regarding -- I'm trying to
20 think exactly how this was discussed. I don't recall
21 exactly why, sir.

Pg. 143

1 Q Why did you come out of executive
2 session and say nothing was concluded in executive session
3 if you proceeded to pass that resolution and then tell the
4 Court, if you would, please, why you interspersed that
5 Post Office resolution between the executive session and
6 the Dano Resolution?

7 A Well, sir, I can't answer that,
8 but I think that particular resolution was proposed by Mr.
9 Saft. Like I say, I don't recall that being discussed at
10 that executive session, but now whether -- the sequence
11 may have just had it to propose as a resolution.

12 Q All right, is the answer to that
13 question, then, in the short of it, that you don't know why
14 you came out of the executive session and didn't mention the
15 fact that you had discussed that resolution in the executive
16 session and you were going to pass that resolution in open
17 session, then, and you interspersed a Post Office motion in
18 between that, and the anti-Dano resolution? Is the answer
19 you don't know how or why that occurred?

20 A Yes, sir, I don't know the sequence.
21 I don't know why that came before the other one, or one way

2g.144
1 or the other. I know that when we come out of an executive
2 session, we don't take an action into executive session,
3 we merely hold discussions in the executive session, and if
4 a Board member then has a resolution to pass or whatever,
5 then you proceed right into the business.

6 Q Is it your testimony, then, that

TRIAL TRANSCRIPT OF MARCH 19, 1979

Testimony of James B. Howard

[Pg. 23]

19 Q Mr. Howard, did you discuss
20 anything in this executive session concerning the resolu-
21 tion passed by the Board of Supervisors, beyond the mere

[Pg. 24]

1 legal matters? In other words, did you discuss the
2 practical effect, if any, of that resolution?

3 A Practical effect?

4 Q Yes, sir. Anything concerning who

5 was it in that session?

6 THE COURT: Other than the legal
7 effect.

8 A Yes, sir. Your Honor, I fail
9 to see the relevancy of this line of questioning.

10 No, sir, that is all we were interested
11 in. in.

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[Pg. 25]

14 Q All right, now, Mr. Howard, calling
15 your attention to the meeting of January the 8th, 1979,
16 in which you, I believe there was action taken to revoke
17 some building permits, is that correct?

18 A January the 8th?

19 Q Yes, sir. Complainant's Number Four.

20 A 18th?

21 Q I'm sorry, the 18th. Did I say the

8th?

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1 A Yes, sir.

2 Q All right, January 18th.

3 A Yes, sir.

4 Q All right, now, was that action

5 and revocation of the building permits, was that done in

6 executive session?

7 A No, sir.

8 Q What was discussed in that

9 executive session?

10 A Mr. Harris gave us some legal

11 advice on this matter in the executive session.

12 Q On revoking the building permits,

13 is that correct?

14 A Actually, what he did was advise

15 us that in the investigations that he had made, it appeared

16 that there was an inconsistency, and he gave us his opinion

17 in an executive session for legal counsel.

18 Q And, this concerned itself with the

19 upcoming matter of revoking the permits, is that correct?

20 A Well, we went into executive session

21 to hear, you know, the advice of counsel. Now, it had

to do with his review of the permits, not the permits.

[Pg. 27]

1 the -- I can't recall. I can't think of the word right
2 now, sir.

3 Q Soil Erosion Control Board Ordinance?

4 A The plans, I'm sorry.

5 Q The plans?

6 A Yeah, that is what I was trying to
7 think of.

8 Q You went into executive session and
9 Mr. Harris told you about his investigations, and all
10 that, is that correct, and then you came out of executive
11 session?

12 A We didn't go in to discuss the plans,
13 we went in to get the advice of counsel.

14 MR. HARRIS: Objection, Your Honor.
15 I think we are, again, getting around to the
16 point that they were talking about privileged
17 information. Now, he has given him enough to
18 know that it was advice of counsel, and legal
19 information was sought.
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21 THE COURT: He hasn't completed his
question, let him finish.

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back: "Q But all the advice of counsel was

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to -- so Mr. Harris could tell you about his

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investigation and suggest what you could do about

18

revoking these permits, isn't that correct?"

19

A Yes, sir.

[Pg. 30]

10 Q All right, now, refer to the
11 minutes of that meeting, please, when you came out of
12 executive session.

13 A Yes, sir.

14 Q And, read to the Court what that
15 phrase is upon coming out of executive session.

16 A "On a motion by Mr. Saft, seconded
17 by Mr. Howard, and carried unanimously, the Board carried
18 that the Board had gone into executive session for legal
19 counsel, and no action had been taken, or decisions made."

20 Q And, then what next occurred after
21 that?

1 A Do you want me to read it?

2 Q Yes, sir.

3 A "John P. Harris, III, Commonwealth's
4 Attorney, advised the Board that he had conducted an
5 investigation into the applications of Southern Marine
6 & Salvage (Dano project) and had found that discrepancies
7 existed. The permit application as submitted to the
8 Virginia Marine Resources lacked a page denoting a "spoils
9 area" which was provided in the report submitted to the
10 Army Corps of Engineers, and no mention was made of an
11 earthen dam or "spoils area" in the county's erosion and
12 sediment control application. Mr. Harris stated this leads

[Pg. 31]

Pg 31

13 him to the conclusion that the major land-disturbing activ-
14 ities had been left out of the county's application and that
15 the Board of Supervisors has the authority to revoke the
16 building permit issued to Southern Marine and Salvage."

17 Q All right. Now, was there anything
18 different about that advice Mr. Harris gave you?
19

20 MR. HARRIS: Objection, Your Honor.
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16 THE COURT: The question was when
17 you came back out of executive session, and I
18 think that the Commonwealth's Attorney made the statement
19 whether he did, or Mr. Hayden made the statement he
20 did, did that coincide with what occurred in the
21 thing he said executive session or not? that he said at public

[Pg 36]

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THE WITNESS: Yes, sir, no actions
had been taken or decisions made in ~~open~~ that
executive session.

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[Pg 36]

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The question was what in Mr. Harris' relation to you in open session, so the public could hear it, about this discrepancy that he claimed constituted some discrepancy in a plan, which would therefore somehow make the building permits bad, or something? Did he give you any different advice or any different, make any different statement to you than that in executive session?

A

I can't recall everything that he said in the executive session, but I think basically -- I think that is basically what he said, but I really can't remember everything in the session.

Q

If that is basically the same thing he said in executive session, what he said at public session, why did you go into executive session?

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1 A For the advice of counsel.

2 Q Is it your testimony, then, that
3 you went into executive session to hear what it was before
4 you came out in public and then announced it publically?

5 A Well, I didn't know what was going
6 to be announced, what was going to be discussed, other
7 than we were going into executive session for the advice
8 of counsel regarding this matter.

9 Q All right, now, was this matter on
10 the agenda of the Board of Supervisors?

11 A No, sir.

12 Q Was any notice of this given to
13 Southern Marine and Salvage, any notice of this meeting, or
14 any notice of the action that you took or proposed taking?

15 A No, sir.

16 Q If my understanding is correct, then,
17 you just -- Mr. Harris brought this up, you went into execu-
18 tive session, he said the same thing as he said in public session,
19 session, and you proceeded, without any notice at all to
20 Southern Marine and Salvage, to revoke their building permits,
21 is that correct? No opportunity for them to explain anything
to you.

[Pg. 38]

1 A You have two questions there, did
2 you want me to answer the first one?

3 Q Answer them both, please. If you
4 recollect there are two questions, you can certainly give
5 me two answers.

6 A Well, like I say, sir, the
7 only thing that we went into executive session was for the
8 advice of counsel. We received the advice of counsel, we
9 came out, we looked -- I personally asked for some of the
10 documents... Others in attendance, I think, looked at some
11 of the documents. We asked some questions, we passed --
12 revoked the permits.

TRIAL TRANSCRIPT OF MARCH 19, 1979

Testimony of Steven T. Foster

1 A Yes, sir, they did.

2 Q And, was Mr. William Harris, the
3 County Attorney from Stafford County, in that executive
4 session?

5 A As I recall, Mr. Harris was called
6 into executive session at some point during the session. He
7 was not in the session from the beginning, but was called
8 in at some point when the session was in progress.

9 Q And, do you know why Mr. Harris,
10 Mr. William Harris, was at that meeting?

11 A For the purposes of the executive
12 session was for legal counsel.

13 Q Did Mr. Harris, during that
14 executive session, tell you anything at all about a plan
15 that he had worked out for charging this industry so much
16 a ton to locate in the County?

17 A That is privileged information.

18
19 MR. NAGEOTTE: Your Honor, I would
20 like the witness to be instructed to answer the
21 question, it is not privileged information.

1 THE COURT: Well, what was his --
2 what was he doing in the room, in the executive
3 session? Was he giving advice, or was the Dano
4 matter being discussed nonlegally?

5 THE WITNESS: He was giving legal
6 advice, Your Honor.

7 THE COURT: What was the necessity
8 of the advice? Your first response didn't
9 indicate that it was a legal advice.

10 THE WITNESS: Let me clarify,
11 Your Honor, that executive session was called
12 for the purpose of the Board obtaining legal
13 advice, and, if I recall, the basic question
14 was that there was some question as to exactly
15 what the position of the County would be as far
16 as the review process and this sort of thing, and
17 I believe Mr. Harris was called in because he
18 is well versed in municipal law, and could
19 provide some insight to the Board on that partic-
20 ular matter.

21 THE COURT: Are you saying, under

1 oath, that you asked him questions concerning
2 the legality of the process, and nothing further?

3 THE WITNESS: It was dealing with
4 the legal implications of the process, and the
5 plants location in the County.

6 THE COURT: You understand that
7 you can't, unless you come within one of
8 the exemptions, you can't -- unless it is within
9 one of the exemptions, it is not privileged.
10 Now, what is your original question to him?

11 MR. NAGEOTTE: My original question,
12 Your Honor, and he objected answering the
13 question under grounds it was privileged infor-
14 mation as to whether or not Mr. Harris explained
15 to the Board, in executive session, on November
16 9th, 1978, Mr. William Harris' plan to obtain
17 a payment of so much per ton from this industry.

18 THE COURT: I don't think that is
19 legal. You will have to answer that, that is
20 not legal advice, if that is -- if you, in fact,
21 recall his response to that.

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MR. HARRIS: Your Honor, might

I be heard?

THE COURT: Yes, sir.

MR. HARRIS: It might well be --

MR. NAGEOTTE: I think he can be heard, Your Honor, after he makes an objection. I don't think he has made an objection.

THE COURT: Do you object?

MR. HARRIS: Yes, sir, I object to the rule of the Court. It might well be that what we are talking about here is what kind of contractual arrangement could be worked out for the payment of a sum to the County, or the nonpayment, the advantage, disadvantage, implications, etc., which clearly would be legal advice, and I don't think it is possible, really, to do -- to talk about legal matters in an abstract form where the only thing that you talk about is exactly what the statute says, rather than applying it to the facts at hand.

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1 THE COURT: Can you recall enough
2 about what took place in that meeting to respond
3 to Mr. Nageotte's question about the sale of
4 so much a ton of the sludge, or whatever it
5 was?

6 THE WITNESS: Your Honor, I recall
7 discussing that with Mr. William Harris, but I
8 do not recall if it was in that executive session
9 or not.

10 THE COURT: Well, I don't think if
11 that particular point was discussed in executive
12 session, I don't think that was privileged, unless
13 it was in some purely legal -- within context
14 of legal advice, So much a ton that the
15 County might expect to gain from the sale or
16 purchase, would not be legal advice.

17
18 BY MR. NAGEOTTE: (continuing)

19 Q All right, now, Mr. Foster, in
20 addition to this information about how a tax or payment
21 could be extracted from this industry, what other information

[Pg 99]
1 has Mr. William Harris given you in this executive session
2 concerning his experience in Stafford with this plant?

3 A I don't recall any specific advice
4 that Mr. William Harris gave in our executive session.
5 We had so many meetings and executive sessions.

6 Q All right, now, I want you to tell
7 me what you discussed in that executive session about the
8 plant or the process itself.

9
10 THE COURT: What specific session
11 are you referring to, what date?

12 MR. NAGBOTTE: The executive session
13 on November 9th, 1978.

14 Q I want you to tell me what discussions
15 you had in the executive session concerning the Dano plant,
16 or the Dano process.

17 A It is really difficult for me to
18 describe any specifics that were discussed at that
19 meeting.

20 Q Did you discuss those items?

21 A Which items?

1 Q The plant and the process, those
2 items, among others.

3 A I don't recall the plant and process
4 being discussed that day.

5 Q Did you discuss the location in
6 the County of the -- did you discuss where it was to be
7 located?

8 A I don't recall in specific. Perhaps
9 it was discussed in the session where it was located, that
10 is common knowledge. It has been discussed in a public
11 meeting before that.

12 Q And, that was discussed in executive
13 session as well, right?

14 A I don't recall if it was discussed
15 in specific.

16 Q How long did that executive session
17 last?

18 A I don't recall.

19 Q About two hours?

20 A I don't believe it was that long.

21 Q More than an hour?

[Pg 101]

1 A I would say no more than an hour.
2 Q All right, now, how long have you

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[Pg 102]

1 seconded by Mr. Howard, and carried unanimously, the Board
2 went into executive session for legal counsel. On a motion
3 by Mr. Howard, seconded by Mr. Saft, and carried unanimously,
4 the Board returned to public session. Mr. Hayden stated
5 for the Record that the Board had discussed legal matters
6 and no decisions had been reached." Was that a common
7 entry in the minute books?

8 A It sounds familiar.

9 Q Is that how you go in and/or went
10 into and out of executive session in King George County
11 routinely?

12 A I'm not sure I understand what your
13 question is.

14 Q Well, is that the way you always
15 went in and out of executive session?

16 A By motions, is that what you mean?

17 Q Yes.

18 A Yes, sir.

19 Q And, it never said more than to
20 receive legal counsel, right?

21 A No, sir, there were other reasons the
Board went into executive session.

[P. 103]

1 Q Personnel, right?

2 A Yes, sir.

3 Q Did it ever say personnel, or
4 legal opinion, or was it always vague and general, wasn't it?

5 A It was as specific as the statute
6 requires it to be.

7 Q Well, the Judge will operate

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TRIAL TRANSCRIPT OF MARCH 23, 1979

Testimony of Steven T. Foster

[P. 13]

16 Q All right, now, calling your
17 attention to a meeting on Friday, November the 10th, 1978,
18 do you recall attending a meeting on that date with Mr.
19 John Harris, yourself, and a Mr. Picardat?

20 A What type of meeting would this have
21 been?

P. 14

1 Q Well, I believe this was a meeting
2 held in your office. Now, were there any other people
3 there? A I can't remember the exact dates.
4 I know there was a meeting scheduled of the Virginia
5 Association of Counties that I decided not to go to
6 because I had spoken with Mr. Picardat earlier on during the
7 week, and he and I had agreed to meet -- I believe it was a
8 holiday -- to discuss and clarify some of the permits
9 procedures that was required as I was the County Soil Erosion
10 Agent, and it could very well have been that Friday that
11 we met in my office. Now, was Mr. John Harris also in atten-
12 dance?
13

P. 14

14 A Yes, he was.
15 Q All right, now, did you and Mr.
16 Harris, at that meeting, with Mr. Picardat, agree to write
17 any letter to him or to the District of Columbia Government?
18 A All that was discussed, as I recall,
19 this has been about four months ago, so I might have to take
20 me a while to recall the exact details -- the entire dis-
21 cussion took place that day, and this was a four persons

[P. 15]

1 there. There was a young lady that came with Mr. Picardat,
2 I don't recall what her name was, but there were four people
3 there. The discussion was in light of communications that
4 we were planning to have with the District of Columbia.
5 There was some question by Mr. Picardat and other people
6 with Dano, as to their contract with the District of
7 Columbia, and there was some misunderstanding with the
8 contract, and our review procedure had underestimated the
9 time element involved, that it would take, and so I had
10 agreed to forego this important trip with the Virginia
11 Association of Counties to stay and go first thing Monday
12 morning with Mr. Picardat to Washington. Mr. Picardat and
13 Mr. Harris, and I discussed this, and he was going to call
14 up, I believe it was a Colonel Starbin, who was Director
15 of General Services for Washington, D. C., and arrange a
16 meeting. Now, prior to that meeting, I believe there

[P. 15]

17 had been some discussion about sending a letter to Washington,
18 but as I recall, and I recall quite clearly, when we left
19 our meeting on that -- if it wasn't Friday, it was Saturday,
20 I forget which day it was -- the consensus was that Mr.
21 Picardat would call me at home that weekend -- this is why

P. 16

1 I had stayed, and he would let me know for sure what time
2 the meeting would be on Monday morning. When we left our
3 meeting that day, the conclusion was the letter was not
4 necessary, that a visit was being made that very next
5 Monday, and therefore, it would have served no purpose in
6 the letter. In fact, it was Mr. Picardat, as I recall, who
7 we offered to write a letter, stated that the letter really
8 wouldn't do that much, that it would take a visit to
9 Washington.

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P. 20

17 BY MR. NAGEOTTE: (continuing)

18 Q Now, Mr. Foster, from the time of
19 the Friday meeting with Mr. Picardat, and Mr. John Harris,
20 did you have occasion to discuss the details of that meeting
21 on that Friday with any or all of the members of the Board
of Supervisors of King George County?

P. 21]

1 A I believe, if in fact the meeting
2 was held on Friday, I think that probably was the day it
3 was held. I had arranged to go to the Homestead to the annual
4 meeting of General Association of Counties with Mr. Saft
5 and Mr. Hayden, and I had agreed to drive to that meeting.
6 So, I'm sure and certain that at some point after my
7 meeting with Mr. Picardat, at which time I agreed it would
8 be in the best interest of everyone concerned that I
9 remain in King George and did not go to that meeting. I
10 ~~did~~ did discuss with Mr. Saft and probably Mr. Hayden the fact
11 that I had had a meeting that day with Mr. Picardat and
12 explained to them my reasons for cancelling my trip, partic-
13 ularly because they would have to provide their own trans-
14 portation. So, yes, I'm certain I probably did discuss the
15 meeting with Mr. Saft and Mr. Hayden. I believe I talked
16 with them on a Saturday, I believe is when it was.

17 Q All right, now, isn't it a fact
18 that both Mr. Hayden and Mr. Saft came by your office
19 together before they left for the Homestead and this
20 meeting?

21 A Yes, sir, Mr. Hayden lives right

- P. 22]

1 behind the Courthouse, and I believe they had agreed to meet
2 at the Courthouse because Mr. Saft, at the last minute, had
3 to make arrangements for transportation because I had
4 generated to him that day that I would not be driving,
5 and so I did meet with them in my office on Sunday morning to
6 go over several things with them before they left for the
7 trip. Primarily some things that I wanted discussed at the
8 Association County meeting, since I would not be there.
9 So, yes, they did meet at my office because they were riding
10 up together to the Homestead.

11 Q And, this, you say, occurred on a
12 Sunday or Saturday?

13 A I believe it was on Sunday morning.

14 Q And, at that time, did you discuss
15 with them the meeting that you had held with Mr. Picardat
16 on Friday, and what had been agreed at that meeting?

17 A I'm certain, probably, in the discus-
18 sion we had that morning that we probably reaffirmed our
19 previous conversations that I was remaining behind, and
20 yes, Mr. Harris and I and Mr. Picardat --
21

P. 23]

Q Sir, my question is -- if you just get to the answer to my question.

A I believe I am answering your question.

THE COURT: You are rambling a little bit, Mr. Foster. Try to be a little more specific.

A I did talk to Mr. Saft and Mr. Hayden that morning about that.

Q All right, sir, now, did you, at

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Q All right, sir, now, did you, at any time after your discussion with Mr. Saft and Mr. Hayden in your office, receive any telephone calls from Mr. Saft and Mr. Hayden concerning this matter?

A Which date are you talking about now?

Q At any time after the Friday meeting, and before the Sunday night incident in which you, or someone advised Mr. Picardat and Mr. Valentino and Mr. Coddington, that the letter would not be forthcoming, and the matter was now a mythical discussion. A No, sir, I received no phone calls.

29.24]

1 Q Did you receive, at any time, any
2 telephone call from Mr. Hayden or from Mr. Saffs from the
3 Homestead? A Mr. Hayden did not instruct me to
4 do anything. About I can recall I did receive one phone call from
5 Mr. Hayden at the Homestead to my home in King George, Illinois.
6 yes, sir; I did. I say his purpose, if he had no instructions

7 Q When did you receive that call?

8 A It was at night, I'd say about, check
9 eleven o'clock at night, and it was either -- I believe it
10 was Monday night of that week, whatever date that was.

29.25]

1 Your Honor. Q Now, what, if anything, did Mr. Hayden that
2 instruct you to do during this telephone conversation? Mr.
3 Harris recall A I can recall Mr. Hayden did not instruct me to
4 do anything that I can recall. That there would not be a

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1 Q All right, now, how would anyone
2 know, if they came to your office to read the minutes of these
3 meetings, what the specifics of what was discussed in execu-
4 tive session, but what at least the general discussion
5 concerned itself with, if they could only see in the minutes
6 legal counsel, or personnel matters?

7 A I'm not sure I understand your ques-
8 tion.

9 Q Well, I believe you testified that
10 it was a standard procedure for the Board of Supervisors of
11 King George County to simply say they were going into execu-
12 tive session for legal counsel or personnel matters, but
13 they didn't say what it was for, what it concerned itself
14 with, isn't that correct?

15 A I had also operated on the
16 assumption of reading the Statute, that this was as specific
17 as it had to be.

18 Q Well, I understand that you testi-
19 fied to that before, Mr. Foster. I'm going onto the next
20 point, and that is even assuming your interpretation of the
21 Statute is correct, which is not for my assumption, it is

P. 35]

1 really the Judge's determination as to what the proper
2 interpretation of the Statute is, not yourself, nor mine,
3 but even assuming that is correct, how could -- the
4 question is: How could someone from the public come into
5 your office, the County Administrator's office, and know
6 even vaguely what in the world was discussed in an
7 executive session if the only reference to them in your
8 minutes was for legal counsel or for personnel matters?

9 A The minutes of the Board of Super-
10 visors are open for public inspection, and they can read
11 what is in the minutes. I don't know how I can better
12 answer your question.

13
14 MR. NAGEOTTE: Well, Your Honor,
15 can I ask the question one more time?

16 THE COURT: Yes.

17 Q My question is, Mr. Foster, and
18 that is exactly my question, how would anyone from the
19 public know even vaguely what was discussed in an executive
20 session if that is all that was listed on the minutes? They
21 wouldn't know if it was legal counsel for what, or personnel
matters for what, would they?

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THE COURT: You are giving him the answer. Just let him answer how the public would know if you feel that that is not sufficient notice. Do you understand the question? In other words, what he wants to know is if all the minutes say that the Board went into executive session to consider personnel matters, he wants to know how the public would know what you were going to talk about in this executive session, if that is all you said on the minutes. Do you have an answer for that? If you don't have, say you don't know.

THE WITNESS: I guess the best answer I can give, Your Honor, is that from the way we would place -- what the Board would approve at the minutes in each meeting, would not give anyone any specific details of what was discussed in executive session, no, sir, that is correct.

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Q

All right, how about a meeting with members of the Virginia State Health Department in Richmond, concerning Dano, on or about the 25th of November, 1978?

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Your Honor, the Board members and myself and Mr. Harris attended a meeting that I had pre-arranged with the Attorney General's office to be scheduled at the Madison Building, in Richmond. I believe the Madison Building, it could have been one of the others. We did attend this meeting with the Attorney General's office, and

P. 63
1 at that meeting, unbeknown to us, until we got there, there
2 were officials from the State Health Department, and I
3 believe, the State Water Control Board were there with the
4 Attorney Generals, the State Attorney Generals, and had
5 been invited at their request. So, yes, I was at such a
6 meeting.

7 Q All right, now, these State Officials
8 were invited to this meeting by representatives of the
9 Attorney General's office, is that correct?

10 A Yes, sir. They were not invited
11 by myself or to my knowledge, any members of the Board of
12 Supervisors, or our counsel.

13 Q All right, now, did the members of
14 the Attorney General's office know that you and your Board
15 members were traveling to Richmond, Virginia to meet with
16 them on this date?

17 A Did members of the Attorney General's
18 office know that?

19 Q Yes.

20 A One or two members did, that I talked

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Q Did you ask any representatives of
the Attorney General to show such interest in this case that
whether or not your Board of Supervisors had complied with
the Virginia Freedom of Information Act before they held this
meeting in Richmond with you, and invited all these other people
to a meeting?

P. 66]

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A

No, sir, I did not.

2

Q

Was the public given any notice of
this meeting?

4

A

Yes, sir, as I recall, the newspaper
reporters were told we would be going to Richmond to meet
with the Attorney General's office.

7

Q

And, that is the extent of it,
right?

8

9

A

There was no public advertisement
with the paper that I recall, because --

10

11

Q

Could I, as a member of the public
who wanted to go and attend that meeting, even know it was
held until after it was held?

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A

I can't answer that question, Your
Honor.

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MR. NAGBOTTE: I believe he can,

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Your Honor. He knows.

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THE COURT: Read it back. I want
to get the exact wording, please.

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NOTE: At this time the Court Reporter reads back the following testimony: "Q Could I, as a member of the public who wanted to go and attend that meeting, even know it was held until after it was held?"

THE COURT: It is a little vague.

MR. NAGEOTTE: Your Honor, I am sorry, I will make it as unvague as I can.

Q In regards to this meeting held with the Attorney General, Mr. Foster, and his staff, and these regulatory agencies in Richmond, in which you and the members of the Board of Supervisors of King George attended, you testified that the only notice given of that meeting, or at least I thought you testified the only notice given of that meeting was you called the newspapers, is that correct?

A I don't believe I said the only notice. As I recall, it was common knowledge. It was no secret that I had arranged this meeting with the Board of Supervisors, that they had requested that such a meeting be arranged in open session. I had called and contacted the

P. 68] 1 Attorney General's office, had scheduled an agreeable time
2 for all parties concerned, and it was common knowledge.
3

4 THE COURT: Was this -- I think you
5 answered the question I'm about to ask -- was
6 any executive session held in Richmond in the
7 Attorney General's office?

8 THE WITNESS: No, sir. It was not
9 a meeting of the Board of Supervisors.
10 I recall specifically that I was very conscious
11 of whenever the Board of Supervisors met, and
12 particularly conscious when you have a three man
13 Board of Supervisors.

14 THE COURT: To answer Mr. Nageotte's
15 question, if he had wanted to come, would he
16 have been barred from it?

17 THE WITNESS: No, sir, not to my
18 knowledge.

19 THE COURT: That is an answer to
20 your question. Let's go onto the next one.
21

69] 1 BY MR. NAGEOTTE: (continuing)

2 Q How would I have known, Mr. Foster,
3 that the meeting was occurring?

4 THE COURT: He has testified that
5 it was put in the newspaper. What other ways --
6 was there any other notices sent about this meeting
7 to anyone in particular?

8 THE WITNESS: No, sir. It was
9 treated like any other meeting we would arrange
10 in Richmond. It was not kept from the public, and
11 there was no attempt to put an add in the paper
12 telling the public we would be going down there.

13
14 BY MR. NAGEOTTE: (continuing)

15 Q Mr. Foster, was anything put in the
16 newspaper saying that on a particular day, at a particular
17 time, there would be a meeting of the King George Board of
18 Supervisors in Richmond, at some particular place?

19 THE WITNESS: Your Honor, can I
20 elaborate on this question?
21

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THE COURT: Yes, you may.

A No notice was put in the newspaper of a specific time and place of this meeting, because at the request of the Board of Supervisors, and the chairman particularly, as always was the case, I would execute with the Commonwealth's Attorney as to when, in fact, we should adjourn meetings when the Board was in session, and when we should adjourn meetings. And, in this case, upon the Commonwealth's Attorney's advice, it had been determined that it would not be a meeting of the Board of Supervisors. The Board was going to get legal advice, and for that reason, at the previous meeting, we did not adjourn the previous meeting until our departure from Richmond. On Mr. Harris' advice, we just went to Richmond to meet with these people.

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Q All right, now, were there any minutes made of that meeting in Richmond?

A No, sir, not that I recall.

Q Were there any records whatsoever made of that meeting in Richmond?

A No, sir, not that I recall.

Q What did you say the date of that

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TRIAL TRANSCRIPT OF MARCH 23, 1979

Testimony of William H. Harris

[Pg. 125]

5 A THE WITNESS: So, if it is a legal
6 matter, you can't just go in and sift everything
7 out, Your Honor, and say, "Well, this is, and
8 money, and this isn't." It all ties together, and it is
9 based on legal advice based on the facts. You have got
10 to discuss the facts in order to give the
11 legal advice. That is correct, Mr. Nageotte.
12 That is not correct, THE COURT: That is exactly right,
13 and I am sure Mr. Nageotte knows that, but
14 he wants to know if you talked about anything
15 else that did not require legal advice.

16 THE WITNESS: No, Your Honor.



[Pg. 135]

20 THE COURT: Is your answer that you
21 they could did not discuss anything with them except the
22 legal advice you gave them, or that you talked

[Pg. 136]

1 about other things aside from legal advice?
2 THE WITNESS: As I recall, the only
3 thing that was discussed was legal advice.
4 There would have to be certain facts that you
5 would have to relate in giving the advice. It
6 is sort of hard to say this is your option
7 without giving certain facts, because you can
8 change one fact, and then your options change.

TRIAL TRANSCRIPT OF APRIL 19, 1979

Testimony of Betsy Aldman

[Pg 4]

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Q

Mrs. Aldman, I asked you, I believe,

to bring with you at this time the original shorthand notes of the Board meetings, which are in question in this suit, is that correct?

A

Yes, sir.

Q

And, you did bring those with you?

A

Yes, I did.

Q

Would you refer to the minutes of the Board of Supervisors of November 16th, 1978, please.

A

Okay.

Q

Do you have those minutes?

A

I have the book, yes.

Q

On the -- at the second time in that meeting that the Board went into executive session, would you find that in your notes, please. I believe you will find it at the very end of your notes, if that will help you.

[Pg 5]

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A

Okay.

Q

Have you found that now?

A

I think so.

Q

Now would you tell the Court what appears in your notes when the Board came out of the executive session.

[Pg 5]

7 A Nothing. I'm sorry, there is nothing in your
8 Q I'm sorry, there is nothing in your
9 notes when the Board came out of executive session, is that
10 correct?
11 A That's right. That what appears is
12 the Q After Now, I call your attention to
13 Complainant's Exhibit Number Two, which are the minutes of
14 that meeting which were typed, and call your attention to
15 the last item when the Board came out of executive session.
16 It says, "On motion" -- well, I will just read the whole
17 thing, "On a motion by Mr. Hayden, seconded by Mr. Saft,
18 the Board went into executive session for legal counsel. On
19 a motion by Mr. Saft, seconded by Mr. Hayden, and carried
20 unanimously, the Board returned to public session. Mr.
21 Howard stated that no decisions had been reached in executive

[Pg 6]

1 session. Then there was a motion made by Mr. Hayden, seconded
2 by Mr. Saft, and carried unanimously, that the Commonwealth's
3 Attorney be instructed to contact the Attorney General's
4 Office, to arrange an appearance before the Board of Super-
5 visors to render legal advice. A motion was made by Mr.
6 Hayden, seconded by Mr. Saft, and carried unanimously, that
7 the Commonwealth's Attorney be directed to represent the
8 defendants in Law Action Number 39, filed in King George
9 County Circuit Court on November 16th, 1978, and there being

Pg 6

10 no further business, the meeting was adjourned on a motion
11 by Mr. Hayden, seconded ... Now, is that what appears in
12 the typed minutes after that meeting?

13 A Yes, it is. What I had, which was
14 in shorthand. Q Would you tell the Court, please,
15 how you were able to type that information in the minutes of
16 the meeting of November 16th, 1978, if that information was
17 not in your original shorthand minutes of the meeting?

18 A Well, I assume that was done at the
19 meetings where I did not stay till the end, and Mr. Foster
20 took notes for me. Q Calling your attention to just your
21 notes as you say, All right, do you know that to be correct
the case, or do you just assume that?

Pg 7

1 A I'm saying I assume, because I can't
2 remember on this specific meeting, but it did happen.

3 Q Where would the notes, or how would
4 you know what to type, then, in the Board minutes if you
5 weren't there?

6 A He would have given me his notes.

7 Q Do you have his notes with you?

8 I believe that we asked that you provide us your notes, the
9 notes that you worked from to type the original, type the
10 minutes as they appear in the minute book of the Board of
11 Supervisors, and we did not find any notes such as that in
12 there.

But, you did put down what you thought

[Pg. 7]

13 A I gave you what I had, which was
14 my shorthand books. ... is that correct?

15 Q All right, so is it your testimony
16 then that the notes of Mr. Foster, if in fact there were
17 any, are now missing, or not in the files? In November 1964
18 A Yes, sir. I didn't keep those handwritten
19 pieces of paper. On both occasions, there were two indices-



[Pg. 19]

1 A (witness indicating)
2 Q All right, but I notice that there is
3 a number of other matters taken up in the minutes after that
4 executive session, is that correct, that the last occasion
5 of your minutes is the executive session?

6 A That's right. In all three instances
7 Q Could you explain that again,
8 please?

9 A The same as before, I was
10 excused, and I assume Mr. Foster took the notes from the
11 rest of the meeting.

TRIAL TRANSCRIPT OF APRIL 19, 1979

Testimony of Reginald P. Hayden

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Q Mr. Hayden, did there come a time when, on the 9th of November, 1978, you received, in public session, a presentation from an industry known as Dano, and/or Southern Marine and Salvage, evidencing their intent to locate in King George County?

A There was a presentation in that time frame. I'm not sure of the date.

Q Does the presentation, as contained in Complainant's Exhibit One reflect that, that would be the minutes of the Board?

A The minutes of the Board would reflect it, yes.

Q Do you recall going into executive session immediately following that presentation?

A I recall an executive session on that night, yes.

Q During that executive session, did you, or any members of the Board of Supervisors, or anyone else present in that executive session, in your hearing,

28
1 discuss the issue of any payment of a tax or gratuity or
2 money in any form from the industry to King George County?

3 A The discussion around the subject
4 was a general discussion that was initiated because of a
5 situation in Stafford County.

6 Q What was the general discussion?

7 A The Free Lance-Star, in fact,
8 carried an article when Dano was looking in Stafford, as
9 to a potential payment to the County to help in recreational
10 facility at a dollar per ton for Dano. My question, at the
11 point in time, was the legal ramifications of that.

12 Q But, that matter was discussed then,
13 in executive session by the Board?

14 A I requested legal information on it,
15 yes.

16 Q Was there also a discussion during
17 that executive session concerning whether or not King George
18 County, or the Board of Supervisors, would take a position
19 concerning this industry's location in King George County in
20 that executive session?

21 A I don't recall. If it was, it would
be privileged.

18 Q Is it the general practice of the
19 Supervisors in King George to go into executive session for
20 one of the purposes permitted? ~~Is it the general practice of the~~

21 A Only for the purposes permitted.

[12.32]
9 Q You heard Mr., I believe it was Mr.
10 Valentino, testify that he was told by Mr. John Harris, on
11 the telephone, that there would be no letter, ~~that there was~~
12 a letter, and it was now a political issue, or political
13 decision, is that correct? Did you hear that testimony?

14 A I heard the testimony, yes.

15 Q Now, did you or did any other
16 member of the Board of Supervisors, to your knowledge, direct
17 Mr. Harris to make that statement?

18 A Negative.

19 Q Did you have any conversations
20 with Mr. Harris from that Friday until the Sunday night
21 when he spoke to Mr. Valentino?

1 A I don't recall.

2 Q Did you give Mr. Harris any instruc-
3 tions between that Friday and that Sunday?

4 A Between a Friday and a Sunday?

5 Q Right.

6 A This was after the meeting when
7 Dano or Southern Marine and Salvage had been in here?

8 Q Right, and before or about the time
9 you went to the Homestead.

10 A No.

11 Q Did you give Mr. Foster any instruc-
12 tions?

13 A I knew from Mr. Foster that there
14 was a possible meeting, because that was the reason Mr.
15 Foster did not go to the Homestead with us.

16 Q Did you give him any instructions
17 between Friday and Sunday?

18 A No.

19 Q Are you aware of anyone else giving
20 either Mr. Foster or Mr. Harris instructions between that
21 Friday and Sunday, the Friday night, or Friday meeting, and
the Sunday conversation testified to by Mr. Valentino?

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1 A No.

2 Q Do you have any knowledge or infor-

3 mation at all as to why Mr. Harris would represent to Mr.

4 Valentino that there was a meeting, and it was now a political

5 decision?

6 A No.

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1 Q Did you get a status report? A paper-

2 A Yes, I did.

3 Q What, if any, action did you take

4 concerning that status report? Did you report that to Mr.

5 Saft?

6 A I told Mr. Saft at a cocktail party,

7 yes.

8 Q I believe your answer covered this,

9 but let me ask it directly: Is it your testimony then that

10 you did not give Mr. Foster or Mr. Harris any instructions

11 during that telephone conversation from the Homestead?

12 A I was only talking with Mr. Foster,

13 and I did not give him any instructions, no.

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Q I believe that is Plaintiff's Exhibit
Number Two. If you would look through that, please, and
see if there wasn't a presentation by the King George
Environmental Association.
A Yes.
Q There was?
A Yes.
Q Did the Board of Supervisors go
into executive session after that presentation?
A Yes, it did, but it was only by --
it didn't have anything to do with the King George
Environmental Association.
Q What did it have to do with?
A And, was the purpose of that
The minutes reflect that the
Board went into executive session for legal advice.
Q Legal advice concerning what, if
not the King George Environmental Association?
A I don't recall. I do remember that

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we were going into legal session before the presentation
by the King George Environmental Association, and so they
would not be sitting around while we were sitting in as
legal counsel, we asked them if they would like to make a
presentation before we went in.
Q Is it your testimony that their
presentation was not discussed in executive session?
A That's right. e you interested in?

2944

9 A I don't know that he even said
10 that, but I'm going to straighten all of this out as to why
11 there was a resolution behind an executive session. It had
12 nothing to do with the executive session. There are many
13 several times, you will find, if there was no action taken
14 into the executive session, we will go onto another item.
15 This was another item on the agenda.

2946

7 for us by testifying. The people from the Post Office were
8 waiting in the audience when you came out of executive
9 session, is that correct?

10 A They were. I'm not sure that
11 they weren't there before we went into executive session,
12 but I know they were there when we came out.

13 Q If the purpose of putting this
14 up front was to get the people from the Post Office on their
15 way, and if they were already there before you went into
16 executive session, why didn't you handle that matter
17 before?

18 A I don't recall. I just said I
19 don't know whether they were there before. I know they were
20 obviously there afterwards, because we handled the resolu-
21 tion at that time.

TRIAL TRANSCRIPT OF APRIL 19, 1979

Testimony of Woodrow W. Saft

[Pg. 70]

1 A At a point in the meeting, we went
2 into executive session.

3 Q At a point in the meeting?

4 A Yes. Near the end of the meeting.

5 Q And, during that discussion in
6 executive session, was the discussion conducted concerning a
7 payment of a tax or gratuity or monetary amount from this
8 industry to King George County?

9 A As I recall, there was some legal --

10 Q Mr. Saft, just answer the question,
11 would you please, sir. Was that subject discussed?

12 A The legal aspects of that subject
13 was discussed.

14 Q Well, was the subject discussed?

15 A The legal aspects of the subject was
16 discussed.

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14 THE WITNESS: I can tell you,
15 decisions were not made in executive session.

16 We obtained legal counsel relative to the issue
17 in executive session, and made the decisions in
18 public session, what decisions were made?

19 THE COURT: That is just what he
20 said a while ago.

21 THE WITNESS: Exactly.



2993

1 Q What if any instructions or direc-
2 tions did you give Mr. Harris or Mr. Foster?

3 A None.

4 Q You had no discussion with them
5 whatsoever?

6 A None.

7 Q Well, you heard testimony concerning
8 things that Mr. Harris, Mr. John Harris, purportedly told
9 Mr. Valentino on the telephone. Do you know where, if Mr.
10 Harris said that, do you know where he would get that infor-
11 mation from?

12 A First of all, I don't know that it
13 took place, and secondly, I would not have knowledge of
14 such a conversation.

15 Q Is it your testimony then that
16 you did not give any instructions whatsoever to Mr.
17 Harris, that is Mr. John Harris, or Mr. Foster?

18 MR. HARRIS: Asked and answered
19 again, Your Honor.

20 THE COURT: Complete your question.
21

29 94
1 Q -- at any time between Friday follow-
2 ing that November 9th meeting, that Friday, and the Sunday
3 night which Mr. -- during which Mr. Valentino reported a
4 telephone conversation he had with Mr. John Harris?

5 A I gave no instructions whatsoever,
6 and had no communications with the parties so indicated.

7 Q All right, sir, calling your atten-
8 tion to the Homestead. Did you have occasion to discuss
9 this matter at the Homestead?

10 A I had some knowledge of the industry
11 as gained through contacts at a cocktail party.

12 Q Who was present at that time?

13 A Mr. Sharp, Mr. Bandy, and Mr. Hayden
14 made contact during the evening, and mentioned this, and of
15 course, we had gotten a real ribbing from the people of Staf-
16 ford County on it.

17 Q And, you discussed the industry at
18 that cocktail party?

19 A We discussed aspects of it in
20 general terms, but not in detail.

21 Q Did you, at any time, call Mr. Harris,

1 that is Mr. John Harris, or Mr. Foster from the Homestead?

2 A I placed no calls to anyone except
3 my wife from Homestead.

8 Q In the Homestead, did Mr. Hayden
9 make any reports to you concerning what was occurring in
10 Stafford or King George County?

11 A No, no reports to me. We had
12 casual discussions on what was happening at the annual
13 meeting of Virginia Association of Counties, and a few things
14 of this nature, and if there was some point of interest,
15 that was relayed back from the County. Of course we dis-
16 cussed it, because we did room in the same room in the hotel.

3 Q Well, did Mr. Harris not tell you the
4 same thing in executive session that he told you in
5 public session?

6 A No, he informed us of the legal
7 research, and answered questions relative for legal
8 guidance, answered the questions that the Board put before
9 him in executive session, and this involved quite a bit
10 of legal research, I might say, on his part.

[Pg. 103]

11 Q And, did he also discuss with you,
12 however, the factual situation that he had gotten these
13 facts, and where he had gotten them from?
14 A In fact, he quoted some of the details
15 right out of the law books to us so that we were well in-
16 formed.

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[Pg. 105]

9 Q From time to time, do you have occasion
10 to discuss these types of matters informally with the Board,
11 although you didn't in this occasion?

12 A We tried to minimize the communica-
13 tion between Board members except in public sessions that
14 may influence a decision. We tried to exercise those as a
15 Board function, and not as individuals. I can't say that
16 I used any communication to influence the decision of the
17 Board, of the fellow Board members.

18 Q I'm not asking you if you used any-
19 thing to effect that, I'm asking if you had any communication
20 with them.

21 A Certainly I have communication.

[Pg. 106]

1 meet them at the Post Office, or at the store. Certainly
2 I speak to them, but I try to make an effort not to involve
3 any responsibility of my position.