I call to your attention that only 4% of the duck stamp holders were contacted. This may appear to be low but take into consideration the short hunting period, the type of activity, and that this figure does not include those checked by state officers.

During the first six months of this year, Missouri agents prosecuted 2,050 violations. Of this number, 1,227 were "No Permit." Approximately 700 were for over-limit, closed season and illegal methods. Our records indicate that we check approximately 20 to 25% of the one million persons who purchase licenses each year in our state. Using this as a basis, we missed about 10,000 "free riding" wildlife customers the first six months of 1963. When you multiply that number by the price of a permit, it is obvious that the loss of revenue is extensive. However, what would our income be, were it not for the men in the field prying "free loaders" out of the brush, chasing them through the fields, listening to their excuses? Although it is sometimes hinted as a cheaper method, I doubt if the personal field contact, by the enforcement officer can ever be replaced by modern communications media in persuading the "mythomaniacs" of field and stream to abide with our "pay-as-you-play" plan.

In closing, I would like to "sin-seriously" admonish once again the success of our department's programs depends to a great measure on the image created by the conservation office in the minds of our critical constituents. I believe Assistant Secretary of Interior Frank Briggs referred to them as "vociferous" rather than "critical."

The conservation officer needs all the help he can get from every man on the team in carrying the "pig skin" of wildlife law enforcement down a rough and rugged field to the goal posts of good hunting and fishing. Whatever the cost of game law enforcement, the hunting and fishing public is getting its license dollars' worth for every badge that blazes on the breasts of the "Brush Beaters."

SUITS AGAINST OFFICERS

By Ed Ashbaugh

Attorney for the Arkansas Game and Fish Commission

To The Law Enforcement Section of the
Southeastern Association of Game and Fish Commissioners

Mr. Chairman, Ladies and Gentlemen; I feel greatly honored that out of the fourteen states that comprise the Southeastern I was chosen to discuss the question of "suits against officers" with you. This is a question which comes very close to us of the Arkansas Game and Fish Commission since we have some suits of this type pending in our courts at this time.

In my association with the law enforcement division of my own Commission, and of those of various other wildlife commissions, I have found these men to be dedicated to the enforcement of the game and fish laws, and to the protection of the fish and wildlife of the country, and this in my opinion is good conservation which inures to the benefit of all mankind, and here I wish to state frankly that in my opinion our own Commission could operate only for a very short period of time without the aid of our own law enforcement division, since we are wholly supported from license fees and some small sums of money from fines, not one cent of tax money going to the support of the Arkansas Game and Fish Commission, and human nature being what it is I am afraid many of us would soon be unemployed if we depended on tax money for support.

This question of suits against officers appears to be one of growing concern among all of us, as we are repeatedly faced with it. It is the duty of every wildlife officer when he sees a violation of a game or fish regulation, or has reason to believe that such regulation has been violated, to take appropriate action to arrest or apprehend the alleged

violator, and therein lies the crux to this question of "suits against officers."

Since wildlife officers are dealing wholly with game and fish violations, all of which are misdemeanors, it is necessary that the officer see the violation, or have in his possession a valid warrant of arrest for the offender, said warrant of arrest having been properly issued by a court of competent jurisdiction to try the case. Having made the arrest, it is the duty of the arresting officer to do the following: (1) If a sight arrest is made by the officer, it is his duty to take the alleged offender to the nearest court in the township wherein the offense was committed. (2) Let the defendant be charged and arraigned by the Court. (3) The Defendant should then plead guilty or not guilty; if the plea is "guilty" the Court assesses the penalty and costs. If the plea of "not guilty" is entered by defendant, time is set for trial, usually at a later date and defendant placed under an appearance bond. The procedure is the same where an arrest was made on a warrant.

Although an officer may exercise the utmost care and caution in making an arrest, he cannot always avoid being sued for damages, as under our laws any person believing himself to be the injured party has a right to file a suit against the wildlife officer. Sometimes the complaint takes the form of a charge of false imprisonment and sometimes as an ordinary assault and battery case. In any event, the officer finds it necessary to defend himself in court. Fortunately for the wildlife officer in Arkansas, the Commission provides him with legal counsel.

In this state where a civil complaint for damages was filed against an officer on a charge of "false imprisonment," our Supreme Court said "That in making an arrest or preventing the escape of one charged with a misdemeanor, an officer may exert such physical force as is necessary on the one hand to effect the arrest by overcoming the resistance he encounters, or on the other hand, to subdue the efforts of the prisoner to escape; but he cannot in either case take the life of the accused or even inflict upon him great bodily harm, except to save his own life, or to prevent a like harm to himself."

In commenting further on this question of false imprisonment, our court said "a misdemeanor must have been actually committed to justify an arrest without a warrant, and the officer must determine at his peril whether an offense has been committed or not."

Another favorite line of attack against wildlife officers being that of willful and wanton assault with a deadly weapon upon the person of the plaintiff, thereby causing shock to his nervous system, and that such assault on the part of the wildlife officer was premeditated, malicious, vicious, violent, unlawful and with careless, reckless, negligent and wanton disregard for the safety of the person and property of the plaintiff, and then asks a sum of money for actual damages and a sum for punitive damages.

Assault and Battery—Liability for damages, where an officer in good faith, believing that plaintiff had committed a misdemeanor after ordering him to stop, shot his tire casings to prevent him from escaping arrest, and thereby injured his automobile, but inflicted no personal injury on plaintiff, the officer is not liable for damages to the automobile, so holds our Supreme Court. Our own court also holds that an action of false imprisonment under a wrongful arrest will not lie, where the arrest complained of was made under lawful authority.

Our court also holds that a claim for punitive damages on a charge of false imprisonment will not be allowed without a showing of "malice, wantonness, or lack of good faith," and that the defendant has a right to show that he "acted in good faith as a defense."

At this point it is perhaps pertinent to the question at hand to define the terms "false arrest," "false imprisonment" and "assault and battery."

Section 41-1601, Chapter 16, of Arkansas Statutes (1947) annotated, defines false imprisonment as the unlawful violation of the personal liberty of another, and consists in confinement without sufficient legal authority.

Section 41-601, Arkansas Statutes (1947) defines assault as "an

unlawful attempt coupled with a present ability to commit a violent injury on the person of another."

There is another facet to this question of "suits against officers" that we believe it proper to discuss here at this time and that is the question of an officer trespassing on private property for the purpose of investigating violations of wildlife regulations, or for the purpose of making an arrest for the violation of a wildlife regulation. Various laymen have repeatedly raised the question with us that a wildlife officer has no authority to enter upon private property to enforce the game and fish laws of the state, and our own Supreme Court has not, up to this date, clearly defined this question, but we take the position on this question that a wildlife officer has the same right to enter upon private property to enforce the game and fish laws of the state as any other peace officer has to enter upon private property for the purpose of enforcing all other non-game and fish laws; to hold otherwise would be to completely nullify all game and fish laws.

Since it appears that we do not have an Arkansas case that is in the parlance of lawyers on "all fours" with this theory, we submit to you a North Carolina case that is squarely in point, in State versus Ellis, 241 N. C. 702, 86 S. E. 2d 272:

> "Speaking through Associate Justice Johnson, the Court said the evidence indicated that Ellis was in the performance of his official duties. 'And being in the performance of his official duties, the doctrine of retreat as an element of self-defense had no application to the defendant's situation. This is so for the reason that a peace officer, or one clothed with the powers of such officer, who is assaulted or obstructed or interfered with while in the lawful performance of his duties is not required, or ordinarily permitted to retreat and thus leave the would-be lawbreaker to work his will and frustrate the orderly enforcement of the law. On the contrary, it is his duty when assaulted to stand his ground, carry through on the performance of his duties, and meet force with force so long as he acts in good faith and uses no more force than reasonably appears to him to be necessary to effectuate the due performance of his official duties and save himself from death or great bodily harm. Also, as bearing on the question of excessive force, a peace officer acting in self-defense is presumed to have acted in good faith, and the jury should have been so instructed.' "

It seems to be the opinion of many people that their constitutional rights provide them with the privilege of doing as they please on their own property. In the North Carolina case supra, the facts were that the officer had entered upon the property to investigate a fish violation case and was met by a brother of the owner, who attacked the officer with a large rock expressing the intention of killing the officer, who in self-defense killed the man. The lower court held the officer to be a trespasser upon the property of the person killed. The high court said this was not true, holding that the only place that is inviolate to the owner is his house and yard and outbuildings and to search these the officer would need a search warrant, and with this theory we fully agree.

In closing, let us suggest that when you make an arrest that you not use any more force than is necessary, always treat the offender with kindness and courtesy, advising him of his rights in the matter, and take the offender to the nearest court having jurisdiction in the case.