

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA . CASE NO. 4:07-CR-54-1
V. . ELIZABETH CITY, NC
JAMES E. JOHNSON, JR. . MARCH 11, 2008
. .
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TRANSCRIPT OF HEARING
BEFORE THE HONORABLE TERRENCE W. BOYLE
JUDGE, UNITED STATES DISTRICT COURT

APPEARANCES:

FOR THE UNITED STATES: BARBARA KOCHER, ESQUIRE
ASSISTANT U.S. ATTORNEY
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310 NEW BERN AVENUE
RALEIGH, NC 27601-1461

FOR THE DEFENDANT: JOSEPH B. CHESHIRE, IV ESQUIRE
JAMES E. JOHNSON, JR. CHESHIRE, PARKER, SCHNEIDER,
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P. O. BOX 1029
RALEIGH, NC 27602

FOR THE DEFENDANTS: MICHAEL P. SANDERS, ESQUIRE
ABLE L. BRAND HORNTAL, RILEY, ELLIS & MALAND
JOHN T. RAGLAND P. O. BOX 220
ELIZABETH CITY, NC 27907

FOR THE DEFENDANTS: WAYLAND J. SERMONS, JR., ESQUIRE
TROY R. GODWIN ATTORNEY AT LAW
RAYMOND H. RHODEN P. O. BOX 69
WASHINGTON, NC 27889

COURT REPORTER: MS. SANDRA A. GRAHAM, CVR
Proceedings recorded by stenomask, transcript produced from
dictation.

1 THE COURT: Let's see, Ms. Kocher, how do you
THE COURT:
2 want to proceed. The first case is Johnson, Bland,
3 Ragland, Godwin and Rhoden?

4 MS. KOCHER: Yes, sir. Those were especially
MS. KOCHER:
5 set for today. The parties have reached an agreement in
6 that matter, so there will be pleas for the Court to hear
7 today.

8 THE COURT: Okay. Do you want to do them one at
THE COURT:
9 a time, or how do you want to do them?

10 MS. KOCHER: Given the number of individuals, I
MS. KOCHER:
11 think it would be just physically almost impossible to
12 have everyone seated at the table. The Government could,
13 if the Court would allow, perhaps to just give one factual
14 proffer.

15 THE COURT: All right. Let's see.
THE COURT:

16 MS. KOCHER: By attorney perhaps, Your Honor.
MS. KOCHER:
17 Mr. Johnson is represented by a single attorney. Then two
18 of the defendants each have attorneys.

19 THE COURT: All right. Who is representing Mr.
THE COURT:
20 Johnson, Mr. Cheshire?

21 MR. CHESHIRE: Yes, sir, Your Honor.

MR. CHESHIRE:
22 THE COURT: If you want to come up.
THE COURT:

23 And who is representing Mr. Bland?

24 MR. SANDERS: I am, Your Honor.
MR. SANDERS:

1 THE COURT: Do you have another defendant?

THE COURT:

2 MR. SANDERS: Yes, Your Honor. I have Mr.

MR. SANDERS:

3 Ragland, also.

4 THE COURT: All right. If you'll come up. The

THE COURT:

5 clients can probably stay in the audience, if they are

6 here. That's fine with me.

7 MR. SANDERS: All right.

MR. SANDERS:

8 THE COURT: And then, Mr. Teague, do you have

THE COURT:

9 one?

10 MR. TEAGUE: No, I have a matter that was from

MR. TEAGUE:

11 yesterday.

12 THE COURT: Who is representing the others?

THE COURT:

13 MR. SERMONS: Wayland Sermons from the Beaufort

MR. SERMONS:

14 County Bar. I represent Mr. Rhoden and Mr. Godwin.

15 THE COURT: Okay. If you want to come up, too,

THE COURT:

16 then. I'll have the three lawyers come up.

17 All right. Everybody is going to enter a plea

18 of guilty, is that right, Ms. Kocher?

19 MS. KOCHER: It is, Your Honor.

MS. KOCHER:

20 THE COURT: And what is Mr. Johnson going to

THE COURT:

21 plead to?

22 MS. KOCHER: Mr. Johnson will be pleading to

MS. KOCHER:

23 counts two and three of the criminal information.

24 THE COURT: Two and three?

THE COURT:

1 MS. KOCHER: Yes, sir. The Government, in
MS. KOCHER:
2 return, will dismiss count one as to Mr. Johnson.

3 THE COURT: How about Mr. Bland?

4 MS. KOCHER: Mr. Brand, the information --
MS. KOCHER:

5 THE COURT: Is it Brand?

6 MS. KOCHER: It is, sir. The information --
MS. KOCHER:

7 THE COURT: It's miswritten on this sheet.

8 MS. KOCHER: The information is misspelled, Your
MS. KOCHER:
9 Honor.

10 THE COURT: B-R-A-N-D.

11 MS. KOCHER: Yes, sir.
MS. KOCHER:

12 THE COURT: And what is he going to plead guilty
THE COURT:
13 to?

14 MS. KOCHER: Mr. Brand will be pleading guilty
MS. KOCHER:
15 to count three only, and the Government will be dismissing
16 counts one and two.

17 THE COURT: And the next gentleman.

18 MS. KOCHER: Mr. Ragland --
MS. KOCHER:

19 THE COURT: Yes.

20 MS. KOCHER: -- will be pleading guilty to count
MS. KOCHER: --

21 three.

22 THE COURT: Okay.

23 MS. KOCHER: And the Government will be
MS. KOCHER:

24 dismissing counts one and two.

1 THE COURT: And the next two only have one
THE COURT:

2 count?

3 MS. KOCHER: That is correct, Your Honor.

MS. KOCHER:

4 THE COURT: And they are pleading to that?

THE COURT:

5 MS. KOCHER: They are.

MS. KOCHER:

6 THE COURT: We will do it this way. Mr.

THE COURT:

7 Johnson, if you would come up and have a seat behind Mr.

8 Chesire here, I will take your plea.

9 And, Mr. Cheshire, he is familiar with the Rule

10 11 aspects?

11 MR. CHESHIRE: Yes, sir.

MR. CHESHIRE:

12 THE COURT: Mr. Johnson, do you swear to tell

THE COURT:

13 the truth?

14 MR. JOHNSON: Yes, sir.

MR. JOHNSON:

15 THE COURT: You are represented by Mr. Cheshire.

THE COURT:

16 You are charged with these charges of conspiracy to

17 violate the Migratory Bird Treaty Act, hunting over bait

18 and killing migratory birds without retaining actual

19 custody. You can have a trial on those charges. If you

20 have a trial, the Government would be obligated to prove

21 you guilty by a proof beyond a reasonable doubt. You

22 could examine the witnesses against you at a trial,

23 present witnesses, testify yourself. If you didn't

24 testify, that wouldn't be used against you. By admitting

1 the charge and pleading guilty, you waive a trial; there
2 won't be a hearing or a trial in the case. Do you
3 understand that?

4 MR. JOHNSON: Yes, sir.

MR. JOHNSON:

5 THE COURT: Is that what you want to do?

THE COURT:

6 MR. JOHNSON: Yes, sir.

MR. JOHNSON:

7 THE COURT: Have you been forced or pressured in

THE COURT:

8 any way in order to get you to do this?

9 MR. JOHNSON: No, sir.

MR. JOHNSON:

10 THE COURT: Are you doing it voluntarily?

THE COURT:

11 MR. JOHNSON: Yes, sir.

MR. JOHNSON:

12 THE COURT: And, of course, you are represented

THE COURT:

13 by counsel throughout all of these proceedings.

14 MR. JOHNSON: Yes, sir.

MR. JOHNSON:

15 THE COURT: How do then plead -- the Government

THE COURT:

16 said it is going to dismiss the conspiracy charge in

17 return for the plea of guilty to the other two charges.

18 Is that what you have agreed to?

19 MR. JOHNSON: Yes, sir.

MR. JOHNSON:

20 THE COURT: How do you then plead to hunting

THE COURT:

21 over bait and aiding and abetting in that and killing

22 migratory birds without retaining the actual custody,

23 guilty or not guilty?

24 MR. JOHNSON: Guilty.

MR. JOHNSON:

1 THE COURT: Are you guilty of these charges?

THE COURT:

2 MR. JOHNSON: Yes, sir.

MR. JOHNSON:

3 THE COURT: Okay. Thank you. You can either

THE COURT:

4 have a seat there or you can go back if you want, wherever

5 you want to keep him. I am going to bring the other

6 people up in sequence.

7 Let's see, Mr. Sanders, your clients are next.

8 I think everybody can fit around. We have enough chairs.

9 Mr. Brand and Mr. Ragland, if you would come forward,

10 please. Mr. Sanders, if you would just get them to sit or

11 stand behind you.

12 MR. SANDERS: Yes, sir.

MR. SANDERS:

13 THE COURT: Which gentleman is Mr. Brand?

THE COURT:

14 (Mr. Brand indicates)

15 THE COURT: Okay. Do you swear to tell the

THE COURT:

16 truth?

17 MR. BRAND: Yes, sir.

MR. BRAND:

18 THE COURT: And you are charged with three

THE COURT:

19 charges: conspiracy to violate the Migratory Bird Treaty

20 Act, hunting over bait and killing migratory bird game

21 without retaining actual custody. It is my understanding

22 that you are going to plead guilty to count three, the

23 last one of these charges, killing birds without retaining

24 actual custody, and that in return the Government is going

1 to dismiss the other two charges. Is that the agreement
2 you have?

3 MR. BRAND: Yes, sir.

MR. BRAND:

4 THE COURT: And you have been represented by

THE COURT:

5 counsel throughout the proceedings, correct?

6 MR. BRAND: Yes, Your Honor.

MR. BRAND:

7 THE COURT: And are you doing this voluntarily?

THE COURT:

8 Are you making this agreement on your own voluntary

9 wishes?

10 MR. BRAND: Yes, sir.

MR. BRAND:

11 THE COURT: Has anyone forced you or pressured

THE COURT:

12 you or made you do this in any way against your will?

13 MR. BRAND: No, sir.

MR. BRAND:

14 THE COURT: And you understand you can have a

THE COURT:

15 trial. You can require the Government to prove its case
16 beyond a reasonable doubt. You can present witnesses and
17 evidence; you can testify or not testify. That won't be
18 used against you, and that you waive the rights to trial
19 and your other procedural rights by admitting the charge?

20 MR. BRAND: Yes, sir.

MR. BRAND:

21 THE COURT: Are you willing to do that?

THE COURT:

22 MR. BRAND: Yes, sir.

MR. BRAND:

23 THE COURT: How do you then plead to killing

THE COURT:

24 birds without retaining them in actual custody?

1 MR. BRAND: Guilty.

MR. BRAND:

2 THE COURT: Are you guilty of it?

THE COURT:

3 MR. BRAND: Yes, sir.

MR. BRAND:

4 THE COURT: Okay. Thank you. You can have a

THE COURT:

5 seat.

6 And you're Mr. Ragland?

7 MR. RAGLAND: Yes, sir.

MR. RAGLAND:

8 THE COURT: And you are represented by Mr.

THE COURT:

9 Sanders throughout these proceedings?

10 MR. RAGLAND: Yes, Your Honor.

MR. RAGLAND:

11 THE COURT: And you are satisfied with the

THE COURT:

12 representation? He represents two people; you understand

13 that that is something you have to consent to?

14 MR. RAGLAND: Yes.

MR. RAGLAND:

15 THE COURT: Did you talk to them about that?

THE COURT:

16 MR. SANDERS: Yes, Your Honor, and I have a form

MR. SANDERS:

17 placed in the file signed by each client.

18 THE COURT: All right. And it is my

THE COURT:

19 understanding that you are charged with three charges:

20 conspiracy to violate the Migratory Bird Treaty Act,

21 hunting over bait, and aiding and abetting, and killing

22 migratory birds without retaining actual custody, and that

23 the Government is going to allow you to plead guilty to

24 the last charge and will dismiss the other charges. Is

1 that the agreement you have?

2 MR. RAGLAND: Yes, Your Honor.

3 MR. RAGLAND:

4 THE COURT: And you understand that you can

5 THE COURT:

6 plead not guilty, have a trial, have the Government put on

7 its proof, require them to prove the case beyond a

8 reasonable doubt. That by pleading guilty you forego a

9 trial. There won't be a trial. Your admission of guilt

10 will provide the finding of guilt. Do you understand all

11 that?

12 MR. RAGLAND: Yes, sir.

13 MR. RAGLAND:

14 THE COURT: Has anyone forced you or pressured

15 THE COURT:

16 you in any way in order to make you plead guilty?

17 MR. RAGLAND: No.

18 MR. RAGLAND:

19 THE COURT: You are doing it voluntarily?

20 THE COURT:

21 MR. RAGLAND: I am.

22 MR. RAGLAND:

23 THE COURT: How do you plead to killing

24 THE COURT:

25 migratory birds without retaining their actual custody,

26 guilty or not guilty?

27 MR. RAGLAND: Guilty.

28 MR. RAGLAND:

29 THE COURT: Are you guilty of it?

30 THE COURT:

31 MR. RAGLAND: Yes, sir.

32 MR. RAGLAND:

33 THE COURT: All right. Thank you. You may have

34 THE COURT:

35 a seat.

36 And, Mr. Sermons, you are representing Mr.

1 Godwin?

2 MR. SERMONS: Mr. Godwin and Mr. Rhoden, Your
3 Honor.

4 THE COURT: All right. If they will come
5 forward. And you have discussed with them their right to
6 have separate, independent counsel; and I see they have
7 signed waivers.

8 MR. SERMONS: They have, Your Honor.
9 MR. SERMONS:

10 THE COURT: And they understand that?
11 THE COURT:

12 MR. SERMONS: They do, Your Honor.
13 MR. SERMONS:

14 THE COURT: Which gentleman is Mr. Godwin?
15 THE COURT:

16 MR. GODWIN: Right here.
17 MR. GODWIN:

18 THE COURT: Okay. And you are charged with
19 THE COURT:

20 conspiracy to violate the Migratory Bird Treaty Act. You
21 understand that you can plead not guilty. You can have
22 the Government required to prove its case beyond a
23 reasonable doubt, that at a trial you can have a trial in
24 front of the Court or otherwise. That at a trial you can
25 object to improper evidence, examine the witnesses against
26 you, put on your own witnesses, testify if you want and
27 that you give up those rights. You won't have a trial by
28 admitting you did it. Do you understand that?

29 MR. GODWIN: Yes, sir.

30 MR. GODWIN:

31 THE COURT: Has that all been explained to you

32 THE COURT:

1 by your counsel throughout this?

2 MR. GODWIN: Yes, sir.

MR. GODWIN:

3 THE COURT: Are you admitting this charge

THE COURT:

4 voluntarily?

5 MR. GODWIN: Yes, sir.

MR. GODWIN:

6 THE COURT: Has anyone put any pressure on you

THE COURT:

7 or forced you or coerced you in any way in order to get

8 you to plead guilty?

9 MR. GODWIN: No, sir.

MR. GODWIN:

10 THE COURT: How do you plead then to the charge

THE COURT:

11 of conspiracy to violate the Migratory Bird Treaty Act,

12 guilty or not guilty?

13 MR. GODWIN: Guilty.

MR. GODWIN:

14 THE COURT: Are you guilty of it?

THE COURT:

15 MR. GODWIN: Yes, sir.

MR. GODWIN:

16 THE COURT: Thank you. And that would make you

THE COURT:

17 Mr. Rhoden, is that right? Mr. Godwin, you can have a

18 seat.

19 And you are Mr. Rhoden, then?

20 MR. RHODEN: Yes, sir.

MR. RHODEN:

21 THE COURT: And you are also represented by Mr.

THE COURT:

22 Sermons. And you understand you could have separate

23 counsel, but you have waived that.

24 MR. RHODEN: Yes, sir.

MR. RHODEN:

1 THE COURT: You are satisfied with his law work?

THE COURT:

2 MR. RHODEN: Yes, sir.

MR. RHODEN:

3 THE COURT: And the Government has charged you

THE COURT:

4 with conspiracy to violate the Migratory Bird Treaty Act.

5 And you can plead not guilty; you have that right. You

6 can require the Government to prove its case by a proof

7 beyond a reasonable doubt. You can present witnesses and

8 evidence and testify or not testify, examine the witnesses

9 against you, object to improper evidence. You give up

10 those rights and the right to trial by admitting the

11 charge. Do you understand that?

12 MR. RHODEN: Yes, sir.

MR. RHODEN:

13 THE COURT: And are you doing that voluntarily?

THE COURT:

14 MR. RHODEN: Yes, sir.

MR. RHODEN:

15 THE COURT: Has anyone pressured you or forced

THE COURT:

16 you or made you, in any way, do this against your will?

17 MR. RHODEN: No, sir.

MR. RHODEN:

18 THE COURT: How do you plead to conspiracy to

THE COURT:

19 violate the Migratory Bird Treaty Act, guilty or not

20 guilty?

21 MR. RHODEN: Guilty.

MR. RHODEN:

22 THE COURT: Are you actually guilty of it?

THE COURT:

23 MR. RHODEN: As far as I know, sir.

MR. RHODEN:

24 THE COURT: Well, yes or no.

THE COURT:

1 MR. RHODEN: Yes, sir.

MR. RHODEN:

2 THE COURT: Okay. All right. Thank you.

THE COURT:

3 Well, the Government wants to put on a showing

4 of fact in order to establish the charges.

5 MS. KOCHER: Thank you, Your Honor. I would

MS. KOCHER:

6 defer to Agent Jack Baker.

7 THE COURT: If the lawyers can't see, you can

THE COURT:

8 move around in the courtroom.

9 MR. BAKER: Your Honor, this investigation began

MR. BAKER:

10 on January 5, 2007, when myself and Agent Canada went into

11 Middle Bay, which is adjacent to property owned by James

12 Johnson.

13 THE COURT: What county and body of waters is

THE COURT:

14 this?

15 MR. BAKER: We are in Pamlico County. This

MR. BAKER:

16 would be the Pamlico Sound (indicating on map). Out here

17 to the north is the Pamlico River. This is Jones Bay.

18 This is actually a portion of the Jones Island Club. You

19 may be familiar with that. And you come around, and

20 you'll hit the Neuse River. It will take you up to the

21 New River.

22 This is located near the community of Hobucken

23 in Pamlico County, which is approximately 20 or 25 miles

24 east of New Bern, North Carolina.

1 On the 5th of January, myself and Mr. Canada
2 came into Middle Bay in an area in front of the James
3 Johnson Hunting Lodge. We noticed large quantities of
4 scaup and bufflehead ducks sitting in an area in front of
5 the lodge. We looked in some of the boats at the lodge.
6 And one particular boat, a green Maycraft had large
7 quantities of whole kernel corn scattered in the bottom
8 indicating it was being used to transport corn.

9 THE COURT: How big a boat is this?

 THE COURT:

10 MR. BAKER: It's 18 feet, 10 inches. About 19

11 MR. BAKER:
feet, a pretty good sized boat.

12 So we returned on the 9th of January, 2007,
13 entered into an area of Porpoise Creek where we knew there
14 was a hunting blind being used. And this area right here
15 in front of the blind, we jumped a lot of resting scaup.

16 THE COURT: What time did you go in?

 THE COURT:

17 MR. BAKER: It was --

 MR. BAKER:

18 THE COURT: Dark?

 THE COURT:

19 MR. BAKER: No, it was midday. Midday.

 MR. BAKER:

20 Continuing up this creek, this is just a little mud bottom
21 tidal creek. We jumped a large concentration of scaup
22 right here, several hundred scaup. We did a little search
23 around, located fresh corn in the bottom of the creek
24 there. We set up a surveillance camera at that time and

1 recorded Mr. Rhoden and Mr. Godwin on two occasions, on
2 the 12th and the 14th coming into Porpoise Creek dumping
3 large quantities of grains of corn into the water.

4 THE COURT: Coming in a boat?

5 THE COURT:

6 MR. BAKER: Coming in a boat, in that same

7 MR. BAKER:

8 Maycraft boat that we saw the corn scattered in. And that
9 boat is registered to James Johnson. And it lists a
10 Virginia and a North Carolina address for the
11 registration.

12 THE COURT: Was the corn bagged when it was in

13 THE COURT:

14 the boat?

15 MR. BAKER: The scattered corn? No, it was just

16 MR. BAKER:

17 spilled on the deck of the boat. When they came in to

18 pour it out, it was bagged. And you could see the

19 multiple bags stacked in the boat. In fact, the video

20 shows them just pouring it over the bow into the water.

21 We were able to collect fresh samples. In fact, the

22 surveillance video shows hundreds of scaup that would come

23 in immediately after they baited and go into a feeding

24 frenzy there.

25 THE COURT: And it comes in hundred pound bags

26 THE COURT:

27 in polyurethane wrapping?

28 MR. BAKER: Fifty and hundred pound bags. In

29 MR. BAKER:

30 fact, after --

1 THE COURT: Like you buy at a feed and seed
THE COURT:
2 store?

3 MR. BAKER: We did locate the source for the
MR. BAKER:
4 corn. He is actually just a farmer that raises corn. And
5 he sells it on the side for extra money.

6 THE COURT: He bags it and sells it.

THE COURT:

7 MR. BAKER: Sells it by the bags. Four dollars
MR. BAKER:
8 a fifty and eight dollars a hundred.

9 After this was all over, we went back and
10 obtained records for purchased corn. And during the 2006-
11 2007 waterfowl season, which ran from November to January,
12 Mr. Johnson, through his corporation, purchased 21.3 tons
13 of corn, the majority of which we believe was placed in
14 these two creeks here for the purpose of attracting and
15 feeding wildfowl.

16 THE COURT: What's that, 43,000 pounds? I'm
THE COURT:
17 just doing quick math.

18 MR. BAKER: That's correct, yes.

MR. BAKER:

19 We set up a surveillance camera. We recorded
20 them on two occasions baiting, watched large quantities of
21 ducks come into that area.

22 On the 15th of January, which was a Monday,
23 Martin Luther King Day, myself and Agent Canada came to a
24 little dirt landing there. And from there you can see --

1 THE COURT: Came in a boat?

THE COURT:

2 MR. BAKER: No. You can go by vehicle to this -

MR. BAKER:

3 - actually, it's a little public landing at the end of a

4 state maintained road and surrounded by Mr. Johnson's

5 property. From there you can see his hunting lodge in the

6 distance. And we identified the vehicle, a white Cadillac

7 Escalade, that we knew belonged to James Johnson. As a

8 result of that, we initiated a surveillance the next day.

9 Mr. Canada and I and a state officer, Ed Austin, we

10 assumed positions of surveillance before daylight. We

11 actually watched a morning hunt on these impoundments

12 where they hunted puddle ducks.

13 THE COURT: How many impoundments are there?

THE COURT:

14 MR. BAKER: Oh --

MR. BAKER:

15 THE COURT: How many blind set-ups are there?

THE COURT:

16 Do you have any idea?

17 MR. BAKER: I have no idea.

MR. BAKER:

18 THE COURT: More than five?

THE COURT:

19 MR. BAKER: Oh, yes. Oh, yes.

MR. BAKER:

20 THE COURT: More than ten?

THE COURT:

21 MR. BAKER: More than ten.

MR. BAKER:

22 THE COURT: These would be blinds to rotate,

THE COURT:

23 where you would pick a blind based on the weather and

24 circumstances?

1 MR. BAKER: And the habits of the birds, where
2 MR. BAKER:
3 ever they are using.

4 THE COURT: How many thousand acres are involved
5 THE COURT:
6 in this compound?

7 MR. BAKER: It's approximately more or less
8 MR. BAKER:
9 10,000 acres.

10 THE COURT: Okay.

11 THE COURT:
12 MR. BAKER: Some of the -- probably the finest
13 MR. BAKER:
14 waterfowl habitat in the state.

15 THE COURT: Marsh and cut over woods?

16 THE COURT:
17 MR. BAKER: Primarily these are saltwater marsh
18 MR. BAKER:
19 impoundments. You probably can't even build them anymore.
20 He's got a few newer ones on higher ground.

21 THE COURT: Dike impoundments or open
22 THE COURT:
23 impoundments -- well, they wouldn't be impoundments if
24 they were open.

25 MR. BAKER: They are diked. But they are the
26 MR. BAKER:
27 type you can drain and plant a crop in. These are
28 saltwater impoundments that you raise widgeon grass and
29 that sort of thing, primarily for puddle ducks: widgeons,
30 pintails, that sort of stuff.

31 On the 15th we found Mr. Johnson was there. We
32 set up the surveillance. On Tuesday, the 16th, they did a
33 little bit of puddle duck hunting in the impoundments in

1 the morning. Not much happened at that time. About three
2 o'clock we heard a radio transmission that Mr. Johnson was
3 ready to go hunting. It was Troy talking to Ray. Ray
4 indicated he had a truck load of corn, what should he do
5 with it. And Ray told him to park it at some inaudible
6 location and come to him. They were ready to go hunting.
7 They came out of the hunting lodge, came through what's
8 known as the Leary Canal into the back end of Porpoise
9 Creek, came by me out here, got into the blind. I
10 observed --

11 THE COURT: Past you; you were hidden?

12 THE COURT:

13 MR. BAKER: Yes. I was concealed. Actually,

14 MR. BAKER:

15 when they came out, I was right here on the elevated
16 portion of the dike, so they came right by me. Went to
17 the blind. I could see them. I could see the blind very
18 well. Saw three of them get into the blind, later
19 identified as Mr. Johnson, Mr. Brand, and Mr. Ragland.
20 The two fellows in the boat, Godwin and Rhoden, placed a
21 few decoys out and then left the area, obviously, to be a
22 tender, to pick up whatever ducks were killed.
23 Immediately when they got to the blind, a cloud of ducks -
24 - I'll estimate 2,000 scaup -- got up from right in front
of the blind. They weren't up here on the bait. They
were sitting here in a little cove out of the wind waiting

1 to come in and feed. Surveillance shows that they had fed
2 that morning, so they were probably going to feed that
3 afternoon. But when they got to the blind, this
4 impressive cloud -- I'll estimate 2,000, could have been
5 3,000 -- scaup. I heard the whoosh of the wings from
6 where I was when they got up. They got in the blind,
7 proceeded to hunt --

8 THE COURT: So the birds got up, then they got
9 THE COURT:
10 in the blind. They weren't in place when the birds got
11 up, but the birds are going to come back.

12 MR. BAKER: The birds are going to come back.
13 MR. BAKER:
14 And the birds were sitting right here. They got
15 up and came out on the big water.

16 THE COURT: And this is in the afternoon?

17 THE COURT:
18 MR. BAKER: This is 3:30 in the afternoon, yes,
19 MR. BAKER:
20 sir. The tender boat, after he put the decoys out, kind
21 of came out, made a little circle, got over here out of
22 the way. The first couple of birds came in, went right by
23 the blind. There was no shooting. I watched the birds go
24 up into the baited area, set their wings and go down.
25 About the third or fourth flock of ducks that came in, I'm
26 watching the birds as they come in. I could see the gun
27 barrels come out of the blind, hear a volley, and I see at
28 least two birds come down, probably more, but I saw at

1 least two come down. Heard Mr. Johnson get on the radio,
2 call Troy and say, I've got some birds down; I need you to
3 come get them. I see the boat come in, I see it make a
4 couple of circles. I see them bend like they are picking
5 up some birds. They never go to the blind. They leave.

6 During the course of about another thirty
7 minutes, the birds continually come in. I heard two more
8 sets of volleys --

9 THE COURT: Even though they are being shot?

THE COURT:

10 MR. BAKER: Even though they are being shot.

MR. BAKER:

11 THE COURT: Because there is feed?

THE COURT:

12 MR. BAKER: Yes. And if you look at the video,

MR. BAKER:

13 you can see the feeding frenzy of the birds in this,
14 because they normally will not be up in a small creek like
15 this. This is a type of mud bottom creek. There is no
16 aquatic vegetation. They were strictly there for the
17 corn, Your Honor. That is the only explanation there is.

18 I was in a small paddling boat, so I called Mike
19 Canada, who was in the next creek over. He was way over
20 here. I said, they are hunting; they've got some birds
21 down. You better come on. We don't know long they are
22 going to hunt. So he had to come all this way around this
23 long peninsula to get to them, and it took him 15 or 20
24 minutes to get there. During that time, they fired two

1 more volleys. Mike gets to the blind, contacts the
2 hunters, checks the guns, licenses, plugs, that sort of
3 thing, asks them how many birds they had killed. They
4 said we have two birds on the water. That's all you've
5 killed? Yes, sir, that's all we've killed. Mr. Johnson
6 gets on the radio, calls Troy, says they have a visitor at
7 the blind, and he needs to come to the blind. Mike
8 contacts Mr. Rhoden and Troy at the edge of the decoys,
9 immediately sees a bag that has four freshly killed scaup
10 ducks in it. Mike asks him, where did you get those
11 ducks? And Rhoden and Godwin said, we killed them. Where
12 did you kill them? Well, we killed them in this blind,
13 the same blind that Mr. Johnson and his two companions
14 were hurting. We had been watching the whole time, and we
15 knew they had not been in that blind. What was going on,
16 this is a common scheme to kill additional birds.

17 THE COURT: You just boost your limit by adding
18 THE COURT:
19 the guides.

20 MR. BAKER: That's exactly right. This happens
21 MR. BAKER:
22 all over the country. This wasn't just sloppiness on the
23 part of the guide. They had them in the bag, had the bag
24 secured, immediately claimed them and came up with this
25 story about --

26 THE COURT: What's the limits nowadays?
27 THE COURT:

1 MR. BAKER: It's two scaup per person per day.

MR. BAKER:

2 And they had four in the boat. When they got there, they
3 knew they had additional birds down. They didn't know how
4 many. They knew if they didn't claim those four birds,
5 and they had more than two on the water, they're over the
6 limit. So they stuck with the plan and claimed the birds,
7 which we knew was not true.

8 During the discussion with Troy and Ray about
9 the feeding --

10 THE COURT: Well, did they have guns with them?

THE COURT:

11 MR. BAKER: They did have one gun in the boat.

MR. BAKER:

12 THE COURT: And the gun had been fired or not

THE COURT:

13 fired?

14 MR. BAKER: I don't know.

MR. BAKER:

15 THE COURT: Didn't check?

THE COURT:

16 MR. BAKER: We didn't check. But we knew they

MR. BAKER:

17 had not been in that blind. We knew they had not killed

18 any birds. It was just ludicrous to me for them to

19 suggest that the landowner and his guests would stand by

20 and let the hired help kill the first limits of birds.

21 And it never happened anyway. So that was our position on

22 what was happening there. And that was the basis for the

23 conspiracy charge, the conspiracy to kill over the limit

24 of ducks. Made contact with Mr. Canada. He got to the

1 blinds. All their licenses, guns and everything was in
2 order. Asked them how many killed. There was two. Ray
3 and Troy came up, gave him the story about how they had
4 supposedly killed those four ducks. I asked Mr. Johnson
5 about his feeding program; Mr. Johnson didn't want to talk
6 about it. When I got to the blind, you know, we kind of
7 repeated some of the same questions. We asked Mr. Johnson
8 if he would like to discuss his feeding program or make
9 any statements on behalf of his invited guests as to their
10 knowledge or lack of knowledge of his feeding program.
11 And he said, no.

12 We believe that the experience of the hunters
13 involved, the number of ducks flushed at the blind when
14 they got there, that it was certainly reasonable to anyone
15 that that area was probably baited. They were openly
16 talking on a marine band radio about having a truck load
17 of corn. And those ducks would not be in that creek for
18 any other reason than that large quantity of corn, Your
19 Honor.

20 THE COURT: All right. Is there anything else
21 THE COURT:
22 from the Government.

23 MS. KOCHER: No, sir.

24 MS. KOCHER:

THE COURT: All right. Based on the evidence

THE COURT:

presented, the Court finds that the pleas are freely and

1 voluntarily made. At the time of the pleas each defendant
2 had a full understanding of the charges against him, and a
3 factual basis exists. The Clerk is directed to enter,
4 respectively, the guilty findings of charges of the five
5 defendants as outlined by the Court.

6 How do you want to proceed? Have you worked
7 something out with these defendants?

8 MS. KOCHER: We did not come to terms on the
9 MS. KOCHER:
10 recommendations, Your Honor. The Government does have
11 recommendations.

12 THE COURT: I'll let you do that first. Then
13 THE COURT:
14 I'll hear from the lawyers. And the clients get to
15 allocute if they want.

16 MS. KOCHER: My recommendations first, Your
17 MS. KOCHER:
18 Honor?

19 THE COURT: Yes.

20 THE COURT:
21 MS. KOCHER: In regard to Mr. Brand and Mr.
22 MS. KOCHER:
23 Ragland, they were invited guests that day. And while the
24 number of ducks alone, we believe, would have been
evidence that they should have known the area was baited,
I do recognize that that is slim in that evidence. The
defendants Brand and Ragland, have at all times following
their contact with law enforcement maintained their own
liability for failure to retain the birds, as charged in

1 count three. As a result of their ongoing acceptance of
2 responsibility for that, the Government would recommend
3 \$1,000 fine as to each of those defendants, but would not
4 recommend probation or restriction of their hunting for
5 any time in the future. I believe that is consistent with
6 past charges for failure to retain the birds in their
7 custody.

8 As to the two employees, Your Honor, it would be
9 the Government's contention that they were acting at the
10 direction of a landowner in this case. The Government
11 did, through its charging, give these two a significant
12 break in that, as you are well aware with the statutes,
13 the baiting itself would be a Class A misdemeanor,
14 which the Government declined to charge. The Government
15 would seek a \$500 fine for each of those employees. And
16 given the significance of the baiting activity that these
17 employees undertook, no matter at whose direction, we
18 would request a restriction of their hunting activities
19 for a year's time.

20 As to Mr. Johnson himself, typically when a
21 landowner has baited the area, and there are invited
22 guests, the Government's fine reflects the number of
23 hunters that were hunting over the bait. We would
24 recommend a \$7,500 fine in that regard. And, again, to

1 reflect his level of culpability over the two employees,
2 which were acting under his direction, the Government
3 would request a two year restriction on his hunting and
4 corresponding probation.

5 THE COURT: All right. Mr. Cheshire, do you
6 THE COURT:
7 want to say anything? Mr. Johnson, you have the right to
8 allocute. If you want to speak about the case or your
9 punishment, you are welcome to do so. I'll be glad to
10 hear from your lawyer.

11 MR. JOHNSON: Your Honor, would it be
12 MR. JOHNSON:
13 permissible to read a written statement?

14 THE COURT: Certainly.
15 THE COURT:

16 MR. JOHNSON: I have had a feeding program at
17 MR. JOHNSON:
18 Hobucken for years, and I have fed more waterfowl than I
19 could possibly hunt. I thought that the areas where the
20 corn was put out was far enough away to not be hunting
21 over bait, and I have told my employees that I want to
22 hunt legally. In fact, I had heard that the game wardens
23 had been around the area. And I thought I was legal. I'm
24 aware that there is a 300 yard state law and a 500 yard
25 county blind law, and I thought I was safe under federal
26 law.

27 I've always tried to hunt in a conservative
28 manner and to not put undue pressure on wildlife on my

1 property. I have a better understanding of hunting over
2 bait, with aid of bait and how flight patterns can be
3 affected by bait. And that's why I'm accepting
4 responsibility. I was not trying to hunt over bait,
5 because the blind I was hunting on was approximately 600
6 or more yards away from where the bait was. But I now
7 understand I was hunting over bait, with the aid of bait.

8 I have tried to be a good hunter, and I am very
9 sorry for this. I love wildlife and hunting, and this
10 experience has caused me a lot of regret and
11 embarrassment. And I'll try to be more aware and more
12 careful. And I've learned a lot, and this will never
13 happen again. Thank you.

14 THE COURT: All right. Thank you. Mr.

15 THE COURT:
Cheshire.

16 MR. CHESHIRE: Thank you very much, Your Honor.

17 MR. CHESHIRE:
I submitted this morning, Your Honor, to the Clerk, three
18 letters on behalf of Mr. Johnson. And I hope that you
19 will take the opportunity to get a chance to read those
20 letters. One is from Dewey Wells, who is a lawyer that I
21 know that Your Honor has known for some time who has
22 hunted quite frequently with Mr. Johnson and has been on
23 Mr. Johnson's properties. Another is from the Deputy
24 Director of the Audubon Society of North Carolina who has

1 spent much time on Mr. Johnson's properties, not hunting,
2 but reviewing of the properties and seeing how his
3 properties work. And the other is from Homer Robbins, who
4 used to be a North Carolina wildlife officer and is now
5 head of security on Mr. Johnson's property. And the
6 reason that we submitted those letters to the Court and
7 the reason that I want the Court to take the opportunity
8 to look at them is because what these three people in
9 their own different ways say about Mr. Johnson, and I
10 think what the Audubon Society says says it about as good
11 as they can, that his property, the 10,000 acres that he
12 has in this particular area -- and he has other hunting
13 properties -- are maintained to the absolute best possible
14 limits of conservation for waterfowl and for other types
15 of wildlife as well. In fact, what the Audubon Society
16 would say to you and says through the letter and I think
17 what Mr. Wells and Mr. Robbins also say is that because
18 Mr. Johnson limits the hunting on his property, nobody
19 hunts on the property, basically, unless they hunt with
20 him. It is very rare that there is any hunting there.
21 And that his property there is really like a wildlife
22 refuge. One of them says, and I think that it's exactly
23 right, that there is state property next door; and there
24 is more hunting that goes on in one day there than there

1 is in 365 days on Mr. Johnson's property. And so his
2 property, according to these people, is a very, very
3 valuable resource to the people of North Carolina, to the
4 hunting up and down the Pamlico River and even on the
5 eastern part of the state. He does spend hundreds of
6 thousands of dollars, literally, maintaining his
7 properties in pristine ways. One of the ways that he does
8 that is that he feeds. And over this two year period of
9 time he did purchase tremendous amounts of corn. Corn was
10 put out in lots of different places to make sure that the
11 ducks are fed. The work that he does in his impoundments
12 what he grows, the amount of corn he grows on his property
13 is pretty extraordinary. And he doesn't do that to go out
14 and let lots of people kill lots of ducks. He does that
15 to try to secure the population of ducks and work to be a
16 conservationist.

17 Now, when he first came to my office, Your
18 Honor, I deal with people all the time, 35 years. This is
19 a man who really did believe, and I believe believed and
20 was confused about exactly what the federal law on hunting
21 over bait was. This bait (we've measured it) was
22 approximately 625 yards away from where the blind was.
23 We know, and Your Honor has heard a million times, about
24 the 300 yards state argument, and the 500 yard blind

1 argument and how far is too far. And during the course of
2 the conversations with James, and I got an opportunity to
3 get the discovery, look at all of the discovery, you know,
4 we had discussions about birds flying from open water into
5 creeks and why they would fly from open water into creeks.
6 And the fact that 600 or 700 or 800 yards might not make a
7 difference because it's in aid of bait. And if they were
8 flying from one spot to another because of where the bait
9 was, then that could be -- and he came to the realization
10 of that. And I think it was a good exercise for him to
11 come to the realization of that. I wish he had come to
12 the realization of that earlier. But when he did, he was
13 accepting of his responsibility. And he feels really
14 terrible about what his friends have been through, what
15 his employees have been through. He is the one who told
16 them to bait. Baiting had been done in that area of
17 Porpoise Creek for years and years and years and years.
18 And, as the Audubon people will tell you, as Dewey Wells
19 and Mr. Robbins will tell you, they never saw James ever
20 do anything that was anything other than conservation.

21 The Government has requested for Mr. Johnson to
22 lose his hunting privileges for two years. Mr. Johnson
23 has not been perfect as a hunter. I doubt there has ever
24 been any hunters that have been perfect. He has not been

1 perfect as a hunter, Your Honor, but hunting is something
2 that he loves. And it is not just something that he loves
3 to do. It is something that he has -- and I really can't
4 emphasize this point to you enough -- that he has spent --
5 and he is a man who is able to -- but he has spent much of
6 his money on the conservation of wildlife and of
7 waterfowl. And of course if it is taken away from him, I
8 don't know what will happen to the property. Maybe he'll
9 sell it, maybe he'll just not continue having it under
10 conservation. I don't know. But I don't believe -- I've
11 seen other cases in which people have hunted over bait. I
12 know there must be times when somebody has lost their
13 hunting license for two years. I was actually going to
14 ask Your Honor to consider taking his license for less
15 than one year, because of all the demonstrated good that
16 these letters show, particularly the Audubon letter, about
17 what Mr. Johnson has done. He is a businessman and needs
18 to travel frequently. It will be, unless there is some
19 ability if he is on probation to continue to travel and
20 not be restricted, that will be onerous.

21 But I don't think -- you know, we have talked
22 about this case; and he has asked me about this case a
23 million times, the Jones Island case where they were
24 hunting over bait, and there were lots of people that were

1 members of that particular club.

2 THE COURT: Was that a case here?

THE COURT:

3 MR. CHESHIRE: Yes, sir. It was chosen --

MR. CHESHIRE:

4 THE COURT: I don't remember. What was that

THE COURT:

5 about?

6 MR. CHESHIRE: It's a hunting club, and it was a

MR. CHESHIRE:

7 hunting over bait case, and it was chosen to proceed

8 against the hunting club. And none of the members were to

9 be punished individually. No one lost their license and

10 yet Mr. Johnson, who I think it would be hard to say does

11 not keep his property conserved better than almost anyone

12 in North Carolina, should be punished with the loss of his

13 license for two years when other people that have done the

14 same thing but not put the resources, the limitation of

15 hunting and the resources into really building a beautiful

16 preserve there, not just a place to hunt.

17 THE COURT: Didn't the club get closed down for

THE COURT:

18 a period of time?

19 MR. CHESHIRE: No, sir, I don't believe it did.

MR. CHESHIRE:

20 It paid a large fine and --

21 THE COURT: Well, didn't it get closed down?

THE COURT:

22 Sure it did.

23 MS. KOCHER: It did, Your Honor. There is no

MS. KOCHER:

24 hunting on the club for a two year period.

1 THE COURT: Yeah, I closed it for two years.

2 THE COURT:
3 They just couldn't gin up a live body to take the
4 punishment, but it's dormant now.

5 MR. CHESHIRE: Well, I don't believe those
6 MR. CHESHIRE:
7 people lost their hunting privileges for two years.

8 THE COURT: Well, because we didn't have a live
9 THE COURT:
10 body. You're right. They can skip out somewhere else and
11 hunt.

12 MR. CHESHIRE: Yes, sir. But my point is,
13 MR. CHESHIRE:
14 again, to the Court, is that if you read these letters,
15 and I think you would know these people, and they are
16 substantial people who would not lie to the Court about
17 what Mr. Johnson has done to maintain his properties. The
18 passion that he has for not just hunting, the passion that
19 he has for maintaining his properties. And I believe his
20 employees would tell you that, too -- they are nodding --
21 for maintaining his properties for the purpose of wildlife
22 and fowl, as opposed to hunting, is something that ought
23 to give the Court some thoughts of mitigation in this
24 regard. Yes, was there hunting over bait here?
25 Absolutely, there was, under the law and under Mr. Baker
26 and the way he described the facts, which as I've told Mr.
27 Kocher for months we would not contest a single one of the
28 facts of the Government, and we haven't contested those

1 particular facts.

2 But, Your Honor, there are significant
3 mitigating factors here. One of them is -- at least if
4 you take it from what I say -- the genuine belief in Mr.
5 Johnson, although wrong, that at this time he wasn't
6 hunting over bait, he was. But he had a genuine belief
7 that he did not, I believe. But also his past of being a
8 conservationist and spending an enormous amount of money
9 and providing the State of North Carolina, actually, with
10 a really large preserve for wildlife and waterfowl that
11 the State of North Carolina could not afford on its own
12 should be some mitigating factor.

13 So I would ask the Court not to take his hunting
14 license for a period of two years. As I said, I was
15 actually going to ask Your Honor for a period of less than
16 one year. Certainly one year is enough for the facts of
17 this particular case. And I certainly don't think the sum
18 of things that I believe would be inconsistent with what
19 the Court has done before, but with all the mitigation Mr.
20 Johnson has, I think you could certainly fashion some kind
21 of something. Mr. Johnson would be willing to do any
22 other types of conservation efforts, as we have talked
23 about, open his property at the appropriate times to
24 juvenile hunters and handicapped hunters or things like

1 that, which would be consistent with his goal. And this
2 really is -- Your Honor sits in these cases, and you know
3 how important it is to many of these men. Which Mr.
4 Johnson, his hunting is important, but also the
5 conservation is important. And that's what sets him
6 apart, in my mind, from other people that I have seen in
7 these situations.

8 So I would just ask you to read those letters
9 and think about the mitigation and render an appropriate
10 judgment.

11 THE COURT: Well, I'll do that, and I'll commit
12 THE COURT:
13 myself -- well, whether I do that or not, you'll have to
14 decide, but I'll commit myself to that. And I recognize
15 your client's devotion and commitment to wildlife, and I
16 haven't said anything, and I have no axe to grind
17 whatsoever in the case. But in just looking at one of
18 these letters, I think one of the -- I mean, there are a
19 couple of points of distinction that you pointed out, and
20 you are correct, and I have heard my share of these. You
21 have a veteran conservationist sportsman as a client.
22 Well, you have a veteran judge as a judge who has heard
23 probably as many of these, if not more, than anybody else
24 in the Eastern District, maybe over time. I don't know.
And so I take all of that into account, and I accept most

1 everything you have said. But the problem always is to
2 me, and this is not a legal matter, and it is not going to
3 affect my sentence or judgment in the case, is that the
4 sport or the naturalist aspect of it is that the person
5 and nature come together, neither compromised, and that's
6 the thought, and that's what the law sort of expects. But
7 the problem with these baiting cases is almost invariably
8 the people want to be able to kill wildlife when they want
9 to be able to kill it. The vargarities of nature are
10 interrupted because they don't have the time, and they are
11 busy, and they set aside time to do a certain thing in a
12 certain way, and so they have to manufacture nature in
13 order to see that accomplished. It's the element of
14 control that is really the defect here. If you went back
15 a hundred years -- well, I won't go into that. I mean, if
16 you just went and stayed every day of every hunting season
17 and waited for the ducks to show up on their own, maybe
18 they would come and maybe they wouldn't, but that's the
19 sport. You can't do it with fishing, you know. You can't
20 go out and broadcast, in the ocean, bait and all of a
21 sudden here they all are. You have to sort of adapt your
22 habits and desires to the overpowering forces of nature.
23 And this interferes with that. I'm not going to do
24 anything, you know, Draconian or dramatic in the case.

1 But, you see, that's the problem.

2 MR. CHESHIRE: There is a secondary part of
3 MR. CHESHIRE:
4 that. Of course, there is also a little conflict there
5 between the people that want to attract ducks for the
6 purpose of other people not being able to kill lots of
7 ducks.

8 THE COURT: I understand exactly what you said.
9 THE COURT:
10 You could say, I'm going to feed 40,000 pounds, and I'm
11 going to film them and watch them and love them and just
12 enjoy that. Then you could say, I'm goinig to have
13 another place over here. I'm not going to feed anybody,
14 and I'm going to get a cup of coffee and go out there in
15 the blind and see if a duck comes and do everything I can
16 to attract him but just see if, you know, the wind and the
17 vegetation and the habitat and the luck of the draw and
18 all of that produce a shoot that day. And most days it
19 probably wouldn't.

20 MR. CHESHIRE: In that context, it is an
21 MR. CHESHIRE:
22 interesting fact, I was talking to both sides that Mr.
23 Johnson has never even actually hunted out there until
24 2006, so most of the attraction was the former of what
25 Your Honor says.

26 THE COURT: And he may not be someone to whom
27 THE COURT:
28 this applies, but in many instances, and you've

1 represented some of them, it's the imperative of I'm going
2 out there on a day certain, and I'm going to bring my
3 friends, and I'm going to kill a duck. And whatever I
4 need to do to have that come together, I need to do.

5 MR. CHESHIRE: I don't disagree with the Court.

6 MR. CHESHIRE:
7 The difference with Mr. Johnson is really, if you look at
8 what he has done as a conservationist, it really is fairly
9 extraordinary, so I just offer that to the Court.

10 THE COURT: All right. Thanks.

11 THE COURT:

12 MR. CHESHIRE: Thank you, sir.

13 MR. CHESHIRE:

14 THE COURT: Let's see, Mr. Sanders, you

15 THE COURT:

16 represent Mr. Brand?

17 MR. SANDERS: Yes, Your Honor.

18 MR. SANDERS:

19 THE COURT: Does he want to say anything. Mr.

20 THE COURT:

21 Brand, if you want to say anything with respect to the

22 case, you can. You don't have to if you don't want to.

23 MR. SANDERS: I don't believe either of my

24 MR. SANDERS:

clients, Mr. Ragland or Mr. Brand, want to say anything.

THE COURT: Mr. Ragland, likewise, you have the

THE COURT:

right to speak if you want. You don't have to say

anything, but if you want to, I'll be glad to hear from

you.

MR. RAGLAND: I don't. Thank you, Your Honor.

MR. RAGLAND:

THE COURT: Do you want to say anything?

THE COURT:

1 MR. SANDERS: Yes, Your Honor, briefly. Mr.
 MR. SANDERS:
2 Ragland is from Connecticut. Mr. Brand is from Supply,
3 North Carolina, down near Wilmington. Mr. Brand and Mr.
4 Johnson are lifelong friends. Mr. Ragland and Mr. Johnson
5 are friends from college. They get together and have
6 gotten together at least once a year, sometimes more, for
7 37 years in a row. I can say that Mr. Brand and Mr.
8 Ragland do not have a history of any wildlife problems.
9 Mr. Brand is a retired textile executive. Mr. Ragland is
10 a retired financialist, is the best way to put it, on Wall
11 Street and now lives in Connecticut. They both hold Mr.
12 Johnson in the highest regard. In speaking with them as
13 to his stewardship of that property, you would never hear
14 either of my clients say anything about James Johnson and
15 the way he keeps that property.

16 They, unfortunately, came into a situation that
17 was a bad situation. They had been invited down. They
18 came up from Wilmington and flew down from Connecticut,
19 went hunting and ran into Mr. Baker. They understand the
20 law about actually retaining the ducks that had been shot,
21 and they take responsibility for that.

22 THE COURT: Thank you.

 THE COURT:

23 Mr. Sermons, you represent Mr. Godwin. Does Mr.
24 Godwin want to say anything about his punishment or the

1 case?

2 MR. SERMONS: No, Your Honor.

MR. SERMONS:

3 THE COURT: And you represent Mr. Rhoden. Does

THE COURT:

4 he want to say anything?

5 MR. SERMONS: No, Your Honor.

MR. SERMONS:

6 THE COURT: Do you want to say anything?

THE COURT:

7 MR. SERMONS: I would like to be heard, Your

MR. SERMONS:

8 Honor.

9 THE COURT: All right.

THE COURT:

10 MR. SERMONS: Thank you. Judge Boyle, it is a

MR. SERMONS:

11 pleasure to be in your court. I know I'm not a very

12 regular attender here. But my clients, of course, are

13 employees of Mr. Johnson. They are lifelong residents of

14 Pamlico County. Mr. Rainbow, who is here, is the father-

15 in-law of Troy and Ray is married to Nancy, who is here in

16 the front row, and his daughter is Christina, who is

17 married to Troy. And together they work as caretakers for

18 the corporation down in Pamlico County.

19 This is a case, Your Honor that my clients were

20 acting in direction of their boss or the corporation. But

21 moreover, they were acting in a tradition that had been

22 taught to them by the two prior caretakers. And Mr.

23 Baker, I believe, has talked to those individuals,

24 Mitchell Ray Midgett and Bert Robertson. And the facts

1 would show that this feeding program had been going on in
2 two places, Middle Bay, which is in front of the lodge.
3 And there is no evidence that there has ever been any
4 hunting, and your analogy about watching them and
5 photographing them and everything, I think would be
6 applicable for that area in front of the lodge.

7 And then the Porpoise Creek, where this case arises, for a
8 number of years, and I believe Mr. Baker indicated to me
9 that he had known there was corn there, but he just never
10 knew that they hunted. And, in fact, they didn't start
11 hunting out on the point until 2006. The two individuals
12 clearly were not trying to hide anything. They did their
13 job during the middle of the day. They carried their corn
14 in the trucks and they carried the -- they were aware of
15 that corn being in the bottom of the green Maycraft.

16 Your Honor, I have given you a letter from the
17 Sheriff of Pamlico County attesting to their status there
18 with him. He known them all their life, and they are good
19 people. I would ask you to consider that. And Judge, the
20 two individuals, of course, are employees of the
21 corporation that owns the land and would like to continue
22 to have a job, if possible. And I understand the
23 Government's recommendation about the loss of license, and
24 I won't argue with that, Judge, and if it turns out that

1 what they were doing was against the federal law, they
2 understand there has to be a punishment for it. They
3 would, however, ask the Court, if it possibly could, to
4 allow in this judgment for them to continue as caretakers
5 in some role. And I have talked to Mr. Baker about this.
6 I know he has some concerns about them being in possession
7 of a gun and retrieving ducks in their role as caretaker
8 of the property. I would ask the Court to consider those
9 two things when you structure your judgment. I would also
10 point out that \$500 to these men is a tremendous amount of
11 money. Thank you, Your Honor.

12 THE COURT: Thank you. Well, I think it has
13 THE COURT:
14 become established that relying on a linear distance is a
15 false reliance in these waterfowl cases. It's the
16 influence and effect on the birds that controls, and the
17 introduction of bait or feed raises the consciousness, and
18 hunting should be done with great care if that is going to
19 be the case.

20 All right, I'll do the following. With regard
21 to Mr. Johnson, I'll impose probation for a year, a \$7,500
22 fine and have a one year prohibition on his right to hunt.

23 To Mr. Brand, a \$1,000 fine. To Mr. Ragland a
24 \$1,000 fine.

To Mr. Godwin and Mr. Rhoden, probation for one

1 year, \$500 fine and no hunting for that year. I don't
2 make any comment about their work and their continued
3 ability to do work. As long as it is lawful, I am not
4 going to prohibit that. And everybody pays special
5 assessments, as ordered.

6 MS. KOCHER: Judge, if I could, we are going to
7 MS. KOCHER:
8 move to amend so that the judgment correctly reflects Mr.
9 Brand's name.

10 THE COURT: Yes. All right, thank you, counsel.

11 THE COURT:

12 MR. CHESHIRE: Thank you, Your Honor.

13 MR. CHESHIRE:

14 THE COURT: We'll take a brief recess.

15 THE COURT:
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STATE OF NORTH CAROLINA)
) C-E-R-T-I-F-I-C-A-T-I-O-N
COUNTY OF PERQUIMANS)

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Sandra A. Graham, CVR
Court Reporter & Notary Public
Notary Public Number: 19940140086

April 19, 2008