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Sarah Betancourt, New York Law Journal

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Two partners from Shearman & Sterling and a group from Wigdor LLP have joined a pro bono effort to help officials in Kenya prosecute poachers more effectively.

Shearman & Sterling partners Beau Buffier and Heather Kafele and name partner Douglas Wigdor, senior associate Renan Varghese and associate Elizabeth Chen from Wigdor LLP spent five days in June training Kenya Wildlife Service officers in aspects of the law to enforce the 2013 Wildlife Conservation and Management Act, which provides stricter financial and criminal penalties for poachers, including potential life imprisonment and a \$200,000 fine.



The attorneys traveled to the Isiolo and Nanyuki regions to train about 45 wildlife intelligence and patrol officers on best practices in key areas relevant to the Wildlife Act, such as crime scene investigation and management, witness interviewing, and testimony at trial. Wigdor's son Jacob served as a high school volunteer.



Buffier, who is head of Shearman's global antitrust group, said the attorneys did a mock cross examination to prepare the officers, many of whom had not seen the inside of a courtroom.

"There's an effort to ramp up prosecution cases, even though many have been thrown out," he said. "Because there is no jury, the judge has to know beyond a reasonable doubt that the poacher did it, and have evidence of that."



Most rangers find rhino and elephant carcasses days after the crime has been committed, Wigdor said. As a result, witness interviews become more important. "We talked about recanting, and showed the class how to write a witness statement, how to read it back and record if you have the means to," he said.

During a pair of two-day sessions, the lawyers trained wildlife officers on how to secure crime scenes and in depth witness interviewing.

"The first thing is to secure the crime scene to make sure it hasn't been tampered with. We taught how to photograph, look in the carcass, get DNA samples and bagging, the chain of custody, and how to avoid contamination," Wigdor said.

The teams also played board and card games that quizzed officers on the specifics of the act.

Buffier and Kafele stressed the importance of another kind of training they provided—community education on the importance of conservation. The attorneys asked townspeople not to tell poachers what direction an elephant might have gone.

"A lot of the community seeks it as a cost," Buffier said. "For example, If you're a maize farmer, who has elephants constantly trampling crops, or a community that seeks lions as a pest. We share work being done in other parts of Africa and India. Over there, they promote non-lethal methods to keep animals away from crops."

The training focused on public national park officers. Kenya has several conservancies, with wealthier ones possessing resources such as choppers, night vision goggles, and GPS to track animals. The attorneys said the poachers have similar tools, if not more, to find animals, and are often funded through terrorist organizations.

Shearman and Sterling has previously worked pro bono in Kenya and Africa, including recent trainings for magistrates and judges for prosecution in Nairobi. Wigdor and Shearman attorneys researched the Wildlife Act and ongoing cases in Kenya that are available online in preparation for the trip.

The program is run by Lawyers Without Borders, which was awarded a grant by the U.S. State Department in 2015 to do pro bono work related to the Wildlife Act, and had previous involvement in the country in 2007 doing trial advocacy training.

Lawyers Without Borders founder Christina Storm said the two-year program will train everyone who is involved with wildlife issues in Kenya. "When it's all said and done, we'll have trained 500 to 700 people," she said.

The legal training came two months after Kenyan President Uhuru Kenyatta's pledged to end the illegal ivory trade in Kenya, and burned a pyre of ivory worth \$100 million.

Poaching of endangered species like rhinoceros and elephants had reached dangerous levels in the early 2000s. The passage of the Wildlife Act in 2013 provided stronger criminal and financial penalties for those caught and prosecuted for poaching, along with potential life imprisonment.

A recent report by the nonprofit WildlifeDirect found an 80 percent reduction of deaths of rhinos and elephants from poaching from 2012 to 2015. The nonprofit has an ongoing courtroom monitoring program run by legal interns in Kenya.

Storm said the report was a factor in designing the programming for the attorney's June trip. "We decided to target the shortcomings. Evidence collections is one of those areas," she said.

WildlifeDirect CEO Paula Kahumbu said so far, no poacher has received the maximum penalty allowed under the law.

"Other offenders of wildlife crimes have been charged under a different clause that carries a penalty of \$10,000, or jail time of five years," she said. "The amazing thing is that most offenders have been able to raise the fine."

Convicted persons receiving jail sentences have risen from 3 percent in 2008 to 6 percent in 2015. Because of the Wildlife Act, there are an increasing number of accused persons who are pleading not guilty because of the harsher penalties. This is leading to longer trials and the opportunity for corruption and tampering of evidence, according to the report.

Still, wildlife officers and pro bono attorneys think that the Wildlife Act can be used to make a difference in conservation.

"A lot of people told us that this is their life's ambition," Varghese said. "They want to protect wildlife. The investigators are out there risking their lives daily, because poachers are armed and dangerous."

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