

ASEAN-WEN: A SEAN Wildlife Enforcement Network





JUDICIARY WORKSHOP ON WILDLIFE CRIME AND PROSECUTION

[time and place]

Shared Principles of Investigation, Prosecution and Sentencing



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- 25 years prosecuting crimes involving wildlife; 30+ years in federal wildlife enforcement
- ECS has 40 federal attorneys who specialize prosecuting only pollution and wildlife crime across the U.S. in our federal (national) courts
- Nationwide jurisdiction; can appear in any federal court
- International assistance and training: 20+ countries so far;

NOTE: The opinions and advice expressed by the presenter are informal discussions of policy and law: nothing in the workshop is intended to be a directive or statement of policy of the Department of Justice or any of its components. This is not intended to confer any rights, privileges, or benefits upon actual or prospective witnesses or defendants.

My Purpose Today

- Examine the common principles in our legal systems;
- Explore how professional law enforcers should evaluate “wildlife crime;”
- Explain how we evaluate, prosecute and sentence these crimes in the U.S.

My Theme

- “Wildlife crime” is just another type of crime; sometimes minor, sometimes serious;
- Wildlife crime should be pursued and evaluated using the same general factors used to evaluate other criminal conduct;
- Punishment for wildlife crime should fit the crime; some wildlife crimes are minor; some are serious enough to justify substantial terms of imprisonment, fines and other sanctions.

Quick CITES Reminders

- Affects international trade only;
- Designed primarily to regulate trade;
- Appendix I – no commercial trade allowed;
- Appendix II – commercial trade ok w/permit;
- Appendix III – (almost the same as App. II).

CITES membership imposes obligations

Each member country must:

- Implement treaty through domestic legislation;
- Enforce that legislation;
- Conduct investigations and trade monitoring;
- Impose punishment that fits the crime.

Without these, membership is just symbolic

Agree or disagree?

Law without enforcement
is just advice

Two General Types of Crimes

- Human victim crimes
 - Murder, assault, rape, burglary, theft of personal property, etc;
- Economic (“white collar”) crimes;
 - Obtaining money or property by fraud
 - Ordinarily does not involve physical violence to a human victim

Characteristics of Economic Crime

- Potentially high profit margin;
- Traceable electronic (and paper) evidence;
- Multi-defendant, hierarchical criminal syndicates;
- Someone is being “ripped off;”
 - Person
 - Government
 - Legitimate business
- Difficult to detect;
 - No victim comes forward
 - Requires diligent investigative effort

Wildlife smuggling is economic crime:

- Usually committed for profit;
- Theft of a shared resource;
- Sometimes involves organized criminal syndicates;
- Difficult to detect: victim doesn't report;
- Harm involves more than money;
 - Biosecurity (disease, food safety, exotic species)
 - Harm to legitimate import/export businesses
 - Risk of extinction in some cases
 - Loss of “biodiversity” and habitat

What is my point?

- There is no reason to investigate, prosecute or sentence a serious wildlife smuggling case any less vigorously than any other type of fraud or “white collar” case;
- You don’t need to be a “wildlife lover” to evaluate and handle wildlife cases like you would any other type of criminal case;
 - Some are minor, deserving of minor charges and penalties;
 - Some are major, deserving substantial charges and sentencing.

How can this idea work here?

- You don't need U.S. laws, or U.S. prosecutors, or U.S. judges or the U.S. Sentencing Guidelines to treat wildlife crime sensibly in your legal system.
- All that's required are:
 - A commitment to investigating, prosecuting and sentencing wildlife crime using the same concepts you would use for other crimes; and
 - An understanding of the factors to consider when evaluating the seriousness of a wildlife crime.
- This is where the idea of “shared principles” comes in.

Regardless of differences in culture or legal systems, we probably share principles of criminal investigation, prosecution and sentencing

5 Shared Principles Of Investigation

- 1) Investigators should comply with the law
- 2) Investigations should be impartial
- 3) Investigations should be complete
- 4) Investigators should be honest and forthright with colleagues and the courts
- 5) Investigators should detect crime, not create crime

1. Compliance with the law

- Initial and ongoing professional training, to learn the law and procedures;
- Ethics training, to learn their role in society;
- Routine prosecutorial contact during investigations (unless prohibited by the system);
- Judicial oversight, to keep investigators sharp.

2. Investigators should be impartial

- Treat all witnesses, subjects and targets with respect;
- Conduct duties without passion or prejudice;
- Make case referrals without regard to the status, rank, ethnic, religious, or social position of the offender.

3. Investigations should be complete

- Follow the case wherever it goes;
- Use all lawful investigative tools available;
 - Controlled deliveries
 - Undercover investigation
 - Interviews and records review
 - Search and seizure warrants
 - Forensic analysis
 - International cooperation – MLAT - extradition
- Never be satisfied with a mere seizure; collect evidence for civil or criminal charges.

Worth repeating!

- Never be satisfied with a seizure
- A seizure of contraband doesn't end an investigation, it starts one:
 - Find the bad guys
 - Discover the full extent of criminal conduct
 - File appropriate charges against all culpable persons
 - Pursue conviction of defendants and forfeiture of contraband
 - Advocate for appropriate sentences
- A mere seizure accomplishes very little!

4. Investigators honest & forthright

- Never hide evidence
- Be candid
- Investigator stands between the innocent person and the legal system

5. Detect crime, don't create crime

- Especially in undercover cases, know the difference between:
 - Entrapment
 - Inducement
 - Providing a pre-disposed person an opportunity to commit a crime
- Don't sell endangered, CITES I species.

Shared Principles - Prosecution

Who is the prosecutor's client?

- 1) Seek the truth - tell the truth;
- 2) Charge only those crimes you can probably prove with admissible evidence to the necessary standard;
- 3) Evaluate cases; not all provable crimes are worthy of bringing to court (more on this later);
- 4) Avoid actual or apparent impropriety.

1. Seek the truth, tell the truth

- Comply fully with all discovery obligations;
- Always be candid and forthright;
- Like an investigator, the prosecutor stands between the innocent person and the legal system.

2. Present only provable charges

- With admissible evidence
- Provable to the necessary legal standard
 - In U.S., “beyond a reasonable doubt
 - Nearly every case is a potential jury trial
- No “makeweight” or “bargaining chip” charges;

3. Avoid actual or apparent impropriety

- The prosecutor is an officer of the Court and holds a public trust;
- The prosecutor must act without passion or prejudice;
- The prosecutor's conduct must be above suspicion of self-dealing, favoritism.

Prosecutorial Decision-making

The prosecutor has four options when presented with a case by an investigator:

- 1) Recommend (or conduct) additional investigation;
- 2) Bring charges;
- 3) Decline and recommend a non-criminal sanction;
- 4) Decline and take no further action.

Prosecutorial Decision-making

The Prosecutor should file charges if there is sufficient admissible evidence to prove a violation by the defendant unless:

- No substantial government interest would be served;
- The person is subject to effective prosecution elsewhere; or
- There is an adequate non-criminal alternative to prosecution.

(Any other issues a prosecutor should evaluate?)

Impermissible prosecutorial considerations

- Race, religion, national origin, political association, activities or beliefs;
- The prosecutor's personal feelings about the person, associates or victim(s); or
- The possible effect of the decision on the prosecutor's own professional or personal circumstances.

Shared Principles - Sentencing

An Appropriate Sentence is Based On:

- 1) The nature and circumstances of the offense;
- 2) The need to promote respect for the law;
- 3) The need to protect the public;
- 4) The need to deter future criminal conduct;
- 5) The need to remediate the harm caused by the offense to a victim, including the environment.

Shared Principles - Sentencing

- 6) The kinds of sentences available;
- 7) The need to treat similar defendants similarly;
- 8) The need to provide the defendant with correctional treatment.

In other words...

- The punishment should fit the crime.
- Who decides what sentence is appropriate?
 - Investigator?
 - Prosecutor and defendant? (in plea agreement)
 - Legislature? (statutory minimum or maximum)
 - Sentencing Guidelines?
 - Judge?
 - Others in your system?

Let's discuss:

- Do we share these principles?
- Do we agree that the punishment should fit the crime?
- Are serious wildlife crimes treated the same as other serious crimes in your system?