

Dealing with the Uncooperative Court

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Abstract: One of the most difficult yet important challenges facing the wildlife law enforcement officer today lies in his ability to develop confidence and a cooperative spirit in his court. There are a variety of means by which to achieve this goal and in overcoming common prejudices often surrounding the law enforcement officer and his profession. It is critical that the officer learn to communicate, in both deeds and words, his professionalism and the public desire for firm decisions involving wildlife violations.

Proc. Annu. Conf. Southeast. Assoc. Fish and Wildl. Agencies 37:524-533

There is a commonly held view in the field of law enforcement which tells us that the officer's job is completed when the citation is written, and what occurs in the legal process after the citation is neither the officer's responsibility nor his domain.

To a certain degree, the saying is obviously true, and a disregard for this notion can lead the officer and his organization into havoc. But I have always suspected that, for the most part, the idea originated in the mind of some obscure officer somewhere who, confronted with the indifference of an unconcerned prosecutor or lenient judge, threw up his hands in exasperation, took a long sigh of disgust that there wasn't a muzzle-loading season on lawyers, and moaned aloud, "Well, at least I did my job!"

I have to honestly admit that this approach to the uncooperative court has helped to preserve my own sanity more than once in the past, but the longer I work in the field of wildlife law enforcement, the more I become convinced that our job is not over with after writing the citation, and that there is a great deal of room for positive action on the part of the field officer to bring about firmer judgements in his court cases, and a friendlier and more cooperative spirit in the prosecutors and judges that oftentimes seem to treat us and our mission in conservation so lightly and unfairly.

The Enemy Within

I believe that one of the most thought provoking lines ever written about human relations in general is, "We have found the enemy, and he is us." So often, when we find ourselves in conflict with others, we fail or refuse to consider the possibility that we may be at least partially at fault for our own predicament.

The law enforcement officer of today must realize that there have been those in this profession who have not always projected a respectable image, or worked by respectable standards. As in every profession, there have been those before us, and among us, who have soiled our goal of public respect and professionalism. And far too many people are willing to stereotype and brand every man with a badge as being the same as our worst examples. In a sense, every officer carries with him the curse of our worst, and every day he has to demonstrate by example that he is not a fumbling, authoritarian bully who cannot recognize the supreme difference between good, solid law enforcement, and disreputable harassment of innocent citizens.

It is fair to say that there are times when judges and prosecutors alike fall prey to this stereotyped version of the law enforcement officer, whether through mistaken and false information, or sadly, by first-hand experience. When this is the case, and when this is the reason for an uncooperative court system, the officer has both a challenge and a responsibility to prove himself and his profession.

The courtroom is a magnifying glass where the officer's judgement, knowledge, and character are tested under intense scrutiny for all the world to see. In a sense, the officer, as well as the defendant, is on trial when the gavel falls. And yet, virtually every experienced officer can recall an uncomfortable moment when one of his fellow law enforcement officers took the witness stand in a uniform that looked as though it had been slept in, and in one swift blow, betrayed us all.

Importance of Personal Appearance

While it is not true that clothes really make the man, people, for better or worse, most often make their first impression of us by the way we look. This is especially true in our profession, where the public often seems to be looking for a reason to find fault with us. It never ceases to amaze me that, with uniform appearance always being such a profound topic of discussion at cadet schools and training seminars, how often it is overlooked at the field level. In the courtroom, especially, we can be our own worst enemy, and are in a sense almost asking our judges and prosecutors to side with the opposition when we show up looking like many of them halfway suspect us to be. It is so easy to assume that if an officer takes little pride in his uniform, in the symbol of his profession, then perhaps he takes little pride in the quality of his work or his cases that come before the court. If this assumption weaves

its way into the mind of a judge or prosecutor, the officer will find himself fighting an uphill battle before the battle really begins. On the other hand, an officer can use his uniform appearance as an effective tool to create just the opposite assumption in the minds of everyone in the courtroom, and, in effect, become his own best representative without saying a single word.

But say a word he must, and it is in this area that an officer can cause himself problems. How many times have officers stepped into witness stands having only a faint recollection of the case being disputed, having made no attempt after the citation to organize the facts in their minds, to detail the times and events meticulously, or to prepare themselves to defend the actions and steps they took on that far-away day in the past? For many officers, it happens all too often, because as they recall, their job was over with the writing of the citation. And it is not until they are led stumbling through a confused testimony by an even more confused prosecutor, who finds the whole ordeal a bit embarrassing, under the eye of a disgusted judge who finds for the defendant, that an angry officer stomps out of the courtroom wondering why the court will not cooperate with him.

The realm of testimony and case preparation is probably one of the most important yet least attended-to areas of the law enforcement officer's responsibility. It is also the very eye of the storm where prosecutors and judges form their firmest opinions of us as either professionals or sloppy amateurs in the wrong line of work.

Advance Preparation

Our preparation for this "moment of truth" should begin at the very outset of the case. From the moment we open our citation books and begin writing, we, as professionals, should begin to formulate in our minds a defense of our actions should the day come when it is necessary to do so. Probably foremost in our minds at the moment of confrontation should be, "Can I defend the writing of this citation? Is this a case that 12 reasonable jurors would agree was necessary and valid? Whether this person is right or wrong, how will this case look in court if I have to defend my actions here today?" If the officer cannot answer these questions in his mind affirmatively, he most surely should consider the possibility that the case may in fact damage him more than lift him up in the eyes of the public and the court. If the officer *can* answer these questions affirmatively, then he must at that moment begin the process of detailing his actions. This is not to say an officer needs to prepare volumes of paperwork on every citation he writes, but that he should have enough information available on every case that he can confidently recall in the courtroom the details of what occurred.

Cooperation with the Prosecutor

When the day arrives when the officer is notified of an impending trial, he can then prepare to convert this information into a tool that he can use to

gain the confidence of his prosecutor. Too many officers cause their prosecutors to dig for the very information that will make a respectable prosecution, and more often than not, an overworked prosecutor will avoid digging, and, as the officer, merely hope for the best in the courtroom. If an officer is looking for a way in which to build cooperation and friendship with his prosecutor, he has a real opportunity before him here. For this is the precise moment that the officer can seize and demonstrate to the prosecutor that he understands the fundamentals of a good case and his desire to present it as such.

Instead of waiting for the prosecutor to call him in for an all-too-brief conversation about the case, the officer can submit to the prosecutor a written case report detailing the dates, times, events, evidence, and anything else for the prosecutor's evaluation. He can place all this information in a distinctive folder, or do anything else he can think of that will indicate to the prosecutor that he is good at what he does. Does this kind of action mean that the officer is doing the prosecutor's work for him? Some officers seem to think so, and carried to extremes, it could obviously shift into that realm, but the preparation of a case report does several things to the advantage of the officer.

First, it is one of the most obvious avenues by which the officer can show his prosecutor that he is serious about his work. A formal case report on the prosecutor's desk is the surest sign that the officer cares about his job, his reputation and his willingness to cooperate.

Secondly, it gives the prosecutor an opportunity to review and prepare a case even in the absence of the officer. It shows that the officer knows and understands that his prosecutor is truly a busy individual, and that the officer can place himself in another man's shoes. This, more than anything is an indication to everyone that the officer is a man who people can work with.

Lastly, a case report to the prosecutor is probably the finest means available to the officer of "putting the monkey" on the prosecutor's back, so to speak. The officer has made an obvious gesture of going the extra mile, and the prosecutor cannot help but feel an extra sense of responsibility to provide the officer with the concern and cooperative spirit he deserves. The prosecutor, given a well-prepared case report, will have no honest right to say later on that he didn't have enough time or enough detailed information from the officer to present a fair and professional case to the court.

In the same manner, if an officer is actively seeking ways in which to build the court's confidence in him and his profession, the handling of evidence pertinent to his case is undoubtedly one of the best areas the officer can concentrate on.

Evidence Handling

As with the case of uniform standards, evidence seizure and handling is one of the most important areas of emphasis in our training schools, but one which is often forgotten or overlooked at the field level. The suppression of

evidence based upon constitutional violation or mishandling in the chain of custody has reached notorious proportions in recent years, and only those officers with meticulous and conscientious behavior can avoid an embarrassing moment in front of a judge, a prosecutor, and the public at large. This is an area where the officer can again seize an opportunity from what can be looked upon with disgust as nothing more than an aggravating burden.

If an officer's court requires meticulous handling of evidence, the officer should recognize this as a chance to build his character in the eyes of the court. Instead of lashing out against these rules to the prosecutor and the public, the officer should determine in his mind to meet and exceed the protective rights of the accused. It will, in the long run, protect him from the bias that may exist against him and his profession.

Recording Facts for Presentation

There is one other set of "tools" that the officer has available to him today that can vastly contribute to his image as a professional in the courtroom that we sometimes overlook or simply fail to consider. These are the tools that help us to record the facts for presentation that verify our evidence and our actions.

I'm sometimes a bit surprised to see how few officers carry cameras with them nearly everywhere they go. And yet like the old saying goes, "one picture can be worth a thousand words." Consider, for instance, the difference in reaction between simply telling a person that you apprehended 2 individuals killing deer illegally, and that of telling them and then showing them an 8 × 10 glossy photograph of 2 slaughtered deer hanging out of the back of a blood-smeared pickup truck. Now, I'm not suggesting that we try to overdramatize our work to the court, but I believe an officer can make a lot of difference in an uncooperative court by finding ways in which to better illustrate the damage that some of our "good ole boys" can actually do. Even if a judge obviously knows that you are telling the truth about a certain case, a well-prepared series of photographs can make your testimony, and the violation, much more vivid, real, and believable. It may also subtly place more pressure on a judge to issue a stern decision if by chance the courtroom is full of citizens who are watching all of this visual evidence being passed around the courtroom.

There is a whole new realm of scientific methods by which an officer can substantiate his cases and directly improve his standing with a would-be reluctant court. The area of forensic science, by which blood, tissue, and hair can be identified, is an area in which most judges and prosecutors are unfamiliar with but, nevertheless, are very impressed with. And I am convinced that most of them are just as impressed by the fact that our officers are sharp enough to understand and utilize techniques as they are with the techniques themselves.

Officers should look for ways and occasions in which to utilize these

processes. They affirm an officer's ability to use a variety of law enforcement tools and help to substantiate his credibility in the courtroom. For instance, it would be a little silly to introduce species identification evidence in an over the limit fishing violation case just to prove that the accused actually caught fish, but when the time for these techniques is right, the officer should leap at the opportunity to bring them into the courtroom.

There are countless other tools and techniques available to the officer that he can utilize in the courtroom to demonstrate the fact that he is reliable, knowledgeable, and a person to be dealt with seriously. Anything that the officer can do to make his case more clearly understandable or believable will ultimately have the same effect upon his own image.

Close Encounters

Assuming that we have all become the perfect creatures that we suspect ourselves to be and we still have an uncooperative court, the problem may truly lie with our prosecutors and judges. We know that we are doing all that we can humanly do to keep our cases worthwhile, well-prepared, well-documented, and we still feel as though we're not getting a fair shake.

There are several things an officer can do to bring about a positive change in his court, but it is important, I think, to do them in the proper order, and in the proper way, or the officer can do a great deal of damage to himself and his organization.

I think that the first reaction that most of us have to an unfair decision is to lash out in any way we can, and this often takes the form of a verbal attack upon the prosecutor and the judge at the local coffee shop or in any place, to anyone, who will listen to our awful predicament. I think probably all of us at one time or another have found ourselves at this point, and it takes a strong individual to hold his tongue when he wants so desperately to unload on the system that seems so unconcerned toward him. But this is precisely where an officer can lose it all if he's not careful, and if he thinks about it, it may in fact be the original source of his uncooperative court in the first place.

Personal Conference

If an officer feels that his cases are not receiving the attention they deserve, or the firm decisions they merit, he should consider having a personal conference with his prosecutor or judge. I do not mean by this that the officer should trade verbal shots with these people over the telephone or across a congested hallway. Differences of this kind with people of this magnitude and importance to the officer should be discussed and aired in quiet, personal surroundings. Meetings such as this can have a critical bearing on the future success and treatment of the officer and his organization, and he has absolutely got to be a prepared diplomat. He should know exactly why he feels

slighted, in whatever way that may be, and know exactly what he plans to discuss. He should make it clear at the outset of any discussion with these people that his intentions are solely to clearly understand their attitudes and thoughts and to clarify any misunderstandings they may have about him or his case.

The officer's approach and mood to a meeting like this is critical. If an officer can establish a positive atmosphere when he meets with his prosecutor or judge, he may find a surprisingly receptive attitude on the part of his listeners. I think most officers would be surprised to find how many judges and prosecutors actually enjoy talking to law enforcement officers on a one-to-one basis, and how many of them are encouraged by an officer who will sit down and listen to their attitudes and feelings about a case.

It is important that the officer be willing to listen as well as talk. He may find, to his surprise, that there is a certain rhyme and reason for the feelings these people have, or for the decisions that are being handed down. By the same token, if the officer can express himself calmly, without "preaching" his feelings, he may find that these people often were unaware of certain elements of a case, and that there is a good reason for a certain amount of discontent on the part of the officer.

I think that we sometimes fail to recognize how little our prosecutors and judges know about our wildlife laws and wildlife violations in general. Many of them have little or no background in the outdoors and have no understanding of how devastating some violators can be. They are confronted with charges they may seldom hear or deal with and they refer to a statute book that is not a physical part of the references they normally examine. And I can't help but believe that sometimes they wind up just a little bit suspicious about the entire realm of wildlife law enforcement.

Defining Law Enforcement Terms

The officer must learn to communicate with or "educate" these people, if you will. We have to be able to somehow make sure that these people understand the need for our laws and the day to day problems involved in our work. In my own experience, I have happened upon at least 3 prosecutors who did not know what the term "spotlighting" actually meant. And it wasn't until late in the case preparation process that I discovered that these individuals didn't know what the defendants had been doing with spotlights.

The first night hunting trial I ever witnessed, the prosecutor didn't know what the lights were used for until the trial itself was nearly over, and only at the last minute made any attempt to introduce them as evidence. The officer had simply failed to communicate with his prosecutor. And in that case, he lost in more ways than one. The case wound up looking ludicrous, the judge was only amused by it all; the decision, although held in favor of the officer, was an outrage, and a very embarrassed prosecutor lost any desire he may have had to associate himself with any game and fish cases in the future.

Failure to communicate ideas and feelings clearly and calmly is one of the biggest problems in all of human relations, and becomes especially important in the career of the law enforcement officer. If done properly, there is an enormous amount of ground to be gained here on the part of the officer. By approaching the judge or prosecutor directly concerning differences or problem areas, these people receive a clear signal that you believe in yourself and your profession, and that you are not the type to go sulking out of the courthouse to the nearest crowd that you can incite, and that you truly want to have improved relations with your court system. As long as the officer can maintain a calm, professional composure, there is very little he can lose in a meeting such as this. If nothing else, he learns more about the personalities of his judge and prosecutor, and hopefully, they learn that above all else, he is a concerned and conscientious individual.

The Power of the Public

I believe it is fair to say that there are a few courts that, regardless of how we present ourselves, consistently demonstrate a lack of concern for the officer and his work. More often than not, I think this has very little to do with the officer himself, but generally involves a judge or prosecutor who simply fails to recognize the importance of wildlife laws or the necessity of firm decisions in court if the laws are to serve the purpose for which they are intended.

It is at this point that many officers become demoralized in their careers, because it is a helpless and lonely feeling to know that regardless of your professionalism and judgement in bringing only valid cases before the court, that little will come in the way of cooperation or firm decisions. It is also at this point that the officer knows that any further action he might take in dealing with the uncooperative court can be an unhealthy proposition in more ways than one. But there are some things a concerned officer can do with the aid of a few concerned citizens.

In cases where prosecutors or judges seem uncooperative, it is often a result of the mistaken notion on their part that the public in general is unconcerned about wildlife laws. Prosecutors and judges are elected officials, and if they are to survive in their positions, they know that they have to be responsive to the moods and feelings of the people. If they show little seriousness about prosecuting or firmly judging wildlife cases, it is because they have the impression that the public is not serious about wildlife cases. If done carefully and honorably, the officer can play a significant role in changing this mistaken notion.

Publicity for Court Decisions

First, the officer can find out if the court's decisions are being made public. In some towns across our state, the results of each case in the local

municipal court are listed in the newspaper after each trial day. Here, the local residents can see if a person found guilty of illegal night hunting is given a \$15 fine, or if someone caught netting game fish is given a suspended fine and charged only court costs. But I think if one were to closely examine the facts, he would find that in locations where newspapers report court decisions, one seldom sees outrageous decisions like the ones I've mentioned. The court knows that the public eye is on them, and they are not as prone to live and work in the "ivory towers" that they might do otherwise.

There are possibilities here that an officer might look into. Would a newspaper not currently listing local decisions be interested in doing so? Some newspapers that have no interest in reporting news of that kind do take an interest in cases that are unusual or that they feel might interest a sizable segment of the local residents. There is a tool here that a wise officer can utilize.

I am not suggesting here that an enraged officer become a local cub reporter, or run with a crusading vengeance to the local newspaper office threatening a scandalous exposé of our corrupt judicial system, but there is room here for an officer to see that the fundamental facts of a case are provided to what he believes would be an interested public. Nor does an officer have to place himself "up front" in a situation like this. A calm word of information to an interested sportsman may be all that is necessary to see that the public is informed of what has happened in a certain case.

Enlisting Conservation Groups

There is another segment of the public that an officer can utilize in creating an interest in wildlife law enforcement, and it is a segment that too many of us fail to recognize. The anti-hunting fervor that has swept over a large segment of our country in recent years has created in the eyes of many officers a mistrust of any conservation and outdoor groups that are not based upon hunting and fishing. We are sometimes very suspicious of organizations like the Sierra Club, the Audubon Society, or other local clubs, but we have here an opportunity to utilize these groups as our friends if we approach them in the right way.

Three years ago there was an eagle killing case that went before a federal judge in Fort Smith, Arkansas. The 2 defendants pled guilty to the charge of killing a bald eagle, and the judge's decision was to fine the defendants \$25 each.

There was no appeal, and had it not been for 1 Little Rock woman who was a member of a local bird club and who had attended the case, it would have gone no further. But this woman, on her own, initiated a series of letters to various federal officials, and before it was over, the United States Federal Court in Fort Smith, Arkansas, had received an official reprimand by the Supreme Court of the United States. Of course, this story made good press,

and I suspect that the judge who levied those original \$25 fines has regretted it more than once.

Two years ago, we wound up with an eagle violation of our own in Washington County, Arkansas, and remembering the Fort Smith case, we took the time to notify our local Audubon Society Chapter of the upcoming case. Great care was taken here to simply pass on factual information regarding this upcoming trial. There were no undue references made regarding the court nor was any attempt made to incite or organize in favor of the prosecution. There was, however, a great deal of interest expressed about this case, and the Audubon Society members immediately put their organization to work notifying the prosecutor and the court that they were going to closely watch this case. They contacted all the local newspapers and television stations and gathered a group of local residents to actually attend the trial.

Several interesting things happened. First, the defendant's attorney changed the initial plea from innocent to guilty. The prosecutor called us in on 3 separate occasions in preparing the details of the case, and asked for our recommendations as to the fine that should be levied. Ultimately, the defendant received a \$600 fine, his right to hunt was revoked, and he received a 1-year suspended prison sentence that was to immediately go into effect if he were apprehended hunting in any fashion during the next year. Shortly, thereafter, the defendant left the state.

After the decision, the Audubon Society members saw to it that all the local newspapers printed the story. It appeared again on television, and all of their members were notified by way of their newsletter. They drafted a formal letter to the court expressing the great public interest in the case, thanked the judge and prosecutor for their work and the decision, and informed them that they would continue to be interested in all future decisions involving wildlife violations.

And all this was accomplished without one officer having to stand up and jeopardize himself or expose himself to ridicule or retaliation, or to get himself into unnecessary trouble by exceeding his duties.

If the officer will only look about him and act carefully, he'll find an endless array of interested people and organizations that he can utilize in effecting a favorable change in the uncooperative court.

Above all else, the officer must never fall victim to the idea that he is alone, fighting a hopeless battle against an unconcerned system. We must always believe that given time and our own perseverance, we can improve ourselves, that we do have the capacity to enlighten our courts, and that there are many concerned people who are only waiting for us to discover ways in which to make an effective change for the better.