

Thank you for inviting me here to tell my story.

My name is Joyce Kinder. My husband and I have been convicted of a federal crime because we followed commercial fishing guidelines as we understood them. We didn't hurt anybody, steal from anybody, or damage anybody's property. We didn't deliberately violate any law. But, in 2011 my husband Steve and I were sentenced by a federal judge to three years of probation, fined \$5,000 dollars, and had our boat and work truck taken from us. We ended up on the wrong side of the law because we unknowingly fished on the wrong side of the Ohio River. Because we did something that we had no reason to think was illegal, our lives were ruined. I'm here to tell our story because I don't want anyone else to fall victim to a weapon called the Lacey Act; an Act that has become the weapon of choice by wildlife agents. I'm here because I want overcriminalization caused by this Lacey Act and similar acts to stop.

My husband and I live and work in Owenton, Kentucky, where we own Kinder Caviar and Black Star Caviar Company. We collect paddlefish eggs, harvest them into caviar, and export them to customers in other countries. To catch the paddlefish, we use gill nets. Ever since we started our business, we've fished in the Ohio River. We connected one side of our nets to land in Kentucky and the other to branches out in the water on the Ohio side of the river.

We don't come from a wealthy family, but we did learn to work hard and we loved this work. We had big plans to grow the caviar business. We were the first established caviar company in Kentucky. We were the first to take caviar made in Kentucky into international markets around the world. Although small, we had in fact built an industry. We provided for our family, created jobs, and brought new business to Kentucky. We are proud of our business and what we have achieved as a family. We were so proud to have earned the confidence and the

trust of our government, which allowed us to engage in international trade and all that it entails. We never took chances that we knew would jeopardize our business, credibility or the reputation that we worked so hard to earn. This was our American Dream!

We were very careful about whom we hired. The fishermen that fished for us weren't strangers. Most of them belonged to the same family. They included an active sheriff with 30 years of service, a police officer, a construction worker, a Kentucky disabled fish & wildlife officer, and a congressman's aid's son-in-law.

We've never tried to hide anything that we've done from anyone. The state of Kentucky has recognized our success and applauded it. In 2008, I was appointed to the state's Aquaculture Task Force, where I represented wholesalers of aquaculture products. I testified before my state legislature about laws that harshly punished commercial fishermen for accidentally breaching water boundaries. I testified that the boundaries were inaccurate because of GPS positioning lying somewhere on the bottom of the Ohio river. There were three (3) established boundary lines out in that river. Not even the law enforcement of either state, Kentucky or Ohio, knew where either line was positioned, nor did they know which was the true line.

That same year, our company was featured on the Kentucky Department of Agriculture's website. Here's what the Department of Agriculture said about our business:

“Caspian Sea style caviar made right here in the Bluegrass! American caviar now comparable to the caviars of the Caspian Sea!

[A]s the catch and quotas of Caspian Sea caviar continue to decline, prices will steadily increase. Kinder Caviar is fast becoming the choice for the caviar savvy consumer...”

We've always done our best to obey the state laws. In *Ohio v. Kentucky* (1980), the Supreme Court stated that Ohio River is "not the usual river boundary between states" because the "northerly edge" of the river, rather than the river itself, forms the border between Ohio and Kentucky. The Court also found that, historically, the Ohio River has been controlled by Kentucky.

We were fully licensed and permitted to commercial fish in Kentucky waters, therefore, as long as we stayed in the water, we were in Kentucky, or so we thought. In September of 2012, three months after the conviction, we applied for and received harvesting permits that cost \$500, which was specifically designed for harvesting paddlefish and sturgeon and was effective for the entire fishing season, which was through May of 2013. Four months after this condition, Kentucky Fish and Wildlife made a law that said that if any fisherman was convicted of a Lacey Act violation, he could not even work as a helper to any commercial fisherman in any manner. According to the Kentucky legislative research commission compiler, this law would not be effective until January of 2013. However, the fact remained that it was imposed upon us in December of 2012. Six months after this conviction, Kentucky Fish & Wildlife revoked all of our licenses and permits that allowed us to engage in the commercial fishing industry in any capacity. These bullying tactics continue today.

We've always reported every one of our catches to the Kentucky Fish and Wildlife Department, as usual, with the added instruction from the Department of the Interior to list the boat ramp we used as well as the body of water where we fished. No other fisherman was requested to do this. We knew that paddlefish are a threatened and protected species worldwide, not just under Ohio law. We also knew that Ohio law prohibits commercial fishing for paddlefish, as well as the possession or use of gill nets. We interpreted this to mean inland bodies

of water. We worked the same locations and the same water holes in the Ohio River for seven years, almost every day of the season, in the light of the day, before being charged with fishing in Ohio's portion of the river. We never deliberately fished in Ohio's waters.

We've also always done our best to obey federal law. We knew that the Lacey Act makes it a felony to export plants or animals in violation of another state's laws. We took the Lacey Act seriously. That's part of the reason we hired two law enforcement officers and an ex-fish and game officer to help catch the fish we needed for export.

We thought we knew the law, and we thought we were obeying the law. But we didn't know that, according to the GPS coordinates setting the boundary between Ohio and Kentucky sides of the Ohio River, we were actually fishing in Ohio waters as well as Kentucky waters. How could we? This GPS boundary line was not established or made known to have been established to law enforcement officers of either state, Kentucky or Ohio, or to Kentucky commercial fishermen, until late in the year 2008, one and a half years after the incident. The regulation setting the GPS boundary line didn't even come into effect until late in the year 2008. Yet, that fact wound up making us into criminals, even though we always wanted to, and we always tried to, and we always thought we did comply with the law.

On May 5, 2007, my husband was tending our nets when he was confronted by federal agents from the United States Fish and Wildlife Service. The agents told my husband they "had to hold" him for a compliance check and questioned him for hours. He told the agents what he was doing. He explained that, as far as he knew, he was fishing in Kentucky waters, but "they had a job to do." He knew then that he was a target. The agents informed him that he was actually fishing in Ohio because his nets extended past the Ohio/Kentucky boundary. The agents

told him that what he was doing was a federal crime—that even removing two fish (blue cat fish) from nets in Ohio’s portion of the river and throwing them back into Kentucky’s portion of the river was a Lacey Act violation. And so, on March 14, 2011, my husband and I were charged in federal court in a four-count indictment with illegally harvesting paddlefish from Ohio waters and falsely reporting to the Kentucky Department of Fish and Wildlife Resources that we caught the fish in Kentucky’s water.

How were we supposed to know where the boundaries were? The GPS coordinates have changed over the years. No one ever sent us updates. The boundary is not marked in any fashion, even today there are not any boundary signs or indicators. No state or federal official ever told us to move our nets, or said we were anywhere near any boundary line, not even during seasonal boat inspections by Ohio game wardens, Kentucky game wardens or the coast guard. Everyone knew about our business. All it would have taken was a simple warning. We’d have stopped what we were doing immediately. There are state laws in place for these types of incidents that are purposed for decency between two states. But instead, the Lacey Act was the weapon of choice for the agents and officers involved. What we experienced at the hands of those officers was 5 years of pure abuse, bullying, harassment, and intimidation tactics, to the extent of destroying a large international caviar contract in 2007. The Lacey Act made this possible.

We weren’t the only ones confused about the boundary line. On August 8, 2008, Chief David Graham of the Ohio Department of Natural Resources’ Division of Wildlife wrote a letter to Deputy Commissioner Benjy Kinman of the Kentucky Department of Fish and Wildlife. Chief Graham recommended that both states take measures to help “clarify issues concerning Kentucky commercial fishers in the Ohio River experiencing problems or confusion with Ohio laws” and expressed hope that those measures would “aid in clarifying the boundary issue

between the two states.” He acknowledged that “there is some error associated with [the] downloadable track line” used to indicate the boundaries between the two states and emphasized the need to “use the same state boundary information,” as well as make the same “GPS coordinates... available to commercial fishers as well as officers of both states.” In 2010, our fellow fisherman, with 30 years of service and still an active sheriff, John Dunn, testified before a grand jury that he wasn’t sure where the boundary was. He also told the grand jury that the GPS coordinates had recently caused confusion for police when they were trying to figure out which department had jurisdiction over a drowning incident near a boundary.

We felt then, and we still feel now, that we did nothing wrong. But, on January 17, 2012, we made the painful and humiliating decision to plead guilty because we didn’t think we had a choice. We were facing a maximum penalty of up to five years in prison, a \$250,000 fine, or both, on each of four counts. Our companies could have been fined up to \$500,000 per count. We couldn’t suffer the emotional and financial trauma of a trial, and we didn’t want to risk losing our freedom as well as our property. We have three grandchildren and are very involved in their lives. Going to prison was not an option, but a threat. Being a felon was not an option, but a threat. We were concerned that we wouldn’t get a fair trial before an Ohio jury, given that Ohio and Kentucky have been fighting over the water rights in the Ohio River for 200 years. Also, we were told that even if we happened to win at the federal court level, we would have had to go into the court for crimes against animals. We were told that there was no way for us to win. So, our companies each pleaded guilty to one felony labeling violation. This means that we reported (labeled) our catch as being in Kentucky water when Ohio says it was actually from their portion of the water. This is considered false labeling of where the fish came from. My husband and I each pleaded guilty to one count that we “should have known” that we were

fishing in Ohio's portion of the river, a misdemeanor trafficking violation. This means that we took the fish out of Ohio's portion of the river and brought them into Kentucky's portion of the river (thus, trafficking). Many business owners in our position have made similar decisions when threatened with prison time.

Today, we're in poverty. During our probation, we've been prohibited from fishing anywhere in the Ohio River where that river forms the border between Ohio and Kentucky, as well as prohibited from applying for or receiving an export permit. We told our fishermen to go, we could no longer pay them. Our customers left us – guilt by association, a couple of them used the situation to not pay an existing huge invoice. I am not physically able to work anymore. My husband can't even get back in a commercial fishing boat. Our entire way of life has been destroyed. They have us in a hole and they won't let us out. We have completed one year and four months of probation and fulfilled every condition. We have filed a motion for early release from probation, but the prosecutor denied our request on grounds that we have not been punished enough, and it was upheld. Every means of working has been stripped from us. The Food Safety Branch of the Kentucky Department of Public Health refused to renew our permit to operate a business based on a phone call from "somebody up north" and a letter that Kentucky Fish & Wildlife sent directly to the Kentucky DPH. And, based on that letter from Kentucky Fish & Wildlife, the Kentucky DPH told us that they (DPH) would not allow us to process any roe bearing fish, including paddlefish, and that they would be monitoring our facility to ensure that we were not processing paddlefish. We had to close the facility because paddlefish is the only business we do. The main purpose of Kentucky DPH is to make sure that companies are permitted in order to operate a business. Now, they are claiming the authority to monitor my business in order to ensure that I am not producing caviar. By the time the Kentucky DPH

realized they did not have authority to deny us a permit to operate a business, it was too late to start up. We don't have a way of working, not even to make ends meet. The power that the Lacey Acts gives government agents to use at their discretion against the people of the United States is unconstitutional at best. No matter what we do to start working again, we can't fish for ourselves, we can't afford to pay fishermen to fish for us now, buyers will only buy at cut-throat rates – all of which will not sustain life. Enduring this every day for five years, one finally succumbs. Stop. We never wanted to fight them, and we can't win. They took every means away for us to work, I don't want to live like this anymore. Life has become so painfully worthless. The Lacey Act has enabled the government agents to steal and destroy our lives.

Our conviction has devastated us psychologically as well. You can't imagine what it's like for me to know that, in the eyes of the law, my government, my country, I am a criminal. We feel ashamed for what our family has had to endure, humiliated, demeaned in every way, utterly helpless. We don't feel as if the law protects us anymore – we have been victimized by it. All that we have endured at their hands because we established a caviar/commercial fishing business.

One of the conditions of our probation was that we complete 100 hours of community service. The only thing that got me through those 100 hours was the possibility that I could one day tell my story and draw attention to the devastation and destruction caused by Overcriminalization. There are far too many laws out there like the Lacey Act, that agents use as tools to punish people for doing things that aren't morally wrong and which ordinary people have no reason to think would be illegal. Innocent mistakes shouldn't get you threatened with prison time and drive you into poverty levels beyond anyone's imagination, as well as disgrace. Criminal law shouldn't be used to punish people who are morally blameless. Police, agents and

prosecutors should spend their time and the taxpayer's money going after people who have done things that we all know and recognize are wrong. *We have been told that the government spent "upwards of five million dollars" prosecuting our case.*

In spite of all that my husband and I have endured, we don't hate the government. I've always hoped to go into public service, and I still have hope that I'll be able to do so in the future. We still think this is the best country in the world, with the best government in the world. But we also want decent, honest people to be able to live, work and prosper here in the United States of America, peacefully without fear of unknowingly breaking a criminal law and ending up in prison. We are living proof that it's becoming impossible to do that anymore. We didn't ask to be martyrs, but we're here in the hopes that a lot of good will come of our pain and suffering. If this can happen to us, it can happen to anyone. We have, sadly, come to know that it happens more often than most people think. I beg you: help make it stop.

Thank you for your time. I will be happy to answer any questions you may have.