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Wildlife Damage Management, Internet Center
for

September 1964

Legal Aspects of Bird Control

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Davis, Ray; Russell, Jack; Ludeman, John; Geary, Nathaniel; and Bosak, Ed, "Legal Aspects of Bird Control" (1964). *Bird Control Seminars Proceedings*. 141.

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WEDNESDAY AFTERNOON SESSION

MR. BECK: I think this afternoon we have some very courageous gentlemen who have agreed to be on our program. Now, I say courageous because every one of them here is involved in enforcement of federal, state, or local regulations, and some of you fellows have, from time to time, had a comment or two to make about one or the other of the various regulatory agencies.

Now, I hope this afternoon that if you have a question that you will ask it, and I am sure these men will give you the best possible answer, I want to make one thing crystal clear right now. You do not see the Commissioner of the Food and Drug Administration, neither the Secretary of agriculture nor the various state department heads up here on the platform. So if you have a question that regards administrative policy and you ask it, you are not going to get the answer direct from the head man. I hope you recognize and understand that.

These gentlemen have come out here to try to present as best they can the policies of their agency which they represent, and that is a point that I

want to make. If you have some disagreement with the administrative function or with the administrative decisions of these various agencies, I am certain that you will recognize that these gentlemen merely carry out those policies; they don't necessarily make them.

I don't intend to limit your debate. I don't intend to limit your questions. The fellows are all capable of standing on their own two feet and answering their own questions. I have asked today that in this particular session, that the gentlemen complete their talks before questions are asked, and the reason is this: some questions might be asked after the first or second talk which will be answered by one of the other speakers.

The man who has the most backbone this afternoon and has decided to stand up and be moderator is Mr. Ray Davis, who is in the Division of Foods and Dairies in the Ohio Department of Agriculture. Ray is a friend of ours of longstanding and those pest people and health department people here who know him will recognize that.

MR. DAVIS: Thank you, John. Bill Jackson, members of the panel, members of the conference, it is a genuine pleasure to be here today, I do see many faces in the audience that are familiar to me, people with whom we have associated through the years. It is nice to see you. It is also nice to see the new faces, and I hope as the conference wears on, we can become better acquainted.

First of all, I should like to introduce our panel, and I am going to take advantage of my position today and the authority that I have and I will kick off this little panel with a formal statement, after which we will call upon the other members of the panel to discuss and present their views regarding the particular assignments given them.

Now, as John indicated, by and large, we represent regulatory agencies, and we have been called illegitimate children in the past. We don't mind being called illegitimate children today if you smile when you say it, because we are very much aware that there are always differences of opinion regarding certain laws, rules and regulations set down by the various agencies that we represent.

On my right, then, immediate right, Dr. Jack Russell, Ohio Department of Health, who will be discussing the "Humane Laws and Poison Laws." Next, Mr. John Ludeman in place of Dr. Don Spencer, "Registration of Materials," U.S.D.A., Washington. Mr. Nathaniel Geary, "Use Restrictions" of the various insecticides, et cetera, F.D.A., Detroit Division.

And in addition to the members listed on your program, we have Mr. Ed Boast of the U. S. Fish and Wildlife Service, who will answer questions. I think that we can prevail upon him to talk to us and give us some information for perhaps five or ten minutes, and then Ed will answer any question you might have regarding the protection of wild birds. He is the game management agent for U.¹ S. Fish and Wildlife Service.

This is a welcome opportunity for me to participate in this panel discussion and to share our views regarding one of the most persistent problems that we have to deal with in stored foods. Particularly is this true in grain storage, food grain storage and food warehouses where large doors are necessary for ingress and egress.

The defilement and adulteration of foods by the presence of bird excreta is repulsive to say the least and in addition can serve as a source of disease to man. The regulation of this problem in Ohio is governed under the authority of the State Food, Drug and Cosmetic Act. This Act is similar to, patterned after, the National Act, and we feel, in some instances, has greater arms of control that does the Federal Act.

We feel that this law provides an excellent arm of control. First if all, it prohibits the manufacture, sale, or delivery, holding or offering for sale of any food, drug, device or cosmetic that is adulterated or misbranded. This law also declares food to be adulterated if it bears or contains any poisonous or deleterious substance which may render it injurious to health, or if it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food. If it has been produced, processed, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health.

I should like to stop here and make one point, a point which I have made before while talking with some of the members of our conference today, and that is this: that it is not necessary for us in the regulatory agencies, operating under the uniform Food, Drug and Cosmetic Act, to prove that a food product is adulterated if we can prove that it has been held under conditions whereby it may have been contaminated, or adulterated. The enforcement of this law is delegated to the Food, Dairy and Drug Division of the Ohio Department of Agriculture, and, as you know, I represent that division.

Many of our man hours are spent in the inspection of establishments where food is held and subject to contamination by birds. However, we have one area wherein enforcement becomes difficult where humane laws hamper our activities. This reminds me of the young five-year old when he was asked what he thought about his mother bringing home triplets from the hospital. He answered saying that it was all right with him, but mother and dad would have to begin looking around because he didn't think that they would be as easy to get rid of as kittens. Neither are birds easy to get rid of.

Quite often, as George Mowrey told you this morning this happened in his very area, in Toledo - quite often, we may order management to rid a plant of birds only to find that he has already been notified that certain methods of destruction are prohibited by humane laws. This presents a problem, the solution of which requires concerned action and cooperation between federal agencies, local authorities, university people, plant management, pest control operators and our division.

The purpose, then, of our discussion here today is how to best coordinate our individual efforts to a common purpose. It has been proven that when we share and pool our total knowledge and are united in our efforts, we accomplish the most for all. We and the other enforcement agencies feel that it is imperative that we build and maintain an atmosphere of decency, honor and fair play that will command the respect of all and assure protection for the food to be consumed by the people we represent.

Thank you. And now, I should like to introduce again to you and ask that he discuss "Humane Laws and Poison Laws," Dr. Jack Russell, the Ohio Department of Health.

DR. RUSSELL: Thank you, Ray. The comments I have to make here today about our poison laws in the State of Ohio, and humane societies, you may not all agree with, but I have to discuss it from the standpoint that I am working on in relation to public health, and also in consideration of what my contact has been with these particular laws in carrying out my duties in the State Health Department.

I think it is true that we think of humane societies in general often with a negative attitude, that they are a bunch of crack-pots or a bunch of do-gooders who don't know what they are talking about, and that they do no earthly good whatsoever and do interfere with a lot of the work we are trying to do. I think we can all think of instances where this might have been the case, but, on the other hand, we often fail to think, too, of the good they do.

I, for one, think that they do have a vital function to carry out. It isn't too uncommon to remember many years ago when horses were more common in usage and in wider distribution than they are now, of many examples of extreme cruelty and abuse of animals, and it still happens today.¹ It isn't too uncommon to read, for instance, of where somebody is literally starving animals for no good reason except that they are their animals and they feel they can do whatever they want to with them. I think you can see instances of where the humane society does some good in preventing this type of thing.

Also in regard to animal care facilities, I think some good has been accomplished in the type of research that we are faced with today on all levels and all fields of science. There is a growing need for vast numbers of laboratory animals, ranging all of the way from dogs and larger animals, such as cattle, and so forth, all of the way down to very small animals such as guinea pigs, and so forth. In this type of research, the numbers involved may outgrow the facilities in many projects that get beyond the bounds that they first thought they were going to be dealing with.

Many of these experiments involve long-range projects in which the animals have to be kept healthy. Otherwise, if some die, they have lost a lot of time and work tied up in this project. In many instances, as a result of the humane society looking into these facilities, a better program and better planning through new facilities has been done as well as correcting those in operation.

There is a growing awareness of the importance of animal laboratory medicine in this country today, and I think the humane society has had a part in helping carry this out.

Now, I am not trying to say that we haven't had any dealing with humane societies or we haven't had any problems with them, because we have. I know that many of you run into the problems on the local level, whereby you are restrained from using certain methods, say in killing birds, or other animal pests, for a variety of diseases, or nuisance control projects. If you do run into one of these situations where they are unbending and will not compromise, it is rather unfortunate.

I think Dr. Morley pointed out this morning that he and Mr. Straitiff in Akron were able to reasonably approach these groups and see that they would come to a reasonable compromise on what is a humane way of disposing of pigeons, in that instance; and we hope this is the way it can be carried out.

We do have some problems too with humane societies in dog control, dogs for research. In many instances, too, the local humane societies are running the local animal shelter in place of a regular county dog pound and county dog warden, and we don't always see eye-to-eye with these individuals. In the main, I'd say they are more of a benefit than they are a hindrance, and we have many instances of local animal shelters and humane societies that do a very good job of taking care of this job - better maybe than the county would do on their own, and the county is very glad to have this kind of a facility that can take this burden of responsibility off of them.

In relating to the actual humane laws, regarding animals, they are rather broad. There is a little booklet put out by the State Humane Society, which is an organization of the local humane societies in Ohio, which lists these; and actually there is very little reference to specific animals, with a couple of minor exceptions.

In the case of birds, there are some specific references to them, and other species, too; but in general, they tried to prevent cruelty and mistreatment of animals of all kinds, including dogs, and pots of all kinds, and work animals. Don't forget, too, that their responsibilities involve humane treatment of children and other people that are in situations where they can't protect themselves. So I think we oftentimes forget that they do prevent situations that "r" bad and get children out of situations where they are not being cared for properly.

In reference to animals, it merely provides for the humane treatment and prevention and cruelty. In reference to birds, specifically, the only thing they mention is that live birds or fowls shall not be used as targets in trap-shooting, and also the prohibition against killing carrier pigeons.

So the real crux of the disagreement with the humane society people is this interpretation of what is humane. The local humane societies that do put some

restrictions out in the form of what you can or can't do locally usually break down on this point, I don't think any of us have any trouble today justifying the necessity for controlling some of these problems. I get calls all of the time at the State Health Department level from local health departments of their industrial physicians wanting evidence or proof or references citing the public health hazard of pigeons, for instance, or other birds perhaps. We keep a regular file on this, and send out material showing that if anybody gets justification for a local ordinance involving bird or pigeon control, that this is the basis whereby they can justify it.

The next step, of course, is convincing the board of health involved, or in the case of an industrial institution or installation, where the people decided the policies of this company, whether this is a practical thing to do. From there on, they have to contend with the local humane society if there is one present, and many times - as was pointed out this morning - they will go along with. But many times they will not look upon poisoning birds or other animals as a humane method of killing them and will list live trapping or gassing as the only alternative. Well, these aren't very practical methods to use in controlling pigeons; and if you are restricted to that method, I don't think there is very much hope for success in such a program. I have worked personally, in several instances, with pest control operators who have been given a job to do, say in a public building or a commercial building, and I think there is one present here in the room that we worked with not too many years ago.

We had a problem of getting rid of an infestation of domestic cats, living in a wild state, in a state institution. They were causing a lot of exposure of children in this institution to bites and severe scratching, and there was always the possibility of rabies developing. Cats being what they are, this is an extremely dangerous public health hazard - rabies and cats.

There were a lot of active parasites coming off of these animals into the surrounding institution, and it was a nuisance as well as a public health hazard. I think we found out a good humane way of getting rid of them. I didn't hear any complaints on it. We did use poison in this instance in getting rid of them. It was the only practical thing to do really and the safest thing under the circumstances, as far as the humans in this institution. So it is a matter mainly, then, as far as humane societies are concerned, I think, of the local humane societies working intelligently and cooperatively with the local law enforcement agencies, and the local health departments. If there is a common meetings-ground between them, I think they can work out satisfactorily to everyone's advantage and see that the job is accomplished both safely and humanely and effectively.

So might I say that there is a need for a state law giving the right for local health departments to take on this kind of work without maybe having to go through the matter of having it passed locally. I don't know as this is the problem, because you'd still have to convince local people in the humane societies that, there was a need to do this and that it had to be done humanely, and I think it would still break down to a matter of local control. If there

is any need for state laws, I still need to be convinced of it, any broader than what the present state laws are.

In the matter of poison control, this is again not really restricted to birds, as far as I am concerned in my work in the health department. Most of our contact with it has been in reduction of wildlife populations involving rabies control, in a specific area. We have done quite a bit of this, in conjunction with John Beck and his crew, and also with the state wildlife people, and the State Department of Natural Resources, and we have become a little bit familiar with problems and the laws involved here* Basically, they are fairly simple, and yet I think while they may cause some problems in getting these jobs done, I don't think anyone could reasonably say that we can do without such laws, because again there is the other side of the coin to look at. We have got to use poison sometimes to do a job in disease control and in economic problems relating to agriculture, but this is a safety factor; and as health department people, we have to think of the safety factor also, and I would not criticize these laws very much, if any.

First of all, the prohibition on poisoning animals - there is a part of Ohio law, Section 959.03, stating that no person shall maliciously or willfully, without the consent of the owner - and then it makes an exception excepting a licensed veterinarian. I guess we can put out poison and get by with it, but this names a wide variety of domestic animals here, in which it is illegal to use poison in any manner. In violation is anybody using it maliciously, actually trying to poison someone else's animal - usually a dog is the most common thing, where a dog is pestering a neighbor. They put out poison in some form to get rid of the critter in the hopes that no one is the wiser. Then there is also, in the same section, a prohibition against putting poison out willfully, maliciously, or otherwise. You can't put it out in a place where it is easily accessible to a domestic animal belonging to anyone else, whether it is your own land or someone else's land, unless you have the consent of the owner involved.

Of course, many times somebody puts out poison to kill some rodents or crows in this cornfield, and they accidentally poison a neighbor's dog or some other animal. What it amounts to really is that you are liable for it if he can reasonably prove that you are responsible for it. Then you have to pay him the damages involved in whatever happened.

We run into this section, of course, in our placing of poison in killing skunks, primarily, and we have skunk rabies problems in Ohio right now in many areas. We have to get this matter of consent of the property owner right down the line. We wouldn't dare put poison on a property unless we did have the consent of the people involved, if the person is available. In the matter of absentee ownership or something, we just skip that place and don't go onto it. So far we have been mighty lucky. If we have poisoned any domestic animals, we haven't heard about it yet, and usually you don't fail to hear about it.

When we go into these programs, we do publicize the fact. We have to publicize at least in the area where we are doing it, and warn people on adjoining farms that they should keep their domestic animals, dogs and cats and so forth tied up, and that all efforts will be made to safeguard against accidental poisonings. But still I think we are honor-bound and morally-bound to warn people that it is being used. There is always a possibility, we recognize, too, that if we publicize it too much that this is being used, somebody might take the opportunity to poison his neighbor's dog and say it was those health department people who were responsible for it. I think we have some ways of proving that we weren't responsible in some of these cases anyway.

So we do have to look at the safety program on the use of these, I don't know, maybe we have been luck so far, but I can't remember the number of counties we have worked in, I am sure it is in the range of eight or nine counties, and so far we have not poisoned any domestic animal.

A related point on this matter of poisoning animals doesn't strickly deal with poison. It could, I guess, but it is the matter of trespassing animals. Anybody has the right of trying to prevent an animal from trespassing across his place or entering his place. He has the right to kill it or prevent it otherwise from gaining access to his property. When he does so, he has to pay for any damages incurred, if he kills the animal, after first subtracting the damage the animal might have done to his place. This was mainly designed for sheep, marauding dogs, and other animals that kill livestock and sheep. Many a farmer has set out on a moonlight night, and if he shoots the dog, he has to pay for the animal, but at least he gets rid of the violator. Again if he can prove any damage to his premises or livestock, he can also charge the owner of the dog for that.

Another section dealing with poison, 3719.30, prohibition against depositing poison on thoroughfares. "No person shall leave or deposit poison or substance containing poison in a common street alley, lane, or thoroughfare, or a yard of enclosure occupied by another, Whoever violated this section shall be liable to the person injured for all damages sustained thereby."

And it goes on to explain that the definition of unenclosed land is not common land, common meaning accessible to the public. They use the reference here of a large manufacturer that was placing poisonous waste products from the manufacturing process -- whatever it was -- on unenclosed land belonging to the company. Somebody's cattle got out on this land, died from the exposure to the poison, and they held that the manufacturer was not responsible. In other words, the person who permitted his cattle to get out on this unenclosed land was not living up to his responsibility; therefore he could not collect.

It also mentioned the point of chemical spraying along roadways. There is a rather difficult point of law here. If such poisoning results when animals get out and onto public roads and thoroughfares and poison themselves through eating vegetation that has been sprayed, if it would be proved that the owner

of the animals was negligent in permitting the animals to get out in the first place. Then the authorities cannot be blamed. On the other hand, if it is the matter of the spray going over onto the owner's property, or the animals reach through the fence, well, this would be a point they refer to as mixed law, meaning that both sides were at fault; and they would then have to settle some kind of a claim in this manner. As you can see, these get into some rather mixed up points of law.

The other points regarding poison or merely prohibition against careless distribution of samples of poison are rather obvious. You can't have samples of poison, potentially dangerous samples of poison. And there are other prohibitions regarding the sale of poisons, the labeling of poisons, and poisons not labeled. These are mostly medical, wholesale drugs, and as such come under the supervision of the Pharmacy Board of the State, although the Health Department, I think, has the responsibility of enforcing them. You do have this rather broad, general, definition of use of poison, and there is a full set of punishments, prison, fines, and so forth, for anybody violating these sections.

I don't know what the experience has been of people in local departments, who have had widespread use of poisons, I have heard of cases somebody asked this morning about the matter of secondary poisoning. I think John has heard of a few cases, and I have also, involving, say sparrows that were poisoned and animals that were confined, such as dogs being tied up so they couldn't get to the same poison. Many times the dead birds have fallen within their reach and there have been a few instances of secondary poisoning resulting from that. So when you go to putting out material of this sort, it is pretty hard to say what strange things may happen to it and you always have to keep that in mind. I am always a little bit, truthfully, scared of handling poison and the consequences of it. You can't just absolutely be sure of what will happen, and I think if you try to honestly and thoroughly prepare the way for using it, use it in what you think is a proper manner, that is about all you can do.

If something unforeseen happens, then you have to answer the consequences. Somebody will be sued, undoubtedly, and if you prepare for emergencies that is all you can do. I know we do have the matter of the antidote kits, too, for the type poison we put out. I think that is always important, because we may carry them around for thirty years and not use them; and the first day you leave them at home, you may have an instance come up where you wish you had it. I think one case would be enough to justify having it available.

I am sure you people in local health departments and pest control operators have a lot of ideas on the poison control laws that maybe you would like to see changed or more restrictions put on them, and I am for that, too. But at least, I can't see making them less stringent. If anything they ought to be tightened down rather than made more liberal. Any criticism I have would not be from the standpoint that we have less restriction.

MODERATOR DAVIS: Thank you, Dr. Russell.

And now we will hear from Mr. John Ludeman.

MR. LUDEMAN: Sorry that Dr. Spencer wasn't here to face the rap also, but he said he had to be someplace else. I was asked to give a talk on the "Registration of Avicides by the United States Department of Agriculture," and I will go through a few of the items rather hurriedly.

I am pleased to be here and to have the opportunity to discuss the registration procedures and government regulations of avicides. Interest in controlling nuisance birds has noticeably increased during recent years throughout the United States. Research efforts have been expanded by many agencies and private concerns. Their efforts are reflected in an increase in the numbers and varieties of bird control products submitted to the Department of Agriculture for registration. The list includes many gels, greases, sticky substances, discoloring agents and numerous toxic materials. Approximately thirty such products are currently registered.

Prior to 1962, the registration of avicides and repellents was not required by the Federal Government. An extension of the regulations under the Federal Insecticide, Fungicide, and Rodenticide Act, effective April 1, 1962, defined bird control agents and repellents as economic poisons. This made their sale in interstate commerce subject to the provisions of the Act. All avicides and repellents are now required to comply with the same provisions of the law as do other pesticides. In common with most laws, the Act and associated regulations are precisely worded. As an aid to better comprehension of the regulations, a pamphlet entitled "Interpretations of the Regulations for the Enforcement of the Federal Insecticide, Fungicide, and Rodenticide Act" is available upon request. This pamphlet should be of considerable assistance to anyone preparing to apply for a Department registration.

A thorough discussion of the law would require too much time. Therefore, with your indulgence I would like to quickly review the law as it relates to registration of avicides, then go into more detail on those provisions that cause the greatest trouble for those seeking registration of their products.

First may I mention that devices, including those for bird control, are subject to the misbranding provisions of the law, but are not required to be registered. If, however, a device is being misrepresented by the manufacturer or distributor, and if the product has been sold outside of the state in which it is manufactured, the Department can secure samples and conduct tests of the device. Should the tests show that the claims made for the device are not valid, the Department can take steps to seize the device and take appropriate legal action against the shipper. As is always true when a regulatory action is started against a product subject to the law, the burden of proof rests on the Department to show that the device is misbranded.

As stated before, registration requirements are well defined. Economic poisons must be registered with the Department if they are to be shipped outside of the state in which they are manufactured. The law required that the products must be properly labeled, and lists the information required to be on the label. It even details where certain precautionary information must be printed and the size of the type to be used.

Basically each label must include the following information:

1. Name of the product, brand, or trademark.
2. The name and address of the manufacturer, distributor, registrant, or person for whom registered.
3. Net content.
4. An ingredient statement.
5. An appropriate caution or warning statement,
6. Directions for use.

A pamphlet entitled "Regulations for Enforcement of the Federal Insecticide, Fungicide, and Rodenticide Act," as amended March 27, 1964, gives guidance on several features of an acceptable label. Labels prepared in conformity with its directions encounter little difficulty if the product is registerable for the use covered by the application.

From the foregoing it is evident that the preparation of an acceptable label is a rather involved and technical job. When completed, however, the label either complies with the regulation or it doesn't. A product is not registered until an acceptable label is available. Even though the format label may be acceptable, the Department required that the product meet three additional requirements before it can be registered. Proof must be submitted that the product: (1) Is effective for the purposes for which it is intended; (2) Will not endanger the user, children, pets, or domestic animals, or beneficial wildlife when label warnings and caution a are carefully followed; and (3) Will not leave illegal residues on food or feed when used as directed.

Tests conducted by the manufacturer or his agents to demonstrate that the product meets these conditions are required. Reports of use experience from the general public are not usually acceptable unless accompanied with % complete report of the use experience. Acceptable testimonials should include a statement of the initial problem, listing the species and the number of birds involved and what they were doing that made them a nuisance. The statement should also detail how the product was use how the birds reacted, and duration of observations and the final results of the product's application. If the manufacturer claims a life span for his product, the test should be continued to an equal or longer period of time. Data submitted on formal studies should include all data collected, not merely a condensed version of the tests.

If the product to be registered contains a new chemical, the pharmacologists of the division require data regarding its action, toxicity, and an antidote or treatment for accidental ingestion in case the hazard is sufficient to require one. Chemistry section may require data on its chemical structure and a method of analysis particularly if the material is to be used on food.

If the product is intended for use in a manner which could result in the contamination of food or feed, data will be required to show that no residues result from the directed use, or if residues result they must be covered by a tolerance established by the Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act. When preparing an application for registration of a product particular care should be paid to paragraph 361.14 entitled "Misbranding." This paragraph states in effect that a product is misbranded if the article or its label is false or misleading to the public in any particular. Literature that accompanies the article at any time is considered to be part of the labeling and must be submitted for review. A registrant should be prepared to submit proof of all claims made for his product. At times, particularly when a product is new and not well tested, sufficient data may not be available to warrant registration. For this situation a temporary permit may be requested. It may not exceed a period of one year, but may be issued if circumstances warrant. Temporary permits are usually issued when a new product requires more extensive testing to determine its effectiveness under a variety of conditions. Products shipped under a temporary permit must bear the statement "For Experimental Use Only," on the container label and accompanying literature. The holder of the permit must submit progress reports of the tests at three-month intervals and at the end of the program. Products registered for experimental use cannot be offered for general sale to the public. The permit can be cancelled for cause at any time.

A regular registration is issued for a period of five years and will be renewed at the request of the registrant if the product and label remain unchanged and no new data have been developed to invalidate any of the uses on the label. If at any time a new label is prepared, or if the ingredients are changed, an application for an amended registration must be made. Product marketed with labels or contents different than the one registered are considered as misbranded and are in violation.

Speaking of violations brings up the subject of enforcement of the Act. It has long been realized that a law without penalties is ineffective. The law provided that official inspectors may collect samples for examination by Department laboratories. These samples are purchased from recipients of interstate shipments. Samples may be collected in accordance with a routine schedule, or the inspectors may be requested to collect special samples of particular brands or shipments. If the sample is a registered pesticide it is examined chemically for its contents. The label is compared to the registered label. If the chemical analysis does not coincide with the ingredient statement on the registered label another laboratory may run tests on the product's effectiveness. If the sample is found to be in violation of the law in any way the manufacturer or registrant, is notified by registered mail and given twenty days to furnish an explanation of the variance. If a satisfactory explanation is not made and if remedial action is not taken, he can be taken to court. This is a criminal action which differs from the seizure of the goods, which is a civil one. When unregistered pesticides are found in interstate commerce they may be seized immediately or the distributor may be notified of the requirements of the law. If such a warning is ignored a

future shipment will likely be seized and suitable court action taken.

In closing, may I state that there is no fee for registration of a pesticide with the Department of Agriculture. Registration cannot be considered an endorsement of the product. Registration does indicate, however, that a product so registered has met the minimum requirements of the law. At present, one may not always be able to distinguish registered from unregistered pesticides on the retail shelves. On August 29, however, regulations were published outlining the procedures requiring registration numbers on pesticide labels. It is hoped that this addition will assist the public by disclosing that the claims on pesticides displaying the Federal numbers had been reviewed by a qualified group of scientists in the Department of Agriculture, before being permitted to be shipped in interstate commerce. We are convinced that the label is the best guide available for the safe and proper use of a pesticide. It's still good business to "read the label." Thank you.

MODERATOR DAVIS: Thank you, John.

And now we will hear from Nathaniel Geary, Food and Drug Administration, on "Use Restrictions."

MR. GEARY: Thank you, Ray.

Members of the panel, and members of the seminar, I will give you a little bit of background about the Food and Drug Administration, first of all, and then maybe you will decide how I happened to get here.

The Food and Drug Administration is a consumer protective organization which inspects manufacturers, packers and distributors of foods, drugs, cosmetics, therapeutic devices and hazardous household substances. It sounds like a big job and it is for such a small organization. We are under the commerce provision of the federal laws and this means that we have jurisdiction over these products which move in interstate commerce. There was one exception, until recently. That one exception was oleomargarine which was ruled a burden on interstate commerce and we have jurisdiction on that product wherever we find it.

In October of 1962, with the passage of the Kefauver-Harris Drug Amendment, a similar provision was placed into the law with regard to drug products. There is pending currently a third exception, if it passes the Congress, and this would have to do with the psychotoxic drugs, psychogenic drugs, amphetamines, barbiturates, which have been quite a problem in illegal channels of distribution.

By way of summary, the fiscal year 1963 - and these are the latest published figures - there were a total of 1327 actions in Federal Court. Now, when you consider that the industry that we police is worth approximately a hundred seventeen billion dollars, this doesn't sound like a big figure, and it is not. Most people are honest.

Now, of the prosecutions brought in that same year, there were 248. More than half of these involved illegal distributions of drugs, so that cuts the number already to roughly 170. Seventy of these invoked prosecutions from unsanitary food, factory operation, or the shipment of adulterated or misbranded drugs. The other hundred involved such things as hoaxes, frauds, sub-potent foods and drugs, and violations of standards.

Now, it is these seventy prosecutions that I want to talk about, to more or less show, by example, how the Food and Drug Administration affects the pest control operator, and how the Food and Drug Administration affects the owner or operator of food plants.

I would like to point out, first of all, that we feel that there is no place in a food or feed manufacturing or storage establishment for birds. We have a stock recommendation that we give to the operator of any establishment, and that is: if you get them in, get them out. Once you get them out, keep them out, and if they return, get rid of them.

Now, the means by which the getting rid of the birds is concerned is not our responsibility, and we don't make any specific recommendation as to use of pesticide, as to use of device, or shotgun techniques to get rid of these pests. We do state that if a pesticide chemical is used, it should be used along the recommendations that competent people have given for that; that would be USDA; it would also be the local authorities who control this sort of operation. Where the food is concerned, we state that the food cannot be adulterated or misbranded by inclusion in it of any of these chemicals. If a food is found to have a dangerous pesticide ingredient and the food is in interstate commerce, it is subject to federal seizure.

On a local basis, if we were to find this in any routine sampling of wheat, for example, in a grain elevator, there is no interstate jurisdiction and we would refer this to the state where we encounter the violation. This happened fairly recently in Indiana. It wasn't a bird control chemical, it was a mercurial fungicide used for treatment of seed wheat. We found about a ton of this in a grain elevator. The wheat was intended for food use, so what we did was simply point it out to the state control officials, who in turn seized the wheat. The case was disposed of by the wheat being treated completely for seed use by all of the kernels of the wheat being colored pink so that it couldn't be used for human channels of food.

There are two basic amendments to the Act. One has to do with tolerances for pesticides, and the other has to do with establishment of tolerances for these products in a manufactured food. One is more or less a pesticide amendment, and the other a food additives amendment.

Now, as far as I know, most of the bird control chemicals have no tolerance in food products. If some of these products happen to be recognized chemicals, with recognized uses, then, it is possible that there might be a legal tolerance for that particular chemical in a food product; but the guide here, I think, would be first of all in considering a use for which there has been no

previous or established use, to check with the heads of FDA and USDA, and the state where these chemicals will be used to find out, rather than use the chemical and then say, "Well, what do I do now? I did it.

We had a case here in Ohio last year. It was a voluntary type thing. We were out checking crops in the field, and we found out that telephone companies and highway crews were doing some spraying along the roadside, in grape-producing areas. This produced quite a bit of stir, from the standpoint not so much of the use of spray, per se, but whether or not the grapes would be contaminated by these spray chemicals.

Another one occurred when a commercial applicator applied a chemical to a field of cabbage. He had second thoughts, and he actually gave us a call in Detroit and said, "What do we do?" So we collected a sample and found it exceeded the residue tolerance. We also found that the cabbage were ready for harvest, so there wasn't time for the proper pre-harvest interval of application, so, as a result, the pesticide operator took the beating and the farmer plowed the crop under.

Now, I mention prosecutions not from the aspect of being cops or looking to beat somebody on the head, toss them in jail, fine them or something like that, but just from the aspect of showing what may happen if a serious condition is found and correction is not effected. Actually, by giving you the figures of such a small number of prosecutions out of 43,356 investigations, 87,729 samples of products manufactured in the United States, and 14,437 samples of products being shipped into the United States from foreign countries, total number of actions again, on a federal basis, involving prosecutions, were about 240, so you can see that is a very small percentage. The majority of violations that we encounter are settled out of court without any legal sanction, per se, without any adverse publicity to anyone. A good many of these things are settled by our inspectors when they make inspections of various establishments. They point out these conditions. They are required by law to give a notice of their observations of any condition which, in their opinion, would cause a food to be adulterated or rendered injurious to health. So if compound 1080, for example, is stored next to some bags of food material in an open container where animals might track through it, walk over the food container, and the liquid be absorbed by the container, we can say that this is a violative condition, and we can say that 1080 is being improperly used.

As I said before, I don't know of any specific instance of bird control chemicals being involved in one of these food actions, but I can say we have had numerous instances of bird excreta being the subject of our activity.

There is one point that I would like to stress which has been stressed before this afternoon, and this is the matter of reading the label. There are quite a number of poisoning cases each year involving pesticide applicators, who, through familiarity with a chemical, through constant use from day to day, sort of forget or overlook the hazards of these chemicals. We have encountered some of these people in plants, putting down such a toxic substance as 1080 without any sanitary precautions at all, lighting a cigarette and going on to

the next assignment. They may have well become a statistic.

With such common materials as DDT we found residues on a sample of alfalfa, somewhere in the neighborhood of 19 to 20 parts per million. We collected the sample from a hay dealer, who had bought it on auction from the estate of a deceased farmer. We don't know what caused his death but with residues in his alfalfa such as that, we suspect that **pesticides** might have had something to do with it. Thank you.

MODERATOR DAVIS: Thank you, Mr. Geary. And now, we will hear briefly from Ed Bosak, U. S. Fish and Wildlife.

MR, BOSAK: Thank you, Mr. Davis. Panel members, ladies and gentlemen.

As a member of the Fish and Wildlife Service Branch of Management and Enforcement, we are charged with the responsibility of the protection and perpetuation of the migratory species, as given protection under the Migratory Bird Treaty Act, between Great Britain, representing the government of Canada, the United States and Mexico. The Act of 1928 lists those species which were granted protection. There are various species which are not granted protection under the Migratory Bird Treaty Act. However, I would advise you to consult your state code for certain species that are granted protection under the state codes, and I cite for instance, here in Ohio, hawks and owls.

Now, those two sections of the Code of Federal Regulations which I think pertain to this meeting - and I shall read verbatim, if you will excuse me --are 50-CFR, 1621, which states: "Upon receipt of information from the owner, tenant, sharecropper, or other person, that migratory birds are injuring his crops or other property on the land on which he resides, or over which he exercises control, together with a statement of the location of the area, the nature of the crops, or other interests being injured, the extent of such injury, and the particular species of the birds committing the injury, an investigation will be made. It is then determined that the injury complained of is substantial and can be abated; a permit to frighten, herd, or kill such birds may be issued; the permit shall specify the person, the time, and the method by which such birds may be frightened, herded or killed. The permit shall further provide that all dead birds shall be disposed of as prescribed therein, that a report shall be made of the operations and shall include such other conditions as may be appropriate in the case."

Now, 1622 50-CFR goes on to further say, "Depredating blackbirds, cowbirds and grackles. A permit shall not be required to kill yellow-headed, red-winged, bi-colored red-winged, tri-colored red-winged, and Brewer's blackbirds, cowbirds and all grackles, when found committing or about to commit serious depredations upon ornamental or shade trees or agriculture crops, provided, A, that none of the birds killed pursuant to this section, nor their plumage shall be sold or offered for sale; B, that any person exercising any of the privileges granted by this section shall permit at all reasonable times, including during actual operations, any federal or state or deputy game agent, warden, protector, or any other game law enforcement officer, free and unre-

stricted access over the premises on which such operations have been or are being conducted and shall furnish promptly to such officer whatever information he may require concerning said operations; C, that nothing in this section shall be construed to authorize the killing of such birds contrary to any state laws or regulations, and that none of the privileges granted under this section shall be exercised unless the person possesses whatever permit as may be required for such activities by the state concerned."

Other than that, gentlemen, I have nothing else to contribute. I could get into possibly some of the phases of our work. I could get into phases of John's work. We have actually certain policies which we have as guide lines, policies which I feel are inter-bureau discussions. We are responsible, as a branch management of enforcement, for the protection and perpetuation of those species listed as game birds; depredating species such as bald eagles are classified under a special act and are given protection thereunder. Mr. Beck and Mr. McGriff and Mr. Rodeheffer take care of non-game species that are doing injury within the State of Ohio. John is also responsible for Michigan, and I don't think I will enter into any phases of his work.

I shall be happy to answer any questions which are posed and which are within my capacity to answer, if there are any to be offered. Thank you very much.

MODERATOR DAVIS: Thank you, Ed. And now that you have heard from all of the members of our panel, we will entertain any questions which you pose.

DELEGATE: The gentleman who spoke on registration, what is meant by "labeling under protest," or "registration under protest"? I have heard that term. I don't know what it means.

MR. LUDEMAN: Well, until recently, they had a registration under protest. In other words, a company could apply for registration, and it would be refused for lack of information or dangerous product. At least that would be the attitude of the department. He could apply for registration under protest, and the registration would have to be completed. Then it would be up to the department to gather evidence to back their stand, and it would go to court; and if the registrant was proven to have been wrong, then he would be subject to damages. That has been done away with now. There is no registration under protest, only a five-year registration and an experimental registration which has a life of one year.

MODERATOR DAVIS: Do you have a further question for this gentleman?

MR. MELLITSER: I am from Toledo. What I had in mind was reference back to this matter back to contamination of food products. Much of the contamination from birds does not take place, as I see it, in the primary field. For instance, due to the fact that we have had glut crops

in the last several years and a heavy backlog, of our restriction on number of cars available for shipment, and the fact that we have new and speedy unloading equipment today, much shipment of grain has been taking place in hopper cars. These hopper cars are shipped generally uncovered. I have seen as many as twenty-two cars on a siding, be on a siding for a couple of days, and out of the twenty-two, only three cars were covered with polyethylene or tarp; the rest of them were exposed to the air. I have seen pigeons, grackles, starlings and sparrow, feeding on the grain. Most of the pigeons have been feeding on shelled corn and the other smaller birds feeding on wheat.

Now, anyone who has observed birds to any extent has probably noticed that bird's excreta about the same time they feed, and there is much excrement that is deposited, in my opinion, at least on the top of these cars. I think that much could be done to inhibit contamination if it were required that all hopper cars be covered in shipping.

MODERATOR DAVIS: You ask a question and answer it in the same question. Would you like to say a word here, Mr. Geary?

MR. GEARY: I make mention that as far as the Food and Drug Administration is concerned, any wheat or other grain which is shipped in interstate commerce should be shipped in appropriate containers. We do not have authority to set up regulations as to construction of shipping containers, that is whether they have to have tops or tarps or what-have-you; but we leave it on a general basis, that they should be shipped in appropriate containers, and I assume that some covering would be considered appropriate.

MODERATOR DAVIS: Thank you. He confirms your theory also that the grain should be adequately protected.

MR. MELLISTER: Well, I have spoken to shippers about it, and because there is no regulation, they just disregard it,

MODERATOR DAVIS: We are well aware of this, sir.

In my preface remarks, I stated that we have problems, and I am sure that you are talking about an area in which we have been working with the local health department. This is something that we heartily agree with, with your theory here, but we are also aware of the many ramifications and problems in correcting this condition. We are taking steps to do this. I heard one gentleman say this morning that maybe we do something that the general public doesn't know about. This might be termed deceit; but somehow or other, we must rid the area of the birds, and that is what we are here to discuss today.

In addition to this adequate protection of the food shipped, we feel that the area should be free of birds, or bird contamination, and we have had some problems here. (We don't like to say that there might be

sometimes an implication wherein one authority doesn't wish to move this way because he is going to step on someone's toes and if he moves the other way he is going to step on someone else's toes.) Even though we have this arm that I spoke about in my preface remarks that we can say, "Now, look, people, we expect this place to be free of birds, or you don't operate." We don't prefer to use it.

Now, the Food and Drug law in both federal and state - I will not remark about the federal, I will qualify this by saying the State Food and Drug law provides this arm if we want to use it, irrespective of any other remedy of law at hand, if we feel that the public health or anyone is going to be endangered in any way by these birds or any other contamination being in food. We may immediately, irrespective of any remedies at hand, go to a Common Pleas Court or a court of proper jurisdiction and ask for a prayer of injunction and stop the movement of the product right on the spot. Now, we don't feel that this warrants this sort of drastic action, as long as we can, again, all work together to accomplish the same purpose without the drastic action.

MR. HOCKENYOS: I would like to ask Mr. Geary - this is not strictly a bird problem. There are a lot of nest control people here, and I know it is one that bothers a good many of us. We have the problem of keeping rodents and, most particularly in the winter, mice out of warehouses where food is stored, generally in bags. But we will say, in any case, it is completely enclosed in some form of drum or bag, so we know we can use the anti-coagulants as baits and as water, and we can put out traps, as a kind of an indicator of whether we are getting control or not; but if we could use fifty per cent DDT powder along the walls, the pink colored powder, we can get a very much better per cent of control.

It is a little difficult for me to see how that could contaminate the food inside of these multi-wall bags and drums, and I guess that the fact that we have got a poison there, you will have to say, "No," But we would certainly avoid a lot of damage and otherwise excreta-contaminated food if we could use that fifty per cent DDT powder,

MR. GEARY: To that I can say that I have personally observed, and other inspectors have observed DDT tracking powder. Now, there are two things we have to think of here. Number one is the control aspect; and number two is the contamination aspect, not limited to the bags in storage, but to the bags possibly when they are dumped into a hopper at a bakery. This is something that we have to consider.

Now, will the baker's flour be contaminated when he forgets to dust off his bags, for example? And will the DDT tracking powder fall into the flour that goes into the bread? I can see that conceivably some might.

Now, actually on the tracking powder, I might think that from a practical standpoint that if you have a warehouse of a particular size,, you may have storage for certain types of items in certain sections, or on certain floors, so that it might be advisable to use tracking powder, say, in

the basement, may be along the stairs, may be on floors where there isn't the possibility of the flour going from a container into a finished product.

MR. EBNER: In the City of Pittsburgh, we have used tracking powders in such plants, but only in bait stations. I am sure all of the pest control operators are familiar with bait stations, and the tracking powder is put in the bait station. In other words, we put the tracking powder in the bait stations on the outside of the building, carry them in and set them there, and this control is approved by the inspector.

MR. GEARY: On this same point, I would suggest that if you do have some particular problem relating to the use of a pesticide in a food plant, you don't have the answer, you can get it, if you write to us, and the address is the U. S. Food and Drug Administration, Washington 25, D.C. They will be glad to comment on any particular problems that you might have along those lines.

MODERATOR DAVIS: Are there further questions?

If not, we feel that we have taken care of our duties for the day and ask to be released.

MR. BECK: These gentlemen will be here for a little time if you want to discuss something with them that you didn't want to ask publicly. They will be here and they will be available to you.

. . . Short recess . . .