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LEGAL SUBJECTS AS THE CORE OF A TRAINING PROGRAM FOR WILDLIFE CONSERVATION OFFICERS

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My credentials for talking with you this afternoon lie mainly in my experience as a teacher in conservation officer training programs. As a part of my job at the Institute of Government at the University of North Carolina I have participated in training schools for wildlife protectors for eight years, and during the last five years I have also helped plan and conduct schools for the fisheries inspectors of our Department of Conservation and Development. My general field of interest at the Institute has been criminal law and procedure, and it is on this basis and from this viewpoint that I became acquainted with North Carolina's conservation programs.

As I have had no particular experience with conservation officer training programs in other states, I will need to present the fruits of our experience in the context of our programs here—not only the *what* and the *how* but most especially the *why*—so you may draw your own comparisons and conclusions. Thus if I seem to talk overmuch about the situation in North Carolina it is not so much to hold ourselves out as a model as to help make meaningful for you the insights and conclusions we have reached regarding our training programs. For the sake of simplicity, I am confining this talk to our experiences at the Institute of Government with the training program of the North Carolina Wildlife Resources Commission.

Institute of Government

First, let me tell you something about the Institute of Government. Its beginnings were a series of outside-the-classroom activities of Albert Coates, a law professor at the University, more than thirty-five years ago. Professor Coates, hoping to enrich his course in criminal law, started a series of field trips to police and sheriffs' departments, prosecutors' offices, and the local trial courts. The gulf between the law in action and the law in books was even greater than he had expected. But in continuing his studies, he found a curious thing. The officers in the field were greatly helpful in teaching him about the practical problems, but he found he could also help them—in two important ways. (1) He found many instances in which ignorance of the law was a severe handicap leading to inefficient local variations. (2) Even on the practical level he found a wide variation—and he, as one who had observed the procedures in a number of places, found he could serve as a "clearinghouse of ideas."

The discovery gave the Professor an idea of a continuing service to local officials; he would institutionalize his "clearinghouse of ideas." As his interests were in public law generally, he broadened his target to include assistance to others than those connected with law enforce-

ment, and to state as well as local government. At first, the Institute was supported by subscriptions from the governmental units themselves and supplemented by grants from foundations and civic-minded individuals. Professor Coates retained his base at the law school and as these consulting, coordinating, and training activities with public officials began to demand more and more time, he brought young idealists—mainly recent law graduates he had taught—to the Institute to help. In 1943, the Institute of Government was brought officially into the University of North Carolina, and it has grown over the years.

It has retained, from its founder, a dominant emphasis on law combined with practical problems of administration and finance. Over two-thirds of the professional staff at any one time will usually have law degrees, though most of us find ourselves dealing with types of problems that cause us to draw upon far more than a mere knowledge of the legal craft.

North Carolina Wildlife Resources Commission

The next thing you should know is something of the circumstances that brought the North Carolina Wildlife Resources Commission to the Institute of Government. The Commission was founded in 1947 as an independent fish and game conservation agency, taking over responsibilities formerly exercised by the Division of Game and Inland Fisheries of the Department of Conservation and Development. I am sure that many of you are familiar with the story of the efforts of Clyde Patton to reshape conservation enforcement in our state. He started for the most part with county game wardens inherited from the Department of Conservation and Development. Many of them were excellent men, but they were often state officials in name only. Many really owed their jobs to local politics and would look less to their superiors than to local opinion for resolution of many policy issues concerning their activities.

As the Institute of Government had for a number of years been conducting training schools for the State Highway Patrol, Clyde Patton turned to the Institute quite early for assistance as to selection and training of new wildlife protectors. The selection process that developed is a topic in itself. Its features included state-wide recruitment and a merit-basis hiring policy. Out of this continuing association come a series of regular in-service schools at the Institute for wildlife protectors; later, refuge personnel from the Division of Game were included in the programs for protectors—as they also exercised law enforcement duties.

Philosophy of the Training Program

Now the decision by the Wildlife Resources Commission to go to the Institute of Government for training itself was a major policy decision—whether clearly understood or not. The Institute had a law-oriented bias and its prior major program for state enforcement officials was State Highway Patrol enforcement training. To highlight how this represented a choice with respect to enforcement philosophy, let me give a concrete illustration.

In 1960 the Wildlife Resources Commission entered into a new job of boat law enforcement. This entailed working for the first time closely with the United States Coast Guard. The Coast Guard was enforcing federal laws and regulations that in theory carried criminal punishment provisions. Yet the Coast Guard rarely went to court. It was fortunate enough to have a statute allowing it to bypass criminal proceedings and substitute administrative action. As the statute authorizes the Coast Guard to confiscate vessels for failure to comply with administrative orders, the Coast Guard procedure has the potential of being highly effective. Yet even here, the Coast Guard follows the "soft voice" policy and rarely, if ever, raises its "big stick." If a person in violation of boating equipment requirements will remedy the defect and write a letter to the Coast Guard so stating within ten days, the matter is dropped. As for other types of violations within

the Coast Guard jurisdiction, such as violations of the nautical rules of the road, it is enough to state that criminal prosecutions for offenses of this nature are seemingly very rare. The Coast Guard undoubtedly relies most heavily on education and persuasion as methods of enforcing the law.

It goes without saying, of course, that the Wildlife Resources Commission—which has a very vigorous Division of Education—also uses education and persuasion to a great extent. The same is true of all the really effective men in the Division of Protection. They "sell" sportsmanship and conservation and respect for the game, fish, and boat laws to the vast majority of the public they meet—"soft sell" if you will and without any show of muscle.

A number of protectors, however, insistently claim that there is a small percentage of persons who cannot be reached except through force—or through the threat of force backed up with the ability to carry out the threat.

None of this is intended to be critical of the Coast Guard's policy. In fact its boat-confiscation sanction is far more severe than any punishment wildlife protectors are ever likely to secure in our criminal courts. Moreover, there are important differences as to types of laws to be enforced by the two agencies and as to types of violators encountered that make comparison unmeaningful. Yet the Coast Guard approach to enforcement is one that is found in many places. You might say there are even strong advocates of it in North Carolina—as the last session of the legislature passed a law expressly authorizing our State Highway Patrol to give warning tickets for traffic offenses instead of citations to court.

Administrative discretion not to prosecute violations of the criminal law is a very complex subject on which a number of scholarly articles have been written. It is something that does—and must—exist every day. Under the law of North Carolina, for example, each time you are guilty of violating a municipal parking ordinance you are theoretically subject to be sent to jail for thirty days. Yet the cities make it generally understood that they will not prosecute anyone who goes in and pays his dollar to the Violations Bureau.

A more extreme example might be furnished. Suppose a newspaper article on quaint old laws indicates that a forgotten 1903 local law restricts fishing in a certain creek to the use of cane poles. As a lawyer I could raise some questions whether later general acts on fishing impliedly repealed the old local law—but the general presumption in this state is *against* the repeal of local laws by implication. The odds are more than fifty per cent that the law is valid. Yet the public has been fishing in other ways legal under the general law for years in that creek. Certainly the wildlife protector would not arrest someone casting with a rod and reel in that creek.

A more difficult illustration is the one where a hunter or fisherman is checked along with other members of a party. The protector knows the man as a law-abiding sportsman, has checked him before and knows he is currently licensed. Yet, in checking him routinely along with the others in the party, the protector discovers the man does not have his license with him. The protector is inclined to believe the man's story that his child was playing with his wallet the day before and must have removed the license without his knowledge. The law clearly states that this is an offense, however. Should the protector prosecute? I doubt if many do in North Carolina—despite some tendency toward being "hard nosed" within the Division of Protection. These are all harmless examples of nonprosecution, yet from the literature it is certain that leaving the discretion in the individual officer whether to prosecute or not can lead to abuses.

Most writers list at least four different approaches to deal with the situation:

(1) Administrative control to make the exercise of discretion "visible" is often advocated. The officer, for example, is required to *report* instances when a decision not to prosecute is made. The ad-

ministrative superior can then correct the officers who are either too harsh or too lenient in exercising discretion. Also, the reporting policy will allow a check into possible situations of favoritism, bribery, and the like. After a while there can even be administrative "guidelines" on when to exercise the discretion not to prosecute.

(2) Others remain unhappy with this exercise of discretion even at a higher and visible level. They say that a blanket decision not to prosecute is in effect an amendment of the law and that this authority legally belongs only to the legislature or—in the case of regulations—to the policy-making members of the regulatory agency. Their solution is to rewrite the laws and regulations from time to time to make them more equitably enforceable. This, of course, is ideal, but is more easily said than done. Nevertheless, as I read the signs, decisions of the Supreme Court of the United States dealing with constitutional rights of criminal defendants, criminal procedure, and equal protection of the laws are going to force a change in this direction. If the states want to keep on using the *criminal* law as a way of getting compliance, they are going to have to become more and more legalistic in their procedures in order to get convictions that will stand.

(3) Although nonprosecution is a problem with any type of crime, a third solution as to very minor crimes is to make the violation noncriminal. The Model Penal Code includes a category of offense which is punishable *in the court system*—by a small fine only—but which is technically *not* a crime. New York has adopted it with respect to certain traffic offenses. This approach solves some of the problems of procedure posed by the constitutional guarantees surrounding the criminal trial, but it does not change the problem of the individual officer's use of discretion not to prosecute.

(4) The fourth solution has also been advanced as to purely regulatory codes as to which there is little in the way of conduct that is criminal in the traditional sense of the word. Traffic rules plus hunting, fishing, and boating codes are good examples. As these matters are governed by a regulatory agency, it is suggested that the criminal penalties be repealed—taking the offense out of the court system—and that administrative provisions be substituted. Confiscation of equipment and revocation or suspension of licenses would be the main sanctions, perhaps tied in with a point system weighting the various violations in terms of their relative seriousness.

Returning to the Wildlife Commission, it can be said that rightly or wrongly its choice up to now has been in the main to avoid the dangers of nonprosecution and to pursue a fairly strict policy of law enforcement in the criminal courts as the main backstop to its program of education. It follows that once this basic choice is made and once a legally based training agency has been selected, this will have a profound impact on the shape of the training program.

Recruit Training Program

It is no overstatement to say that the most important subjects taught at the Commission's recruit training school are the law of arrest and the law of search and seizure. Note that I am talking of *law*—not psychological approaches or physical techniques of arrest and search. These are taught also, but are not emphasized until later in-service sessions are held.

Many may wonder whether this makes sense. Wildlife protectors make few actual arrests. Most violators are merely given citations and they come to court on their own. They are not physically taken into custody. And there are also very few full-scale searches made —either incident to an arrest or under a search warrant. Many enforcement agencies with no more of an arrest and search problem than this apparently get along quite well with only a very minor training emphasis on arrest, search, and seizure.

Our answer is that these officers do have the authority and the

occasional need to act. These areas are ones involving the liberty and privacy of citizens and they are surrounded by constitutional prohibitions. The decisions of the Supreme Court as to individual liberties have become front page news in the last few years, but we at the Institute of Government have been following the trend of decisions for a number of years and do not find the new decisions quite so startling or unprecedented as a number of other people do. The law as to arrest, search, and seizure is not easy. So much of it is governed by the development of constitutional doctrines that are now under intensive reconsideration that it is quite impossible to state the law with complete certainty in a number of most essential areas.

For example, is a protector justified in checking a hunter to see if he has exceeded his bag limit when the hunter objects and the protector has no probable cause for believing there has been a violation? Of course if the hunter consents there is no problem, and we teach this. But we also try to give protectors some idea of the constitutional issues the Court to date has not squarely faced. We simply do not know how much power of "inspection" as a lesser species of search there may be; nor do we know how much "detention" not amounting to an arrest an officer may practice in order to ask questions and check licenses.

Though few do run into trouble with arrests and searches, the possibility is always there; and, in this constitutional area, trouble when it comes can be trouble with a vengeance. For these reasons we think a thorough grounding in the law of arrest, search, and seizure is essential.

Another emphasis in our training concerns the whole process of administration of justice. Here, of course, we are necessarily more superficial in our coverage than we are with respect to arrest, search, and seizure or the substantive laws—that is, the game, fish, and boat laws. Yet I believe we spend far more time than is customary in teaching such courses as Introduction to Law and Government, Court Structure and Jurisdiction, and the Law of Evidence. A friend of mine with an enforcement background once accused me of attempting to turn wildlife protectors into "junior-grade lawyers." My answer then was—and still is—that the court situation in North Carolina demands it.

At the justice of the peace level, there are no prosecutors for the State. The wildlife protector, who is technically the prosecuting witness, must literally be the prosecuting attorney. Of course, with the justice of the peace the protector could probably get by without knowing the applicable technical law, yet the Commission is not content merely to get by. As a state agency it is concerned with upholding the law, and this applies to rules of court procedure as well as anything else. But even in the higher courts the need is still there. There are solicitors provided in our recorder-level and superior courts, yet the pressure of caseloads has in most instances reduced the participation of the solicitor to a mere in-court role. All of the books written for lawyers on trial practice agree that the preparation of a case *before* it gets into the courtroom is ninety per cent of the battle of winning a case. This ninety per cent of the lawyer's job is almost invariably done by wildlife protectors. As witnesses, they will not be making objections or rulings as to evidence, yet in preparing a case for trial they must know if certain types of evidence can be introduced to prove a point in issue or whether other types of proof must be gathered.

We are in the midst of a court reform project here and will soon get full-time prosecutors at the lower court level. I will be curious to see if this will lessen our need to train officers as to the administration of justice. I have a notion that the game, fish, and boat law will remain specialized enough that protectors will have to continue to educate judges and solicitors and warrant-issuing officials as to the substantive law. As to procedural law, even if the millenium arrives in which the prosecutor discusses and prepares in advance such minor cases as the ones wildlife protectors usually

initiate, I imagine the training time we spend on court procedural matters will still be justified. Despite the adage about a little knowledge being a dangerous thing, it simply cannot hurt for the protector to have a good idea of what is going on. And, quite importantly, I insist that officers do *not* learn by observation and experience what is *really* going on in court without some study of the basic statutes and legal principles involved.

Although more total hours are devoted to the substantive law —the game, fish, and boat law—than anything else in the basic schools, this is mainly a matter of necessity in the face of a complex subject. The protector *will* be forced to learn on his own the substantive law he must enforce, and in basic schools the subject matter is explored in perhaps less depth than arrest, search, and seizure. The substantive law is by no means slighted, though, and the emphasis is on not just what rule the citizen must obey but on how to prove the violation in a court of law.

It might be mentioned in this connection that the Institute prepares teaching materials on the various subjects taught. In subjects such as arrest, in which there is a great deal of case law, major reliance is placed on the teaching materials we prepare. But in the game, fish, and boat law, which is mostly statutory code and agency regulations, the statutes and regulations themselves are primary. The teaching materials are valuable in covering related questions and in explaining the reasons for various interpretations, but the major portion of our class time is spent making the students reason matters out for themselves from the wording of statutes and regulations.

In-Service Training Schools

In the in-service schools, the pattern has varied over the years. In fact, we are still in the process of change. When I first came to the Institute in late 1957, a policy change for the in-service schools was being planned. The prior schools had tended to be low-pressure affairs in which the protectors came and discussed various interesting legal points in the game and fish law. Examinations, if any, had not been too taxing. The in-service schools held during the winter and spring of 1958 were full-week intensive courses in which the basic legal subjects were covered again in detail, starting from the most elementary point. Then there were stiff examinations during the week and at the end of the course that all were required to take. There was a startling disparity in grades. A good many in the class showed a grasp of the subjects taught. Others, though, clearly had been coasting through in the prior schools and made close to failing grades. The following year the in-service schools were just as intensive. The basic legal subjects were covered again but more quickly, and the extra time was spent on firearms training and investigative techniques such as collection and preservation of evidence, including fingerprints, making crime scene searches, taking plaster casts of footprints, tire tracks, etc.

The 1960 week-long in-service schools were divided equally between two subjects: (1) the new boat law and (2) a course on pursuit driving. The 1961 schools again featured two subjects: (1) defensive tactics and (2) a review of the legal subjects. To help us know where to put the emphasis in the review, all protectors were given a comprehensive examination in the field before the schools were held. Again there was a disparity in results and less grasp of fundamentals by a good many than might have been anticipated, but there was overall improvement.

The examination showed that there is a continuing need for refresher training as to the legal subjects, but it also indicated the need for breaking the in-service schools down into smaller subject-matter groupings instead of repeating a uniform schedule in each of several schools.

For the past several years we have been experimenting. We usually hold a series of one-day regional schools in the fall in which the same material is repeated in each school. These are particularly

valuable for instruction as to new legislation or policy provisions. The in-service schools at the Institute have become more subject oriented with only those attending who show weaknesses, rather than across-the-board affairs for all. Under our present training plan new employees attend a three-week recruit-training school before being hired. After being hired they must attend the next time it is offered our one-week basic-training school, which is mainly composed of legal subjects plus a little first aid and counseling on enforcement policy and procedures. New men also must pass separate schools on firearms, defensive tactics, and pursuit driving. If they do not make a passing grade one year, they must return the next. One other obligatory school in which you will find both new men and old men repeating is the one on investigative techniques. As taught at the Institute, up to half the time in this school is spent on legal problems related to investigations—law of evidence, difficulties of proof of certain elements of the substantive law, etc.

We are still faced with the continuing need for review of legal fundamentals. Yet as time goes by we find it insults the classes to teach the basic courses once again in the same way. There must be a teaching of portions of the basic material in depth—to all—combined with a selection of those who need intensive review of the fundamentals. After the crackdown for 1957-1959, we probably began to slack off somewhat, but reviewing the grades of the last two years shows that a surprising number do not pass and must repeat one of our specialized subject-matter schools.

We are still groping for solutions to the problem of in-service training and are willing to listen to the ideas of others.