

## **A Federal Scam**

A GUEST COMMENTARY BY TOM MCGILL

I want to let you in on a scam – to learn about a ploy so you can beware in case something similar happens to you. This is not a minor scam, but one that is perpetrated in our U.S. Court system against its citizens on a regular basis.

Ted had his family and friends out for a cruise on the water, with lunch planned at a waterside café. He was traveling in a manatee slow speed zone, and he had his vessel moving at about 5 mph. As he moved into the Barge Canal, he added a little throttle to make a left turn, and it was then that he noticed a blue flashing light on a boat approaching him. It was a US Fish and Wildlife Service (USFWS) agent who charged that he was speeding in a manatee zone and was going up on plane. The agent went on to explain that he could be subject to a \$25,000 fine, 6 months in jail, and a 5-years probation.

The law or rule in a manatee slow speed zone reads a little different than the Slow Speed-Minimum Wake signs. The rule says that the vessel must be completely settled in the water, neither going up on a plane nor coming down off a plane, and must not put out an excessive wake that could be a hazard to another vessel under the circumstances. Ted didn't argue, but he didn't feel he did anything to earn a warning, much less a ticket. The officer admonished Ted that, "I've been sent down here to give out tickets, and that's what I'm going to do."

Later, Ted received a copy of a violation notice and was given the option of sending in \$100 or to go to court. Ted decided that since he hadn't done anything wrong, he'd fight the ticket. Federal violations are a little different from state and local ones in that such violations must be challenged in Federal Court in Orlando about 40 miles from Ted's home. Later, Ted received a letter advising him that if convicted, he could be subject to a fine up to \$25,000, 6 months in jail, and 5-years probation. The charge was classified as a misdemeanor, but the maximum penalty seemed pretty steep, and the letter like the previous notices was very intimidating.

Ted received a notice to appear at the Orlando Federal Court on January 30, 2001 at 9:00 am. He had decided to bring one of his passengers as a witness to verify his speed and an expert witness who is familiar with the waterways in question, who knows the rules of the road, and who is familiar with his type of vessel. All of this Ted believed was sufficient to prove and win his case. Ted was aware that a video had been taken of his alleged violation, and he was anxious to look at it believing it by itself would exonerate him. So, he requested a copy of the video before he went to court only to be told that he could not have a copy, that he must view it when he comes to court.

Prepared for his day in court, Ted went to court with his witnesses only to find out that there were only preliminary proceedings. After the Judge spent 5 minutes advising all the they were subject to a fine of up to \$25,000 fine, 6 months in jail, and a 5-years probation, she told the approximate 20 people that they should talk to the US Attorney to see if they "could work things out." The Judge then left the Court with the admonition that she would return and advise those who couldn't work out an arrangement with the US Attorney of their rights and the process.

The Judge returned about 12:15 pm after all 20 or so people had each talked to the US Attorney, one by one in alphabetical order. During all this time there were 4 USFWS agents sitting at the table immediately behind the US Attorney. One of the things she remarked on when she returned was that she had been told there were only 6 USFWS agents in all of Florida and they were spread very thin. I couldn't help

thinking that 4 of those 6 had been sitting at the table behind the US Attorney all morning doing nothing except chatting with each other.

The Judge then said she would speak to the group of 5 or so people who had been charged with manatee zone violations, and she cited the rule of law to them and told them of the discovery process, saying that the agents would provide a copy of the video and a copy of his report, etc. She then told them to see the clerk for a trial date. At about 1:30 pm (no lunch break) all who had come for their day in court left. Most people had lost a full days work for an activity that could have been handled easily and more considerately by mail.

Ted was anxious to see the video because he had taken his family and friends out in his pontoon boat, which he was sure it was completely settled in the water and not putting out an excessive wake. So, you can understand Ted's chagrin when he was advised by the US Attorney, that contrary to what he was told earlier, there was no video of the incident because the camera had malfunctioned. (Do you suppose the US Attorney had looked at the video and didn't like what he saw?)

Ted later received another letter, which contained a motion requesting the Judge to formally advise Ted of the maximum fine and jail and probations provisions that could be levied if Ted were found guilty. By now Ted was familiar with the phrase, up to \$25,000 fine, 6 months in jail, and a 5-years probation. Ted objected to the motion citing it was redundant.

Ted's trial was set for April 11, 2001 and on April 7th he received a letter from the Judge's office containing a citing that on her own motion the Judge was making the US Attorney and Ted aware of the fact that under Federal Rule of Criminal Procedure 58(b)(1), that only petty offenses can proceed based only on a violation and then only if the maximum fine is no more than \$5,000. Since the maximum fine as had been mentioned several times was up to \$25,000 fine, 6 months in jail, and a 5-years probation, the Judge admonished the US Attorney to either move to dismiss the violation or to file amending papers with the Court justifying why the Court should proceed without a complaint or arraignment in place of the violation notice.

She gave the US Attorney until April 9, 2001 to make an amended filing. On the afternoon before the scheduled trial, Ted called the Judge's office to inquire of the status only to be told that while an amended filing had been received that morning (10th), the case had been dismissed.

This whole story reeks of intimidation and collusion between the Federal Prosecutor and the Magistrate. Ted was advised more than 6 times of the \$25,000 fine, 6 months in jail, and a 5-years probation. He was misled thinking he was going to court only to find out it was an opportunity for the US Attorney to put the pressure on. The subsequent letters and motion were to further intimidate him, and the Judge's order on her own motion 4 days before the trial to advise all that a violation notice can not be used as the charging document in cases where the fine exceeds \$5,000 is a contrived situation. I think it's reasonable to assume that since she's been in her job for sometime this can't be the first instance where the charging document was a violation notice. How many other times have they pulled that same charade?

Ted won out, if you can call it that, because he was willing to spend the time to confront the system, because he knew he was right. Most people can't afford to take multiple days off work to fight a ticket themselves, and hiring an attorney to beat a \$100 fine doesn't compute, and the system knows and relies on those facts.

All I can say is this system stinks and is nothing more than a scam to deprive people of their right to

justice by making it too costly and cumbersome for them to pursue. The fact is if you didn't break the law, don't put up with the injustice of the system, fight them. If enough people did, the system might get adjusted more towards justice and be less of a scam.

**EDITOR'S NOTE:** *Captain Tom McGill is an active member of Citizens for Florida's Waterways (CFW) and a respected supporter of our cause vis-à-vis the federal and state abuses. He is a retired engineer and past president of CFW. I was so taken with his fine article that FMCA received his approval to reprint it in this Newsletter.*