

For all practical purposes, the enforcement officer's duty is finished when all the evidence has been presented to the court. If the evidence is not sufficient, the court may dismiss the action or upon conviction impose a just penalty which is commensurate with the crime. This is the court's responsibility and duty and such responsibility should not be usurped by the enforcement officer.

In closing, let me tell you something that you already know: Game law enforcement is a complex and technical work. It requires the services of personnel with high standards of courage, integrity, initiative and, above all, extremely good judgment.

We can do much to assist our law enforcement officers to do a better job if we encourage and obtain uniform interpretation and enforcement of the laws and regulations with which we are concerned. And in the process we will be serving better our constituents—the American sportsman who looks to us to preserve our wildlife heritage through just and simple game laws, vigorously and uniformly enforced.

THE PRACTICAL PROSECUTION OF GAME LAW VIOLATIONS

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One of the important phases of game management is game protection. Without it all of your efforts are in vain.

Good and efficient game protection is not easy, remember that laws and regulations for the protection of game are relatively new in our system of jurisprudence when compared to most of our basic penal laws. It has only been a few generations since laws for the protection of game have become necessary in this country and with the rapid growth of our population and the depletion of our game and habitat we find ourselves faced with the difficulty of efficient enforcement among a populace not completely concerned or sympathetic.

Experience leads me to believe that a substantial portion of our good citizens will violate a game or fish law or regulation that would not think of violating other laws.

That a substantial portion regard violation of a game and fish law by others less seriously than they do other laws.

No law can be satisfactorily enforced without overwhelming public approval and demand. For instance national prohibition—even the federal government with all of its resources could not do the job. The only reason the various offenses of homicide and larceny are reasonably enforced is because there is practically no one who is in favor of the practice.

And, of course, there is that human trait so commonly present that laws should be enforced as to others but not against ourselves.

These conditions coupled with the practical difficulties of apprehension of the game law violator, the size and remoteness of the area to be policed, and the usual inadequate resources to provide adequate personnel and equipment, combine to make your enforcement problems more difficult than in other phases of law enforcement. So it behooves you to make the most of what you have to effect convictions. It will be my purpose to impart to you something of value in the practical prosecution of court cases, whether you are directly or indirectly involved.

Remember from the very first you are on the short end of the stick. A properly authorized officer only may make the arrest. Few game and fish violations are punishable by confinement in a state penitentiary. Therefore, they are mainly in the class of crimes known as misdemeanors and citizens' arrests are not permitted. If a citizen witnesses or has knowledge of such a violation, in order to prosecute he must first obtain from a properly authorized officer a warrant for the arrest of the offender, upon a sworn affidavit left on file and

subject to public inspection. Furthermore, unless the offense occurs in the presence of the officer he, too, must do the same thing before he can make his arrest stick.

In making an arrest without the authority of a warrant, which is by far the most common type in game and fish violations the officer acts at his peril. He has the right to make the arrest *only* if the party arrested has violated the law. He has the right to use force in making the arrest, but *only* such force as is necessary to effect the arrest. He has the right to defend himself and to defend his life, if necessary, but *no* more so than anyone else. He has the responsibility of furnishing the prosecuting attorney with evidence sufficient to effect a conviction. He performs all of these important functions and other lesser ones at the risk of personal liability for bad performance, and above all he holds the key to local public opinion of the entire Department by the manner in which he handles the situation.

So a good officer is necessary to good game and fish management. He not only has to be smart; he must be above average. Above all other traits he *must* be courteous at all times and under all circumstances, and more especially to a violator in the performance of his duties. This is the most admirable trait an officer can have. It can not be overstressed by any superior. There is nothing which affects public opinion more. It is the number one quality I would expect in any officer and plays a great part in the outcome of his cases, especially before a jury.

The second most important trait of a good officer is his ability to control his temper. He *must not* under any circumstances lose control of his temper, even while he is being abused. And he will be many times by violators, by the friends and companions of violators, by some lawyers for the violator, and by the unthinking and irresponsible portion of the public. He must expect it, be prepared to meet it, and triumph over it, as no one can think clearly in a state of anger.

These are not all of the qualifications of a good officer, but they are the most important.

The test of a good officer is the case he presents in court upon a plea of not guilty and the chips are down. All such cases are tried either by the judge of the court as to both the law and the facts, or by the judge as to the law and a jury as to the facts.

Unless the officer is so unfortunate as to be within the jurisdiction of a judge who is known to regard game and fish violations lightly, and there are such, he is usually better off with trial by the judge. Usually it is the defendant who asks for a jury trial, to which he has the right.

There are two main reasons for this: one is, he has several chances to one to obtain an acquittal, an unanimous verdict being required; the other is, the defendant, or at least his attorney, knows that the odds are greatly in his favor when the sheriff, or other legally constituted officer, goes forth to summons a panel.

Never underestimate the power which the person summoning the jury has over the case. Good jurors are sometimes trouble to summons, and the authorized officers sometimes follow the line of least resistance and summons undesirable jurors who loaf in the court house corridors or on the street corners. Sometimes they are even there at the instance of the defendant for the very purpose of being summoned. Sometimes the defendant is a friend of the person summoning the jury and he purposely summons one or more juror who he knows to have little or no regard for game and fish regulations.

The person summoning the jury can decide your case even before the officer testifies.

Always screen your jurors carefully. The arresting officer being acquainted in his community will have generally a good knowledge of most jurors and the prosecuting attorney will have even a better knowledge from past experience. Exercise freely your right of challenge of the jurors. Do it for cause if the prosecuting attorney can elicit answers upon examination of jurors justifying their being excused. This saves peremptory challenges which are limited and which are challenges to which you are entitled without cause. But be not afraid

to use your last peremptory challenge to excuse an undesirable juror as you have nothing to lose, you are already in a bad shape and you have a chance of getting a better one.

However, if the juror you wish to excuse is only moderately undesirable, cast your eye around the court room before using your last challenge, as officers who summon juries, anticipating some will be excused, often bring into court a spare or two to save the trouble of finding another and the spare may be more undesirable than the one you wish to excuse, in which event you had better go to trial with what you have.

Local officers should always maintain a friendly relationship with the officers who summon their juries for obvious reasons. Usually this is not difficult as in most states they are both on the same side of law enforcement.

The trial actually has not yet started, but his case has already suffered several hazards, and if he has at this point obtained an unbiased and fair-minded jury, he has won the first round.

Now comes the officer's turn to convince the jury that the defendant has violated the law.

Remember that it is one thing to witness a violation in the field and quite another to picture it in words to those who know nothing about the occurrence.

When he testifies, and he is usually the main and most important witness for the state, he should *face the jury*, if a jury is used, or the judge, if he is hearing the evidence; *never* the prosecuting attorney who is asking the questions. He is on your side to start with. *Speak out* so every one in the court room can hear. Jurors frequently have impaired hearing and do not disclose it upon examination before they are accepted. *Never* permit a juror to guess as to what is being said. The truth is told boldly. *Never* should he use such expressions as "I think," "I believe," "I suppose," and the like. No person should ever be convicted on such testimony. Testify *positively* or not at all. He should *never* permit himself to show annoyance, anger, or emotion of any type while testifying. He should *never* make sharp or smart answers or ask his interrogator a question in response to his interrogation. Regardless of how rough the defendant's attorney may become in cross examination, he should always be nice and sweet whenever in the presence of the jury. He should be the one who is being imposed upon. Juries are always for the under dog. He should *never* attempt to answer a question which he does not fully understand. Any witness has the right to have the question repeated or clarified by simply stating to the court that he does not understand the question. *Always* introduce all physical evidence seized and always obtain as much as possible. The saying that "one picture is worth 1,000 words" applies to physical objects also.

Endeavor to obtain witnesses in all cases where possible. Their disinterested testimony is worth much more than his.

When he has presented the best case he has and the attorney for the defendant is making his argument to the jury, he should *never* be offended by anything said about him if the attorney takes a crack at him. Remember the attorney is hired by the defendant to do a job. He has nothing personal against the officer. He is merely using psychology on the jury for the benefit of his client, if it works, and sometimes it backfires. The officer can help it to backfire if he takes it as a good sport.

Should the jury return a verdict, or the judge decide the case, for the defendant, he should *never* show any resentment, make any comments, or manifest disappointment, no matter how great he may feel the injustice. After all, this is a matter of opinion which varies greatly with the individual. The officer has performed his duty and there will always be another case. And more than that, before the same judge and probably before some of the same jury.

Now the weak or borderline case.

Remember that the burden of proof is always on the state, and more than this, the violator must be proven guilty beyond all reasonable doubt.

This means that the officer must not only know thoroughly all the laws and regulations, but he must know every element of each offense and how the courts have construed them.

Unless the officer can clearly prove the defendant has violated every element of the offense with which he is charged, it is better to release the defendant in the field and not make the arrest.

There is another type of weak case just as much to be avoided even though a technical violation may be proven. I refer to the case where the violation is not so far removed from conventional conduct as to be of practical importance.

The prosecution of weak cases forces the state attorneys to make compromise dispositions, takes up the time of court personnel, builds a bad reputation for the officer, and in general, hinders the cause of conservation.

However, it takes a sharp officer to analyze his case in this respect while in the heat of apprehension.

The juvenile offender.

No discussion on this subject would be complete without mention of the juvenile situation.

The law governing the arrest and conviction of juveniles vary greatly among the states.

However, I believe that practically all of the states represented at this conference have similar laws on the subject and which is the modern trend of thought, whether you personally agree or not. Here in Kentucky a juvenile is defined as "any child under 18 years of age" and no such child can be convicted of any crime classed as a misdemeanor, and practically all game and fish offenses are such. So that leaves you well behind the "8-ball" when dealing with juveniles.

The only thing that can be done when the child's offenses are great enough and frequent enough is commitment to the state authorities and this varies greatly with the judges of the juvenile courts and usually requires a showing of a consistent pattern of crimes.

So the juvenile problem as applicable to the game and fish laws is not one of enforcement, but of education. Handle the individual offender as best the immediate situation may demand without arrest, and if the child is not already a member of the youth conservation program carried on in the local schools or elsewhere, and he usually will not be, attempt to enroll him, as therein lies the answer.

The junior conservation clubs carried on in this state through the local schools and the camping programs afforded each year have proven highly successful with ever increasing results very much evident. And while it will always be necessary to maintain a staff of enforcement officers, when these youngsters take our places and bring forth another generation, the task will be greatly lessened.

While the things I have mentioned will help your enforcement officers to obtain a higher percentage of convictions, they are not a substitute for preparedness, for this is the secret to being victorious in any court action.

Never depend on outwitting your adversary in the court room, television notwithstanding. Develop your case and prepare your proof before trial. Few cases are ever won or lost in the court room. Do not depend on the state's attorney to prepare your case. Do it yourself. Most state attorneys are busy with other and probably more important cases and most of them earn their constitutional limits of compensation early in each year.

The local enforcement officer is the key link between the public and the department. He is in most localities the only personnel of the department that the average citizen personally knows or comes in contact with. The entire department is judged by the public by the manner in which he goes about his duties. Select the very highest type of personnel for this work. The average will not do. Many aspire who have neither the aptitude nor the ability. And when you find him may your budgets always be sufficient to secure his services even though you will not pay him what he is worth.