

## PREPARATION OF GAME AND FISH CASES

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As you probably know, the Federal jurisdiction extends to cases, game and fish cases, involving the Migratory Bird Conservation Act, the Migratory Bird Treaty Act, the Black Bass Act, the Lacey Act, the Bald and Golden Eagle Act, and probably some others I am not aware of. But in any event these largely relate to interstate transportation of illegally caught or illegally imported fish, fur and game, to the ducks, doves, and insectivorous birds, also the bald eagle because it is the National Symbol, the golden eagle because it so closely resembles the bald eagle.

This jurisdiction also extends in this State to certain Federal enclaves and you probably have them in your state. In these enclaves, which are areas owned by the Federal Government, over which the Federal government has exclusive jurisdiction, the laws applying are State laws but they are also federal offenses. Most of these areas here in Arkansas are policed by the State Game Officials. The individuals caught in game violations in those areas could not be tried in State court and the only recourse is to try them in Federal Court. It is our policy in the Eastern District of Arkansas, and I do not know how you operate in your other various states of which I am informed that representatives are here from too many states to mention, but we rely largely on the Game Management Agents of the Fish and Wildlife Service, that is cases made by State Officers that we will adopt for prosecution, and we have a liberal policy in adopting cases because we feel that conservation of wildlife and the maintenance and enforcement of the fish and wildlife laws are important. We have a liberal policy and if for some reason, and sometimes the reason is unknown to us, the State officials feel that a prosecution would be better laid in the Federal court in a case in which we have jurisdiction we will undertake the case provided it meets qualifications that we think any criminal case we undertake should have. We do not treat wildlife cases as routine—we treat them as criminal offenses—we treat the individuals that are apprehended as criminals. We try to do as good a job as we can in this prosecution. This policy and this method of operation has worked very well here. I think on the other hand when our Federal Agents make a case they feel would be more properly handled in the State Courts that they ask the State Officers to handle them and it seems to me they have a wonderful situation with regard to cooperation between the State and Federal Government here.

Everyone is striving for the same results and we have been very pleased with our success in the prosecutions here. I guess our chief claim to fame in the Eastern District is the undercover cases that we had a couple of years ago. That was an investigation initiated by the Federal Government with the cooperation of the Arkansas Game and Fish Commission which involved purchasing ducks in our two primary duck hunting areas for over a period of two years. We were fortunate in having an undercover man involved as a very effective individual. He could place himself in the situation where he was completely trusted by the violator. We tried, I think, 51 people and of that number some 40 pled guilty. In one trial involving some four or five thousand ducks purchased by this agent, of the nine individuals of whom the Jury tried, eight were convicted and there were some substantial prison terms of up to a year with regard to some individuals. We feel this has been a good thing, something that has helped the situation here in our State.

Now, of course, you should know that preparation of any game and fish case for prosecution is practically the same whether it be State or Federal Court. I might tell you how we initiate prosecution here. It is a little different from State procedure here in Arkansas and I don't know about the procedure in other States, but ordinarily our Agents are not empowered to arrest without a warrant. As a conse-

quence when he detects a violation which is in our jurisdiction he ordinarily secures permission from our office to go to the U. S. Commissioner and obtain a warrant and arrest the individual. Of course he can take such measures as he feels necessary to control that individual until he has time to do that. That does not mean he has to see the violator walk away and can't keep control of the individual but technically the arrest does not occur until the warrant is issued. Thereafter, if it is a misdemeanor we can file an information in the District Court. If it is a felony such as the sale of ducks or the commercialization, the commercial practices, in the duck hunting business we have to indict, which means presenting the case to the Grand Jury. Needless to say, we always make it a practice in our prosecutions to learn as much as we can about the agent who has made the case. We expect the agent also to learn as much as he can about us whether this be a State or Federal Agent. We like to know, I always like to know at least, almost all the facts having to do with the violation, everything I can know about the defendant, everything he has said to the Agent, everything that might have any conceivable basis or relationship to the case. It is important that the Agent realize that the Attorney quite often is not as familiar as he is with the violation, with the laws and with the regulations you gentlemen enforce. It is up to you to educate him. It is up to you to convince him of the importance of your job. It is up to you to make him realize that your convictions about your work are sincere. It is up to you to instill in him the idea that your case is important, that he should work hard for you and that the matter is something of more than passing importance. If there is no misunderstanding between the Attorney and the Agent involved, and the Agent is usually the principal witness, then the prosecution usually goes along very well. We always at the pre-trial conference which we hold with the agents as soon as possible, when the case is set for trial, go over the evidence and the statements he may have and we will evaluate him as a witness. We will try to determine the best manner in which to present his testimony and with everyone it takes a little bit different technique and we will subject him to quite intensive questioning about the violations—sometimes they think we do not believe them but we do it designedly because we want to make sure that the Agent will be prepared for what he might meet in the courtroom. Quite often this results in the Agent, after we talk about the possible defensive measure we might expect in the case, quite often he has to go back and do additional work. We find that many cases have been saved by this one conference—getting the man in and treating the case as something important rather than have it come up to trial and then for the Attorney and the Agent to find out what it is about.

Now, quite often in some cases it is necessary that you resort to people who are more expert in the field than the Agent who made the apprehension or detected the violation. We have had occasion where we discovered we needed someone from the staff of one of the game agencies to present particular expert evidence concerning the matter we had in court. There is one thing I always like to point out, that if game enforcement officers have any failings, and I doubt if they do, I think that they might in some instances fail to allow the violator to talk himself into a little difficulty. We have had cases where the cases were made primarily by the lies that the violator had told or that later appeared to be lies. Quite often, if the man does not admit the violation when you talk to him, if you will just continue talking with him, if you will talk to him about his family, his hobbies, his hunting success in prior years or his fishing success, if you will lead him on and talk with him and use a little psychology you will soon find that he becomes friendly, that he becomes more voluble, he talks more or tells you things that you can later use. Of course you eventually bring the conversation back to the matter at hand and quite often where he had a very hostile attitude to begin with you will find you have achieved a great deal of success and saved yourself a lot of work by spending a few minutes talking to that man. Another extension of this is that we have in courts what we call admissions, of course,

if the defendant admits the ultimate fact of guilt—that's a confession, but admissions tie the man down to a story. I like to know when I have a case what the man has to say about it. If possible I like to have his story reduced to writing. I like to have him have signed this story because then when he comes to court he is bound by the story he told you. Offer to let him write it out or write it out yourself. This may not seem very important at the time but believe me if he is bound to one story and tells another in court we are a long way along the road to achieving what we are trying to.

Another important thing in preparing your case is to immediately after (of course if you take him before the court and he pleads guilty you can forget about all this) but I am talking about the case that is going to have to go to court for one reason or another, usually because they will not admit their violation, promptly and immediately make your own notes about what you see and observe and what he said. In the undercover case I mentioned the man had to remember events and transactions that occurred over a two-year period. Each time something had happened he made a resumé, he made voluminous notes I might say, and this enabled him at the trial to detail facts and figures about the case. They were so impressive that the jury had no question about his truthfulness. For example, we were going along in the trial and the defense conceived the idea, well, let's have this witness identify a bunch of people here in the room as to whether he tried to buy ducks from them or not. This happened on a Friday and most of the people there the agent had never seen before. If he had seen them he did not remember them. He denied he had attempted to buy ducks from any of them. This was on Friday, Court recessed and over the weekend the agent got to thinking. He is a conscientious man and wants to tell the truth in court and he got to thinking there was one individual there who looked rather familiar and he thought he remembered where he lived. He wondered about this for a day and a half, or until Sunday afternoon, and then called me. I suggested he just forget it because I happened to know the individual that he thought he had failed to identify and I know his testimony was favorable to us, but in order to assure himself that he had not inadvertently misled the jury or the court, I suggested he go back and read all his notes to see if he could find mention of this fellow's name or anything similar to it. He did this and was able to recall the various transactions he had recorded in those notes and was able to convince himself that his testimony had been correct. Sure enough, came Monday and this individual got on the stand and the defense said, "Did this man try to buy ducks from you?" and the witness said, "No." So there we were, we were saved from what the agent had wanted to go back on the stand and admit that he had tried to buy ducks from this individual but by reading his notes and looking over what he had put down, preserving his memory in writing, he was able to avoid such a catastrophe. Now, we try our best to present our witnesses in the best light we can in court. This pre-trial conference is designed for that purpose. I would suggest when you appear as a witness to be objective, to be impartial, to be if possible sympathetic with the plight of the defendant. It is not very comfortable to be in court as a defendant charged with a game and fish violation. Be sympathetic if you can. If there is anything good about the individual you know about him, do not make an opportunity, don't brazenly say it, but if the opportunity naturally develops say something good about him. In one case the witness on the stand when I was examining him said, "Why, Joe over there is the most likeable fellow in the world. No one dislikes him and I feel sorry for him." This has the immediate effect—you can sense it and the defense counsel knew it, of making this witness acceptable by the jury because it indicated to them his fairness, his objectivity, the fact that he was not out through bias or prejudice to get this man. Needless to say that was a successful prosecution.

In the field of demonstrable evidence, and by that I mean evidence the court and jury can see, we always feel if we can show them a picture, if we can show them a chart, show them something to illustrate your testimony, we are more effective, we are able to convey to that jury and to that court more effectively your testimony. Take this ex-

ample. We had Andrew Pursley make a case on hunting doves with the aid of bait. I think he had nine people (of that he and the State agent disposed of all but two in the State Court and we got the other two). It's the kind of case, marginal case, where the individual is some distance from the bait, and the bait happened to be corn. Andy did a good job. He sampled the bait he had previously discovered before the season opened. He had photographed the birds as they came in, he had checked it carefully, he had determined the only way these individuals could get to their position was by walking through corn on the ground, something that should be obvious. I think we will be successful in that case because we are going to be able to show that while this individual was some distance from it he must have known the bait was there and while that may not be legally necessary we still think it is practically necessary. We think we will be able to make that case all right. I advise you to use as many crutches, as many aids as you can to make your testimony more effective in court. Now, we feel in this District that the key to successful game prosecutions is the complete cooperation of the agent with the lawyer and that enough time should be devoted to their conference and their work together before the trial that the case can be presented effectively.

We are proud that we have had a hand in this effort in handling these cases and we certainly have a high regard for our commission in this state and our agents. They certainly do a marvelous job and we want to be in there pitching with them and helping them.

Thank you.

## DEVELOPMENT OF TENNESSEE FISH PROTECTION SURVEILLANCE SYSTEM

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### ABSTRACT

Increased population and industrial pressures have focused attention on the need for an accelerated and effective program to prevent and control pollution-caused fish kills in Tennessee waters. A training program to facilitate more rapid and accurate determination of the extent, severity, and probable cause or causes has been developed by the Tennessee Game and Fish Commission.

Game and Fish Officers are located in each of Tennessee's 95 counties, and they comprise a readily available source of manpower to implement the program. The Officers must be specially trained in fish welfare so that they will react quickly and efficiently in the event of a fish kill.

A training program and manual for investigation of pollution and fish kills for Game and Fish Officers have been developed. All Officers in Tennessee have completed the first two-day pollution school of a proposed series of courses. The school was conducted by personnel from both the Game and Fish Commission and the Tennessee Stream Pollution Control Board.

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The pressures of industrial and population expansion in Tennessee have focused attention on the need for an accelerated and effective program to prevent and control pollution-caused fish kills. A training