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and there needs to be more communication amongst curators about what to do with returns from molecular projects like this. We require, minimally, an electronic copy of any sequence data taken or derived from a specimen and hopefully the people that go to the trouble to do this are going to submit the information with a sequence data base where it will have a proper accession number and hopefully they will have included the specimen registration number in the record (in the sequence data bases there are facilities for that). Museums should get back copies of experimental protocols where they differ from already published protocols so that other people, if they are successful, can use them as well.

We are all trying to justify our existence to funding bodies. It is important that, where appropriate, museum staff are authors on publications or at bare minimum the use of the collections are acknowledged. Collections have to justify their existence in the eyes of funding bodies. Sampling for some of these molecular projects adds value to the collection. You should get back reprints, status reports on projects using material from the museum collection, keep track on people like Alan who sits on material for years without doing anything with it.

A prosecution case study.

Steve Downing, West Yorkshire Police

Bob Philpott who was originally going to present this talk is committed on an operational matter so you've got me instead. Bob was going to talk to you about Operation Avocet. It was a Wiltshire case; it started in Wiltshire and spread throughout the country. I'll give you a brief insight into that and then talk about my own case.

Before I look at the case history we need to discuss the legislation to see why I did and why Bob did what we did, then what we did and what impact this will have on your selves. The legislation covering the collection of wild birds is not new. Whilst Henry VIII was busy collecting wives he was also busy preventing museums and egg collectors collecting eggs. He had an act of parliament that said no person shall from the first day of March to the last day of June take or destroy any egg of wildfowl from the nest upon pain of punishment of one year and to forfeit for every egg of crane or bustard twenty pence, every egg of heron, bittern or spoonbill eight pence and every egg of other wildfowl one pence. A long time ago those penalties were quite severe. I'm sure old Henry there was more concerned about protecting his menu than the birds but nonetheless I have to applaud his sentencing policy. From 1880 there was a succession of acts of parliament protecting wild birds and their eggs. In

1894 under the Wild Birds Protection Act the Secretary of State was enabled or empowered to prohibit on application by county councils the taking or destroying of eggs in any year or years in any place or places within that county. There was a second part which also allowed him to prohibit the taking or destroying of any kind of specified wild bird in that same county.

The next major milestone for the protection of birds was 1954. The Protection of Birds Act 1954 prohibited the taking, and only the taking, of eggs, not possession. Effectively that meant that you had to be caught in the first minute. Where does taking start and taking stop? Is it immediately after you've taken it? Is it the point where you give the egg to a person who didn't take it? Is that a joint taking? Is it when you're walking down the lane? It's definitely when you get home. But it is a grey area. There is a bit in between that is very difficult to sort out so effectively we didn't use it very much; it wasn't an effective piece of legislation. However, as far as you are concerned and as far as we are concerned i.e. the enforcement agencies, we will use that Act of Parliament to dispose of eggs.

By the time the Wildlife and Countryside Act came in (it is dated 1981 but it actually came into force in September 1982) Parliament clearly decided enough was enough as far as bird egg collections were concerned. For the first time we got rid of the problem with the original act and we had a definition of wild birds. No longer were we interested in County orders. No longer were we going to be specific to individual species in one area and change it next door (very difficult near county boundaries for example). This time it is any bird of a kind, which is ordinarily resident in, or a visitor to Great Britain in a wild state. I will apologise to the Scots contingent, I speak in English law, but I am fairly confident that that section is the same in the Act in Scotland.

Game birds are excluded but from the egg point of view they are given partial protection in Section 24 of the Game Act of 1831. Again, that was not so much to do with the preservation of the bird rather so that someone with authority could shoot them. That piece of legislation, which applies to game bird eggs, is only applicable to England and Wales, it doesn't apply in Scotland.

Now we know what a wild bird is if we have a look at the offences. The Wildlife and Countryside Act again, 1981. Section 1.1.3 'It is an offence to take or destroy the egg of a wild bird'. This is the piece of legislation that we use to seize egg collections. This is the only one that carries the power of seizure. This is an all-encompassing Act; it is the one we use for virtually everything and Section 1 deals almost entirely with birds. For the first time, Section 1.2, it is an offence to

possess. We have got rid of the problem of possession that we encountered in the Protection of the Wild Birds Act, 1954. It is also an offence to control, and with a large egg collection, you often find that they may be possessed by one person while being controlled by another. Some of the big collectors certainly house them away in safe houses, taking elaborate precautions to protect their egg collections.

Both Bob's case and mine were very, very complicated. We both found eggs. It would have been very nice to have found climbing equipment, binoculars, maps, model makers kits, model drills, egg blowing kits, embryo solvent – good evidence to show we had a taking – taking is obviously easier to prove. What we did find were data-cards. In my case we had a full set of data cards and these were pivotal, in fact the only evidence we had really of what had actually gone off.

In Bob Philpott's case, the Wiltshire case, the police were given some information that the Jourdain Society was holding its AGM at the Red Lion in Salisbury in July 1994. The information said that on display were eggs, nests and photographs so the police visited and sure enough the Jourdain Society were in fact having their AGM. On a large table there were items being displayed which included photographs of one particular nest site and what appeared to be the nest and eggs from that particular nest site. Those photographs were taken in 1994 also and were from Turkey. There were slides, photographic albums and a large number of eggs. Some of those items were identified there and then and given to an owner - ownership was claimed. Other owners just walked away from them and the ownership was never established. There was some quite rare stuff, golden eagles, red-throated divers, an endless amount of rare species that had been photographed and those photographs were on display. At that time it was impossible to say what was lawful and what was unlawful in this collection and so it was all seized. Bob and his team then started to amass intelligence about the people who had been at the conference and in September 1994 nine houses were raided across seven police forces and a total of 13,000 eggs were seized. Subsequently six of those people were successfully prosecuted for the illegal possession of 11,000 eggs and the disturbance of some of the rare birds with fines from £5,000 down to a conditional discharge. That was the first part of the case, the criminal side was over. Bob had a large amount of unused material, unused eggs for which there would never be a prosecution case. He was stuck with that – what does he do with it? In my case, the West Yorkshire case, in October 1995 we received a request from Hampshire to interview a man who had been found disturbing Dartford warbler. The officer that did the raid knew my defendant from old. We knew lots about this man so it was decided to

visit him with a warrant. In his attic, his loft area, there were five cabinets, some 3,000 eggs (600 clutches) and fortunately a full set of data-cards detailing everything. The cards and the collection were seized and the eggs were rationalised into four cabinets rather than the five just to make it easier to get them out of this loft space as we were quite concerned that they would be damaged. Being sued is not a good idea even though it happens quite regularly.

The data cards showed that these eggs were all collected by a Dr George Franklin. Dr Franklin was ninety years old and very ill having suffered a fractured skull. He was too ill to interview and, in fact, was never interviewed. He was never prosecuted and sadly he has since died. There was some confusion whether or not he had given this collection to the Jourdain Society or whether it was with the defendant or whether he was cataloguing it. There was a little bit of confusion in there, where the Jourdain Society backed off at one point. They have since denied all knowledge of this collection. We had the data cards but we had no other evidence to show that it had been taken so we were looking at possession offences.

The best defences are twofold. One, shift the collection outside the UK [i.e. falsify the data] so that the Wildlife and Countryside Act doesn't apply. Two, make sure that the data says that the eggs were collected pre-Act, Wildlife, again the Countryside Act doesn't apply. Obviously data that can prove or show that that occurred is good evidence, and perhaps I ought to mention that the onus is on the defendant to show that these things were done lawfully, not the police (most of the wildlife crime legislation dumps the onus back down to the defendant to prove that things were lawful rather than for us to prove that they were unlawful which is the normal way we go about things). Nonetheless we still have to get a reasonable level of proof rather than just say he did. So those were the two best defences and the data cards went along to prove that. [OHP of three schematic data cards] Card *a*, *b* and *c*. When we started to analyse these cards (600) we found that type *a* was used by Franklin, we think, between 1921 and 1967. The type *b* card was used from 1967 (slight overlap) onwards; his last egg was collected in 1983, post-act. The type *c* card with fancy little printing marks there were found scattered all the way through the collection. Wherever we had a problem with the eggs we found a type *c* card. There were other things; for instance, the type *c* cards were used when Franklin was in two different countries on the same day. Clearly it was all wrong. The *c* cards were printed after the date the eggs were collected. The *a* cards were all typed, 130 of them, so were the *b* cards, the *c* cards all hand written. Why were they hand-written? It wasn't his practice, he kept meticulous records. On the original card there was a little box for sex. When Franklin did it he put hen. On

the *c* cards it was a scientific symbol. On the *c* cards all of the scientific names were wrong. There was something obviously wrong with the *c* card collection. We managed to persuade the magistrates that the *c* cards were, in fact, being used to launder fresh eggs. Re-writing cards is fine provided you keep the old data. Some of the cards were a bit tatty but provided the old data was there you can rewrite it, you can put it on computer disc, you can do what you like, provided, when asked, you can produce the original data for the *c* cards.

During the eleven-day trial the defendant produced a field data book and, unfortunately for him, it didn't all go in his favour. He produced the field book and some of the data in the field book and some of the data which had been written by hand, by Franklin, didn't go along with the cards. He just simply tried to explain it as a mistake but here is a person who is meticulous. Also a lot of the *c* card entries in the book had just simply been cut out. He also, on his data cards, had a single egg of a black vulture collected in 1919 and the field data book said it was collected in 1959. The same with a red-footed falcon collected in Hungary in 1929 – on a *c* card it was in fact collected in the early 1950s. We also found, when we were looking at the consecutive numbering of set marks, it might go a, b, c in order on an *a* card but d would be on a *c* card, handwritten and completely wrong. It looked to us, and we managed to persuade the magistrates that these cards were being used to fill gaps where the eggs had been destroyed, damaged or beyond keeping or if the collections had been split. It was also nice to find a new batch of *c* cards and there were spaces in the cabinets so again we were able to show on the balance of probability that he was going to be feeding yet more eggs into this system. It was extremely complicated but we got there in the end of the 3,000 eggs a lot of them were collected from the 1920s right through until 1983 and remember the defences – ship them out of the country, put them on data before the Act. They were his defences. The eggs were taken as part of the enquiry into offences under the Wildlife and Countryside Act. There are no other powers, no other offences. However, with the evidence on the data-cards to show that some of the eggs were in fact certainly not collected outside the country, and were not collected on the days they were purported to be collected on, and evidence from the data cards show that a vast number of them were collected post 1954 when the taking was unlawful, the bulk of the remainder were taken in contravention of the Protection of Wild Birds Act, 1894. So I'm stuck with a collection which was obtained unlawfully. I didn't go to get it because it was obtained unlawfully. Nor did Bob. But once it is in our possession then we have a problem and this is where I hope we can reassure you that we will not be coming after your collections. They are in our possession - what do we do with them?

Fortunately we have come across this problem before and there is a Police Property Act, 1897. This gives us guidance. The police cannot, obviously, once we are in possession of something that has been obtained unlawfully, just give it back. 'Where property has come into the possession of the police in connection with their investigation of a suspected offence then a court of summary jurisdiction' (a magistrates court) 'on application by a police officer' (and in fact we very rarely take these proceedings, we just sit back and wait to be sued) 'or the claimant of the property may make an order for the delivery of the property to the person appearing to the court to be the owner'. So we sit back and let the egg collector sue us and say 'give me my eggs back'. The second part is perhaps as important in egg collecting cases, 'if the owner cannot be ascertained then the court can make an order in respect of that property'. You can argue that egg collections obtained unlawfully at the time they were obtained were the property of the Crown. To you and I, they were wild, no one had ownership, and no one had rights to take those wild eggs. So effectively, unless you want to say the Crown owns the eggs in which case we use the top section or we say we all own them i.e. nobody owns them, there is no owner, then we use the bottom section. And these are the two bits under the Police Property Act that we use to let the courts decide, not the police, not the Crown Prosecution Service and in fact in these complex cases we would miss out the magistrates section right away because we would go to county court. There is a right of appeal. Bob has already passed this first hurdle and he has got the magistrates to agree that our version is the right version, there are other precedents but their defendants are appealing. And I understand, and I don't know whether anybody has actually ever had one of these letters, that some of them have been writing to museums saying it is us today it's you tomorrow (if they get through this 1954 barrier).

In Bob's case he decided to stop at 1954 but I decided that that would leave the loop hole still available because all he would then do is push the data to prior to 1954 or use the external collection as the loop hole to retain these unlawful collections. So in my case I am looking at anything after 1894 and anything outside the UK. I have written to 13 embassies saying quite simply, this egg was collected in your country on this date, was it unlawful? If it was, then they are your eggs and we will be prepared to pursue that ownership claim on your behalf. So I've extended it a little bit and I think that will seal off all of the loopholes.

As you can see, your collections are safe. We have no powers to seize them. We would have no need to seize them – we're giving our eggs to Liverpool Museum.