

**BEFORE THE  
NATURAL RESOURCES COMMISSION  
OF THE  
STATE OF INDIANA**

**IN THE MATTER OF:**

<b>CHARLES SCEARCY,</b>	)	
<b>Claimant,</b>	)	<b>Administrative Cause</b>
	)	<b>Numbers: 00-203L</b>
	)	
<b>vs.</b>	)	
	)	<b>Law Enforcement</b>
<b>DEPARTMENT OF NATURAL RESOURCES,</b>	)	<b>Personnel Action</b>
<b>Respondent.</b>	)	

**NOTICE OF FILING  
FINDINGS OF FACT AND CONCLUSIONS OF LAW  
WITH NONFINAL ORDER BY THE  
PANEL OF ADMINISTRATIVE LAW JUDGES**

You are notified the attached "Findings of Fact and Conclusions of Law with Nonfinal Order of the Panel of Administrative Law Judges" has been entered as required by IC 4-21.5-3-29. To preserve an objection to the document, a person must submit a written objection that:

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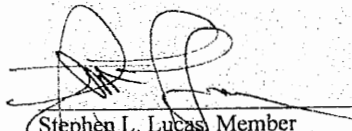
Secretary, Natural Resources Commission  
Indiana Government Center South  
402 West Washington Street, Room W272  
Indianapolis, IN 46204

If objections are filed in a timely fashion, 312 IAC 3-1-12 controls. Preliminary motions relative to the objections may be considered by the Panel of Administrative Law Judges, including a motion for more definite statement or a motion to continue oral argument before the Commission, but the objections themselves will be considered by the Commission.

If no objection is filed in a timely fashion, the Secretary of the Commission may affirm the attached document. The Secretary has exclusive jurisdiction to affirm, remand, or submit to the Commission for final action, any portion of the findings of fact, conclusions of law, and nonfinal order. Unless the Secretary otherwise orders, there will be no oral argument.

A party may move to strike any objections believed to be untimely. The Panel of Administrative Law Judges shall act upon a motion to strike. If the Panel grants the motion, the attached document will be tendered to the Secretary for final action. If the Panel denies the motion to strike, the findings and nonfinal order will be tendered to the Commission for final disposition, including oral argument pursuant to 312 IAC 3-1-12.

Dated: April 25, 2002



Stephen L. Lucas, Member  
Panel of Administrative Law Judges

Copies of the foregoing and of the attached "Findings of Fact and Conclusions of Law with Nonfinal Order by the Panel of Administrative Law Judges" were sent to the following:

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FINDINGS OF FACT AND CONCLUSIONS OF LAW  
WITH NONFINAL ORDER BY THE  
PANEL OF ADMINISTRATIVE LAW JUDGES

*Majority Opinion*

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Statement of the Case

1. The proceeding was initiated when Charles Searcy ("Searcy") on November 7, 2000 filed a request for administrative review of Special Order 1765 (the "Special Order") dated October 23, 2000 terminating his employment with the Department of Natural Resources (the "DNR") effective October 27, 2000.<sup>A</sup>
2. At all times pertinent until his termination, Searcy was a "conservation officer" of the DNR's Division of Law Enforcement (the "Division") as the term is defined at IC 14-9-8-1.
3. The division's director may, with the approval of the DNR's director, discharge, demote, or temporarily suspend an employee of the Division, for cause, after preferring charges in writing. IC 14-9-8-14(a).
4. A conservation officer is entitled to administrative review to the Natural Resources Commission (the "Commission") of a termination of employment under IC 14-9-8,

<sup>A</sup>. Two other proceedings were initiated regarding the same subject matter. These were *Charles Searcy v. Department of Natural Resources*, Cause Number 99-181L, and *Charles Searcy v. Department of Natural Resources*, Cause No. 00-197L. Searcy moved to dismiss these proceedings as being duplicative, and the Department agreed. A final order of dismissal was entered by the panel of administrative law judges as to each.

IC 14-10-2-3, and IC 4-21.5. Searcy is entitled to administrative review pursuant to these statutes. Also applicable to this administrative review are 312 IAC 3-1 and 310 IAC 1.2-5.<sup>B</sup>

5. Searcy sought administrative review of the Special Order in a timely fashion.
6. The Commission has jurisdiction over the parties and over the subject matter of this proceeding.
7. Disciplinary processes governing actions against conservation officers are anticipated by IC 14-9-8 and delineated by 310 IAC 1.2-5. The Division complied with these processes with respect to Searcy.
8. The Commission adopted 310 IAC 1.2-5-4 to assist in implementing the statutory authorities and responsibilities described under IC 14-9-8-14(a). Violations demonstrating "cause" for disciplinary action are established by any of 30 items enumerated in this rule section.
9. The Special Order identifies four of these 30 items which the DNR concludes establish violations that are legally sufficient to support Searcy's termination. These items are as follows:
  - (A) 310 IAC 1.2-5-4(13): Knowing or reckless conveyance of false information to another law enforcement officer or another employee of the [D]epartment concerning a matter of official state business.
  - (B) 310 IAC 1.2-5-4(26): Interfering with any arrest or prosecution brought by other employees of the [D]ivision or by another agency or person.
  - (C) 310 IAC 1.2-5-4(28): Conduct that could result in the citizens of the community or elsewhere not maintaining the proper respect for or cooperation with the [D]epartment.
  - (D) 310 IAC 1.2-5-4(29): Conduct that could compromise a law enforcement officer or subject the officer to blackmail.
10. The burden of persuasion is on an agency where it charges a violation. The standard of proof is by a preponderance of the evidence. IC 4-21.5-3-14. *Peabody Coal Co. v. Ralston*, 578 N.E.2d 751 (1991 Ind. App.). *Tungate v. Department of Natural Resources*, 9 Caddnar 28 (2001).
11. On administrative review of a determination by the DNR, the Commission conducts a hearing de novo. *Indiana Department of Natural Resources v. United Refuse Co., Inc.*, 615 N.E.2d 100 (Ind. App. 1993).
12. The DNR has the burden of persuasion, by a preponderance of the evidence, to demonstrate the four items identified in Finding 9 are legally sufficient to support

<sup>B</sup> 310 IAC 1.2-5 has repealed and replaced by 312 IAC 4-4 for disciplinary actions taken against conservation officers after September 1, 2001. Both process and substance were modified by 312 IAC 4-4, and aspects of this nonfinal order might be different if the new rules applied.

Scearcy's termination. In reviewing the evidence, the Commission conducts a hearing de novo. Each of the four items is considered separately in this opinion.

### **Knowing or Reckless Conveyance of False Information**

13. The DNR alleged Scearcy committed actionable misconduct when he knowingly or recklessly conveyed false information to another law enforcement officer or employee of the Department concerning a matter of official state business.
14. This allegation is based upon answers to two questions made by Scearcy during a tape-recorded interview. First Sergeant Jeffrey D. Barker conducted the interview on Sunday, October 24, 1999 beginning at approximately 2:47 p.m. in DNR's South Region Headquarters at Paynetown. Barker was accompanied by Conservation Officer Kenton Turner.
15. Prior to questioning, Barker informed Scearcy of his Constitutional rights, informed him the investigation would be postponed for 24 hours at Scearcy's request, advised Scearcy any "statement, information, or evidence that is gained by the reason of this interview can and will be used against you in any Department disciplinary proceedings, but will not be used in any criminal prosecution," and informed Scearcy of his right to have an attorney present.
16. Scearcy declined the opportunity to have an attorney present and voluntarily answered Barker's questions.
17. First Sergeant Barker asked 62 questions during the interview. Two of the questions were procedural. The other 60 questions were substantive and directed to the possibility of misconduct by Scearcy.
18. The majority of the substantive questions reviewed incidences of domestic conflict between Scearcy and his ex-wife, Angela Allis, and between Scearcy and Anessa Auberry who was his girlfriend at the time. The events under scrutiny took place on June 15, 1999 and during the week of October 16, 1999, respectively. Scearcy's answers to questions relative to these events are not the subject of the DNR's allegation of misconduct, and they are not germane to the current issue except in the sense they frame the context of the two statements at issue.
19. The answers to questions 49 and 50 are the sole support for the DNR's allegation Scearcy knowingly or recklessly conveyed false information to First Sergeant Barker and Conservation Officer Kenton Turner. Barker asked, "Have you ever bonded anybody out of jail?" Scearcy answered, "No." Barker asked, "You've never bonded anybody out of jail?" Scearcy repeated, "No." Barker returned immediately to the line of questioning regarding the relationship between Scearcy and his ex-wife.

20. Barker identified during the interview when the events took place involving Scearcy and Allis, as well as those involving Scearcy and Auberry. At no time before or during the interview, however, did he inform Scearcy of the time, place, or circumstances when Scearcy was believed to have bonded someone from jail. The bonding event was not identified by Barker as one separate and apart from those involving Allis and Auberry.
21. The subject of the incident described in Finding 19 was when bond was posted on April 25, 1999 to release Poly Zacarias Wills from the Knox County Jail.
22. On August 24, 1999, Indiana State Trooper Brent D. Clark observed two men in an alley in Vincennes, Indiana. He pursued the men and watched them enter an apartment. Clark followed them into the apartment and charged Wills with public intoxication, a misdemeanor. Clark transported Wills to the Knox County Jail at approximately 11:00 p.m. Wills gave Clark the name of the other person in the alley who had been with Wills.
23. Ann Bucko was the Jailer's Assistant on duty at Knox County Jail that evening. She worked the "night shift"<sup>C</sup> from 11:00 p.m. until 7:00 a.m. and had been employed as a Jailer's Assistant since May 1999. Her duties included taking prisoners into the jail and releasing them upon the posting of bond.
24. Bucko testified Wills was brought into the jail by Trooper Clark sometime shortly before midnight on August 24.
25. Bucko testified that initially upon incarceration, Wills declined an opportunity to make a telephone call and was placed in the "drunk tank." Later Wills requested and was allowed to make a call. Bucko did not hear the telephone conversation.
26. Wills testified in an evidentiary deposition that bond was set at \$300, but he only had \$150. He telephoned Allis, with whom he was acquainted as a student at Vincennes University, and asked her to loan him \$150 to post bail.
27. Allis testified she received a telephone call from Wills shortly after midnight on August 25, 1999. When the call was received, she was in the process of moving to a new residence, and Scearcy was helping her with the move. Allis testified Wills claimed he was not intoxicated and "hadn't done anything wrong." Wills said he needed \$150 to be bonded out of jail so he could return to class and preserve his soccer scholarship. Allis responded she had only about \$150 on hand and needed the amount for books to start a new semester, and if she were to loan him the money, Wills must repay her promptly.

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<sup>C</sup>. Here and subsequently in this document, quotations are attributed to witnesses who testified at hearing. These quotations are believed to accurately portray the testimony, but because an official transcript has not been prepared for the hearing, they may not be verbatim.

28. Allis testified she told Sceauxy that Wills had asked her to loan him \$150 to post bond. Allis said she had never bailed anyone out of jail before, and she asked Sceauxy if he was accompany him to the jail for this purpose. She testified Sceauxy "reluctantly" agreed, and the two of them drove to the Knox County Jail.
29. Allis testified that when they arrived at the jail, there was no one in the front lobby, but there was a telephone on the wall. Allis asked Sceauxy what they should do. Sceauxy answered, "Well, I'll go back and ask." She said Sceauxy then "punched in a code" and went through the door, while Allis remained in the front lobby.
30. Bucko testified not long after the call by Wills, Sceauxy and Allis entered the front lobby. Sceauxy used the key pad on the front door of the jail and stood in front of the Jailer's desk. She said the key pad is a system used to keep the general public from getting into the administration and "actual jail section" of the building. Only law enforcement officers and jail personnel have access to the key code.
31. Bucko remembers Sceauxy saying, "I'm here to bond out Poly Wills." Sceauxy was not in uniform, but she was previously acquainted with him and knew he was a conservation officer. Bucko said the event was memorable because it had "never happened before" that a law enforcement officer bonded out a prisoner.
32. Sceauxy also spoke with the Jailer concerning the process for bonding, then he returned to Allis and took \$150 cash from her. Sceauxy delivered the \$150 to Bucko while Allis waited and engaged in a casual conversation with another law enforcement officer with whom she was acquainted.
33. Bucko testified when she took the bond money from Sceauxy, she asked whose name he wanted on the receipt. Sceauxy responded, "Does it make a difference?" Bucko replied the person named on the receipt is who would receive any amount not used in the court process. Sceauxy then said, "Put my name on it."
34. Allis testified a few minutes later Sceauxy returned to where she was waiting. He was accompanied by Wills. Sceauxy handed Allis the receipt for the cash bond. She said she "stuck it in her pocket, and we left." Wills eventually repaid her the \$150, although not until several months later.
35. The preponderance of the evidence does not support the proposition Sceauxy knowingly or recklessly conveyed false information to First Sergeant Barker when he was interviewed on October 24, 1999. The two questions sought by the DNR to support the proposition were part of a 62-question interview with other aspects of the interview directed to other times and other places. The structure of the interview did not place Sceauxy on reasonable notice as to the nature of the alleged wrongdoing. Both Sceauxy and Allis testified the bond money belonged to Allis and that Sceauxy merely appeared at the jail and assisted at her request.

36. Conceivably, Searcy was being evasive when he answered the questions described in Finding 19. An equally likely interpretation is he answered the questions truthfully from his personal perspective of events—that perspective being Allis bonded out. Wills and Searcy was merely helping Allis. Yet a third possibility is he did not comprehend the context of the two questions. The DNR has the burden of persuasion with respect to each charge, and it has not met the burden with respect to this charge.

**Conduct that Could Compromise a Law Enforcement Officer or Subject the Officer to Blackmail**

37. The DNR alleged providing bail for Wills, who the DNR describes in its statement of contentions as “a known illegal drug violator,” could compromise Searcy or subject Searcy to blackmail.

38. Wills was not charged by Trooper Clark on August 24, 1999 with a drug violation. As is the routine practice at the time of an arrest. Clark searched Wills for “controlled substances,” and none were found.

39. Wills was charged with public intoxication, and the charge of public intoxication is what was reflected in the documentation at the Knox County Jail that accompanied his lock-up and bonding out.

40. Trooper Clark testified he was unfamiliar with Wills before the arrest on August 24, 1999.

41. More importantly, both Searcy and Wills testified they had not met each before August 25, 1999.

42. The record is devoid of evidence to support the proposition that on August 25, 1999, Searcy knew or should have known Wills was an “illegal drug violator.”

43. Also, there was nothing secretive in Searcy’s conduct. However poor his judgment may have been in participation in the bonding of Wills, there is no basis for believing he was compromised or could be subjected to blackmail.

**Conduct that Could Result in the Citizens of the Community or Elsewhere Not Maintaining the Proper Respect for or Cooperation with the Department**

44. The DNR alleged interviews of civilians, other law enforcement agency personnel and Indiana Conservation Officers consistently indicate that Searcy’s character, actions, and reputation is not that which allows for the public to maintain the proper respect for the officer or the DNR.

45. At hearing, very little testimony directed to Searcy’s reputation among law enforcement officers with whom he was associated. First Sergeant Barker testified he



spoke with ten or twelve conservation officers in Knox County and neighboring counties, but although some of them heard "hearsay" or "rumors," none of them had first-hand knowledge of any relevant incident of wrongdoing directed to Searcy.

46. Trooper Clark testified he worked occasionally with Searcy, and there had been nothing in that work leading to the conclusion Searcy performed inadequately as a law enforcement officer.
47. There is no evidence fellow law enforcement officers viewed Searcy's character and reputation in a negative fashion.
48. On the other hand, Searcy's participation in the bonding of Poly Wills demonstrated poor judgment and might reasonably cause a member of the public to lack respect for the officer or the DNR.
49. Bucko testified when Searcy appeared with his ex-wife, Allis, to bond out Wills they entered the front lobby of the jail. Searcy used the key pad on the front door of the jail and stood in front of the Jailer's desk.
50. Bucko testified the key pad is a system used to keep the general public from getting into the administration and "actual jail section" of the building. Only law enforcement officers and jail personnel have access to the key code.
51. By using the key code, Searcy abused a privilege intended exclusively for the law enforcement community in the conduct of their duties and responsibilities. He performed a private favor in violation of a public trust. This action may reflect negatively upon the relationship between the DNR's division of law enforcement and the Knox County Sheriff.
52. When Searcy appeared before Bucko to present the cash bond, she remembers Searcy saying, "I'm here to bond out Poly Wills." Searcy was not in uniform, but she was previously acquainted with him and knew he was a conservation officer. The event was memorable to Bucko because it had "never happened before" that a law enforcement officer bonded out a prisoner.
53. Although Allis and Searcy both testified the money belonged to Allis, and that she was posting the bond as a favor to an acquaintance, Bucko had no knowledge of the money's origin. Bucko reasonably believed the money to be Searcy's, and Bucko surprise at Searcy's actions was not unreasonable.
54. Additionally, Bucko testified when she took the bond money from Searcy, she asked whose name he wanted on the receipt. Searcy responded, "Does it make a difference?" Bucko replied the person named on the receipt is who would receive any amount not used in the court process. Searcy then said, "Put my name on it."

55. By authorizing that his name be placed on the receipt, Scearcy reinforced with Bucko the money was his. By doing so, he compounded his error, both in terms of Bucko and other jail personnel present on August 25, 1999, as well as in terms of other court and clerk personnel who would later process the bond receipt.
56. Scearcy further compounded his error by then contacting Clark on behalf of Wills.
57. Clark testified the telephone contact from Scearcy seeking assistance for Wills was extraordinary. In five years as an Indiana State Trooper, no law enforcement officer from another agency ever contacted him on behalf of a prison who Clark arrested.
58. Even if the communication were not improper, by Scearcy's own testimony, he was unacquainted with Wills and so in no position to speak for him.
59. Scearcy's conduct also reflected negatively upon the image of himself and the DNR relative to another law enforcement agency.
60. Clearly, Scearcy's participation in bonding out Poly Wills and in later interceding on behalf of Wills represented poor professional judgment that only became worse at every stage. His conduct could reasonably be expected to cause citizens to lose respect for him and for other conservation officers in the DNR.

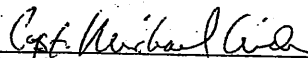
**Interfering with Any Arrest or Prosecution Brought by Other Employees of the Division or by Another Agency or Person**


61. The DNR alleged in the statement of circumstances that Scearcy "has interfered with another agencies [*sic.*, "agency's"] activities by contacting the arresting officer of the individual he bonded out of jail and alluded to action being taken to take care of the incident."
62. The DNR urges in its post-hearing brief this interference occurred when Scearcy contacted Trooper Clark "after the arrest of Poly Wills and asked if he could do anything for Wills." No event other than this communication is offered by the DNR as supporting the proposition Scearcy interfered with an arrest or prosecution.
63. Ann Bucko testified Clark was informed on August 25, 1999 that Wills bonded out, and Clark returned to the jail a short time later. When he returned, Clark asked who bonded Wills out, and Clark was informed Scearcy had done so.
64. Just as Clark was leaving the jail, Scearcy telephoned. Bucko told Scearcy that Clark had just left the building and asked whether Scearcy wished for Bucko to retrieve him. Scearcy answered that he did. Bucko went outside and informed Clark that Scearcy was on the telephone and wished to speak with him. Clark returned and took the call, but Bucko did not hear the conversation.

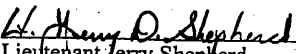
65. Clark testified Bucko came outside as he was leaving the jail and informed him Sceaux was holding on the telephone. Clark then returned to the jail and spoke with Sceaux.
66. Clark testified Sceaux asked him, "What can you do for Poly?" Clark said he answered, "Nothing, Poly made his decision in the alley." And that was the end of the conversation."
67. On cross-examination, Clark testified Sceaux was not present when Wills was arrested. He also testified the charges against Wills for public intoxication were later dismissed. Although Clark said he was personally unaware of the basis for the dismissal, to the best of his knowledge, Sceaux was not involved and did not interfere with the prosecution.
68. The record is devoid of significant probative evidence to support the proposition Sceaux interfered with either the arrest or prosecution of Wills.

#### NONFINAL ORDER

Charles Sceaux committed a violation of 310 IAC 1.2-5-4(28). The violation is of sufficient significance and severity to have warranted a substantial suspension. The violation does not, however, support termination. Sceaux should be immediately reinstated as a conservation officer. The recommendation is he be assigned to other than Division of Law Enforcement District 7.

  
\_\_\_\_\_  
Captain Michael Crider

  
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Stephen Lucas

  
\_\_\_\_\_  
Lieutenant Jerry Shepherd

## *Dissenting Opinion*

The Administrative Law Judge Panel in a majority opinion issued its Findings of Fact and held in paragraphs 35 and 36 that evidence submitted did not meet the DNR's burden of persuasion, by a preponderance of the evidence, to find that Officer Charles Searcy violated 310 IAC 1.2-5-4(13): Knowing or reckless conveyance of false information to another law enforcement officer or another employee of the Department concerning a matter of official state business. In addition, the Panel likewise held in paragraph 43 that there was "no basis for believing" he violated 310 IAC 1.2-5-4(28): Conduct that could compromise a law enforcement officer or subject the officer to blackmail. I cannot agree with the majority and dissent to the Findings of Fact contained in paragraphs 35, 36 and 43.

The Finding of Fact indicates that during the course of an administrative investigation Searcy was asked twice whether he had ever bonded anyone out of jail. Each time, Searcy answered, "No." The questions were simply stated and straightforward. No evidence was introduced to indicate Searcy was confused by what was being asked. Furthermore, it is unreasonable to believe that any veteran law enforcement officer could misunderstand the question. The source of funds utilized to provide the cash bond was not an issue and is irrelevant to the question. In fact, testimony was introduced stating that when Searcy arrived at the Knox County Jail he told the Jailer's Assistant on duty that night, "I'm here to bond out Poly Wills." In addition, Searcy requested that the bond money receipt be made out in his name.

The Law Enforcement Division's Standard Operating Procedure 15-7, which provided standing policy at the time of the incident, stated "...Employees shall not furnish bond or bail for any person arrested, nor shall they suggest an attorney or bondsman to any prisoner or his friends." Evidence clearly supports the DNR's burden that it is more likely than not that Searcy knowingly conveyed false information to F/Sgt. Barker when he denied having ever bonded anybody out of jail.

The Indiana Administrative Code establishing cause for disciplinary action for Indiana Conservation Officers at the time the charges were brought against Searcy prohibits, "Conduct that **could** (bold type added) compromise a law enforcement officer or subject the officer to blackmail." Evidence indicates that Searcy was allowed access into areas of the jail normally closed to the general public as a result of his status as a conservation officer. The Jailer's Assistant knew Searcy as a conservation officer and testified that Searcy's bonding Wills out of jail was memorable because she had never before known a law enforcement officer to bond out a prisoner.

No testimony was introduced to indicate that Searcy made any attempt to ascertain the crime or crimes for which Wills was charged or the circumstances leading to his arrest

and incarceration. Instead, the evidence indicates that Scearcy telephoned the arresting officer and requested to know, "What can you do for Poly?" Trooper Clark, the arresting officer, testified that in five years as a law enforcement officer he had never been contacted by a fellow law enforcement officer on behalf of a person he had arrested. As a conservation officer, it is reasonable to believe Scearcy understood the mechanics of an arrest. A law enforcement officer knows that a police officer must have probable cause to believe a crime was committed and that the person charged committed the crime in order to affect a lawful arrest. It is reasonable to believe that using his law enforcement authority to bond a prisoner out of jail and requesting favorable disposition of the charges could compromise a conservation officer. Trooper Clark testified that his initial contact with Poly Wills was a result of observing what he believed to be a hand-to-hand drug transaction. Evidence also supports the DNR's contention that Wills had a reputation in the local law enforcement community as "a known illegal drug violator." For these reasons, I disagree with the Finding of Facts in paragraph 43. The evidence presented meets the DNR's burden that Scearcy's conduct **could** compromise a law enforcement officer.

On October 18, 1999, the Law Enforcement Division initiated an internal investigation of Officer Charles Scearcy into allegations of misconduct based upon a citizen complaint. Veteran conservation officers with significant investigative experience conducted the investigation and in a manner consistent with the Division's Standard Operating Procedure 9-13 that establishes policy on Internal Investigations. The completed investigation was forwarded to Officer Scearcy's district commander, Lt. Ralph Huffines for review and recommendation. Upon review of the completed investigation, Lt. Huffines filed written charges against Officer Scearcy and recommended that he be terminated for just cause from the Law Enforcement Division.

The written charges and recommendation for termination were reviewed and concurred upon by Lt. Huffines' supervisors (South Region Commander [captain], Operations Commander [major] and Executive Officer [lieutenant colonel]) as it was forwarded thru the chain of command to the Division Director. As outlined in the Indiana Administrative Code, the Division Director appointed a Disciplinary Review Board that reviewed the charges. The Board found probable cause for the charges and concurred with the recommendation for termination. The Division Director then directed the charges served as adopted by the Disciplinary Review Board.

After being served the written charges, Officer Scearcy requested and received a predeprivation hearing before the Division Director as afforded in the administrative rules. The predeprivation hearing gives the employee the opportunity to state any reason why the discipline should not be taken. Following the predeprivation hearing, the Division Director entered an order with respect to the written charges. On October 23, 2000, the Law Enforcement Division Director, with the approval of the Director of the Department of Natural Resources, issued an order terminating Charles Scearcy's employment as an Indiana Conservation Officer under the authority granted by Indiana law.

I cannot in good conscience agree with the Administrative Law Judge Panel's majority opinion outlined in the Nonfinal Order regarding this matter. Charles Sceaux committed gross acts of misconduct. He was terminated for cause consistent with applicable rules and statutes and under the authority granted the Director of the Indiana Department of Natural Resources, Law Enforcement Division. Based upon the foregoing, I must dissent from the majority opinion and recommend that Charles Sceaux remain terminated from employment as an Indiana Conservation Officer.



Lt. Colonel A. Jeffrey Wells