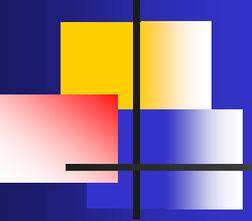


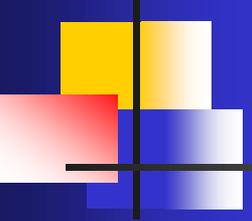
TAB 7

- FEDERAL WILDLIFE STATUTES AND LEGAL PROHIBITIONS
 - MBTA
 - ESA
 - B&GPA
 - FIFRA



Scales of Justice



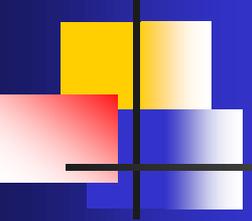


Burden of Proof

- ❑ CRIMINAL ARENA: Beyond a reasonable doubt (Malum en se)

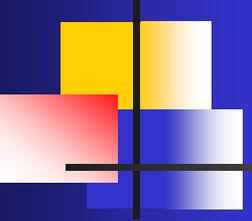
Vs.

- ❑ CIVIL ARENA: A preponderance of evidence (Malum prohibitum)



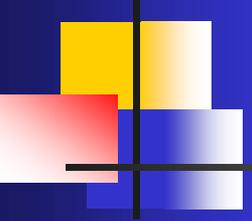
Elements of an Offense

- ❑ Dissect the law to separate each and every element
- ❑ Proof of each element determines degree of prosecution
- ❑ THE LAW vs. STARE DECISIS



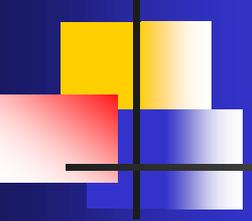
Migratory Bird Treaty Act (MBTA 1918)

- ❑ No person (corporation) shall, without permit, TAKE any listed (50 CFR 10.12 Raptors added by Treaty with Mexico) Migratory Bird, by any means or any manner (shoot, kill, wound, collect etc...)
- ❑ “Scienter”-Strict Liability Statute-One doesn’t necessarily have to know that any action will result in take.. (Different circuit holdings)



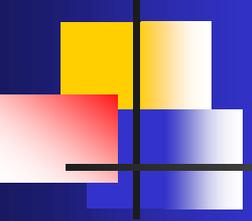
Multiplicity

- Charges can be brought alleging either:
 - One count for each bird taken
 - Or, one count for each event leading to migratory BIRD DEATHS *9TH CT.
 - OR A COMBINATION OF THE TWO GIVEN THE CIRCUMSTANCES AT THE DISCRETION OF THE PROSECUTOR.



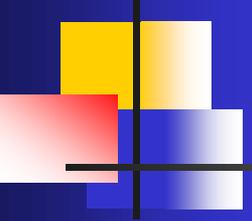
U.S. v FMC Corp

The Appeals court affirmed the conviction of the corporation for migratory bird deaths resulting from the discharge of a pesticide into a wastewater pond. The court held that no scienter was required, noted "*the fact remains that it was FMC's product which killed the birds...certainly construction that would bring every killing within the statute, such as deaths caused by automobiles, airplanes, plate glass modern office picture windowsinto which birds fly, would offend reason and common sense*".



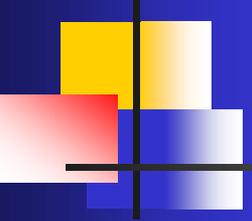
Discretion!

- The court noted that the application of the law should be left to the discretion of the prosecutors and the courts.
- **CONVICTION AFFIRMED** U.S.v. FMC CORP., 572 f. 2D 902 (2nd Cir. 1978)



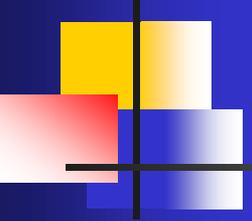
Bald & Golden Eagle Protection Act (1940 + Revisions)

- ❑ Take: Whomsoever shall, "knowingly or with wanton disregard for the consequences of one's actions".
- ❑ 2nd Take is a felony...>one year incarceration
- ❑ <1 year 1st offense and or @100,000, 2 years and/or \$250,000 individual \$250K, \$500K organization



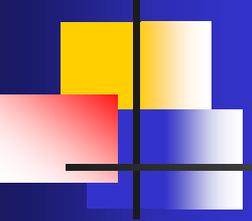
Bald & Golden Eagle Protection Act (cont.)

- ❑ Civil \$ 5,000
- ❑ Forfeitures of equipment (guns, airplanes, vessels etc)
- ❑ Rewards-Statutory Up to ½ penalty (\$5,000) for information leading to conviction. (Supplemented by concerned NGO's to address information leading to the identification of perpetrator i.e. National Audubon Society, NWF, ABC, others....



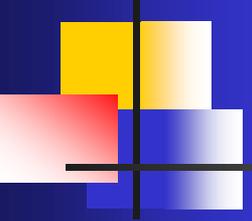
Endangered Species Act (ESA)

- **TAKE** Persons (can include municipalities) shalt not....."harass, harm, pursue, hunt, shoot, wound, kill, capture, collect or attempt to engage in such conduct".
- Culpability:
 - Criminal: Knowingly
 - Civil: Knowingly or Should have Known



Endangered Species Act (cont.)

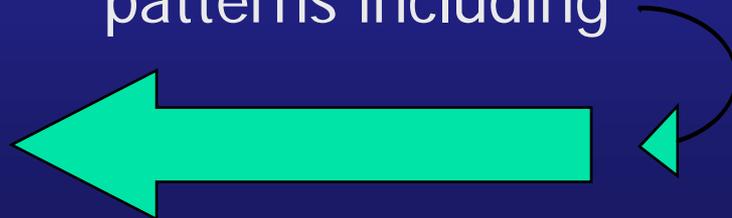
- Penalties-Take = $> \$50,000$, Rescind Federal Permits, i.e. grazing rights
- Restitutions Begat Wildlife Value Rewards-(Greater than B&GEPA) $> \$500,000$

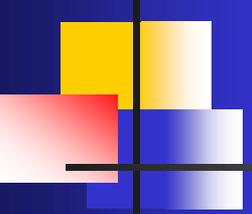


Definitions:

- **HARM:** An act which actually kills or injures wildlife.. may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns , including breeding, feeding or sheltering.

HARASS: An intentional or negligent act or omission which creates the likelihood of injury or wildlife by annoying it to such an extent so as to significantly disrupt normal behavioral patterns including

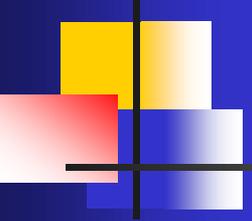




Habitat Destruction: ESA

"A finding of harm (See Definition HARM & HARASS-are both illegal takings) does not require death to individual members of the species nor does it require a finding that habitat degradation is presently driving the species further to extinction. Habitat destruction that prevents the recovery of the species by affecting essential behavioral patterns causes actual injury to the species and affects a taking under Section 9 of the act"

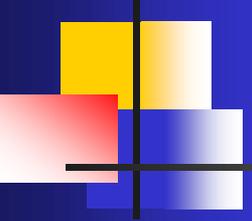
US v Palila II 649 F. Supp..1070 9th Ct., 1986



Federal Fungicide, Insecticide, Rodenticide Act (FIFRA)

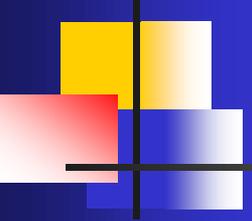
- As to PESTICIDES; It is UNLAWFUL TO (Section 12):
 - Sell/ distribute unregistered, adulterated, misbranded
 - Tamper with Labels
 - Use registered pesticide in manner inconsistent with its labeling:
 - File false reports

- PENALTIES: (ALL ARE KNOWINGLY VIOLATIONS)
 - Civil: \$5,000 for distributors, \$1,000 for private applicators
 - Criminal: \$50,000 For Registrant, \$25,000 For Commercial Applications & >1 year Private Applicator 30 days.



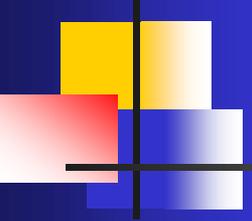
Conspiracy

- ❑ If two or more persons conspire either to commit an offense against the United States ... or any agency thereof in any manner or for any purpose, AND one or more persons do any act to effect the object of the conspiracy....
- ❑ \$10,000 and/or 5 Years imprisonment
- ❑ FALSE STATEMENTS: (18 USC 1001)



Definitions @ FEDERAL LAW

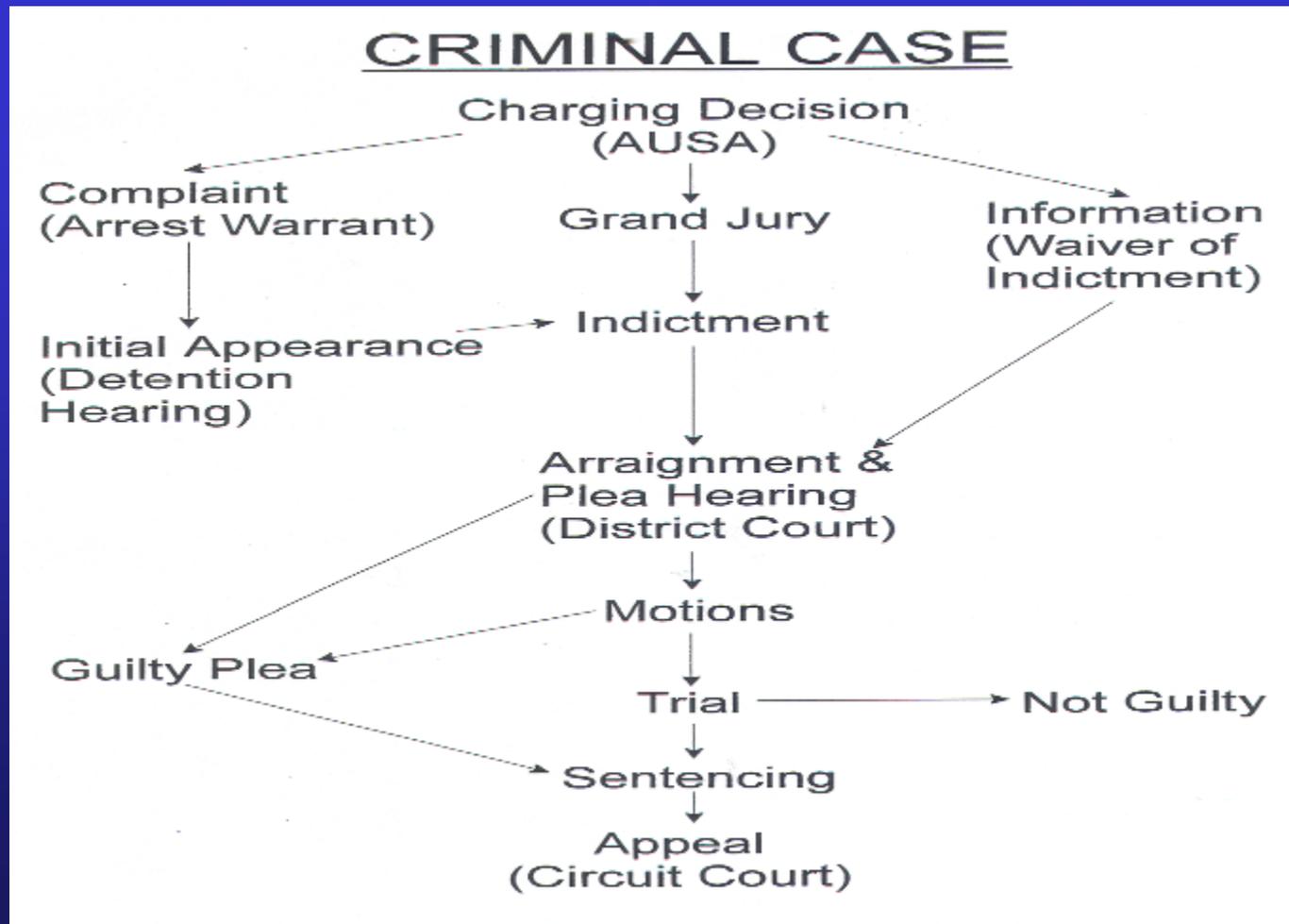
- ❑ PERSON means any individual, firm, corporation, association, partnership, club, or private body, any one or all, as the context requires.
- ❑ ACCESSORY AFTER THE FACT: Whoever, knowing that an offense has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment.
- ❑ PENALTIES: ½ THE MAX FINE OR TERM OF IMPRISONMENT OF THE PRINCIPAL

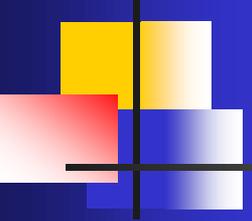


Principles

- ❑ Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal.
- ❑ Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal
- ❑ **MUST PROVE KNOWLEDGE!**

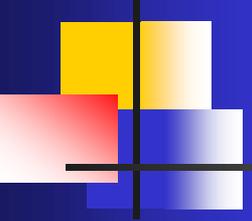
The Prosecutorial Process





Imposition of Sentences

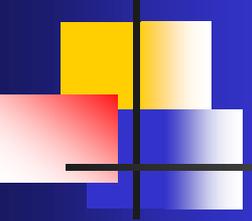
- Sentencing Guidelines
- Nature of circumstances of the offense & history of defendant (Pre-sentence Report by Parole/Probation)
- Need for the sentence imposed to reflect:
 - Seriousness of Offense, Promote Respect for the law, Provide Just Punishment
 - Afford adequate deterrence to criminal conduct
 - Protect the public from further crimes of the defendant.



Issues to be Considered by Non-LE Personnel

- ❑ Acting as an agent of LE (Scope of employment/authority)

- ❑ Searches of Curtilage



Curtilage

Noun 1. curtilage - the enclosed land around a house or other building; "it was a small house with almost no yard"

| **grounds, yard**

| **backyard** - the grounds in back of a house

| **courtyard, court** - a yard wholly or partly surrounded by walls or buildings; "the house was built around an inner court"

| **dooryard** - a yard outside the front or rear door of a house

| **front yard** - the yard in front of a house; between the house and the street

| **garden** - a yard or lawn adjoining a house

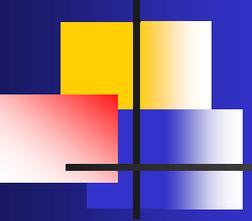
| **playground** - yard consisting of an outdoor area for children's play

| **side yard** - the grounds at either side of a house

| **field** - a piece of land cleared of trees and usually enclosed; "he planted a field of wheat"

Curtilage





Discussion

Organophosphates, Carbamates & Pyrethroids (synthetics which were designed to replace organochlorines and purportedly have less negative impact to the environment) aside from working on the Central Nervous System of Insects can also “destroy the Central Nervous Systems of Non-Target aquatics, fish and wildlife” *“Pesticide Impacts on Prairie Wetlands”* U.S. Fish & Wildlife Service, 1983

- SO....

IF THE LABEL STATES "Highly Toxic to Fish, Birds & Mammals"

- ❑ AND A COMMERCIAL APPLICATOR USES COUNTER IN A FIELD FOR NEMATODES IN AN AREA WHERE GROUND SQUIRRELS & BLACK FOOTED FERRETS ARE FOUND....
- ❑ Have violations of federal law occurred?

