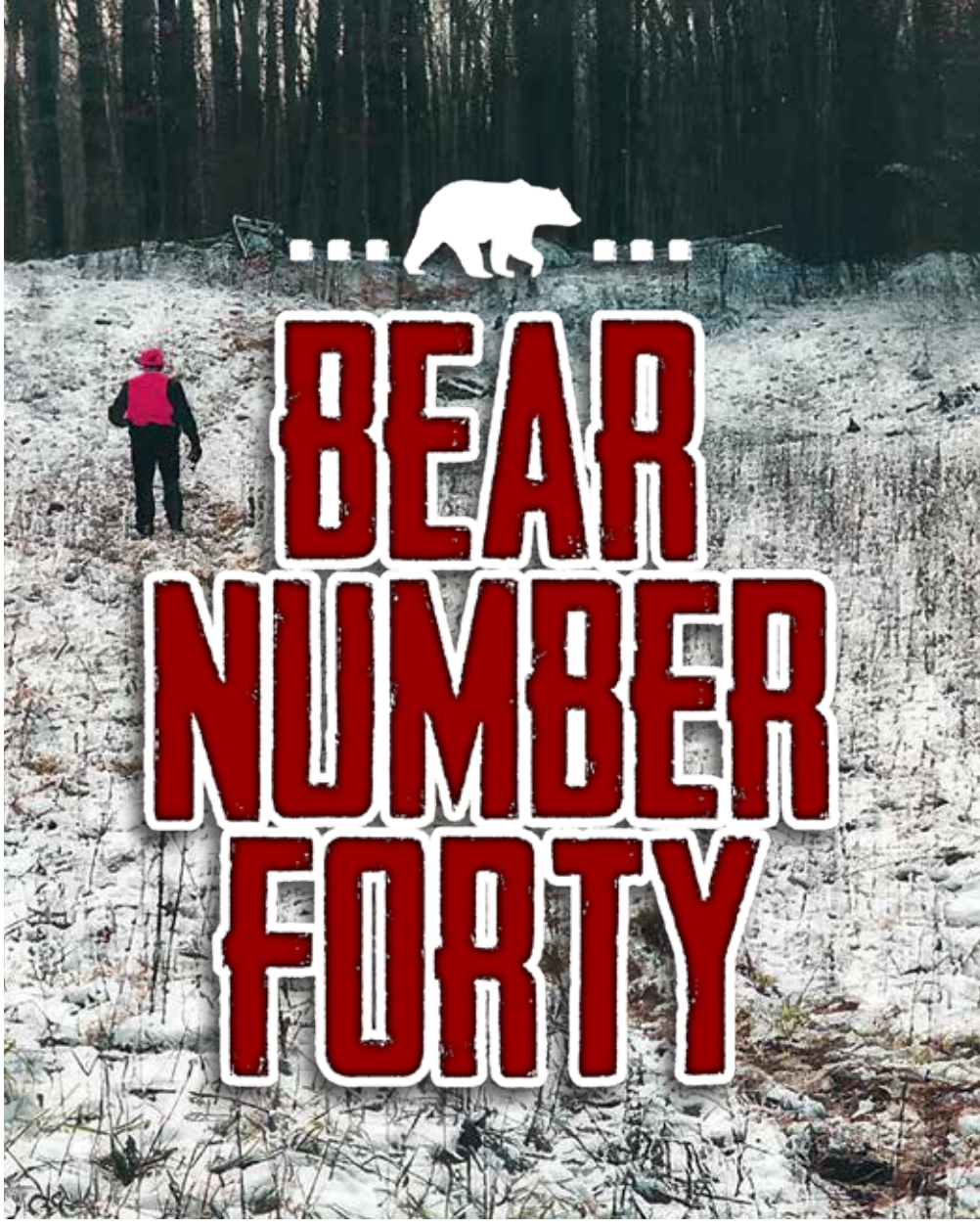
BEAR NUMBER FORTY



The big sow at 263 pounds, with a thick, rich black coat, was in prime condition as winter approached. She was on a mission; to find a winter den for her and the two cubs she was carrying. When the effort to find food exerts more energy than bears can realize from the food, bears know it's time to hibernate. Her tracks in the snow told the story as the saga unfolded.

Drag Marks Leading Out of Forest.

AS I traced the sow's ice glazed tracks backwards, it was apparent she was searching for a den. The temperature had plummeted to the high twenties as three inches of snow fell just before dark on the first day of bear season, Monday, November 24th, 2003. The sow followed the forestry road, just inside the edge of the thick woods for over a half-mile after dark. Her tracks weaved in and out of thickets, grapevines, down into ravines and around large boulders, some the size of houses. She nosed around, in and under fallen trees with large pit mounds. Pit mounds are the bases of trees with the roots and dirt that protrudes up, after a tree has toppled.

After paralleling the forestry road over a half mile, the sow turned left onto the first fork, veering off the roadway. She then skirted a large open quarry along the edge of the woods and then took a direct course into the forest. As if guided by a laser. Her tracks continued down a gradual slope bearing left through some slashings to a fallen maple tree. The huge maple tree, all 118 feet of hardwood, had fallen over, knocking a smaller maple tree on the descent. The pit mound at the base of this maple tree was over 12 feet high. She walked up the far side of the fallen maple tree, exactly 100 feet to a depression amongst the boulders beneath the fallen trees. The depression nestled between the boulders measured 41 inches high, 36 inches wide and 4 feet long. The sow's den site was secure, hidden from view, shielded from the elements and completely encircled by the branches and dead leaves of the large maple trees. The sow bit branches and leaves off of the maple tree that enclosed the den to pad her nest. The sow's new den was 350 yards off of the main forestry road and two miles from the bear check station in Marienville. The big sow now settled into her new den for a long winter's sleep.

Forest County turns into a major hunting Mecca in the fall, as the hunter population swells, especially during bear and deer season. Bear hunters had been arriving all weekend to Marienville along Rt. 66 in a long procession of 4-wheel drive vehicles. Merchants in the area welcome the hunters, especially the restaurants with their advertised specials. Traffic in this little town is unbelievable and the hunters had been checking with us all weekend, in attempts to locate a bruin for opening day.

At 5:30 am on November 24th, the first day of the 2003 bear season, the weather was quite warm as I left to pick up DWCO Lawrence Hergenroeder for patrol. The weatherman was forecasting snow for late afternoon or early evening, which would definitely be a bonus for the bear hunters. We

later met WCO Jim Donatelli and his deputy Bruce Ellis at the bear check station in Marienville. Jim and Bruce were assigned to bear season patrol in my district. In bear and deer season it's a definite advantage to have the extra patrol help. Law Enforcement Bureau Director, Michael A. Dubaich and Northwest Region Law Enforcement Supervisor Jim Egley would also be patrolling Forest County for the first day of bear season. After meeting Jim and Bruce we split up for our designated patrol areas. Jim and Bruce would take the Northeast quadrant of my district, bordering Elk County where a lot of bears are harvested.

Lawrence and I headed north to the Minister Creek Area before daylight. While winding our way up a steep forestry road Lawrence commented, "Mario, there's a hunter without any orange on his head." I replied, "Where?"

He said, "About 100 yards ahead of us on the road." Straining my eyes I then noticed a brown splotch of hair just bobbing up and down on the forestry road. If this hunter were groundhog hunting he would really be taking a chance. As we drove up to the hunter, his body gradually came into view. At a distance of around 30 yards we saw he was totally clad in orange coveralls with his son walking beside him. We stopped and issued him a warning for not wearing orange on his head. We explained to him that, at a distance and because of the mountainous terrain all we could see was his head, which was not covered in orange. This was a classic case of why the law reads; 250 square inches of daylight fluorescent orange on the head, chest and back combined. Hunting pressure was quite high in this area and wearing an orange hat was necessary. We bid the two hunters good luck and continued our patrol. Little did I know at the time, but we would again meet up with this duo in the very near future.

We continued on patrol the rest of the day to check numerous hunters and their bears. We encountered some minor violations throughout the day and

Bear at Check Station.

stopped at the bear check station a few times to check on the number of bears harvested. Just before closing time, the temperature dipped into the twenties and the snow started to fall as predicted. I commented to Lawrence that tomorrow would be a good day for the bear hunters. Patrolling into the late hours, we finally called it a day around 10:00 p.m. after leaving the bear check station in Marienville. I dropped Lawrence off at home and told him I'd pick him up around 6:00 a.m. on Tuesday. I went home after a long day, sorted out the paperwork for the day on my desk and into the tub for a long hot bath.

Bear Body Trajectory.

It seems that my head hardly hit the pillow when the alarm went off at 5:00 a.m. to start another day. Getting up to make coffee, I noticed a blanket of fresh snow on the forest landscape and knew today would be a good day for bear hunters. My dog Morgan, a Springer spaniel, also seemed to enjoy her morning frolicking in the snow and looked at me ruefully, with her big ears drooping, when I sent her back into her kennel, before I headed out for work.

In the predawn darkness, I crept down our driveway through the swirling snow and dark spruces to pick up Lawrence. We patrolled the early morning hours north and west of Marienville, when we stopped at the check station around 10:00 a.m. to get some coffee. A large group of people and hunters congregated at the check station as a successful bear hunter was just leaving when we arrived. Our bear check stations, located throughout the state, are a popular place for hunters and the public to gather and view the black bears harvested by hunters.

I spoke to LMO George Miller, who was in charge of the bear check station, along with FCC workers Rob Cochran and Tom Oliver. The crews at the check stations process each individual bear by weighing each, pulling a tooth for aging, and placing a tag in the bear's ear.

George said they were having a good morning with a fair number of bears being checked in. Some of the bears were harvested the first day, but the hunters were not able to get their bruins out of the woods and to the check station before closing time last night. After getting warmed up for about 10 minutes with some hot coffee we were preparing to leave, when the overhead doors started to open as another hunter was backing his truck into the bay of the check station.

Looking up at the board I saw that this would be bear number forty. Lawrence and I turned around and waited for the hunter to bring his bear in to be checked. The driver exited and was smiling from ear to ear as he walked to the back of his pick-up truck. I congratulated him and asked him why he looked

so familiar. He replied, "You stopped me yesterday for not wearing orange on my head." He proceeded to watch the FCC workers unload and process his bear. His son stepped out of the passenger side, walked to the back of the truck, saw me and glanced away. I asked the son where they got the bear and he mumbled, never making eye contact with me. The son just stared off to his right and at the floor.

I asked the tall and lanky 23-year old son, Fred Barley Jr., to tell me about their hunt. Fred Jr. replied in a very quiet, disinterested dour monotone and still looking at the floor, "We saw the bear tracks, followed them into a thicket and my dad shot the bear."

I continued, "How far was the bear when your dad shot it?"

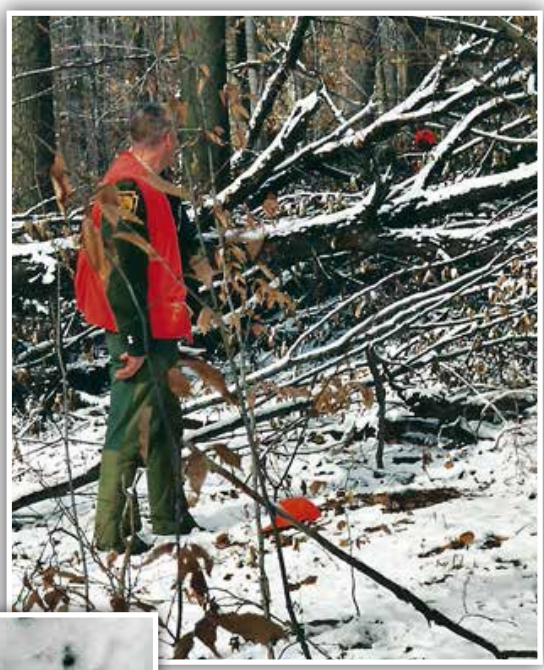
Fred Jr. replied that it was close, real close. I had to ask him three times how far away the bear was when his dad shot it before he finally replied, "About 10 feet."

I repeated, "How far was the bear when your dad shot it?"

He confirmed, "About 10 feet." Fred Jr. never looked at me the entire conversation with his head turned to the side staring at the floor. I asked him to tell me more about the hunt. Fred Jr. related to me that they saw the tracks in the snow, followed them to a large brush pile and he went on the backside of the brush pile as his father followed the tracks into the brush pile. I asked him how big the brush pile was. Fred Jr. informed it was about 20 feet across and he could easily see his father on the other side.

I asked him what happened next. Fred Jr. said that his father could see the bear sleeping and then shot three times into the brush pile. At this point, I heard enough and knew exactly what transpired. I went over to Lawrence and said, "Let's go, I think this bear was shot in its den!"

As we left the check station to investigate the scene, I filled Lawrence in on what the son had told me. We turned onto the main forestry road for about a ½ mile then left onto the first fork to the locked gate in about another 20 yards. We immediately picked up the bear tracks, hunters tracks and drag marks. The tracks led directly to the large fallen maple tree with a gut pile, drag marks and blood leading to the forestry road.



Far left: Former PGC Director of Law Enforcement Mike Dubaich Hunkered in Bear's Location.

Above: Game Wardens Reenact Father Son Approach on Bear Den.

Left: First Shot Cartridge Casing.

It was readily apparent what this duo had just done. Their tracks in the snow told the story. They followed the big sow's tracks to her den. Fred Sr. stood on top of a large branch from the fallen maple tree looking down into the den and observed the sow sleeping at a distance of less than 20 feet. Fred Sr. then jumped down off the branch and approached the sleeping sow to within 10 feet, with only her head visible as he fired the first shot directly between her eyes into her head. The big sow never knew what hit her, as her head flew backwards. Fred Sr. then moved to within six feet of the sow and fired two more times hitting the sow in the neck and chest.

I told Lawrence we had to get back to the check station immediately to seize the bear, as we were unable to contact LMO George Miller via our cell phones due to the topography of the area. Within minutes we arrived at the bear check station and I filled LMO George Miller in on what had transpired.

Fred Barley Sr. and Jr. had left about 10 minutes before we arrived. LMO George Miller only had the Barley's home phone number in Ohio.

I called the residence in Ohio and spoke to Mr. Barley's daughter. I introduced myself and asked her if she could tell me where their camp was located. The daughter was concerned and I readily explained to her that everything was ok, but I needed to speak to her father. She asked me if he got a bear and I informed her that he in fact did harvest a bear. She provided me with the camp location and I thanked her for her co-operation. I radioed DWCO's Rob Cochran and Lawrence Hergenroeder to check the location to see if the bear was still at the Barley camp. Rob informed me he knew exactly where the camp was located after I provided him with directions. Rob and Lawrence proceeded to the camp as I radioed Law Enforcement Bureau Director Mike Dubaich to meet me at

Above left: Hergenroeder Positioned Where Defendant Stood When Shooting Bear.

Above: Larry Hergenroeder Measurement of Bear Den.

Left: Skull Trajectory.

Below left: Mike DuBaich Investigating Sow in Defendant's Truck.

the intersection of Rts. 899 & Rt.66. Mike was just north of Pigeon and met me within minutes as I reviewed the case with him. We left to meet Rob and Lawrence, who were parked near the defendant's camp, but out of sight.

Pulling into the driveway, the large sow was in the bed of the defendant's pick-up truck, with a gaping hole between her eyes. I knocked at the front door and was met by Fred Barley Sr. I informed him why I was there and asked if we could speak to him. He invited me into his kitchen with Officer Dubaich. Fred Sr. glanced over at Fred Jr. sitting on the couch, and there was a slight hesitation before he looked back over to me and said, "What do you want to know?" I asked him if he could relate to me the circumstances leading up to him shooting the bear.

Before he began, I informed him of his Miranda Rights and he agreed to speak to Officer Dubaich and me as the other officers waited outside. In the kitchen, he pretty much parroted what Fred Jr. told me at the bear check station. I asked him if he thought it was extremely unusual to approach a bear sleeping in its den and shoot it at 6 feet away. Fred Sr. didn't seem to think that it was not sporting to shoot the bear in its den at that distance. Fred Sr. said that it wasn't a den; he said bears den in caves. I informed him that bears den in hollow trees, under large boulders, in thickets, under porches, on top of tussocks and yes, sometimes in a cave. After signing his statement, we photographed the soles of their boots, confiscated his rifle, ammo and seized the bear. Officer Dubaich explained to Fred Sr. that we would continue the investigation and he may be receiving citations from me in the near future.

Mike and Rob went to the bear den site to process the scene. Mike Ducbaich recovered two of the empty cartridge cases and Rob located the third by using a metal detector, all within eight feet of the den. Lawrence and I took the bear to FCC headquarters building at SGL 24 where Mike and Lawrence performed a necropsy on the bear later that night. We returned to the den site where I met Mike to photograph the scene and take measurements. Checking the bear's entrails I was able to determine that the sow was carrying two fetuses. It was close to 4:00 p.m. when we completed our investigation and resumed patrol till 8:00 p.m.

Returning to the FCC headquarters building at SGL 24, I photographed the bear as Mike and Lawrence completed the necropsy. Mike was able to track

HIGHER LEARNING

only the ignorant can
convince themselves
they're wiser than the rest

too clever to be caught
little lies expand to
monstrous proportions

eventually they implode
as their plots unravel to
foretell their undoing

trying to cut corners
as greed comes to haunt
their reputations and

their transgressions
exposed for all to see
answer to the judge

lessons learned late
revealed in the media
benefits those wiser
to avoid hard knocks

create tales of woe
to be recited by those
unwilling to walk this
path to higher learning

➲ ***Poem penned by British Columbia's Frank deBoon***

and visually mark the bullet wounds for me to photograph in addition to finding bullet fragments in the carcass. I now had my evidence for court and subsequently filed two citations against Fred Sr. and Jr. for shooting a bear in its den. I arrived home around 10:30 that night as Mike and Lawrence went back out on night patrol.

I called our bear biologist, Mark Ternent in Harrisburg and asked him if he could travel to Forest County to look at the den site and possibly testify in court. I met Mark on a cold, blustery January day and took him to the den site. After hiking into the woods and checking out the site, there was no doubt in Mark's mind that the big sow was in her winter den. Mark pointed out to me where the sow actually bit off twigs and leaves to pad her nest. I was going to qualify Mark as an expert witness with his many years of experience as a bear biologist at the summary trial.

On the day of the summary trial I testified first, then called LMO George Miller to testify, followed by Mike Dubaich and finally PGC Black Bear biologist, Mark Ternent. The cross examination by the defendant's lawyer was going a little too smoothly and I couldn't figure out why he repeatedly kept stipulating that he was not objecting to his defendant shooting the bear in its den. I was trying to keep things under control, but could see I wasn't in the defense attorney's league, even though I was handling the majority of his objections.

Up to now, things were progressing fairly well. When I asked Mark, if in his expert opinion the bear was in a den, the defense attorney immediately leaped up out of his chair and objected to my question and stated that I didn't qualify Mark as an expert witness. Here, I realized that I neglected to ask the District Magistrate to qualify Mark as an expert witness before I started asking Mark Ternent. Mike Dubaich had reminded me to do this before the case started. At this point, things started to go south in a real hurry and I felt as though I were drowning. WCO Rich Cramer, who was sitting behind me, leaned forward to give me some direction, but was admonished by the defense attorney in the form of an objection.

The District Magistrate ruled in favor of the defendants and dismissed the case, even though Fred Sr. admitted to shooting the bear asleep, in its den at a distance of less than 10 feet.

The defense attorney shook my hand after the summary trial and was impressed with the prosecution we put forth, however it did little for me, knowing the hours we put into this investigation. I later asked the District Justice why he dismissed the case. He informed me that I failed to properly qualify Mark Ternent as an expert witness. In my final summation statement, I said that it's relatively obvious you just can't walk up to a bear at less than ten feet, unless it's in hibernation or under sedation such as when we trap and transfer bears.

It never ceases to amaze me the avarice some people have that drives them to unethical, unsportsmanlike and illegal behavior in efforts to fill their tags. However, in this scenario the sad fact remains, the defendants did shoot a bear in its den and she was carrying two young cubs. I'm certain the vast majority of hunters in Pennsylvania would have not capitalized on such an unethical situation and find it inexcusable and a loss of our precious wildlife resource. The words inscribed above the entrance to the ROSS LEFFLER SCHOOL OF CONSERVATION are testimony to what Pennsylvania game wardens live by;

TO PROTECT THOSE THAT CAN NOT PROTECT THEMSELVES.

➲ *Written by Mario L. Piccirilli, retired State Game Warden, Pennsylvania Game Commission, Forest County*