

*U.S. v. Fountain.* (2001).

Background:

Roosevelt Fountain, Sr., and his daughter Shirley Fountain Ellison, operated an oyster fishing business in Cameron Parish, Louisiana. In an effort to “maximize the quantity of oysters sold” by their company, they took part in various illegalities throughout the 1990s that resulted in convictions based on conspiracy and Lacey Act counts. These included:

- Providing fishermen with illegally licensed vessels
- Consulting with fishermen about harvesting excess oysters
- Foreseeable creation and submission of false records
- Interstate commerce of illegally harvested oysters
- Tagging violations, taking of oyster from closed areas, taking excessive quantities of oysters, and licensing violations.

In August 2000, the case went to trial and in January of 2001 Fountain was sentenced to 34 months imprisonment with Ms. Ellison sentenced to 37 months.

Appeal:

Fountain and Fountain Ellison argued in their appeal that the jury had not been instructed in the difference between knowingly and willfully in the Lacey Act, and whether materiality is a component. Fountain also contended that there was “insufficient evidence to convict him of conspiracy to violate the Lacey Act,” as well as insufficient evidence to convict on the false records violations. All of these appeals were dismissed and the convictions upheld.

The Lacey Act’s *mens rea* requirement states that a person who knowingly (in contrast to willfully) violates the Act is subject to “up to five years incarceration.” The difference is, as this ruling states: “Federal courts have consistently found that willfully connotes a higher degree of criminal intent than knowingly. Knowingly requires proof of the facts that constitute the offense.” However, in this case, the court ruled that it is not necessary to define willfully to the jury as it is not part of the actual language of the statute. This same logic applies to the materiality argument.

The court also ruled that there was sufficient evidence to sustain convictions based on the false records, interstate convictions, and conspiracy charges.

Despite the fact that Fountain “did not personally participate” in creating false records, this was irrelevant as (1) the evidence established his knowing participation in the overall conspiracy, and (2) [Fountain] could reasonably foresee that Ellison would create false records to cover up their violations of Louisiana oyster laws. There was also “direct evidence” to indicate Fountain committed his own illegalities. Similarly, there was enough evidence to connect, the court ruled, the violations of Louisiana law to the fact that the oysters were shipped interstate. “In our view, there is sufficient evidence to conclude that the falsified records were related to many of the documented interstate shipments.”