

The Enforcement of Ohio's Litter Control Laws

June 6, 1983
Nelsonville, Ohio

Workshop
Proceedings



Cooperative Extension Service
The Ohio State University

This publication is the edited proceedings of a workshop sponsored by The Ohio State University Cooperative Extension Service, as a part of the Litter Control and Recycling Education Program. Paul R. Thomas, Assistant Director, Community and Natural Resource Development. John D. Rohrer, Leader, Community Services and Program Coordinator.

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12/83

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Issued in furtherance of Cooperative Extension work, Acts of May 8 and June 30, 1914 in cooperation with the U.S. Department of Agriculture, Clarence J. Cunningham, Acting Director of Cooperative Extension Service, The Ohio State University.

This publication is funded in part by a grant from the Office of Litter Control, Ohio Department of Natural Resources.

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Ohio Department of Natural Resources

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Proceedings of
A Workshop on
The Enforcement of Ohio's
Litter Control Laws

June 6, 1983
Hocking Valley Motor Lodge
Nelsonville, Ohio

The Ohio Cooperative Extension Service
Community and Natural Resource Development

in cooperation with

The Office of Litter Control
Ohio Department of Natural Resources

TABLE OF CONTENTS

	Page
Agenda	1
Resource Personnel and Facilities	11
Preface	111
Welcome and Introduction	1v
ENFORCEMENT AS A PART OF THE OFFICE OF LITTER CONTROL	1
Table I.	1
Table II.	2
Table III.	3
ENFORCEMENT OF OHIO'S LITTER LAWS	5
CRIMINAL ENFORCEMENT	5
CIVIL ENFORCEMENT	9
PANEL: A LOOK AT ENFORCEMENT EFFORTS	12
GREG WILLIAMSON	14
RICHARD ELLIS	18
WILLIAM E WILLIAMS	20
TABLE IV.	21
TOM DAVIS	23
PANEL: QUESTIONS AND ANSWERS	25
OFFENDER'S PROGRAMS	33
QUESTIONS & ANSWERS	42
GETTING PEOPLE ORGANIZED	49
QUESTIONS & ANSWERS	56
PANEL: WHERE DO WE GO FROM HERE	57

A Forum on
"THE ENFORCEMENT OF OHIO'S LITTER CONTROL LAWS"

June 6, 1983

Moderator: Ms. Constance A. Jones, Jackson Area Program Assistant, OCES

- 9:00 REGISTRATION AND REFRESHMENTS
- 9:30 WELCOME - Dr. John D. Rohrer, Leader, Community Services, Ohio Cooperative Extension Service and Project Coordinator, Extension Litter Education and Recycling Program
- 9:40 ENFORCEMENT AS A PART OF THE OFFICE OF LITTER CONTROL'S PROGRAM
- Mr. Russ Gibson, Natural Resource Coordinator, Office of Litter Control, Ohio Department of Natural Resources
- 10:05 ADDRESSING THE JURISDICTION OF OHIO'S LITTER LAWS
- Ms. Eleanor Tschugunov, Esq., Assistant Attorney General, Ohio Department of Natural Resources
- 10:50 BREAK
- 11:00 PANEL - A LOOK AT ENFORCEMENT EFFORTS
- Moderator: Dr. John D. Rohrer
- Panel Members:
- Mr. Tom O'Grady, Litter Control Coordinator, Athens City-County Health Department
- Mr. Greg Williamson, Zanesville Litter Enforcement Officer
- Mr. Richard Ellis, Washington County Sheriff, Washington County Sheriff's Department
- Mr. Bill Williams, Law Enforcement Supervisor, District IV, Division of Wildlife, Ohio Department of Natural Resources
- Mr. Tom Davis, Criminal Justice Planning Specialist, Office of Litter Control, Ohio Department of Natural Resources
- 12:00 LUNCH
- 12:50 OFFENDERS PROGRAMS
- Judge Thomas Hodson, Athens City Municipal Court Judge
- 1:30 GETTING PEOPLE ORGANIZED
- Dr. Joe Donnemeyer, Specialist in Rural Crime Prevention, Ohio Cooperative Extension Service, and Director, National Rural Crime Prevention Center
- 2:00 WHERE DO WE GO FROM HERE
- Moderator: Mr. Joe E. Heimlich, Program Assistant, CNRD & 4-H, Ohio Cooperative Extension Service
- 2:45 SUMMARY - Dr. John D. Rohrer
- 3:00 ADJOURN

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Preface

The Ohio State University Cooperative Extension Service provides continuing educational programs in Community and Natural Resource Development, Agricultural Industry, Home Economics, and 4-H/Youth Development for the Citizens of Ohio. Major emphasis is given to economic development and to related social and cultural needs of people in the state.

The Ohio Cooperative Extension Service community development program has a long history of working with local leaders for community improvement. Local groups working together do make a difference in the quality of life in our communities. Some of the topics where Extension has assisted includes: land use and development policy, community services, tax structure and fiscal management, community health and safety, economic development, crime prevention, energy utilization and conservation, housing outdoor recreation, and pollution control.

During the late 1970's, litter control appeared as a statewide issue. The result was the 1980 legislation creating a comprehensive program to deal with the problem. We are happy to be a part of the educational effort to cause a positive change in littering habits.

One step toward change is an increased understanding of Litter Control Enforcement. What is enforcement? Who has enforcement jurisdiction? What are potential pitfalls? What are offenders programs? These are some of the issues addressed in these proceedings of the seminar "Enforcement of Ohio's Litter Control Laws."

Additional information and planning assistance on enforcement is available from the Office of Litter Control, Ohio Department of Natural Resources.

We thank the Office of Litter Control for financial assistance and the contributions of the many resource people who made this seminar possible.

Paul R. Thomas
Assistant Director, Community and Natural
Resource Development
Ohio Cooperative Extension Service
The Ohio State University

Welcome and Introduction

John D. Rohrer, Leader, Community Services
Ohio Cooperative Extension Service
The Ohio State University

Welcome to the Workshop on the Enforcement of Litter Laws. When Ohio revised the legislation dealing with litter control in 1980 a problem of relating the code to various jurisdictions was recognized. So various sections were consolidated so that one section can usually be used for citing violators. But there is still much confusion over the role of the peace officer, the prosecutor, the judge, and the citizen. There are both criminal and civil actions that can be taken with litter violations. Various legislative bodies at the local level can write additional ordinances under our charter form of government.

Finally, no matter how well laws are written, they have little effect until the various levels of government enforce them and in the long run the general public must support them.

It is a matter of record that litter law enforcement in Ohio is very uneven. In some communities we see the city council, the city police or the sheriff, the prosecutor, the judge all working together to enforce the litter control laws. More often, one of the key pieces is missing. No judge can act before citations are issued. No officers want to cite offenders if the judge does not apply the law.

But all these key actors need to know what the community will accept and support. For this to take place the cooperation of many community leaders, organizations and agencies is needed. An awareness and education program is often required to generate and put in place this support system. In extreme cases, changes for support of litter law enforcement will not occur until some of the key actors are changed through elections or appointments.

Some judges and others are questioning the use of jail or even fines for those convicted of dumping refuse in illegal places. They believe those convicted of litter crimes should be placed in an offender program where community work can be performed and contribute to the community rather cost the community with incarceration.

So we have included offender's programs as a part of the workshop. In addition to other permissive legislation, community work and picking up litter is specifically permitted for litter violations. Although the practice is not yet widespread in Ohio, it may become a major component in the litter law enforcement program.

You, as participants, represent a wide variety of key community positions for litter enforcement. This is as it should be because it will take the cooperation of all of us and our counterpart positions in our home communities to really make a difference. It is hoped the workshop and the proceedings will provide a foundation to begin to develop the knowledge and support for effective programs.

ENFORCEMENT AS A PART OF THE OFFICE OF LITTER CONTROL

RUSS GIBSON, NATURAL RESOURCE COORDINATOR
OFFICE OF LITTER CONTROL, OHIO DEPARTMENT OF NATURAL RESOURCES

In 1980, the Ohio General Assembly offered an alternative to the "Bottle Bill" defeated by voters in 1979. The emphasis of this alternative is local governments grants for comprehensive litter control programs. These programs encompass: education/prevention, collection/containment, recycling, and law enforcement.

The following table illustrates the scope of the law enforcement program through the Office of Litter Control.

TABLE I.
LAW ENFORCEMENT PROGRAM SUMMARY PROGRAM/OFFICER ANALYSIS

A. <u>TOTAL NUMBER OF PARTICIPATING COMMUNITIES</u>	43
1. Total number of participating county programs	18
2. Total number of participating municipalities	23
3. Total number of participating townships (See Table II)	2
B. <u>TOTAL NUMBER OF PARTICIPATING COMMUNITIES WITH GRANT-FUNDED ENFORCEMENT OFFICERS</u>	33
1. Total number of counties with grant-funded officers	13
a. Total number of counties with full-time deputies (*One deputy participating in a city/county joint program.)	7*
b. Total number of counties with part-time deputies	3
c. Total number of counties with full-time park rangers	1
d. Total number of counties with nuisance officer	2
e. Total number of counties with Health Dept. sanitarians	1
2. Total number of municipalities with grant-funded officers	21
a. Total number of municipalities with full-time police	3
b. Total number of municipalities with part-time police	9
c. Total number of municipalities with special police	4
d. Total number of municipalities with Health Department sanitarians	2
e. Total number of municipalities with misc. officers	3
C. <u>TOTAL NUMBER OF OFFICERS FUNDED STATEWIDE</u>	42
1. Total number of full-time officers funded statewide	33
2. Total number of part-time officers funded statewide	9

D. <u>TOTAL NUMBER OF PROGRAMS WITH OVERTIME HOURS</u> <u>FOR OFFICERS FUNDED</u>	5
1. Total county overtime hour programs funded	1
2. Total municipal overtime hour programs funded	4

TABLE II.
GRANT COMMUNITIES WITH LITTER ENFORCEMENT OFFICERS
FUNDED BY OFFICE OF LITTER CONTROL FOR 1983

TOTAL COMMUNITIES = 33

<u>Municipalities (18)</u>	<u>Counties (13)</u>	<u>Townships (2)</u>
Alliance	Ashtabula	Jackson - Stark Co.
Ashtabula	Athens	Mifflin - Richland Co.
Barberton	Brown	
Bowling Green	Clark	
Canton	Fairfield	
Cincinnati	Greene	
Cleveland	Guernsey	
Columbus	Jackson	
East Cleveland	Jefferson	
Elmwood Place	Lawrence	
Elyria	Pickaway	
Lakewood	Trumbull	
Mansfield	Wayne	
Norwood		
Salem		
Steubenville		
Toledo		
Youngstown *	donated funds for officers	
Zanesville		

There are 10 sheriff's departments, 13 police departments, and two health departments with enforcement officers. Table III shows us a breakdown of these programs with the full time equivalents (FTE's) employed.

TABLE III. GRANT COMMUNITIES WITH LITTER ENFORCEMENT OFFICERS
FUNDED BY OFFICE OF LITTER CONTROL FOR 1983

<u>Analysis of Officer Composition</u>		
<u>Deputy Sheriffs</u>	<u>Police Officers</u>	<u>Special Officers</u>
Ashtabula (1)	Ashtabula (1 PT)	Canton (Park) (2)
Athens (2 PT)	Bowling Green (OT)	Cincinnati (San.) (4)
Brown (1 PT)	Cleveland (4)	Lakewood (Police) (1 PT)
Fairfield (1)	E. Cleveland (2)	Greene Co. (Parks)(1)
Guernsey (1)	Elmwood Pl. (1 PT)	
Lawrence (1)	Elyria (OT)	
Pickaway (OT)	Mansfield (OT)	
Trumbull (1)	Norwood (AUX)	
Wayne (2)	Springfield (OT)	
Richland (2)	Oak Hill (1 PT)	
	Jackson TWP (1)	
	Salem (2 AUX)	
	Zanesville (1)	
<u>Nuisance Officers</u>	<u>Sanitarians</u>	<u>Misc. Non Peace Officers</u>
Athens Co. (1 PT)	Toledo (2)	Jefferson Co. (1)
	Clark Co. (1)	Columbus (4)
	Barberton (1 PT)	Alliance (1)
		Steubenville (1)

PT = part time AUX = Auxillary
OT - overtime

The ultimate goal of litter law enforcement is to change the behavior of those people who litter. This may be accomplished by using law enforcement to attack the process that reinforces littering behavior. Law enforcement can accomplish this in three ways:

1. Firstly, law enforcement can reduce people's motivation to litter through personal intervention into the littering act. This intervention occurs through confronting those persons who litter and subsequent prosecution.
2. Secondly, law enforcement can indirectly affect people's attitudes about littering. This may be accomplished as a result of the deterrence that is produced by active and highly visible litter enforcement programs.

3. Thirdly, through the use of a well planned enforcement information campaign, law enforcement can impact the public's perceptions, awareness, and knowledge of the littering problems and how law enforcement addresses these problems.

What can you do? There are two basic means by which you can be involved. The first is in investigations. Who litters, who dumps, where and when are all questions that need to be addressed. The second step is in your personal contact with litterers; violators of the litter law and the public in general. If they see you around, they will think twice before littering.

What can we, the Office of Litter Control, do? (1) We can share with you our experience and knowledge gained from this experience. (2) We can also help you as you plan your enforcement program. (3) We can help you create and develop ordinances enabling you to better do your job. We are a valuable resource to you so use us.

What is the "real answer" to the problems encountered in enforcing Ohio's litter laws? The real answers are in this room today.

ENFORCEMENT OF OHIO'S LITTER LAWS

ELEANOR J. TSCHUGUNOV, ASSISTANT ATTORNEY GENERAL,
DIVISION OF WILDLIFE, OHIO DEPARTMENT OF NATURAL RESOURCES
FOR
THE ATTORNEY GENERAL OF THE STATE OF OHIO,
ANTHONY J. CELEBREZZE, JR.

INTRODUCTION

The problem of litter control can be addressed either criminally by the filing of a criminal complaint or civilly through the initiation of an action brought by a private party based upon tort. I will address the question of the criminal enforcement of Ohio's laws first and then continue with possible theories of law civil action.

CRIMINAL ENFORCEMENT

Ohio's law which prohibits the discarding of litter is found in the Ohio Revised Code 3767.32. That provision reads:

(A) No person shall, regardless of intent, throw, drop, discard, place, or deposit litter or cause litter to be thrown, dropped, discarded, placed, or deposited on any public property, or private property not owned by him, or in or on waters of the state, unless the person has:

(1) Been directed to do so by a public official as part of a litter collection drive;

(2) Thrown, dropped, discarded, placed, or deposited the litter in a litter receptacle in a manner that prevents its being carried away by the elements; or

(3) Been issued a permit or license covering the litter pursuant to Chapter 3734, or 6111, of the Revised Code.

(B) As used in this section, "litter" means garbage, trash, waste, rubbish, ashes, cans, bottles, wire, paper, cartons, boxes, automobile parts, furniture, glass, or anything else of an unsightly or unsanitary nature thrown, dropped, discarded, placed, or deposited by a person on public property, on private property not owned by him, or in or on waters of the state, unless the person has:

(1) Been directed to do so by a public official as part of a litter collection drive;

(2) Thrown, dropped, discarded, placed, or deposited the material in a receptacle in a manner that prevented its being carried away by the elements; or

(3) Been issued a permit or license covering the material pursuant to Chapter 3734. or 6111. of the Revised Code.

This section may be enforced by any sheriff, deputy sheriff, police officer of a municipal corporation, police constable or officer of a township or township police district, game protector, park officer, forest officer, preserve officer, conservancy district police officer, or any other law enforcement officer within his jurisdiction.

I have been asked to address the question of enforcement of this provision. Persons who are authorized to issue citations for a violation of R.C. 3767.32 are listed in the last paragraph of the statute. Authority conferred by that paragraph extends to "any sheriff, deputy sheriff, police officer of a municipal corporation, police constable or officer of a township or township police district, game protector, park officer, forest officer, preserve officer, conservancy district police officer, or any other law enforcement officer within his jurisdiction."

Since the enactment of R.C. 3767.32 questions have arisen with regard to the meaning of the language "any other law enforcement officer." R.C. 2901.01(K) defines the term "law enforcement officer" as it is used in the Revised Code as follows:

"Law enforcement officer" means any of the following:

(1) A sheriff, deputy sheriff, constable, marshal, deputy marshal, municipal police officer, or state highway patrolman:

(2) An officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of such statutory duty and authority;

(3) A mayor, in his capacity as chief conservator of the peace within his municipality;

(4) A member of an auxiliary police force organized by county, township, or municipal law enforcement authorities, within the scope of such member's appoint or commission;

(5) A person lawfully called pursuant to section 311.07 of the Revised Code to aid a sheriff in keeping the peace, for the purposes and during the time when such person is called;

(6) A person appointed by a mayor pursuant to section 737.01 of the Revised Code as a special patrolman or officer during riot or emergency, for the purposes and during the time when such person is appointed;

(7) A member of the organized militia of this state or the armed forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence;

(8) A prosecuting attorney, assistant prosecuting attorney, secret service officer, or municipal prosecutor. (Emphasis added.)

There are two specific instances which have been brought to the attention of the Office of Litter Control. The first of these concerns nuisance inspectors whose authority is found in R.C. 3767.27 states:

The board of county commissioners, whenever there is a violation of sections 3767.13 to 3767.29, inclusive, of the Revised Code, may employ and reasonably compensate one inspector of nuisances who shall be vested with police powers and authorized to examine all cases of violation of such sections. R.C. 3767.28 states:

For the purpose of examining cases of violations of sections 3767.13 to 3767.29 inclusive, of the Revised Code, and for obtaining evidence thereof, an inspector of nuisances may enter upon any premises in any county, and shall make a complaint, and institute prosecution, against any one violating such sections. The inspector shall not be required to give security for costs. The prosecuting attorney shall be the legal advisor of such inspector and the attorney in all such prosecutions.

These provisions authorize a nuisance inspector to examine violations of R.C. 3767.13 to 3767.29. Such an inspector may also "make a complaint, and institute prosecution, against anyone violating such sections." If a nuisance inspector is considered to be a "law enforcement officer" he would also be authorized to enforce the provisions of R.C. 3767.32. The major impediment to such a conclusion is the lack of specific conferral of arresting powers which is required if a person is to be considered a law enforcement officer as defined in R.C. 2901.01(K). R.C. 3767.27 does, however, grant to a nuisance inspector "police powers." Whether the power to arrest is a general police power is unclear.

The question of whether a general grant of police powers confers the authority to arrest also arises with regard to sanitarians. A sanitationer is a person appointed pursuant to R.C. 3709.15 by a board of health of a city or a general health district for purposes of "Sanitary duty as the public health and sanitary conditions of the

district require..." R.C. 3709.15 confers upon sanitarians "general police powers." It has been the opinion of the Office of Litter Control that neither nuisance inspectors nor sanitarians are authorized to enforce the provisions of R.C. 3767.32. If the question is determined to be of critical importance, clarification can be sought either through the legislature or perhaps by way of opinion of the Ohio Attorney General. Attorney General opinions may be issued only upon requests made by the heads of state departments and agencies, state officers, and prosecuting attorneys.

A second statute prohibiting litter is often referred to as the "stream litter law." This law is codified in R.C. 1531.29 and reads:

No person shall place or dispose of in any manner any garbage, waste, peelings of vegetables or fruits, rubbish, ashes, cans, bottles, wire, paper, cartons, boxes, parts of automobiles, wagons, furniture, glass, oil, or anything else of an unsightly or unsanitary nature on any state owned, controlled, or administered land, or in any ditch, stream, river, lake, pond, or other watercourse, except those waters which do not combine or effect a junction with natural surface or underground waters, or upon the bank thereof where the same is liable to be washed into the water either by ordinary flow or floods. This section does not apply to any substance placed under authority of a permit issued under section 6111.04 of the Revised Code or exempted by such section from its terms.

Game Protectors are the law enforcement officers of the Division of Wildlife and are authorized by R.C. 1531.13 to enforce wildlife laws. They are also given the following authority:

The chief of the division of wildlife and game protectors are vested with the authority of law enforcement officers for the purpose of enforcing the criminal laws of the state on any property owned, controlled, maintained, or administered by the division of wildlife, and may arrest without warrant, any person who, in the presence of the chief or any game protector, is engaged in the violation of any such laws. (Emphasis added.)

Since R.C. 3767.32 is a criminal law of the state it may be enforced by game protectors within their jurisdiction. R.C. 1531.13 specifies that that jurisdiction extends to property owned, controlled, maintained, or administered by the division of wildlife.

Therefore, a game protector may enforce the provisions of R.C. 3767.32 only on Division property. Comparison should be made with the provisions of R.C. 1531.29, however, since it is a wildlife law which is enforceable by game protectors throughout the state. It pertains not only to any state owned, controlled, or administered land (not just land owned, controlled, etc. by the Division), but also to "any ditch, stream, river, lake, pond, or other watercourse, except those waters which do not combine or effect a junction with natural surface or underground waters, or upon the bank thereof where the same is liable to be washed into the water either by ordinary flow or floods." Thus, a game protector can enforce a litter violation on private property if it is in accordance with R.C. 1531.29 jurisdiction. If the violation is not made with regard to a waterway or bank, but rather is made on private land, there may be a violation of R.C. 3767.32, but a state game protector would have no jurisdiction thereover.

This has been a brief summary of some of the questions which have arisen concerning the criminal enforcement of Ohio's litter laws and is not intended to be exhaustive. As other questions arise they should be brought to the attention of the prosecuting attorneys of each of our counties or to the Office of Litter Control in the Department of Natural Resources.

CIVIL ENFORCEMENT

Aside from the pursuit of criminal prosecutions, private persons who are injured by activities which might be litter offenses may have available a civil action in court. Actions in this area, generally, have been recognized by the courts based upon three theories of laws.

One theory recognized by the courts is that of nuisance. In a cause of action based upon nuisance, courts will ask whether a defendant's activity creates an interference with the plaintiff's "reasonable use of his property." Courts have held that evidence of a beneficial activity or the use of utmost care in the carrying on of an

activity will not preclude a finding of a nuisance. If a court finds that there is, in fact, an interference with someone's reasonable use of his property it will most appropriately order that the nuisance be abated, i.e., that the activity cease. Abatement is an equitable remedy and will ordinarily lie to prevent future or continuing injury. It may also be ordered in cases where measuring damages is either difficult or impractical. Additionally, it may also be ordered where a plaintiff has suffered no pecuniary loss whatsoever. A cause of action for nuisance is based on the fact that a plaintiff's property value for the ordinary purposes of life has been impaired.

A second theory of law which might be brought by a private landowner is that of negligence. In order to maintain an action in negligence a plaintiff must show that the defendant has failed to exercise the degree of care required by law and that that failure proximately caused damages to the plaintiff. Negligence is different from nuisance in that in order to show negligence a plaintiff must show that the defendant had a duty which he failed to perform. In a nuisance action only the result of a defendant's conduct is in issue, the standard of conduct is not. In the majority of cases the remedy which a plaintiff seeks in a negligence action would be for damages that proximately resulted from the defendant's act or failure to act.

A private citizen might also bring an action based on the theory of trespass. A trespass is an unauthorized entry onto the land of another and there is no need to show that the entry was intentional. In many respects trespass is like nuisance. The thrust of the action is that the plaintiff has suffered in unreasonable interference with the use of enjoyment of his land. With trespass, however, there must be some physical entry onto the land, i.e., litter blowing onto one's land from an adjacent property owner might amount to trespass, whereas mere odor from a garbage pile next door would not. If a trespass is continuing a court might properly issue an injunction to prohibit the activity. If the trespass is a single occurrence damages caused thereby would be appropriate.

The foregoing theories of law have been set forth generally to present factors which might be considered by a party desiring to bring an action. They are by no means exhaustive and any legal action should be carefully considered based upon the facts of a given case.

The Division of Wildlife has been successful in bringing civil suits where pollution has caused damage to the wild animals of the state. The suits are brought by the Division on behalf of the citizens of Ohio for the lost value of the fish and any other living creatures in the streams of the state. The state is, by law, the trustee of all wild animals in the state "not legally confined or held in private ownership legally acquired." R.C. 1531.02. In the case of State v. Bowling Green, 38 Ohio St. 2d 281 (1974) the Supreme Court held at 283: "that where the state is deemed to be the trustee of property for the benefit of the public it has the obligation to bring suit not only to protect the corpus of the trust property but also to recoup the public's loss..." The loss to the citizen's of Ohio from stream pollution can include: the cost of the fish killed, cost of transporting replacement fish from the nearest hatchery, costs of investigating the incident, loss value of the food chain, (micro and macro organisms), and loss of reproduction value of the fish. The problem is a serious one which in 1981 resulted in the death of 247,557 wild animals valued at \$35,814.43. The Division actively pursues these cases on behalf of the citizens of Ohio to recoup their loss.

In closing I would merely recognize that litter, and pollution in general are serious problems for the citizens of Ohio. Enforcement actions are being actively brought by the Attorney General's Office on behalf of both the Department of Natural Resources and the Ohio Environmental Protection Agency. It is the hope of the Attorney General that through the actions of his Office and those of local law enforcement agencies and each and every citizen of the state, Ohio will enjoy a litter and pollution free environment.

PANEL: A LOOK AT ENFORCEMENT EFFORTS

TOM O'GRADY, LITTER CONTROL COORDINATOR
ATHENS CITY-COUNTY HEALTH DEPARTMENT

Other than casual littering, which I am sure we all have trouble enforcing, the Athens County Program's biggest problem is illegal dumping. We have somewhere around 100 illegal roadside dumpsites in Athens County. We spend a lot of time monitoring and sifting through them for evidence. Early in the program we started sending letters to people whose names turned up in the dumps; requiring them to clean up whatever they dumped, to take the stuff to a landfill, and turn in the landfill receipt as evidence of proper disposal to the Health Department. We had a lot of success with that early in the program. People who didn't respond to it got a second letter reminding them they had a first letter they should follow up on or they would be taken to court. The second letter was often very successful. Then, if we didn't get a response, we went to court. Our court cases have been successful for the most part.

We have used court action less in the second and third years of our program. Now, we spend a lot of time talking to people. We have come up with a little form which we call an "Official Order". If we see a problem (many times on private property) where trash is stored and may blow onto public property, we leave an "Official Order" from the Health Department stating the problem and what they need to do to clean it up. It is called an Official Order but I do not think it is very official. I do not know what kind of legal weight it carries, but it is amazing the results it gets because it is from the Health Department.

Most recently we have been knocking on doors and confronting people with the problem. It is amazing how people really do not like to talk about how they are handling their solid waste or litter. We are getting good results. What we are hoping to do in the future is work a lot more closely with the Sheriff's Department making site visits

to problem areas with the sheriff's deputies. We have been initiating contacts with other local law enforcement officials such as village and city police in Athens and Nelsonville. We have received a lot of cooperation and it is now up to the litter program to follow up. We are getting the groundwork laid out and we are having a reasonable amount of success for a difficult job.

GREG WILLIAMSON
LITTER ENFORCEMENT OFFICER, CITY OF ZANESVILLE, OHIO

Who are the people that serve in the capacity of litter enforcement officers? They are individuals who, in most cases, have completed some form of law enforcement training and currently serve as full-time sheriff's deputies, police officers, village constables, State of Ohio game protectors or auxiliary law enforcement officers.

Litter enforcement officers are better known as "Leg Work People" because they are the individuals who do a lot of running around investigating litter complaints from start to finish. It is very important that litter enforcement officers be aware of what their responsibilities are in relationship to the local and state laws dealing with litter and what is expected of them by their immediate supervisors.

Littering is against the law: it is a violation of Section 3767.32 (a 3rd degree misdemeanor) of the Ohio Revised Code, punishable by a fine of up to \$500 and 60 days in jail. The severity of the fine differs depending upon the presiding judge's feelings toward littering, the amount of trash discarded and whether or not the violator is being cited under local littering ordinances or state law. Litter enforcement officers should know what section of law they are working with because it can play a big role in whether the officer's municipality reaps any of the funds from the fine or whether the violator will face a stiffer fine from the county judge or a smaller fine from a city municipal judge.

During their daily work hours, litter enforcement officers will be faced with calls from the public requesting assistance in helping to abate litter problems either witnessed or discovered by the general public. When a call is received in an enforcement officer's department, it is essential that the following information be collected from the caller:

1. Name of calling party (helpful, but not mandatory).
2. Telephone number and address of calling party.
3. What type of incident they are reporting.
4. Information on any witnesses.
5. When incident occurred.
6. Time of call.
7. Will caller prosecute (mandatory).

There are two areas that I would like to examine, One is in reference to why you should ask the name of the calling party. Should the littering case you are working on end up in court and the violator pleads "not guilty," you will need to subpoena the complainant into court. Also, if you as the officer did not witness the littering incident and cannot get a confession out of the alleged violator at the time of questioning, you will have to depend on the complainant to file the charges. If you are successful in getting a confession, you can proceed and cite the individual for littering, but you will still need the name of the complainant for assurance purposes. Secondly, find out if the complainant will prosecute should the need arise.

When investigating a complaint after gathering the necessary information from the caller, the officer should proceed to the location where the littering incident occurred. Once at the scene, determine trash in comparison to the roadway, stream or residential household. Make sure you always have a working camera (35mm if possible) so you can take pictures of the discarded trash and the area where the trash is lying. Always have available small plastic evidence bags and tags. You will find these very beneficial in collecting articles from the littered area. Any evidence you can secure with names of individuals on it can be helpful in a court of law. Any evidence collected at the scene should be kept confidential until the necessary time when the evidence will be requested of you by the prosecutor. Having strong evidence that can link a person to a littered area is a real plus when compiling a case against a violator.

The second method of handling a complaint dealing with littering is actually observing a violator in action. This is normally accomplished through long hours of watching a primary dump area in your respective county. Normally known as a "stake-out," the litter enforcement officer can position his vehicle near the dump site in an obscure location where the officer can see the dump site and violator but not vice versa. Again, this is a long drawn out process but one that can prove fruitful if the officer is patient. Another method in the same area is using an unmarked vehicle deployed as an abandoned or inoperative vehicle. This type of set up can be successful because it allows the officer to position himself in an isolated area near the dump on foot. It will also provide no indication to the litter violator that he or she is being watched from an observation point near the dump. The officer should be in close striking distance of the dump so if a littering incident is being observed he can make the apprehension. Most officers on stake-outs of this sort will not be required to wear their regular duty uniforms but they should have some identification available when they approach a violator. Once the littering incident is observed by the officer, the officer should approach the vehicle, identify him or herself, and inform the violator why he is being questioned. The remaining steps include picture-taking of trash, subject's license number and vehicle in proximity of trash dump. If officer can secure a written statement from violator, this can be very helpful. Violator should then be given a ticket ordering an appearance in court. It must be stressed at this time that if this type of surveillance is used, the officer should have access to a portable radio or car radio to stay in touch with the sheriff's office or respective department in case trouble develops.

The third area in which we will move at this time is using a dump truck filled with trash operated by an officer and parked at a dump site. What you as an officer will attempt through this method is to act as a decoy to lure other dumpers to the site who may see you parked in your trash-loaded truck. Potential dumpers will not know whether you are a dumper or just having lunch at the site. It

should be made known at this time that you should check with your prosecutor to get his or her feelings on this matter. Some prosecutors may feel this approach borders on entrapment.

The last area I would like to touch on is actually observing someone discarding something from their vehicle upon a roadway. It is a simple task to bring this type of violator to justice. If you are in a marked cruiser, you should radio your department that you will be stopping a violator's vehicle, location and the nature of the stop. Approach the violator, identify why you stopped the subject, then request the individual to stay in vehicle while you return to your car to write citation for subject's actions. Again, if possible, try to obtain as evidence what the subject threw out of his or her vehicle.

If you are serving as a litter enforcement officer with no official law enforcement powers, all I can suggest is that you determine what your duties and authority are through your immediate supervisor. Utilize these people to watch for litter violators and to apprehend them if at all possible. Work closely with your local prosecutor or city law director and rely on these individuals to push for total support of state or local littering laws by enforcement personnel. Also encourage your prosecutor or law director to give support to your efforts and lend legal advise to you on preparing a littering case.

In closing, it should be noted that no method for dealing with litter violators can be the one ideal approach in solving the litter problem. What program and methods work for one officer may not be suitable for another. Everyone has their own way of doing things. If your program works, stay with it.

RICHARD ELLIS
SHERIFF, WASHINGTON COUNTY

I think what I represent here today is the other side of the coin--we do not have a litter control program funded by the Office of Litter Control. However, litter is a problem in our area, especially in the springtime and I feel a lot of the ideas addressed here this morning relate to our problems. We have city dwellers who will go into the county and deposit their trash on open land belonging to a farmer. The farmer becomes very agitated about this trash so he comes in to the sheriff's office.

The litter presents a problem to the farmer in that it is not only an unsightly addition to his property but if he is working in his fields and runs over a bottle and cuts his tire, it is a major expense to him. It also is a waste of his time while he has to take care of the ruined tire. I mention the fact that at this point of time the crime is not as severe as murder, but I think if the farmer could catch the individual dumping the trash there would be a trial on manslaughter charges.

Someone mentioned bottles. Many teenagers drive around with a six-pack and a bottle of wine. Once these are empty, they deposit them in someone's front yard. If the homeowners happen to catch the teenagers, the homeowners become very irate.

I feel responsible in this particular area because it is my office's duty to take care of this type of problem. Frankly, we don't always get around to it. It is a matter of priorities and I think that often what keeps us from addressing these issues is priorities. I have difficulty in my county because my views are not always consistent with the county fathers' priorities.

We have, however, done some inspections as far as dumps are concerned. Our policy has been, in the past, to go out, go through

the dump and obtain names and addresses off the material in the dump. Subsequently as it goes into court action, the individual appears in court and states that so-and-so or such-and-such was paid to discard the trash, therefore the individual is not responsible. I do hope the new House Bill allowing three or more items containing name and address to be used as evidence passes. It would certainly be of help to us.

I also came today to learn how to start something in Washington County to help solve some of the litter and dumping problems. These are problems for county sheriffs: what do we do with it and how do we enforce it?

WILLIAM E. WILLIAMS
ENFORCEMENT SUPERVISOR, OHIO DIVISION OF WILDLIFE

The Division of Wildlife has pursued the collection of damages for polluters who were responsible for the killing of wild animals and habitat destruction since 1946. The Division has pursued the polluters that have disposed of their waste into Ohio waters and have made it an unprofitable venture. The news media has been an ally to the Division by exposing polluters to the general public. The legal precedents which have resulted in bringing polluters to court have helped provide a strong basis for improving the quality of our waters in the State of Ohio.

In 1975, the Attorney General on the behalf of the Division of Wildlife, sued a major American firm for the damages to the fresh water mussel of the Muskingum River. The court awarded \$260,000 to the Division of Wildlife for damages. At this time it was the largest amount of money ever collected by a Wildlife Agency in the United States for a kill resulting from water pollution.

The Division of Wildlife has always pursued littering on Division of Wildlife lands and lands administered and controlled by the Division.

In 1968, the Ohio Legislature gave the Division of Wildlife a new Stream Litter Law, 3767.32 of the Ohio Revised Code. This was a significant step toward improving the quality of water in Ohio streams. Wildlife Officers met the challenge of the new stream litter law and violators were "streaming" into the courts at a record number.

In 1969, House Bill 503 was introduced and passed by the legislature creating a new Stream Litter Law, 1531.29 of the Ohio Revised Code. Monies taken in by fine for violating the stream litter law would be injected into the Wildlife Fund. The officers had a tool

now that they could use to curb the mountains of waste that were being disposed into Ohio streams. Following is history of arrests made for stream litter since this time.

TABLE IV

Year	<u>Stream Litter Arrest</u>	<u>Littering State Property</u>	<u>Percent Convictions</u>
1967-1968	1	50	98.5
1968-1969	740	149	99.6
1969-1970	545	149	98.9
1970-1971	823	208	98.6
1971-1972	815	321	98.7
1972-1973	960	207	98.6
1973-1974	687	251	98.6
1974-1975	607	263	98.6
1975-1976	506	229	98.4
1976-1977	658	271	98.3
1977-1978	664	353	98.5
1978-1979	685	400	98.3
1979-1980	719	449	98.8
1980-1981	931	515	98.2
1981-1982	1044	619	98.1
TOTAL STREAM LITTER TO JUNE 22, 1982			10,385
TOTAL LITTERING STATE PROPERTY TO JUNE 22, 1982			4,434

The total of arrests for stream litter starting 1968 when the Stream Litter Law was imposed on the Division of Wildlife to enforce until our Annual Report of June 12, 1981, to June 22, 1982, was 10,385 arrests.

The total of arrests for Littering State Property starting June 22, 1967, to June 22, 1982, was 4,434 arrests.

The total of both categories: Stream Litter and Littering State Property starting June 22, 1967, to June 22, 1982, was 14,819 arrests.

The conviction rate for the period from June 22, 1967, to June 22, 1982, averaged out at 98.54%.

The Division of Wildlife is very proud of their record and the excellent job done by the Game Protectors and Agents. Our officers will continue to excel in trying to apprehend the pollutor and the stream litter violator.

The Division has noticed a severe drop in the disposing of acid mine water into the streams since our sister Division of Reclamation has taken hold of the mining operations. The Division is very grateful for the job they have done and the dedication their officers continue to do in their work.

The Ohio E.P.A. has worked very closely with our Division on stream pollutions which kill wild animals. They have also worked with us on industrial wastes disposed of into streams which did not create a fish kill, but was a violation of the Stream Litter Law, 1531.29 of the Ohio Revised Code. The field men and women of the Ohio E.P.A. are always willing to give any technical assistance we ask and we do appreciate their efforts.

We are involved with a problem of industrial waste at the present time which I am sure will be corrected. This is the disposing of salt brine into the streams from the Oil and Gas Industry. I believe a solution will be worked out to curb this type of pollution in the very near future.

If we maintain a vigilant control over the problem that arises due to solid wastes and industrial wastes into our streams, we could leave a better country to future generations who, I believe, will take up the fight to keep our streams free from pollutors.

TOM DAVIS, CRIMINAL JUSTICE PLANNING SPECIALIST
OFFICE OF LITTER CONTROL
OHIO DEPARTMENT OF NATURAL RESOURCES

Russ Gibson talked with you earlier about the Office of Litter Control's perceptions on how enforcement plays a key role in taking care of the litter problem. I am going to deal with a few specifics on how we work as a state office with some of the gentlemen seated behind me and enforcement agencies around the state. Basically we do not work with these people; rather we work with local community coordinators of litter control programs. As an office we work directly with local programs. When the legislators decided that there was going to be a litter control program, they decided that it was to be addressed on a local level.

So we give funds to local communities, counties, municipalities, townships, and state agencies to conduct litter control programs. Law enforcement is just one element of a comprehensive program and when a local community decides that law enforcement needs to be addressed they work with their local enforcement agencies to develop and implement some type of enforcement aspect to their program.

Now BLC (Before Litter Control) it took a lot of time to work on litter cases - the investigations of dumping and the casual litterer. As these officers and Bill's game protectors will tell you, littering is not a high priority with most agencies. One of the reasons it is not is because you cannot just walk out the door and catch someone littering. Casual litterers are probably our biggest problem. Nearly everyone has seen someone throw something down, but you didn't have the power to take care of it. The reason that it is a low priority in most agencies is because it takes a lot of time and it takes a professional person to know how to handle it. Bill was telling you about the 14,000 litter arrests that Game Protectors make--I was once a game protector and worked in Harrison and Jefferson Counties. They have so many arrests because they are out there a

lot of time in places where many people are gathering, checking fishing and hunting licenses and they see people. They are more aware of people littering.

ALC (After Litter Control) we give grants to local communities to make this a priority. If we give your community or your county some money to implement a litter control program and you decide law enforcement is going to be part of it, we can supply you with money to hire an officer such as Greg (Williamson) or a nuisance inspector such as some of these people back here or a deputy such as Jerry Orwell. We can supply funds, we can supply training, we can supply materials, technical assistance, anything that you need along the lines of assistance to help you implement a litter control enforcement program. That is why Russ said our ultimate goal is to include litter enforcement as a normal process or to develop standard operating procedures for litter enforcement within every law enforcement agency.

The only way we can do this is by getting people throughout Ohio to do it. Putting people who have no job duty but to work on litter enforcement in communities can make this a high priority. Whether we can have somebody in every county or every municipality as an officer for litter control, we do not know. But the more people we can get involved, the more there is going to be an awareness that litter enforcement is a top priority, and, hopefully, people's attitudes will change.

PANEL: QUESTIONS AND ANSWERS
JOHN D. ROHRER, MODERATOR

Q: Mr. O'Grady, I understood you to say that there were 100 illegal dumps when you started your program. Now you are in your third year of the program, do you have any idea just how many you now have?

A: Tom O'Grady: We have cleaned up somewhere around one-fourth of them and those we have cleaned up have had very little recurrence of dumping. We have had a few people go back and throw in a bag or two of garbage; it makes it easier to follow up on something like that when it is not mixed in with a thousand other bags. We try to get it cleaned up quickly so that we do keep it a fairly clean site. Right now, I do not know of any new dumps since we have started monitoring the old ones. The ones in the most remote parts of the county are the ones that are active as opposed to the ones that are closer to where we center our operations.

Q: In the three years, you have had about a 25% success?

A: Tom O'Grady: Just on cleanups. I think we have cut down on illegal dumping better than 60%. A lot of the dumps haven't been cleaned yet, but in the two years we have been monitoring them, they have not gained the trash compared to what they were getting when we started the program. I could visit any dumpsite that first year and everytime I showed up I could see a new accumulation of stuff with any number of types of envelopes in it. In the past year or so most of the dumps are sitting there and they are weathering; they haven't been cleaned up, but they are not accumulating much more trash. There is an awareness around the county that something is going on.

Q: Where do you think the trash is going? Is there any evidence that the legal landfills are being better utilized?

A: Tom O'Grady: We haven't really checked on that; I'm not sure where it is going. I would like to believe that it is going to the landfill. I have no idea how many dumpsites there are on private property. We haven't even fooled with that part of the problem and I am not sure we are going to try to get into it.

Q: Mr. Williams, would dealing with the stream litter law apply to underground watersheds, such as underground rivers when industrial problems are presented? We had a local problem in Circleville. Industrial wastes were shipped all the way from California to Pickaway County and disposed of. I am just wondering what kind of experience, what situations are there, that we can see that apply. I know that our local law enforcement is now aware of it with the E.P.A. and I just wondered if our office could get some kind of insight from you.

A: William E. Williams: I think you are going to find that the Ohio E.P.A. is really starting to move in this direction. I think if you tell them about your problem and if you can take them to the site and show them where there is this unsanitary condition, I think that you are going to see that they will take action. They must have a license to bring this from California in there. Most of your stream litter investigations, whether solid waste or industrial like this have to be dug out. You have to get enough real good, hard evidence that you can take to court and win. You do not ever want to go to court haphazardly. You want to make sure you have everything possible and then when you have everything possible (evidence) look for some more.

Q: Mr. Williams, I do this both as a service to yourself and your agency, and as a service to the local law enforcement agencies that are here. Game Protectors (GP's) are not the state "litter cops" and I think that is important that we all recognize that. Their responsibilities are many. There are times, however, when a local sheriff's department, for instance, may stumble across a problem in a stream or on public property. When should a local department, a local

policeman, a local sheriff's department contact a GP in reference to a litter related matter?

A: William E. Williams: Under 1531.29, they do not have to contact us. They are given the right and the authority to take care of this problem. If they think that they need some assistance for something we would be glad to offer any assistance we have.

Q: Perhaps I ask it more in reference for what sort of indicators might they look in exploring a dumpsite or investigating a dumpsite along a stream. Recognizing that they have the authority to do so, what sort of indicators should they look for that might show there is something more serious involved; something that might indicate stream pollution, might indicate a fish kill other than normal dead fish. When do things get out of hand? What sort of indicators are there that they might want to get in touch with you?

A: William E. Williams: Well, all that has to happen is a farmer or anybody to dump a pesticide container into a stream. Fish can't stand much herbicide or pesticide. If you do use something like a herbicide to treat a water area, then it should be the type that will not kill fish and is so stated on the container. But even if a farmer washes out his tank into a stream, it is a very good possibility that he is going to kill fish if that stream has fish in it. Sheep dip is another thing that gives trouble.

Q: Is there a comprehensive list that people could look for that tells what can cause a fish kill?

A: Tom Davis: The E.P.A. might have something that lists toxic or poisonous substances. Most containers have a poison label on them. Anything along that line is something that we should suspect of being a fish killer.

A: William E. Williams: If you do have a fish kill in a stream, contact the wildlife officer in the county and have him come to the

scene immediately. Let him look. That's the best thing in the world to do.

Q: I spoke to a man who has a pond. All the herbicides from his neighbor's fields killed the fish in his pond. Is this something that we can address?

A: William E. Williams: The man really has civil damages.

Q: Mr. O'Grady, I believe you mentioned you went through the junk to gain evidence and sent letters out. Were you using the names as evidence?

A: Tom O'Grady: Well, when we get a name out of a dump, the first thing we do is contact that person. Early in the program it was with a letter. If the people hadn't dumped their trash they were more than ready to let us know. We have taken several to court in Athens County.

Q: Are the solicitor and judges willing to take just the names as evidence?

A: Tom O'Grady: Yes, we have a special prosecutor for the program. So far we haven't used an eyewitness account in any of our prosecutions and we have had something like 20 in the last two years. It is based mostly on evidence we have found in the dumps; circumstantial evidence. But our judge is willing to hold people responsible for the proper disposal of their trash.

Q: Have you ever had a jury trial?

A: Tom O'Grady: No. Most people when faced with the evidence will plead no contest. On the other hand, they might say "well, my boyfriend did it but I am not going to get him in trouble." As a result, the judge sticks them with an even tougher fine. I don't think we have had less than a \$100 fine ever, usually it is more. We generally get a pretty good fine and a work sentence.

Q: Sheriff Ellis, I am going to put you on the spot. Realistically, if I were a citizen in Washington County and I called your dispatcher up and said someone dumped trash on my property sometime last week, what response would I get from the Sheriff's office?

A: Sheriff Ellis: As I mentioned earlier, this is the type of thing we handle. As far as the statute is concerned, it is our responsibility. I have had individuals come in and complain that someone's dumped trash on their farmland. What happens then is that we take the information of whom the individual is and the location of his farm. Then we send a deputy out to check. We go through the trash that has been dumped and then attempt to check back to see who is responsible for the dumped trash. We answer on a complaint type basis. We have no formal program per se.

If I might interject before we finish here, you mentioned earlier about the state troopers sitting in the crossovers on the Interstate doing paperwork. As a protector of life, limb and property, while I am saying this is true, should you see any state trooper, deputy sheriff parked alongside a roadway or crossway with his head down, he is not asleep. I have had more individuals complain to me that these individuals are sleeping on duty. They are not asleep, they are working on paperwork. He is doing a legitimate thing by getting his paperwork caught up during the particular time the car is sitting in position where it will be a deterrent to anyone who wants to violate the speeding laws.

A. William E. Williams: I would like to address the lady with an earlier question. Every applicator of restricted pesticides/herbicides has to have a permit from the Ohio Department of Agriculture. If he so violates this permit by wrongly applying this application, it is his problem. So it would be wise for the individual who has this problem to contact the Department of Agriculture about this applicator. Also it would be wise to get hold of the Ohio E.P.A. and have them come in right away unless they want to hire a lawyer to bring a civil case against the applicator. The

reason so many farmers pay applicators to do their application work with herbicides and pesticides is to relieve themselves of liability.

Q: I have a question for Sheriff Ellis. If I am not mistaken, there is a state law that says that any two or more cars not licensed on a property is not legal. How do you handle people who are storing a lot of junk cars on their property without a permit; or there might be car parts, some of which might be strewn into the roadway. That is a common problem. A lot of times the rationale for it is that these people are making their living selling parts.

A: Dick Ellis: This relates to junk vehicles, and abandoned motor vehicles law. I believe the statute allows four or five vehicles. If a person has them stored on his property they have to be under cover, they cannot be exposed. Washington County has an individual who, as a part of his particular job, does vehicle inspections as far as junkyards and abandoned motor vehicles are concerned.

A: Tom O'Grady: When we talk to them, the individual always has the opinion that these things are going to turn into gold someday. We ask in a very nice way if there is some way that he could take care of this matter and get them cleaned out. We've met with some success. The only thing is we have had difficulty in coming back to the statute to find some particular section under which we can prosecute. Often there is a section that passed the legislature saying that this law exists. But when it comes down to it there is no penalty section for it. We are running into this in some areas.

Q: Do you charge violators fees for cleaning up?

A: Well, in some instances we have been able to get the individual to clean it up with cost to himself and secondly we try to get the person who tows the vehicle to go straight to the landfill.

Moderator, John Rohrer: I was aware that there was some clarifying or some additional authority to sheriff departments to clear titles

on these junk vehicles and permits the department to dispose of the vehicles.

Q: Sheriff, how long do people have to remove vehicles that have been abandoned off your property or in front of your property. How many days? Is it a matter of policy between departments?

A: Sheriff Ellis: On business land, I think the statute is 72 hours. There is a bill in legislature now getting it down to 24 or 48 hours. We are hoping this will come about. In other words, if you have a business, why do you want to wait three days before you get rid of it. I think here again we are making some strides in this particular area. I would like to see the legislators putting more penalties on some of these things because it acts as a deterrent. Consequently, if a law has a penalty section to it, it gives you teeth to do something.

David Boothe: On those questions dealing with agricultural chemicals, one source of the information on authority or jurisdiction is the Cooperative Extension Service. County Agents throughout Ohio are responsible for the training of pesticide applicators. All farmers are not required to have a license; it is only those that use "restricted use" pesticides, but they have specific labels if you have a question on whether this chemical is harmful.

A: William E. Williams: I never thought of that but the Cooperative Extension Service would probably be the first place to contact. They are handy for us in the county.

David Boothe: From a legal standpoint, you would contact your law enforcement people, but if either the law officer or the citizen wants information, one local source is the CES. Right in the office every county agent has a book with labels any farmer might use. They can read that label and determine what the problem might be.

Moderator John Rohrer: You are right in saying that the Department of Agriculture does the certification, but it is the Extension Service that does the training for becoming certified.

Q: To Sheriff Ellis, I have a question. Do you have any statistics as to how many calls on litter you get? You say you get more calls on litter on farmers' property in the springtime than any other time of the year. Do you know what the percent of those calls is compared to other calls the Sheriff's Department receives for action? If not, would this help in making litter control a more "aware" subject for Sheriff's Departments?

A: Sheriff Ellis: As far as the first question, no, I do not have statistics or numbers. They can be gotten in a short period of time. If you want to start with vandalism, litter compared to vandalism is way down on line of destruction to property. I think we are guilty of not giving litter the attention it should get. Here again, a lot of situations we are involved in are seasonal types of things. The season determines the types of crime. During springtime, while everyone's cleaning up, many people within corporate limits do not have any way to dispose of their trash. In other words there is no means for them to do it, and if there is a means, often they do not want to or cannot expend the funds to transport it from point A to B to dispose of it properly. So it might get taken out and dumped. Then the landowner doesn't want this on his property; he doesn't want something thrown along the road or in his fields. I think I have had six calls recently and they were bad.

OFFENDER'S PROGRAMS
JUDGE THOMAS HODSON
ATHENS CITY MUNICIPAL COURT JUDGE

I always approach a group like this with a little fear and trepidation. Normally, when judges come onto a program in the afternoon, people have already built up a whole lot of hostility against judges in the morning.

I have been asked to talk about Offender Programs. There are about as many offender programs as there are judges. They are tailored to the judge's personality and philosophy about what he/she wishes to do with offenders.

I am proud to say that our offender's program started from the litter program. For those of you who may not know what that means, an offender's program is having people who are convicted of crimes work in community service programs such as collecting litter.

We started, a couple of years ago, early in my judicial reign, by using people who were convicted of litter violations to clean up litter. We have expanded that and for the past year we have been using all first offense misdemeanor violators in community service programs, litter and other programs. We have been using people not convicted of litter offenses in the litter program collecting litter and doing other types of activities. In May, 1982, we got this program started by the receipt of a private grant. Nobody was willing to fund us. The city and the county weren't willing to fork over big bucks for me to put people out on the road picking up trash. We decided it was still a good program so we got a private foundation to give us \$10,000. This \$10,000 has carried us over a year in the program. For those of you who are thinking about starting a program, it does not have to be a big money program. If you can get some up-front money, you can get rolling.

Let me talk a little bit about the philosophy of offender programs. I said there are many different programs and I think that it is important to look at the philosophy of how the judge in your area handles litter. I am very strict against litterers; I am very pro litter enforcement. I think my sentencing program of people who are convicted of litter offenses reflects that. That reputation, I think, is known within the community. People know that if they come before my court for a litter violation they are going to have to do some work.

I am a firm believer that the punishment ought to fit the crime. Some judges are not, unfortunately. Some judges might as well be computers. They sit up there, they see a certain charge, they see a certain person, they calculate--it goes through, they spew out the sentence. The same sentence for everybody. Now at first that may seem fair, but it is not. What you have to do is tailor the sentence to meet the crime. That's why the offender program is so good. If somebody litters the environment, you get them out cleaning up that environment. If somebody shows no regard for property or no regard for their fellow humans, you force them to go out and develop some regard through sweat.

You tailor the punishment to fit the crime. It is my philosophy that this aids the community quite a bit. I look at it from what benefit it has for the defendant and what benefit it has to the community. It is hard to get people to volunteer to clean up trash. You have volunteer days maybe once or twice a year and you get a few people, but on a continuing basis it is really hard to get volunteers. It is real nice to have somebody out there doing your bidding. So in a sense, the offender program is an aid to the community.

In my area, we have a double problem. Being the home of Ohio University, Athens has a lot of students who take our environment for granted. It is not their home and they feel they can litter the landscape and pollute our environment and go away scott free. I try

through sentencing to develop in these people a sense of responsibility for their actions. You become responsible for what you have done. It is no excuse to say "Hey, I was drunk, I didn't mean to destroy that mailbox on that person's farm, I was just drunk and out having fun. Sorry, judge." Well, that's fine. You can be sorry, but you are going to have to pay for that. You have to become responsible for your actions. We have used the offender program to do that.

It has worked as well for the college students as it has for the local members of the community, the full-time members of our community. Any of you trying to make sales pitches back home, it is cheaper too!

That \$10,000 is a lot less expensive than housing people in jails. And if you have a judge who wants to be strong on litter enforcement, jail time is an option. It costs a lot of money to house somebody in jail. I think Athens County runs an average of \$30 a day to house someone in the county jail and I think it is going up to about \$35 a day. I can get someone a room here where they can have swimming privileges and a snack, cheaper than I can house somebody in the county jail for one day. So if you give somebody a 10-day jail sentence, you are talking about \$350. What does the community gain from that? Probably very little; it would house one person for that period of time.

So an offender program is cheaper than putting somebody in jail and it has the same impact on the individual. It is also better for the offender's family. Fines work and I do use fines, but sometimes that fine is penalizing a person who did not commit the crime; it is penalizing the children and spouse. If you have an offender program and you say "You work. You don't have to pay me any money, but I want so many hours out of you," then you are punishing the one who committed the crime and you aren't punishing the other people in the family. From a selfish point of view, it also reduces the percentage of unpaid fines we have.

If you were to take a survey in your courts, you would find that about 50% to 60% of the fines levied by your court are never collected. Most people think because somebody is fined, the fine is paid. Courts are just like local businesses. You have to go out and grab the person to collect money from them sometimes. So the percentage of unpaid fines in most of your counties is quite high. You cut that percentage by allowing somebody to work off their fines. One last thing on philosophy and goals, it has definitely decreased our recidivism rate, our repeat offender rate. When I talk about the results of our program, we will get into that a little bit.

Let me talk about the mechanics of the program. Again, if you are trying to do a sales job, our program is set up under Ohio Revised Code Section 2951.02. It is under the broad category covering all misdemeanors.

The judge makes the determination whether the person goes into the offender program or not; not the prosecutor, not the law enforcement officer--the judge. There are certain criteria that the judge looks at to determine whether the person should go into the program. One, is the person a first time offender; you do not want repeat offenders in the program. The statute says that it is limited to first offenders. Now I stretch that a bit. If somebody's had a minor traffic offense, a minor disorderly conduct or an open container like up in New Straitsville during the Moonshine Festival, I disregard that and let them go to the program if I feel it will do them so good. But that is one consideration--is the person a first offender?

Secondly, it has to be a non-violent offense. Remember, I send more than just litter violators to pick up litter. I do not want to have somebody go into that program who broke somebody's jaw. He might get upset at the supervisor and break the supervisor's jaw! When I say non-violent I mean disorderly conducts, thefts, litter, bad check violations, a whole category of things that could be considered non-violent. In the University area we have a lot of people

who try to get into bars without being of age. There are all kinds of false ID's and it is a real good deterrent to using them when students know they might have to pick up trash. That's a non-violent offense. I have used criminal trespass, even traffic offenses in this program.

You have to consider that under this section of law you cannot give a person more than 80 hours of community service. That is the upper limit, but that is equal to two 40-hour work weeks. It can be stretched out over a period of time. The key to the program's success is giving the defendant a choice. This is also stated in the statute. For littering I am giving you a fine of \$200 plus costs and I am ordering you to spend 60 days in the Athens County jail. I will suspend your jail time provided that you are law abiding for a year and that you spend X number of hours in our offender program picking up trash. I did not order that person to go out and pick up trash. It is not involuntary servitude; it is not slavery because I did not order that person to do it. I gave the person a choice. They can go to jail for 60 days or they can go out and pick up trash. Usually they choose to pick up trash.

The way we work is that we have criminal arraignments every single morning. If a person pleads guilty or no contest, or if the person comes in and is convicted of an offense and the offender meets these qualifications, I send that person directly to a director of our offender program. The offender is interviewed that same morning. It is better to get them while they are in court than to let them go home. Many of you are shaking your heads, you know how hard it is to get them back to court. So you have them sit down with the director right there. Our director then interviews the person and goes over the types of jobs, the types of qualifications the person has and develops a list of potential jobs or agencies with which that person can work.

By doing that, we give the person a choice of which agency or which community agency they want to work with, but one of our

successes in this area is that we give the agency a choice as to whether or not they want to take the person. Any of our agencies can say we do not like this person, please do not send us any more like this--the agency has the right to reject the people we send them. So we have a person making the choice to go there and we have an agency making a choice to have the person. The agency is totally in charge of supervision. Now that supervision varies. Some of our agencies are real tight with supervision while other agencies are very loose. We consider that an agency problem. If an agency tells us they want to participate in our program, it is their problem to supervise. I do not go on the job and make sure that these people are supervised. What I do is get a report back on every person I send out through the offender program. I get a report back as to whether that person showed up, whether that person worked, whether that person did what they were supposed to do, whether that person was mouthy and whether that person arrived late because I still have control over that person through the offender program. If the person satisfactorily completes the work, they have met one of the conditions of their suspended sentence. Then all they have to do is stay out of trouble for a year. However, if they don't meet the criteria, if they don't do everything that the agency tells them to do, I get a letter back from the agency saying this person screwed up and did not do what they were supposed to do. That letter is sent to the director of the program. The director of the program, pursuant to my instruction, takes that information immediately to the prosecuting attorney. A motion is then filed to impose a suspended sentence. The defendant is brought back into court where he/she has an option of telling me why they did not show up, why they did not do their job, why they broke five appointments. If that explanation is satisfactory, fine. Most of the time it is not; most of the time they have no reasonable explanation. They simply did not think I was serious when I sent them to do this program.

If they have no satisfactory explanation, they go to jail. It is as simple as that. I had a young man, just last Friday, who went to jail for 60 days because he missed four appointments at the

University. He didn't take the work program seriously. He is now spending 60 days in the Athens County Jail during final examination week. To make the program work you have to have that lever. I rely on the agencies to help me in that regard.

The cost of the program outside of the director, which we got through a private grant, is covered by the \$5 we collect from every participant in the program. We add \$5 on as their court costs. The statute indicates that a court may require an offender who agrees to perform work under those circumstances to deposit with the court a reasonable fee to procure a policy or policies of liability insurance to cover the period of time during which the offender will do community service work. We collect \$5 which defrays the Workman's Compensation cost to the city and the county jurisdictions which have to purchase it for this person in case they harm a third person while on the job. If they walk in front of traffic and cause an innocent driver to wreck and kill somebody, that is covered by a liability insurance policy paid from their \$5 fee. It is a lot of protection for the community. The statute says we can do it and we have averaged it out and found \$5 per participant is enough.

The results. Let me tell you just about last year. We have put more than 150 people through our program in the last year. The following numbers will not compute for those of you with mathematical minds, because we have some people still doing their programs. I sent 23 people to do 8 hours of community service, 20 people to do 16 hours of community service, 63 people to do 24 hours of community service (that's three 8 hour work days) 13 to do 40 and 5 I have sentenced to do the full 80 hours of community service work.

What type of person is going to this program, if any of your judges ask you this question? Well the type of person is predominantly male (4 or 5 males/1 female) which is pretty well reflecting, at least in our rural areas, the crime ratio. The predominant ages of the people we have in municipal court and the people who have gone through the program are 18 to 21 years of age. They are the people

who have gone through the juvenile system and are now in adult court, many of them for the first time. That largest age group is 18 to 21 years old, able-bodied males--according to the people who have gone through our program. The next highest age group, obviously, is the next one up, 22 to 30. Approximately 70% of the people who have gone through our program are between the ages of 18 and 30.

There are two distinct groups, we have students at the University and we have non-students, but the one thing that cuts across the board is that they are usually unemployed. The bulk of them are unemployed; when I say the bulk, I mean about 70-85% of them are unemployed. Those who are employed are usually making less than \$7,000 per year. So we have young, male unemployed or young, male underemployed going through the program. Those are easy people to place with the agencies because they are the most able-bodied people to do the tasks that our agencies want. We have had two college graduates and one person who has a doctorate degree going out and picking up trash. It is certainly not a class system although most of the people are unemployed.

With over 150 people who have gone through the program, we have had amazing results in compliance. We have only had to revoke five people's sentences. In other words, we have only had to put five people in jail for non-compliance out of the 150 who have gone through the program. Our compliance rate is astounding.

Our recitivism rate, a person goes through the system once, gets sentenced, and then comes back and goes through again is very low. We looked at our figures from 1978 to the first part of 1982 and took 100 criminal offenders at random; our recitivism rate was 33.6%. The same people were committing crimes time and again, and again, and again. I have had a couple of gentlemen who have been in my court 18 times since the first of January, primarily on minor offenses,, things on which I cannot incarcerate them. We might as well have a turnstile there instead of a counsel table because they whip in and out so fast.

Of the people we have put through the program, our recitivism rate is 5%. So we have dropped from 33.6% on a random scale to 5%. We have not had one single repeator that we have put through any of our offender programs come back through the courts for the same offense. They may come back through for being drunk or having an open container, but they do not come back through for the same offense.

The cost savings have been amazing. We count our cost savings on two levels. One, the cost savings of keeping people out of jail, and two, cost savings that we have for the community. For example, during one reporting period I sentenced people to 297 total days of jail. At \$30 per day that comes to \$8,910 we saved the county in jail expenses. Almost \$9,000 saved in jail expenses! And what did the community get out of that? Well, the people that we sent out did approximately 742 hours of work. Now if you compute that at minimum wage that comes out to about \$2,500 of labor that these different agencies saved our community. So you have a \$9,000 jail savings and you have a \$2,500 benefit to the community. These cost savings in our smaller counties are significant. We have had good luck, and we plan to continue. We plan to expand our program if we can. If our community ever gets into recycling, we would like to send some of our offenders to work for community recycling programs. We are constantly adding agencies to our programs and it has been very successful in the little over a year that we have had it. It is encouraging, and we plan to continue.

QUESTIONS & ANSWERS
JUDGE HODSON

Q: I have a question since, by your own admission, you feel you are on the hot seat. When the Offender's Program is not available to you as a sentencing judge, recognizing incarceration costs, would a routine sentence for litter offenses still be 60 days?

A: It depends. I am not avoiding your question, it depends on the offense. If somebody threw a gum wrapper down, I would probably not do 60 days. However, if somebody took a dump truck full of bags or loose garbage they had collected for 10 bucks from all the people in the neighborhood to discard and dumped it over a hill, it would probably be more even if we didn't have the offender's program. It depends on the severity of the offense.

Q: In your court, what does it take to have "sufficient evidence" for a conviction on the litter laws.

A: Quite frankly, not many of our litter cases have gone to trial. Most people plead guilty or no contest at arraignment. People are cited and a summons is issued for them to come to court. Most who appear, and there is a percentage of them who do not, usually plead guilty or no contest.

Q: What does it take for evidence: names?

A: Names will do it. I think its circumstantial evidence; it is not reasonable to expect more. There is a bit of reason in the law, believe it or not, and it is not reasonable for all of us to have some litter agent sitting by every known dumpsite 24 hours a day watching to see if they can catch somebody dumping something. That is not reasonable. And I do not think that is required. It is enough to have some link with that trash or that dumping to the defendant in court. Now it is the defendant's burden to prove to me that wasn't their stuff or to raise a reasonable defense. I know they are presumed innocent until proven guilty, but if they raise a reasonable defense, I will consider that. Most of them do not. Most of them say "Hey, you found my stuff." Some of them will say, "Hey, we paid somebody to dump that stuff." and then they will go dump the person they hired. I can't say that we have gone without embarrassment. We summoned in a 4-year old girl one time. Because her name was in the pile of trash, she was the one picked up. We issued this nice official summons ordering her into court and in she trouped with her parents one morning much to everybody's dismay. That has been the exception. The rule has been we have been very successful. We have not had a jury trial on litterers.

Q: In a jury trial, when in essence to prove any criminal act you require the proof beyond a reasonable doubt, the burden still rests with the prosecution?

A: Certainly.

Q: Then in a jury trial, would names on the trash be sufficient?

A: It depends on the jury. I would let that go to a jury. If there were enough link to satisfy me to a probable cause or enough prima facie evidence, I would allow that to go to a jury. Now you are talking hypothetically and I can't say that I would always do that.

Eleanor Tschugunor: I was going to mention this morning that we have had one Ohio Supreme Court Decision defining 6310.09 Stream Litter statute of the strict liability statute. I don't think it's been decided yet but it sure sounds like that is what Chapter 37 is getting to: if your name's on the litter you are strictly responsible for whatever happens to it. If you did not dump it, that's too bad. If you gave it to somebody else who did, you are still liable. A lot of our environmental type offenses lose a lot of law in that they are strict liability. I think it is coming on this issue.

Judge Hodson: We had a situation where some parents gave the trash to their teenage son and daughter to go out and legally dispose of it for them. Well, it was a nice day and the kids decided to shortcut this so they took it and they dumped it over some hill. They got caught. The names of the parents are in the trash. Nobody caught them doing it, but the names of the parents were found. The parents got the summons; the parents came to court. They pleaded no contest. I found them guilty and I ordered the parents to go to the work

program. I suggested however, heartily, that they take their children along. And they said there was absolutely no problem with that. They said that the children would be there every step of the way. They were.

Q: Do you think this law works like this; say my son were driving my car and he left it in a no parking zone. That's my responsibility because that is my car, right? If they picked my car up and towed it, they would be coming after me, they wouldn't be coming after my son because that is my car and it is registered in my name.

A: In many areas, using your good analogy, they have special statutes or ordinances. Columbus has one, Athens has one; if the owner of the vehicle gives it to somebody else and somebody else commits the parking offense, the owner is still responsible. And I think that's pretty much the way I have interpreted the litter laws. I have never been reversed on appeal. I am not saying that I have the be all and end all of environmental law, but I have not been reversed on appeal yet.

Q: Do you have any idea how we can get our local solicitor, prosecutor, or judge to think along the same lines as we are talking about for using names as evidence. In Section 32 it says "or cause to be dumped, discarded, or placed." How can we get them to think along the same lines?

A: I don't mean to stammer, but I think you have to educate them. They have to see the importance. If they don't see the importance they are going to find a loophole in anything. I can take any law and find you five loopholes if you don't want to prosecute, if you don't want to convict on it. Until the judges and prosecutors are committed to enforcing these types of laws and until they stop treating them as irritants that we don't want to deal with, we don't want to talk about, we don't want to have them in our courts, you are going to continue to have problems. I don't know what you can do to educate your local judge or local prosecutor, maybe the Attorney General's office could help.

Q: Do you have any written judgments on that?

A: Eleanor Tschugunor: We do on the stream litter law. I don't have copies with me but it is an Ohio Supreme Court case.

A: William E. Williams: One way that we have done it to help us is to get the local judge to do it with us. We take the judge around with us and show him the bad litter sites all over the county. Then you say "We have a problem in this county and we need your support, we need your help." You would be surprised how many judges are receptive. A lot of our judges do not have time to get out into the county like they should. They are very receptive to this kind of action.

A: Let me also sound like a cynic for a minute. Judges in Ohio are elected. Judges in Ohio, regardless how much they tell you they are not; they are politicians. If you have a community that is upset about litter is upset about the abuse of the environment, that community can exert pressure on the judge, not in the decision in a particular case, but as to judicial philosophy. Look at the drunken driving laws in the State of Ohio. In just the last year the MADD (mothers Against Drunk Driving) groups and the citizen groups have pressured legislators who are now pressuring the judiciary. Community involvement, community support has a lot to do with judicial philosophy.

Q: I have come across a particular case where part of the dumping is from across state lines. Is that a difficult thing to get into court?

A: If that's in my county I'd be reluctant to talk about it. I don't want to prejudge any cases. Under the rules, we have no subpoena powers from anybody outside the State of Ohio. But there are interstate relationships between states. For us in border areas, it is a real problem. The offense is occurring here, the person lives there. You can try to get them when they are here but to summon them into court, we have no subpoena power. You can't even try.

Q: About the procedures when you see a name in the trash, you cite them and then the summons is sent. Can anyone cite anyone else? Could I or does it need to be an official?

A: It is better to go through the Prosecutor's Office because if you cited somebody and the prosecutor didn't want to prosecute the case, it wouldn't go anywhere. It would just sit there and die a natural or unnatural death. So it is better to call a law enforcement agency or the litter enforcement people and let them work closely with the prosecutor's office. The Prosecutor is the one who has to prosecute so it is always best to coordinate through them.

Q: So we come to where there is no litter program. If someone digging through trash finds a name, they should go to the county prosecutor?

A: Or a city prosecutor depending on your jurisdiction.

GETTING PEOPLE ORGANIZED
JOSEPH F DONNERMEYER, DIRECTOR
EXTENSION SPECIALIST, RURAL CRIME PREVENTION
NATIONAL RURAL CRIME PREVENTION CENTER

At first, I thought a conference on litter prevention would not be related to my area of expertise, crime prevention. And so I felt somewhat uncomfortable preparing for this presentation. But I must admit to a re-education this past week. I'll tell you why. The Center is in the midst of conducting a crime study among 1200 farm operators in Ohio, and the survey form includes several questions about litter. Do you think it is a problem to farm operators? Absolutely! In fact it may be their number one crime problem. If technically you want to include litter as a crime, then the litter crime rate is 100 percent on all farms studied. As I review the answers of our respondents, I can't help but think that there's a correlation between a society where littering is a problem, where vandalism is a problem, where trespassing is a problem, and where disrespect for property in general is a problem.

What my topic is specifically about is how to get people organized, and that is what I have to be concerned with in my Extension work and in my work with law enforcement and other organizations who are committed to the concept of crime prevention. However, the principles of "people participation" are the same and cut across all programs. Now I do not think there is anyone where who has not experienced, either in the process of organizing, speaking at, or just plain attending, a public hearing in which the attendance was very low. I have driven 2 1/2 hours and more to speak at a program, and maybe five people are in attendance. We have all heard the same excuses: it snowed, high school basketball night, etc. I have also driven the same distance to programs and there are 150 people in attendance. Their reasons may not be because there was a recent multiple murder. It was because people were concerned about crime prevention and were motivated enough to be at a meeting in order to find out more about prevention.

"People participation" is a "feast or famine" proposition. In the cases of famine, it usually happens in one or two ways: you announce a public hearing by advertising it on the radio, and in the paper, etc. Who shows up? Most of the time it is people with extreme situations. For example, at a crime prevention meeting, there is always the fellow who wants to give "testimony" because he's either been the victim of a whole series of crimes, or there were some kids on his property vandalizing, he shot one of them, and he's now being sued for liability. I actually had this latter situation occur at a meeting. The gentleman felt he had been wronged despite what the law says about the use of deadly force. His situation merited sympathy, but it was not typical and contributed nothing to the purpose of the meeting.

At public hearings of the famine type, representatives of corporations or organizations with specific vested interests also tend to be in attendance. But where's the general public, that great body of apathetic people we often complain about.

I think another way that we normally have famine is in the sense that the first meeting is very well attended, but all subsequent meetings are not. I have seen this happen many times. Lots of enthusiasm, everyone's going to get organized. At the second meeting we still might get a lot of people there, but by the third meeting, what's happened? The answer is simple. People's time is taken up by other activities. It is either summer vacation, school is starting again, Christmas shopping is due soon, or I have to plant my garden. It's one of those of "perfectly good" excuses.

I used to work in Indiana and I know over there you do not dare call any kind of meeting (and I don't care what it is about) on high school basketball nights. I guess in Ohio it is probably high school football night. The point is this, and it already has been stated by earlier speakers on this program: as law enforcement officers, as state government, as universities, as all of us become more and more involved in programs for people, we must recognize one thing--without

full public support, without citizen cooperation, it is not reasonable to expect that we are going to succeed. Especially in the area of enforcement, you cannot put a cop on every corner, you cannot put a smokey on every county road, you cannot put an officer behind every litter barrel. You need public cooperation to really do an effective job of enforcement. In addition, when you have public support for issues like crime, for driving under the influence of alcohol, for litter control, you will find that the public begins to control itself. Therefore, you can concentrate on the "hard core" cases.

Now, let me convey to you several insights into how to organize people. First we have to recognize this: there's only so much time in a day. Think about our schedules. Subtract out of a 24-hour day the time we all must take for eating, sleeping, commuting to work, work itself, watching television, maintenance on our homes, saying hello to the kids once in a while (and maybe even to your spouse), and recreation. What's left? What's left are the organizations we already belong to. What are those? Church for many of us, Rotary, Kiwanis, soccer league, and softball for many others. To give you an example, even for the smallest county (population wise) in the state (which may be Vinton County) you can probably name about 300 organizations and auxiliaries, etc. What happens many times, when we fail to get people organized, is that we are trying to add one more organization to compete with the other 300 for the limited amount of free time available to people.

Yet, there are excellent examples of "people participation" programs in the enforcement area. Why do they work? Because Rotary, the realtors association, etc. support these programs and they have someone from their staffs or membership working as volunteers. It is very important to recognize this fact: organizations of all kinds compete for that limited amount of spare time people have remaining after watching the "boob tube" and performing necessary family work and responsibilities. In fact many of us today define our membership in volunteer organizations as that time we take away from television.

There are always 1-2 percent of any population, in any town, or in any township of this state who join absolutely everything. They are great people. They are busy, but they always seem to have time to help out and get involved in new things. What distinguishes a good program from a not so good program, is how do you get the next 50 percent involved. (By the way, you will notice there's still another 48 percent I think we should just about write off. These are people who simply never get involved.) Successful programs are those that get a significant proportion of the population to participate. Let's not try to go for 100 percent. We will be disappointed forever. We will quit our jobs and "burnout" by the time we're 35.

We also have to recognize that among the next 50 percent, they do not join everything. Different issues stimulate different people. Very often the issue that "turns them on" is the one that the organization they already belong to decides to take up as an endeavor or as a project.

What do I mean by this? Have you ever heard of peer group pressure when it comes to explaining why young people commit vandalism. There is peer group pressure throughout our lives. There is an adult peer group that says: "Come on John, come on and do this. After all aren't you part of our Rotary. Aren't you a good Rotarian. You had better show up on Sunday for the pancake fund-raiser." Haven't you ever felt that kind of pressure? That's how you get people organized. Most of the time you work through organizations that already exist.

Now, there are two basic elements in organizing. What they both boil down to is, you never get people to participate voluntarily in programs unless they define the problem for themselves. At lunch with John Rohrer recently, we were trying to recall when awareness of litter as a problem occurred. I seem to remember that when I was growing up in the 1950's, there was not a big deal made about litter. It was fairly common to throw things along the side of a road while traveling by car. But sometime in the late 1960's or early 1970's,

the fellow who played "Tonto" started shedding tears in Keep America Beautiful commercials. We've had about 20 years of what I would call "education." That is one essential element in getting people organized: creating awareness. We do that through our local newspapers and through television and radio ads. There's another aspect of getting people involved. Its called persuasion. That is normally done on an interpersonal basis. That is "one on one" or in a small group setting. Within the area of littering, there are some very good television commercials by the Office of Litter Control. They create the awareness, the background, the context, but when it comes to a local action program in litter control, persuasive strategies must be devised.

There are five principles of "people participation." The first three are "awareness creating." The last two are "persuasive" strategies. The first one is this: People will participate when they have a better knowledge of an issue or situation. An earlier speaker mentioned how local judges were educated. The judges were taken around to the local dump sites. I think a lot of our television commercials create awareness, but on the local level it is often advantageous to talk about the "local" situation. I have conducted crime prevention programs as Director of the National Rural Crime Prevention Center all the way from Nelsonville to Montana (where I was last week). I am not about to speak for the local crime problem in Montana. I can talk about the national overview and then ask the audience: is Montana different or the same, and from this I can get input from the local law enforcement officers about local problems. I think the same thing needs to be done relative to creating awareness through better knowledge of an issue or a problem. Give people a chance to define the issues for themselves. Provide an opportunity for "self-education."

Second, citizens will voluntarily participate when they see positive benefits to be gained. In the Cooperative Extension Service, it is called the demonstration method. A speaker this morning mentioned only a quarter of their county's dumps have been

cleaned up, but that they have reduced the amount of litter in other locations by 60 percent. I believe this illustrates the value of good demonstration programs.

Third, citizens will participate in a program when their way of life is threatened. Rural Ohioans in general and I believe all Buckeyes want a relatively clean environment. I know that when it comes to farm operators getting their combines caught in trash and litter and everything else including on occasion, someone's mailbox, they do tend to define their economic livelihood as threatened. They say: "Hey, that's my property, that's my territory, this is my community. This is costing me!" You can use these expressions to your advantage to get people to voluntarily participate in activities.

Now let's go on to persuasion. Before I state the fourth principle of participation, remember, people are comfortable in the groups they already have joined. These are built-in audiences. Most of the time you do not need to create a whole new layer of organization.

Feeling comfortable in a group is the fourth principle of participation. One of the consequences of feeling comfortable in a group is the fact that we all respond to peer group pressure within that group. This is the fifth principle of "people participation": feeling obligated. Most of us do tend to be involved in programs through a mixture of altruism and obligation. We all want certain things in our community and our neighborhoods, but that extra push that gets us out there to participate in an improvement program is the fact that we got somebody nudging us, a neighbor, a friend, our minister, etc. We know if we do not pay attention to them they're going to be back and back at us time and time again.

Let me conclude with the following advice. Remember, people only get involved if they define the problem for themselves. If you are smart about doing your programs, you can look at your community and you can see right away that there are a limited number of people

and organizations to whom you can go with preliminary ideas, and from there broaden your base of support. Never start out a program by saying: "Let's have a public meeting." There is a small group of "core" people and this core varies depending to whom the issue is important. For instance, in a litter control program, you would want the support of law enforcement, the local judiciary, perhaps the Extension Service and other organizations that you know ought to be involved in the planning. Of course, you will also have that one or two percent of the so-called "joiners." And from there you begin to make some preliminary plans and gradually broaden your base of support to those who are often called "lieutenants." The lieutenants are the people who do the footwork, that is, the other 50 percent who get involved if nudged properly and if there is personal or organizational interest in the issue. And so once you lay that groundwork, then you can begin to call a public meeting in which people can address the problem, and even if you already have a firm idea of the problem and solution, let them think it's their idea. It is only then, after a lot of "people" work, that you finally develop a plan of work by which to launch your program.

Finally, and do not forget this, people love to be patted on the back. When it comes to volunteer work we are like a puppy dog with a new master. Recognition is extremely important and very often we will forget that with our volunteers, and take them for granted. And by the way, this also is very important because somewhere down the road you may want to use them again. And very often their willingness to join your effort is based upon the recognition they have received from earlier volunteer efforts.

In conclusion, local programs using volunteers must be based on "people principles." Among us so-called "bureaucrats" those who put these principles into practice will have successful programs.

QUESTIONS & ANSWERS
JOSEPH DONNERMEYER
NATIONAL RURAL CRIME CENTER
THE OHIO STATE UNIVERSITY

Q: Do you find with the Crime Prevention programs that the enforcement agencies you are asking to increase efforts are a little hesitant sometimes?

A: Yes, indeed! It is a natural reaction. For years and years, not only in law enforcement but in a lot of areas we have been professionalizing to the point where Montana officers call the general public "civilians." That's a lot of distance. You are saying "Boy, you are unlike me," but yet law enforcement cannot do its job without those civilians. So you say, given all of the other things I have to do besides run this sheriff's department, how can I allow any of my officers time to be devoted to this new area called crime prevention? That's a very natural reaction, and a very legitimate question.

What it boils down to is the answer the judge gave: it is cost effective. In the long run it is cost effective. I will give you an example; in an economically depressed area they have laid off about a third of their law enforcement personnel which is something like 1,000 officers. It is the city of Detroit. They have increased their crime prevention staff from 5 to 200. What they have been able to do is reduce the level of crime in what used to be "murder city" to a level so that fewer numbers of reports are called in by people to law enforcement. If you figure the average time it takes for an officer to respond to that call, they have reduced crime to the point where they have made up for this 1,000 officers laid off. So in the long run if you can prove efficiency, then the program is worth it. But there is a natural reaction to first say, "I can't afford it."

PANEL: WHERE DO WE GO FROM HERE
JOSEPH HEIMLICH, MODERATOR
PROGRAM ASSISTANT, LITTER EDUCATION
OHIO COOPERATIVE EXTENSION SERVICE
THE OHIO STATE UNIVERSITY

Judge Hodson: Joe Donnermeyer was talking about all the positive things you can do in the community and to educate, and that is good. I think you can do that, you need to do that. But to the 50% of the people that you aren't going to get through Joe's program, that is what you have to work on and don't forget the term "intimidation" because I think that is what you have that will work on the other 50%. The certainty of prosecution, the threat of prosecution, the threat of fines, the threat of going to jail, the threat of having your illegal dump publicly exposed in the newspaper; intimidation works just as well, if not better, than just talking.

Joe Donnermeyer: Well, let me add to what you said. You are going to need public support for that and that is what that first 50% can give you.

Judge Hodson: You see, if you add us together you have 100%.

Q: If we find a nuisance or health risk, it is probably under the jurisdiction of Health Departments. Say we find the health risk and we clean it up. Is the procedure to go ahead and charge that cost of clean up to the land owner through liens or tax liens?

A: Eleanor Tschugunov: Let me get the situation straight. You have citizens complain to the health department that there is a health risk. And then the health department cleans it up. I can relate it to what we do in the Division of Wildlife with regard to those types of costs. Whenever we file a civil suit for fishkill, we ask for almost all the damages in the suit like the cost to replenish the stream with fish, we ask for investigation costs, those are costs that we need to determine precisely what the damage was to the environment. That pays our officers and it pays for processing film.

I don't know whether the Department of Health should go in and actually clean it up. I would think that the first thing to do is to file charges against the person to get them to clean it up initially.

Comment: If I could address that. I am with the City of Athens Code Enforcement and we have a problem similar to that right now. Under the city's municipal code, we have a nuisance section where city council can declare a lot as a public nuisance, appropriate the money to clean it up and then we put a lien on their taxes. We do it for dumps and we do it for weed cutting. It works.

A: Russ Gibson: Many communities have those provisions written into their local ordinances (under Charter Government).

Q: How about under statutory governments, municipalities; same thing?

A: Yes.

Q: I have a question for the judge. Perchance, have you spoken of your offender program to other judges in other counties? Would you if requested?

A: Judge Hodson: The answer is yes to both parts. I have talked with judges in Washington County about it. I have not talked to the judges in Meigs County yet. Last week I sent out a letter to the judges in Morgan County about it. Their response is not overwhelming. You are not surprised, right? I will go anywhere to talk about it. What would be better than each county doing it individually would be to somehow have some coordinated service throughout our smaller counties. That may be pipedreaming down the pike a bit, but it would work a lot better because in much of our area, people who come to my court live in Meigs County or Perry County or Morgan County or vice versa. If there were other counties with similar programs, it would be beneficial. And yes, I will go anywhere to talk about anything.

Q: I have a mine that is discharging coal slurry from a slurry pond right into a stream. There is not any visible fishkill, yet marine life has left the stream. Whose jurisdiction does that come under, Ohio Department of Natural Resources?

A: Eleanor Tschugunov. Yes, that would fall under our statute. I haven't seen any cases like that where there was no fishkill, but the claim is often made for other wildlife in the area. If there is nothing living in this stream, it would be difficult to show damage by pollution and it is also hard to evaluate what type of wild organisms are living there but it can be done.

Q: I have seen this stream go from a good fish supporting stream in the past five or six years to a practically dead stream.

A: Eleanor Tschugunov: By the omissions from one entity? That would be a good case for Division of Wildlife.

Q: I don't know if it is a recent phenomenon or not, but there is brine being spread on the roads in my county.

A: Eleanor Tschugunov: I will volunteer to answer this one. Since the change of Administration, the problem of brine statewide has been brought to the attention of the new Director of Natural Resources and also the divergent policies between the EPA and ODNR. It is at the top of the priority list at Departments, Division of Oil and Gas and I think you can expect to see some new regulations with regard to that very shortly.

Q: More strict or less?

A: Eleanor Tschugunov: As I understand it, this is an EPA, and Division of Oil and Gas battle to which the Division of Wildlife is tangentially related. There are going to be stricter regulations. Right now the procedure is to permit the drilling of the oil; they don't say anything on how you dispose of this by-product, brine.

That has given the EPA a lot of problems because like you said it is dumped on the roads. My bet would be that brine will not be permitted to be disposed of on the roads in the future.

Q: On township roads, a lot of times, trustees will replace a worn out culvert and their ultimate way of disposing of it is to pick it up and set it over in the ditch or in the next hollow, after they have placed the new one in. Is it their responsibility? Are they liable to take this to a disposal site so they do not set a precedent for dumping?

A: Tom Davis: Sure that's litter. Something is not in a place or lawfully disposed, even when they are township trustees.

A: Judge Hodson: It may be litter but whether you are successful in getting someone to prosecute them would be the next question and that's where practicality comes in. You could sue anybody for anything, the question is whether you are going to win or not.

Q: Well, why wouldn't you win?

A: Judge Hodson: First of all I doubt you would get a whole lot of prosecutors who wish to take on township trustees enmasse. You might!

A: Russ Gibson: It might be one of those courses of action where the bottom line is you just want to get it out. Maybe you can convince the township or the county highway departments to do it. You could kill two birds with one stone. Rather than going in with an axe to grind and a citation book out which isn't going to accomplish much, you could walk in with your emphasis being to try to get that culvert removed and in doing so educate or inform those officials of what it is you are trying to accomplish and how they can play an important part in setting the precedent. It is very difficult for you to justify to the public their leaving their culverts in the ditch. Sometimes, in law enforcement one has to be flexible.

Q: One idea that came up this morning was the occurrence of so many appliances littering the landscape. Often these are on private land around houses or against the barn, and so on. People bring old cars onto their property, strip them down for parts and leave the skeletons around. Is there any precedent on dealing with such a thing on private property when it may only be visual blight as opposed to a health hazard? Is there room to deal with private land owners who are creating dump heaps around their properties?

A: Judge Hodson: It is a very difficult situation. One person's junk is another person's treasure and you can't force your aesthetics on everybody. These are nuisance situations that you were talking about; nuisance is a real broad area of law. You could almost define anything as a nuisance and nuisance is the area that you need to look to. There is no law that says I cannot have an old refrigerator in my yard. But if that is creating a nuisance to the community then you can do something about it.

Q: What determines whether it is a nuisance?

A: Judge Hodson: Many things. Is it a possible health risk; can neighbor kids come over and get in it and suffocate? That could be an "attractive" nuisance. Kids come over and play around the car and if it falls off the blocks it could kill one of them. Nuisance is broadly defined in law. You can almost give it any definition you like.

Q: The gentleman from Wildlife this morning mentioned two terms that he said are very important. The state has employed these terms in their laws; "unsanitary" and "unsightly." What is the realm of these words?

A: Judge Hodson: In interpreting these, it is whatever a judge or jury wants to call "unsanitary" and "unsightly." There is no one blanket answer. One judge may find something unsightly, another may not.

A: Eleanor Tschugunov: One term often used is "does it interfere with your reasonable use of your property." You can see, with a stream, if somebody upstream is putting something into the stream and your cows drink from that stream, you have a reasonable right to have that stream in a pure enough condition for your cows to drink from it. That's a reasonable use.

Q: If you were wanting to sell your place and you knew that visual blight would bring down your property value, would that stretch over in the nuisance category then?

A: Judge Hodson: It could.

Q: But someone would have to initiate that action?

A: Judge Hodson: That's correct.

A: Russ Gibson: I think to put that into the current context, I think that was much more in reference to a civil action rather than a criminal action.

A: Judge Hodson: If somebody has a couple of refrigerators and three junk cars on a property next to mine and somehow that is a nuisance to my children, I would sue them civilly to clean that up and for the damage they have caused to my property.

Q: There is a law on the books, 4767.29; refrigerator doors have to be removed or chained or something like that.

A: Judge Hodson: Right, that's one specific area. We don't only get just refrigerators, we get refrigerator parts--a door, a handle.

Q: Community groups who have expressed concern for blight, and they are concerned because they don't like the way it makes their community look may not be concerned enough to spend any money to file a suit--maybe not even spend a lot of time. What channels can they

go through to get something cleaned up? Private property is the biggy. Where do they start?

A: Judge Hodson: One way of starting is to get your local city council or county commissioners to pass certain ordinances to address that position. Then you have to enforce it. Village council, whatever, go to the governmental groups--make them aware, do some research. Is there already a law that might fit; if not should there be one? That's putting the ball back in the public officials court saying "you do something about this, I can't afford it."

Q: We have quite a problem with some unsightly houses in our village. There are certain people with everything from junk cars to you name it behind their houses. We have a problem with what our council calls the "unsightly ordinance." So we decided to attempt to enforce it. We go to these people and order them to clean the property up and they refuse to do it. We cited them into court and they refused to pay the fine. If we put them in jail; it costs. Anyway they are right back out there with the same thing all over again. After about the third or fourth time, what do you as the judge do with these people?

A: Judge Hodson: I keep putting them in jail. Most people do not like to go to jail more than one time. You have to have some club to get them to obey. Now you are not going to have a 100% success, some people like to go to jail. It is free room and board, it is clean and they don't have to take care of themselves; some people think jail's a good place to get medical bills paid. But jail's the best club you have. There are some values you are not going to change, but if somebody goes to jail repeatedly, they might get tired of it after while. If you don't use this club, if you aren't strong, if you aren't tough, then nobody's going to take you seriously and nobody else is going to clean up their property either.

Q: But what do you do when you don't have the money. In the case of our village, we scrape the bottom of the barrel to do things

anyway. At \$20 a day to house them at our county jail, it becomes a bit expensive. The county court is reluctant to appear on a transfer on a then you've got a county ordinance; or the county commissioners feel differently from the village. So we are getting into something for which the county court doesn't want to be responsible. That is what we are up against. We get tired of paying to put this person in jail and eventually we're right back to square one.

A: Judge Hodson: If you choose to enforce the ordinance, and if you have community support for enforcing that ordinance, you have to be prepared to go the whole route. If you aren't prepared to pay that expense to put that person in jail, then do not enforce it.

Q: I feel there is just not enough people power to go around. You have to get people's support behind this thing. The biggest need I see is a way we can meet with groups that are already organized and say "here are the laws that pertain to littering; here are some of the penalties involved, and here is what you can do." For example, if you see something happening, don't wait three days or, as Greg said, pick up the evidence and take it in. But what do we need to do? What should we say to Mr. & Mrs. Citizen out here as far as helping the law enforcement people to do their job.

A: Russ Gibson: You build up public interest and support and then you hit a brick wall somewhere. Instead of bouncing off and around, you bounce off and you lose the support you have already built up. It is easy for people to get excited but a lot harder for them to maintain that enthusiasm. In our office we look at law enforcement as we look at developing law enforcement programs. We have to look in longer terms, five year terms, or two or three year terms in most communities to be realistic. The first year you plan then you legitimize. You know what it is that you are trying to address. You need to have some idea as to how you think you want to address it and then, when you have all your plans together, you get your commitments - the commitments of the county sheriff or the police chief. The public can pressure public officials into doing things, but I think

that those public officials are a lot more apt to do things well, consistently and over a period of time, when as a courtesy to them, we work with them. We lay out plans and we inform them of the fact that this is what we are going to be doing. This is how you can help. As an example, it would be terrible judgement on my behalf, as a police officer, to cite somebody into a judge's court without first talking to the judge to discuss this problem with him and how we think we can address it. The whole first year is planning and legitimizing the activities. Then you work to maintain those commitments and the public support.

Q: I think we need to work with organizations that are already there, but nobody has said "this is what we need to do." I don't know whether it is possible to come up with some way to share with people "here are the laws dealing with litter." You hear a lot of rumors, hearsay, going around. I think we need to be specific if we are going to go talk to these people. I heard discussion here today dealing with litter on private property and not really knowing for sure. People will get you over the barrel if you do not know what you are talking about. So I think we need that specific information and you have to take public officials with you through this planning process or you won't have them. I wish we had some more specific things on; "Here's how you can get enforcement." People get excited, they see a pile of rubbish along a road and they start riffling through it. Is that the thing to do? I'm asking the question, "do we have specifics" on what to do?

A: Russ Gibson: In answering your question in that situation, people can go in and rummage through the garbage themselves, but then those people must be willing to take that all the way through prosecution, otherwise they have disrupted evidence for the law enforcement people.

A: Judge Hodson: To answer your question, it is important the general citizenry know to whom they can complain. Do we call the sheriff's office or do we call the health department, who do we call?

Nothing's more frustrating for the private citizen than to call the wrong agency just to hear "sorry we can't help you." Perhaps in your local community you can establish who is the person to be called. Is it the sheriff, the health department, or do both of them accept calls? Then publicize that. On a state level there would be all kinds of possibilities. There could be state hotlines for people to call in complaints and then those complaints would be filtered back down to the local areas like the Attorney General has with consumer complaints; it's a clearinghouse. It goes back to the local law enforcement agency to enforce. Perhaps there needs to be a statewide clearinghouse for litter complaints. There is this new thing on drunken drivers. There is project READY where you call into a toll free number if you see somebody drunk and driving.

A: Russ Gibson: I will outline what we from the state perspective are working on or at least exploring at this time. Our public awareness campaigns do not deal with law enforcement. The advertising campaign is to accentuate positive things and for some reason law enforcement is often perceived as a negative. What we are exploring right now is the possibility of developing a statewide awareness campaign dealing with law enforcement. We feel that from an informational standpoint, this would help support field efforts people throughout the state are doing.

A: Joe Donnermeyer: In response to your question, something that is occurring in other states is Block Watch and community watch programs. I say this because as you were making your comments, you sounded like you were talking about a "litter watch." In fact, a lot of these organizations which have been around for a couple of years and have reduced their crime program to where it is "old hat" are looking for new things to do. In other words, they are shifting from simply crime prevention over to community affairs/activities. Litter is a very logical choice.

A: Judge Hodson: If you have the commitment of your local law enforcement, and your local health department, I would suggest you go

out in the county and publicize. If you think somebody is dumping, if you see a bag of trash, if you want somebody to come out and investigate, call a certain number. Now you had better be sure that the complaint is going to be followed up when somebody calls. You have to get the cooperation ahead of time, but it would certainly get citizens involved on a local level in your efforts; it would become a citizen participation program. Or they can say, "gee, I don't want to go through this garbage, but I can call the sheriff and have him come down and do it." If they see their complaint is followed up, it will keep on working.

A: Tom Davis: In reference to your question about a piece of paper that has the laws and things like that on it, there are several grant communities that already have those published. They tell who and where to call for different kinds of complaints--private property complaints go to the health department, litter goes to the office of litter control, but that's a very unique thing for each county and each municipality because they are all different. It is something that needs to be investigated a lot more at the local level.

A: Judge Hodson: You do not want to make your citizens into lawyers, you do not want to bog them down with all this legalese. That's tough enough for those of us who are trained in law to wade through, let alone giving it to the average citizen. You just want to make it very simple.

A: Tom Davis: You don't want to make them police officers either. So, if you have a concern, if you see something that is out of the ordinary, call.

Q: In counties that do not have a litter project, is there a way they can tap into your office to get this sort of information?

A: Russ Gibson: With the exception of finances, the services we provide to a grant community we will to the best of our abilities, also be available to any community. If you are not a grant recipient

and you think there is something we can help you with, by all means give us a call. We are committed on a statewide basis, we are just unable to provide funds to every community. We would be more than happy to help anyone get started.

