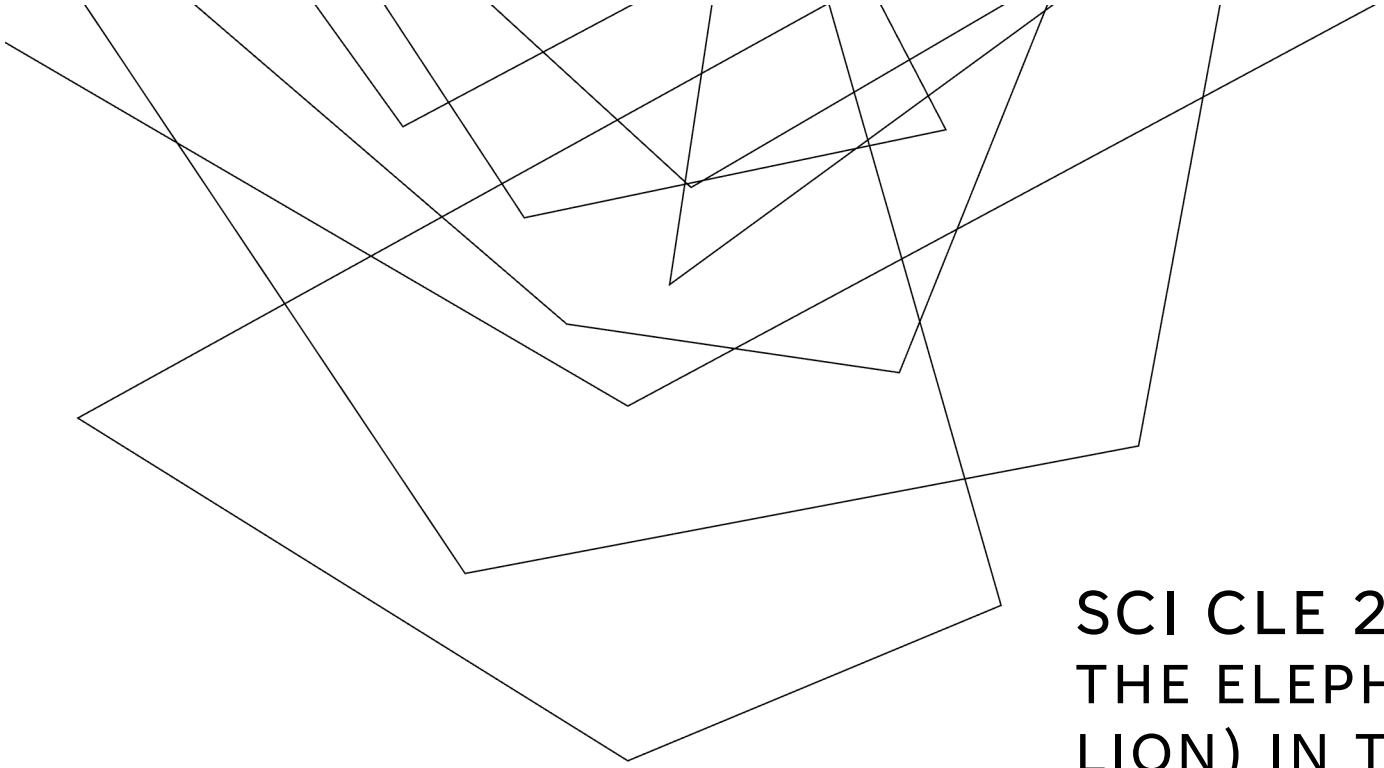
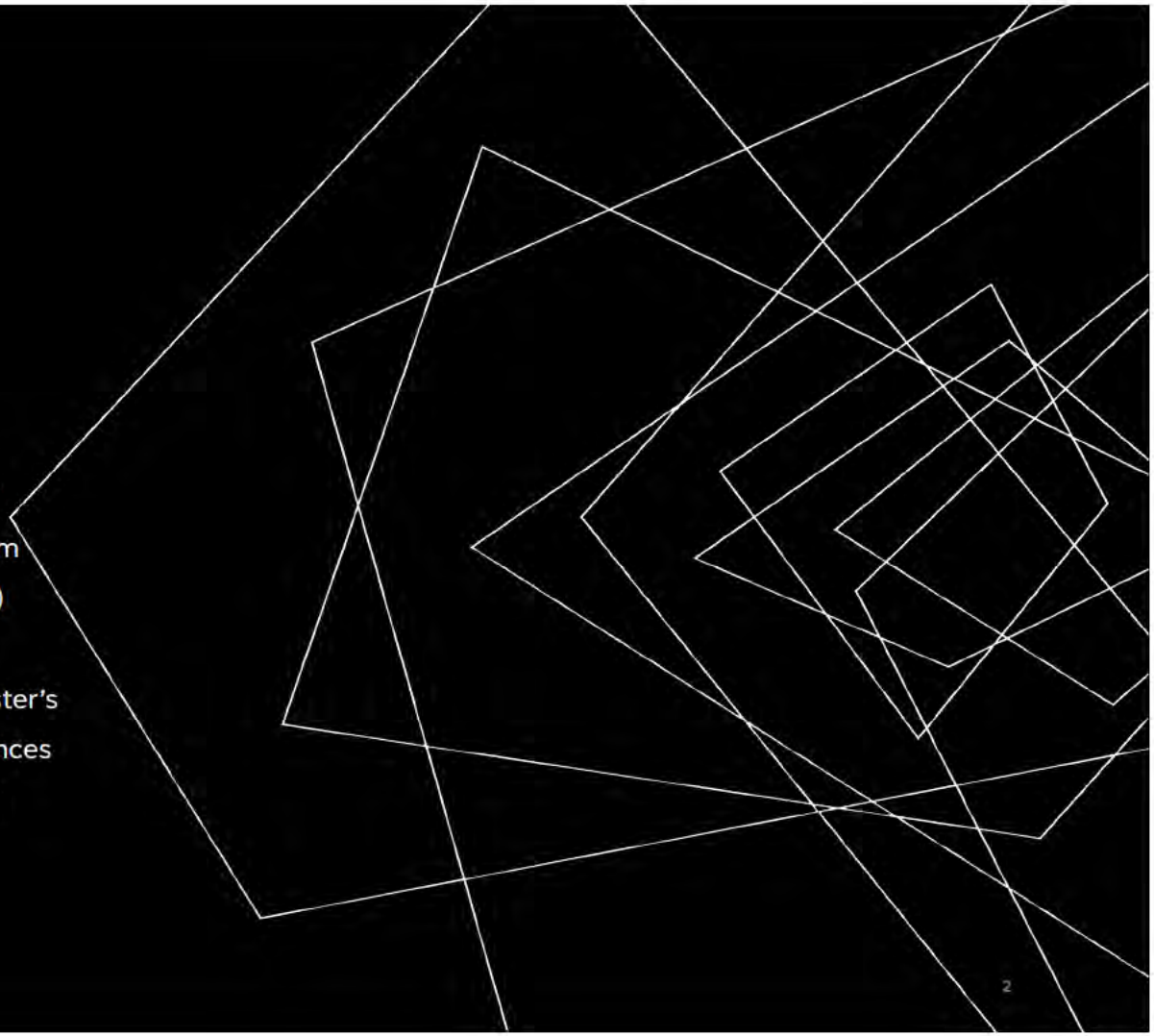


SCI CLE 2026
THE ELEPHANT (AND LION) IN THE ROOM: CUTTING-EDGE CASES INVOLVING WILDLIFE

with Phil Brewster

DISCLAIMER

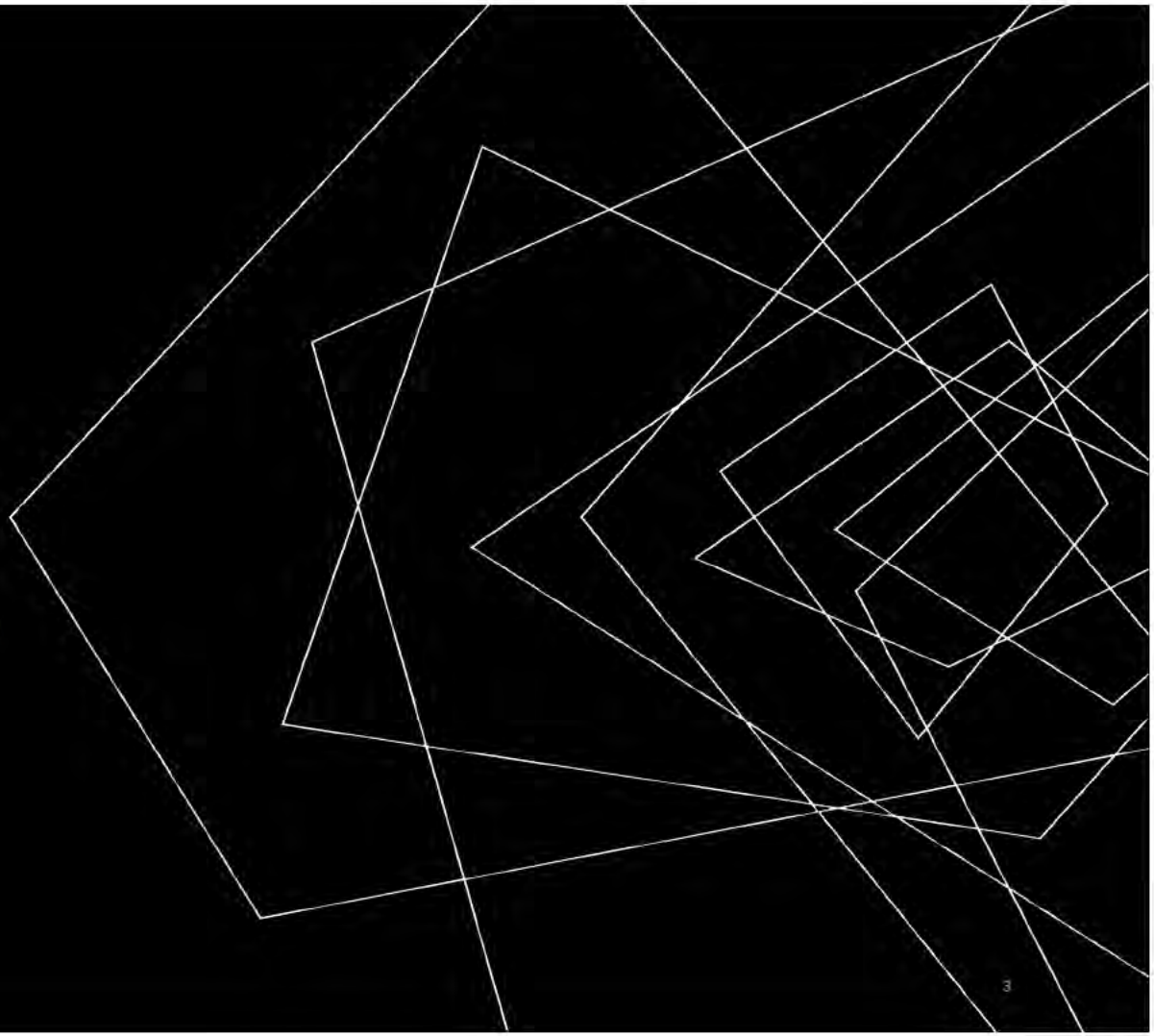
The views and opinions herein and discussed today are solely those of Phil Brewster and Brewster Law Firm LLC and are not the views of any (i) client or (ii) co-counsel. Michael Labuschagne authorized Phil Brewster's discussion of the factual circumstances of his case for purposes of this CLE session (2/18/2026).



WHAT TO EXPECT

Applying U.S. Law to an African Conservation Crisis

IFAW's Deadly Elephant Translocation Project in Kasungu National Park



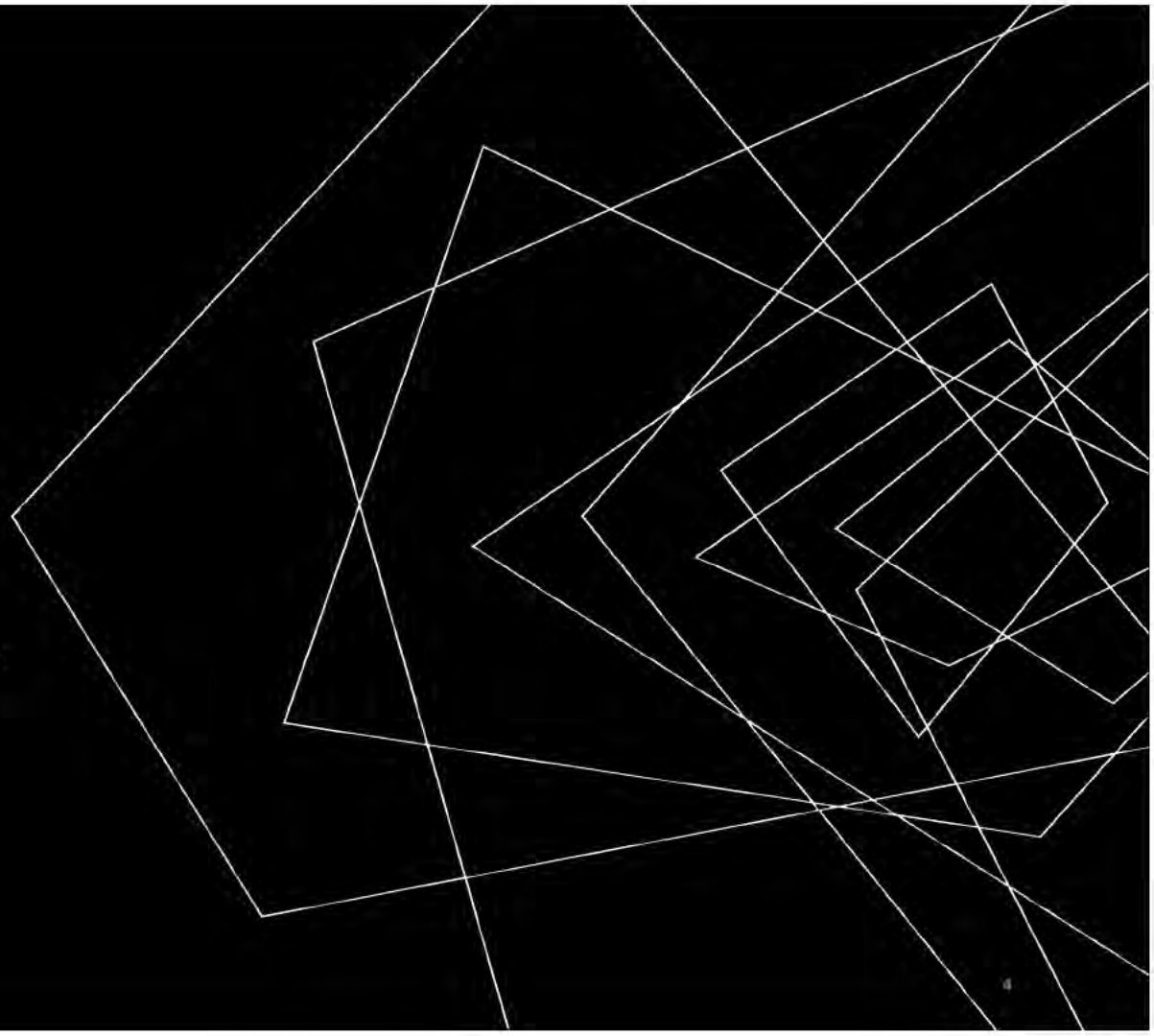
ROADMAP FOR TODAY

I. Elephant Translocation Crisis

II. Sunlight The Best Disinfectant

III. U.S. Laws to The Rescue

IV. Additional U.S. Whistleblower Programs



I. ELEPHANT TRANSLOCATION CRISIS

EXCLUSIVE

OpenAI Plans Fourth-Quarter IPO in Race to Beat Anthropic to Market

The rivals are competing to be the first major generative AI startup to tap the public markets.

71 4 min read

- **Exclusive | Amazon in Talks to Invest Up to $50 Billion in OpenAI**

Trump to Announce Fed Chair Pick on Friday

The president has spent months weighing his choice to lead the central bank.

1 min read

- **Here Are the Four Finalists to Run the Fed. None Are Exactly What the**

A Plan to Save Elephants Sparked a Deadly Conflict

The conservation project was supposed to rebuild the elephant population. It became a cautionary tale instead.

6 min ago 9 min read

Opinion

Tom Homan Makes a Good Offer to Minneapolis

By The Editorial Board

Trump's Regression to the Mean

By Holman W. Jenkins, Jr.

Shutdown Déjà Vu

By Kimberley A. Strassel

Trump's Cowbell Moment

By Kimberley A. Strassel

America's Immigration Labor Shock

By The Editorial Board

The Perils of a Falling Trump Dollar

WSJ

THE WALL STREET JOURNAL WEEKEND

DOW JONES | News Corp * * * * * * * * * SATURDAY/SUNDAY, JAN. 31 - FEB. 1, 2026 ~ VOL. CCLXXXVII NO. 25 WSJ.com ★★★★ $6.00

What's News

Business & Finance

◆ **Trump said** he would nominate Kevin Warsh to be the next chairman of the Federal Reserve, choosing a former Fed official who has aligned himself with the president's criticism of the central bank. **A1, A4, A5**

◆ **Elon Musk's rocket-maker** SpaceX and artificial-intelligence startup xAI are planning to merge into one company, further consolidating his business empire. **A1**

◆ **Nvidia's plan to invest** up to $100 billion in OpenAI has stalled after some inside the chip giant expressed doubts about the deal, people familiar with the matter said. **A1**

◆ **Disney CEO Bob Iger** plans to step down and pull back from daily management before the Dec. 31 end of his contract, according to people familiar with the matter. **B9**

◆ **A violent selloff** sent silver prices crashing and gold futures to their biggest one-day dollar decline on record. **B10**

◆ **Chevron and Exxon** reported their smallest annual profits since 2021, pressured by a growing glut of crude. **B9**

◆ **Verizon posted** its biggest quarterly combined mobile and broadband net additions since 2019. **B9**

◆ **Drug giant Eli Lilly** said it planned to open a $3.5 billion plant in Pennsylvania. **A2**

Worldwide

◆ **After the U.S. military** has assembled a formidable force in the Middle East within striking range of Iran, Trump must decide how to use it. **A6**

◆ **The Justice Department** is releasing more than three million additional pages, videos, images and other files related to its investigation of Jeffrey Epstein. **A3**

◆ **The FBI is leading** an investigation into whether federal agents who fatally shot Alex Pretti in Minneapolis violated his civil rights. **A3**

◆ **Former CNN anchor** Don Lemon has been arrested by federal agents on charges related to an immigration-enforcement protest that disrupted a church service in Minnesota. **A3**

◆ **The Senate passed** a bipartisan deal to fully fund most of the federal government, while giving lawmakers time to negotiate over proposed restrictions on immigration enforcement. **A3**

◆ **Ukraine's Zelensky** said Kyiv supported the U.S.-proposed pause to strikes on energy infrastructure. **A6**

◆ **Mexican exports of oil** to Cuba have slowed to a trickle as Trump amps up the pressure on Mexico to stop its support for the Communist regime. **A8**

◆ **Died: Catherine O'Hara**, beloved comedic actress, 71. **C6**

PEGGY NOONAN
America needs restraint —and facts **A13**

Trump's Fed Pick Faces Big Hurdles

Whisper campaign by Wall Street insiders undermined Hassett's chances

By Nick Timiraos And Brian Schwartz

WASHINGTON—When Kevin Warsh showed up at Mar-a-Lago to interview with Donald Trump shortly after the president-elect's campaign victory in November 2024, Trump expressed surprise that Warsh was being considered for Treasury secretary.

"You're my Fed chair," Trump told him, Warsh later recounted to an associate. For months, Warsh had been making similar comments to new acquaintances and longtime confidants alike: The job would eventually be his.

It would take 14 months, a reality-television-style public audition, a bitter behind-the-scenes campaign, and a criminal investigation of the sitting Fed chair before that prediction came true. On Friday morning, Trump announced he would nominate Warsh to succeed Jerome Powell as

Please turn to page A4


ANN SAPHIR/REUTERS

Kevin Warsh

Warsh, if confirmed, to inherit a central bank divided over future path on rates

By Nick Timiraos

WASHINGTON—President Trump said Friday he would nominate Kevin Warsh to be the next chairman of the Federal Reserve, choosing a former Fed official who has aligned himself with the president's criticism of the central bank.

"I have known Kevin for a long period of time, and have no doubt that he will go down as one of the GREAT Fed Chairmen, maybe the best. On top of everything else, he is 'central casting,' and he will never let you down," Trump said in a social-media post.

Warsh, 55 years old, served on the Fed's board of governors from 2006 to 2011, playing crucial behind-the-scenes roles in Washington's rescue of Wall Street during the financial cri-

Please turn to page A4

Ukraine Pushes 'Energy Truce' Amid Outages


SERGEI GAPON/AGENCE FRANCE-PRESSE/GETTY IMAGES

IN THE DARK: A visitor ses a flashlight Frida a he National Art Museum in Kyiv. Ukraine's power grid has been battered by Russian strikes, and Pr sident Volodymyr Zel ns y supports a U.S.-backed pause on attacks on energy infrastructure. **A6**

Plan to Save Elephants Turns Deadly

Malawi project has left dozens of people and animals dead as good intentions go awry

By Nicholas Ba iyo

LUM ZI Z mbia—Three-year-old Dick on N wi a was deep into his afternoon nap when half a dozen elephants, using trunks as trowels, gouged a five-foot-wide hole in the brick wall near his bed.

His mother, Matilda Banda, was caught out in the open. Unable to reach Dickson, she hid in the bushes as the animals wrecked her home and devoured the family's corn supply.

She pictured her son being trampled to death. It wasn't hard to imagine; elephants had crushed her cousin the previous year.

Dickson survived the November rampage, concealing himself under a pile of baskets. Since then, he's suffered from bouts of uncontrolled sobbing and relentless nightmares.

"My child is no longer the same happy little boy," said Banda, 23.

Here on the border between Zambia and Malawi, elephants are trampling farmers and farmers are shooting elephants in a conservation project gone badly wrong. Dozens have died. Crops needed to stave off starvation have been decimated. Poaching is resurging. It's a cautionary tale about the pitfalls that can accompany good intentions.

In 2022, a Netherlands-based conservation group, the International Fund for Animal Welfare, helped the government of Malawi truck 263 elephants from Liwonde National Park in the

Please turn to page A9

Musk's SpaceX And xAI Look to Combine

By Alexander Saeedy And Berber Jin

Elon Musk's rocket-maker SpaceX and artificial-intelligence startup xAI are planning to merge into one company, people familiar with the matter said, further consolidating the billionaire's business empire.

SpaceX executives have started to tell some investors about the planned tie-up, one of the people said.

It is possible that a merger won't happen and talks could fall apart or that Musk could decide on a different path.

Both companies are privately held, and the math of a potential deal wasn't immediately clear. xAI sought to raise $15 billion from investors for a $230 billion valuation last year, while SpaceX was seeking an $800 billion valuation in a December tender offer, The Wall Street Journal previously reported.

Reuters reported earlier that SpaceX and xAI were in discussions to combine.

Musk has launched plans to take SpaceX public this year in what could be one of the biggest initial public offerings on record. It also wasn't clear how the rocket maker's offering would be affected by merging with an artificial-intelligence startup and a social-media company.

The Journal reported that Musk had decided to take SpaceX public in part to raise more capital to build data

Please turn to page A2

Business Travelers Enter New Era Of $100 Rooms and Meatloaf

* * *

Scrimping is in high gear as companies cut spending; Cracker Barrel's road rules

By Heather Haddon

The message from Cracker Barrel management went down for some like a stale biscuit.

Employees should postpone work travel until later this year, when the Southern-themed restaurant chain hopes to start recovering from a steep sales slide. But if workers must hit the road, management said, they should fuel up on the chain's own meatloaf and country fried steak.

"Employees are expected to dine at a Cracker Barrel store for all or the majority of meals while traveling, whenever practical based on location and schedule," the company said in an internal message.

"Travelscrimping" is in high gear across corporate America. Companies looking for cuts are turning their focus on the expenses employees incur on the road. The changes are stripping work trips of whatever shred of glamour they had after years of belt-tightening.

Rather than enjoying one of the few remaining perks of white-collar work, employees are scouring for $100 hotel rooms, preparing grocery-store-bought meals and trekking to laundromats to wash their dress shirts rather than expensing the hotel's white-glove service.

On top of the dining guidelines, Cracker Barrel is cutting off its traveling workers from booze, with any alcohol needing to be covered personally.

Please turn to page A9

INSIDE

U.S. NEWS
Justice Department releases more than three million pages of Epstein files. **A3**

EXCHANGE
A crypto CEO riles up Wall Street. **B1**

Nvidia's Doubts Stall Megadeal With OpenAI

By Berber Jin And Robbie Whelan

Nvidia's plan to invest up to $100 billion in OpenAI to help it train and run its latest artificial-intelligence models has stalled after some inside the chip giant expressed doubts about the deal, people familiar with the matter said.

The companies unveiled the giant agreement last September at Nvidia's Santa Clara, Calif., headquarters. They announced a memorandum of understanding for Nvidia to build at least 10 gigawatts of computing power for OpenAI, and the chip maker also agreed to invest up to $100 billion to help OpenAI pay for it. As part of the deal, OpenAI agreed to lease the chips from Nvidia.

At the time, the ChatGPT maker expected the deal negotiations to be completed in the coming weeks, people familiar with the plans said. But the talks haven't progressed beyond the early stages, some of the people said. Now, the two sides are rethinking the future of their partnership, some of the people said. The latest discussions, they said, include an equity investment of tens of billions of dollars as part of OpenAI's current funding round.

Nvidia CEO Jensen Huang has privately emphasized to industry associates in recent months that the original $100 billion agreement was nonbinding and not finalized, people familiar with the matter said. He has also privately criticized what he has described as a lack of discipline in OpenAI's business approach and expressed concern about the competition it faces from the likes of Google and An-

Please turn to page A2

FROM PAGE ONE

Business Travel's New Era

Continued from Page One

"Exceptions for special occasions must be pre-approved by an E-Team member," the company wrote.

Inside Cracker Barrel, where the company held layoffs recently, some workers shrugged off the change as minor compared with their broader fears, saying they didn't even think they could drink when traveling. (Cracker Barrel started adding alcohol to its menus in 2021.)

Many companies still want their road warriors to travel, but more employees expect to pick up the tab for costs as budgets shrink, according to a recent survey by SAP Concur.

Justin Salerno used to go with his gut on spending decisions while traveling for an aerospace startup. After his firm was bought recently, the Milwaukee-area engineer now must line up his expenses with the federal rate used to reimburse employees for lodging and meals.

It's a test of accounting and bargain-hunting skills. Hotel rooms in an area of Utah he frequents should be no more than $110. When the city has special events, those rooms can cost several hundred dollars a night. The 45-year-old typically decides comfort and convenience are worth the cost of having to explain to his managers why he went over the limit.

"I'm a bit loosey goosey about it," he said.

Companies have plenty of good reasons to keep a lid on travel costs. Times are tight, and expense-account abuse can be a drain.

As a finance chief for construction companies, Jeff Oscarson has seen employees try to push through some logic-defying travel expenses, including a $500 bottle of wine, pairs of jeans and a chair.

Some say they're getting used to foraging for meals at grocery stores.

"Why would you do something to poke the bear by expensing a chair?" Oscarson said.

Amazon has long asked corporate workers to travel frugally, suggesting the cheap seats when possible. The policy has sparked internal debate about what is cheap enough, and if being really tall warrants business class for overseas trips.

David Markley, a 58-year-old executive coach who spent seven years at Amazon, repeatedly flew coach from Seattle to Europe, Japan and Bengaluru. He learned to never sit near the bulkhead where bassinets frequently were placed.

"When one baby wakes up, they all tend to wake up," he said.

Some corporate travelers say they are getting used to foraging for their meals at grocery stores and assembling them back at their hotels.

Others skimp on breakfast and lunch and try to save their allowance of dollars and calories for dinner.

Leroy Craighead, 49, a business consultant from Chicago, has adopted a system for surviving on a tight client budget. He limits himself to a coffee from Starbucks in the morning and a spartan lunch to free up funds for a satisfying dinner. He's also mastered using his frequent-flier status with various hotels to score dinners at their members-only lounges.

"There's tricks," Craighead said.

Corporate road warriors say European companies can be even more parsimonious. Michael Paci, a senior manager at an international consulting firm, tries to be reasonable, but doesn't think much of charging a $50 steak meal with a beer. His European colleagues have to save receipts even for a drip coffee.

"They are going to get you two euros at a time. There is a degree of absurdity," he said.

Joe Fenti, a 29-year-old Boston resident, quit his corporate consulting job last year after feeling like his life was being whittled away by busywork with no concrete end. He's channeling the experience into a full-time comedy career; part of his routine is acting out interactions between managers and workers.

"We changed the expense policy. We notified everyone via smoke signals and bird calls," Fenti's fictional manager said in one TikTok video.

"My report is just Ubers and diners from a client trip, this really shouldn't be hard," the employee responded.

Eventually, having run out of ideas to reconcile his expenses, the employee resorts to using a random code. "This is perfect," the manager said.

Matilda Banda and her son survived an elephant attack by hiding.

Zambian farmer Tatenji Mwale's banana plantation was trampled.

Farmer Ignatius Nyasulu stands beside a solar-powered electric fence in Kasungu.

Anderso Soko v its the grave of his nephew who as stomped to death.

Elephant Project Goes Awry

Continued from Page One

south, which had too many elephants, to Kasungu National Park in central Malawi, which had far fewer. The 280-mile relocation was part of the country's broader conservation efforts.

For environmentalists, the imperative was clear. Elephant populations have grown in pockets of Africa, such as Kenya and Zimbabwe, due largely to a drop in poaching. But that recovery doesn't come close to making up for the staggering losses of previous decades. In the 1980s, there were 1.3 million elephants in Africa. Today there are 415,000, according to the International Union for Conservation of Nature.

"The goal was to ease pressure on Liwonde and help rebuild a viable elephant population in Kasungu," an IFAW spokesman said.

The 2022 effort tripled the elephant population in Kasungu park, boosting Malawi's tourism industry with it. IFAW used images of elephants being lifted by cranes to raise money for further wildlife-protection projects.

Within 24 hours of release, elephants strayed out of the park, crossed the border into Zambia and trampled two farmers to death. It would soon escalate into one of southern Africa's deadliest conflicts between people and wildlife in recent decades.

CLOCKWISE FROM TOP LEFT: NICHOLAS BARIYO/WSJ (4); XINHUA/ZUMA PRESS

An elephant is loaded into a tru k in Malawi as part of the translocation.

'A wake-up call'

The toll on the human side over the past three years: 26 villagers dead, scores injured, $4.5 million in crops destroyed and hundreds of homes damaged, according to Warm Heart Initiative, a Zambian nonprofit providing social support and advocating for locals.

On the elephant side, nearly half of those moved to Kasungu may have already been killed, mostly by farmers retaliating for crop damage, according to Warm Heart Initiative. In late 2024, rangers found five elephants that had been shot in Zambia and died after limping back to Malawi.

"Elephants are very smart animals; they do pretty much what they want at any time," said Adam Hart, a conservation scientist at the University of Gloucestershire in England. "It is very risky to move them around."

IFAW and Malawian officials fenced off most of the park, but not the section of park boundary along the border between Malawi and Zambia. Malawi's Department of National Parks and Wildlife said both countries agreed the border should remain unfenced to allow wi life to cross freely.

"The Kasungu translocations were not well pl ned, said Hart, noting t at lo als weren't adequately co sul ed, warned or trained to cope with an incr sed elephant population. Thei impact will serve a a w ke-up call for othe org nizations planning w dlif relocations."

IFAW said Malawian wildlife authorities decided to move the herds; the conservationists provided money and technical support. Malawi's Justice Ministry declined to comment.

With elephant incursions into Zambia growing, farmer Augustine Kumanga organized fellow residents to defend their land. Banging pots and yelling, the 78-year-old retired military pilot routinely led the charge when his neighbors attempted to drive the animals from farmlands.

In one 2023 foray, Kumanga fell, fracturing his arm and ribs as he tried to escape the elephants. It was his third elephant-related injury, and it proved fatal.

Kumanga had worked with a local volunteer group that fights poaching in the national park, according to close associates and family members. "He loved wildlife and conservation, but at the time of his death, he hated elephants," said his widow, Dorothy Mtonga.

His death brought simmering anti-elephant anger to a boil. Kumanga's neighbors chased the animals back to Malawi with guns and spears. Some elephants have since been killed in confrontations, according to local conservationists.

Adding to the anger is a prolonged drought in the region that has elephants and humans competing for resources. More than six million pe ple in Malawi and Zambia fac hunger after crops failed nd cattle starved, according to the United Nations.

A single elephant can eat up to 600 pounds of vegetation and drink more than 50 gallons of water in a day. The newcomers can't find enough of either in Kasungu, so they raid croplands and villages, according to Benson Zimba, a Zambian conservationist with the local nonprofit Green Nature Zambia.

Elusive solutions

Boniface Nkoma, a 48-year-old farmer on the Malawi side of the border, was biking home from market, carrying a sack of corn, when he crossed paths with four elephants.

One animal picked him up with its trunk and tossed him into thick bushes, killing him, according to his widow, Dilisa Chirwa, who witnessed the 2024 attack.

"He tried to run, but it was too late," Chirwa said. "The elephants ate the corn after attacking him."

The sounds of snorts drew Zambian farmer Mkanda Nkhata, 75, out of his house one day in 2024. Arriving at his fruit trees, he found himself face-to-face with a herd of elephants. One bull charged and knocked him unconscious, before stomping on him. Nkhata's neighbors rushed him to a hospital with a head injury and broken ribs.

"I have been farming since the 1980s, and elephants had never been a problem for me," said Nkhata, who is still paying off $100 in medical bills. "All these problems started in 2022."

Just 50 elephants lived in Kasungu 10 years ago, down from as many as 1,200 in the 1970s, according to conservationists. By mid-2022, the park's population had rebounded to 120 elephants, which largely stayed in the protected area. The translocation brought the total to 383.

Kate Evans, founder of Botswana-based research-and-education nonprofit Elephants for Africa, said the elephants moved into Kasungu have struggled to adjust.

"The older ones will always try to lead others either to look for new sources of food or go back to where they were translocated from," Evans said. "With villages so close to the park, this conflict is not surprising."

IFAW has been working with Malawi's government to head off clashes between elephants and their neighbors, a spokesman said. Rapid-response teams—made up of locals riding motorcycles and armed with firecrackers and devices that spray chili-pepper irritants—try to steer wandering elephants back into protected areas. A solar fence was installed. An app helps track the elephants.

The IFAW spokesman said clashes occurred even before the new herds arrived. "Human-elephant conflict is unfortunately an inevitability wherever humans and wildlife coexist," he said.

In May, a pair of leopards invaded a ranch in Botswana, killing two herders and snatching a goat. A few weeks later, crocodiles killed a fisherman along the Zambezi River in Zimbabwe, according to local authorities.

Conservationists, including independent and government agencies, usually try to mitigate tensions by providing jobs, schools, healthcare and other benefits for those living near areas set aside for wildlife. They often compensate villagers when carnivores kill their livestock or herbivores eat their crops. Maasai herders in Kenya and Tanzania are paid around $600 for each cow killed by predators, on the condition that no predators are killed in retaliation, according to conservationists.

The Kasungu translocation has so far eluded such successful solutions.

New risks

A former IFAW employee, Michael Labuschagne, is leading the charge against the project.

Labuschagne, an ex-South African commando, founded Warm Heart Initiative in response to the clashes that followed the translocation. He says when he headed IFAW's law-enforcement efforts in southern Africa he warned the group that translocated elephants would escape their new home, which didn't have enough water and vegetation to support the enlarged herds.

"I stressed to IFAW the inherent risk of human-to-elephant conflict in Kasungu, and IFAW failed to adequately address this known risk prior to the translocations," he said.

He describes the project as a case of "conservation imperialism," in which poor communities bear the cost of foreign environmentalists' actions.

Conservationists and government leaders say locals—and wildlife—will ultimately benefit from translocations and other conservation efforts, which have been a boon to Zambian and Malawian tourism industries. Zambia's tourism revenues shot up 60% in 2024 to $2.5 billion, according to government data. Malawi took in $230 million from tourism in 2024, a 19% jump from a year earlier.

But the resulting anger, according to villagers, has had broader consequences for conservationism in the countries. Many locals no longer report poachers to wildlife authorities; instead, they hunt down and kill stray elephants, according to conservation volunteers.

"Poaching is again cropping up, residents are frustrated," said Anderson Soko, a Zambian who hunted illegally inside Kasungu in the 1990s but has since joined anti-poaching initiatives.

Victims of attacks have threatened to sue IFAW, according to British law firm Leigh Day, which is representing potential plaintiffs. Warm Hearts has been documenting evidence for the victims.

IFAW called the legal threat opportunistic and said the victims should seek any compensation from the Malawian government. Malawi's Justice Ministry declined to comment.

Lawyers are hoping to recruit Matilda Banda, whose son narrowly escaped being crushed during naptime, to join a possible U.K. lawsuit.

Banda said she wants compensation for the losses she suffered. The elephants, after ransacking her house and eating her corn, urinated on what remained of her grain supply.

"I had never been this close to elephants," she said. "It was a very scary moment."

An elephant is loaded into a truck in Malawi. XINHUA/ZUMA PRESS

By
Nicholas Bariyo

Jan. 29, 2026 9:00 pm ET

LUMEZI, Zambia—Three-year-old Dickson Ngwira was deep into his afternoon nap when half a dozen elephants, using trunks as trowels, gouged a five-foot-wide hole in the brick wall near his bed.

His mother, Matilda Banda, was caught out in the open. Unable to reach Dickson, she hid in the bushes as the animals wrecked her home and devoured the family's corn supply.

She pictured her son being trampled to death. It wasn't hard to imagine; elephants had crushed her cousin the previous year.

Dickson survived the November rampage, concealing himself under a pile of baskets. Since then, he's suffered from bouts of uncontrolled sobbing and relentless nightmares. "My child is no longer the same happy little boy," said Banda, 23.

Matilda Banda and her son survived the elephant attack by hiding. NICHOLAS BARIYO/WSJ

Here on the border between Zambia and Malawi, elephants are trampling farmers and farmers are shooting elephants in a conservation project gone badly wrong.

Dozens have died. Crops needed to stave off starvation have been decimated. Poaching is resurging. It's a cautionary tale about the pitfalls that can accompany good intentions.

In 2022, a Netherlands-based conservation group, the International Fund for Animal Welfare, helped the government of Malawi truck 263 elephants from Liwonde National Park in the south, which had too many elephants, to Kasungu National Park in central Malawi, which had far fewer. The 280-mile relocation was part of the country's broader conservation efforts.

For environmentalists, the imperative was clear. Elephant populations have grown in pockets of Africa, such as Kenya and Zimbabwe, due largely to a drop in poaching. But that recovery doesn't come close to making up for the staggering losses of previous decades. In the 1980s, there were 1.3 million elephants in Africa. Today there are 415,000, according to the International Union for Conservation of Nature.

“The goal was to ease pressure on Liwonde and help rebuild a viable elephant population in Kasungu,” an IFAW spokesman said.

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IFAW helped Malawi move 263 elephants, tripling Kasungu’s population. MEDIA DRUM WORLD/ZUMA PRESS

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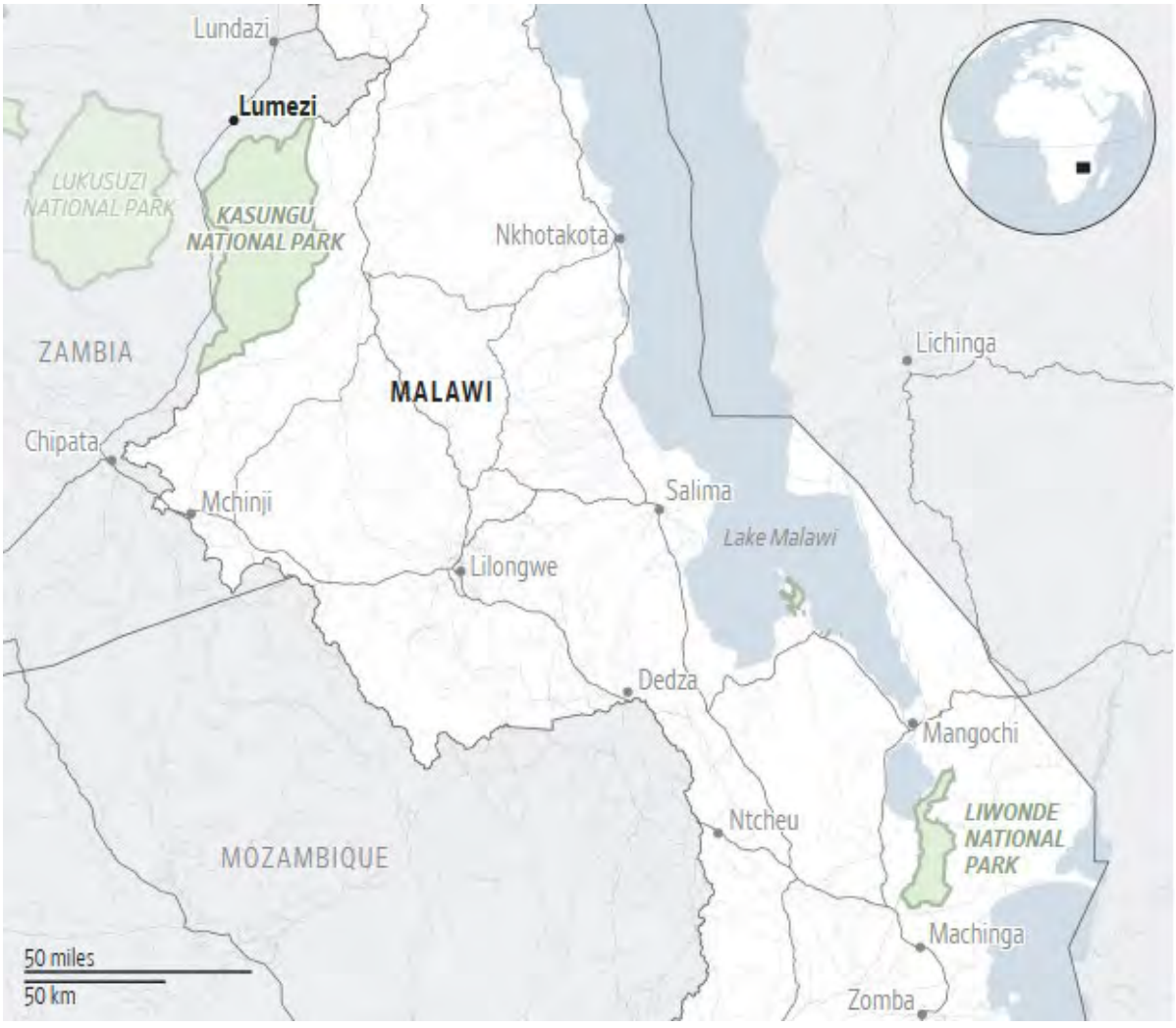

“The Kasungu translocations were not well planned,” said Hart, noting that locals weren’t adequately consulted, warned or trained to cope with an increased elephant population. “Their impact will serve as a wake-up call for other organizations planning wildlife relocations.”

IFAW said Malawian wildlife authorities decided to move the herds; the conservationists provided money and technical support. Malawi's Justice Ministry declined to comment.

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Adding to the anger is a prolonged drought in the region that has elephants and humans competing for resources. More than six million people in Malawi and Zambia face hunger after crops failed and cattle starved, according to the United Nations.

Zambian farmer Tatenji Mwale's banana plantation was trampled by elephants. NICHOLAS BARIYO/WSJ

A single elephant can eat up to 600 pounds of vegetation and drink more than 50 gallons of water in a day. The newcomers can't find enough of either in Kasungu, so they raid croplands and villages, according to Benson Zimba, a Zambian conservationist with the local nonprofit Green Nature Zambia.

Elusive solutions

Boniface Nkoma, a 48-year-old farmer on the Malawi side of the border, was biking home from market, carrying a sack of corn, when he crossed paths with four elephants. One animal picked him up with its trunk and tossed him into thick bushes, killing him, according to his widow, Dilisa Chirwa, who witnessed the 2024 attack.

"He tried to run, but it was too late," Chirwa said. "The elephants ate the corn after attacking him."

The sounds of snorts drew Zambian farmer Mkanda Nkhata, 75, out of his house one day in 2024. Arriving at his fruit trees, he found himself face-to-face with a herd of elephants.

One bull charged and knocked him unconscious, before stomping on him. Nkhata's neighbors rushed him to a hospital with a head injury and broken ribs.

"I have been farming since the 1980s, and elephants had never been a problem for me," said Nkhata, who is still paying off $100 in medical bills. "All these problems started in 2022."

Just 50 elephants lived in Kasungu 10 years ago, down from as many as 1,200 in the 1970s, according to conservationists. By mid-2022, the park's population had rebounded to 120 elephants, which largely stayed in the protected area. The translocation brought the total to 383.

Kate Evans, founder of Botswana-based research-and-education nonprofit Elephants for Africa, said the elephants moved into Kasungu have struggled to adjust.

'Crops are so attractive to elephants,' says Green Nature Zambia's Benson Zimba. MEDIA DRUM WORLD/ZUMA PRESS

“The older ones will always try to lead others either to look for new sources of food or go back to where they were translocated from,” Evans said. “With villages so close to the park, this conflict is not surprising.”

IFAW has been working with Malawi’s government to head off clashes between elephants and their neighbors, a spokesman said. Rapid-response teams—made up of locals riding motorcycles and armed with firecrackers and devices that spray chili-pepper irritants—try to steer wandering elephants back into protected areas. A solar fence was installed. An app helps track the elephants.

The IFAW spokesman said clashes occurred even before the new herds arrived. “Human-elephant conflict is unfortunately an inevitability wherever humans and wildlife coexist,” he said.

In May, a pair of leopards invaded a ranch in Botswana, killing two herders and snatching a goat. A few weeks later, crocodiles killed a fisherman along the Zambezi River in Zimbabwe, according to local authorities.

Zambian farmer Ignatius Nyasulu stands beside a solar-powered electric fence on Kasungu’s Malawi side. NICHOLAS BARIYO/WSJ

Conservationists, including independent and government agencies, usually try to mitigate tensions by providing jobs, schools, healthcare and other benefits for those living near areas set aside for wildlife. They often compensate villagers when carnivores kill their livestock or herbivores eat their crops. Maasai herders in Kenya and Tanzania are paid around $600 for each cow killed by predators, on the condition that no predators are killed in retaliation, according to conservationists.

The Kasungu translocation has so far eluded such successful solutions.

New risks

A former IFAW employee, Michael Labuschagne, is leading the charge against the project.
Labuschagne, an ex-South African commando, founded Warm Heart Initiative in response to the clashes that followed the translocation. He says when he headed IFAW's law-enforcement efforts in southern Africa he warned the group that translocated elephants would escape their new home, which didn't have enough water and vegetation to support the enlarged herds.

"I stressed to IFAW the inherent risk of human-to-elephant conflict in Kasungu, and IFAW failed to adequately address this known risk prior to the translocations," he said.

He describes the project as a case of "conservation imperialism," in which poor communities bear the cost of foreign environmentalists' actions. Labuschagne has also written to U.S. Congress about IFAW, which has offices in Washington, D.C., saying the group should be held responsible for the deaths and crop damage.

Conservationists and government leaders say locals—and wildlife—will ultimately benefit from translocations and other conservation efforts, which have been a boon to Zambian and Malawian tourism industries. Zambia's tourism revenues shot up 60% in 2024 to $2.5 billion, according to government data. Malawi took in $230 million from tourism in 2024, a 19% jump from a year earlier.

But the resulting anger, according to villagers, has had broader consequences for conservationism in the countries. Many locals no longer report poachers to wildlife authorities; instead, they hunt down and kill stray elephants, according to conservation volunteers.

"Poaching is again cropping up, residents are frustrated," said Anderson Soko, a Zambian who hunted illegally inside Kasungu in the 1990s but has since joined anti-poaching initiatives.

Anderson Soko visits the grave of his nephew, who was stomped to death by elephants in 2023. NICHOLAS BARIYO/WSJ

Victims of attacks, meanwhile, have threatened to sue IFAW, according to British law firm Leigh Day, which is representing potential plaintiffs. Warm Hearts has been documenting evidence for the victims.

IFAW called the legal threat opportunistic and said the victims should seek any compensation from the Malawian government. Malawi's Justice Ministry declined to comment.

Lawyers are hoping to recruit Matilda Banda, whose son narrowly escaped being crushed during naptime, to join a possible U.K. lawsuit.

Banda said she wants compensation for the losses she suffered. The elephants, after ransacking her house and eating her corn, urinated on what remained of her grain supply.

"I had never been this close to elephants," she said. "It was a very scary moment."

Write to Nicholas Bariyo at nicholas.bariyo@wsj.com

II. SUNLIGHT THE BEST DISINFECTANT

Volunteers

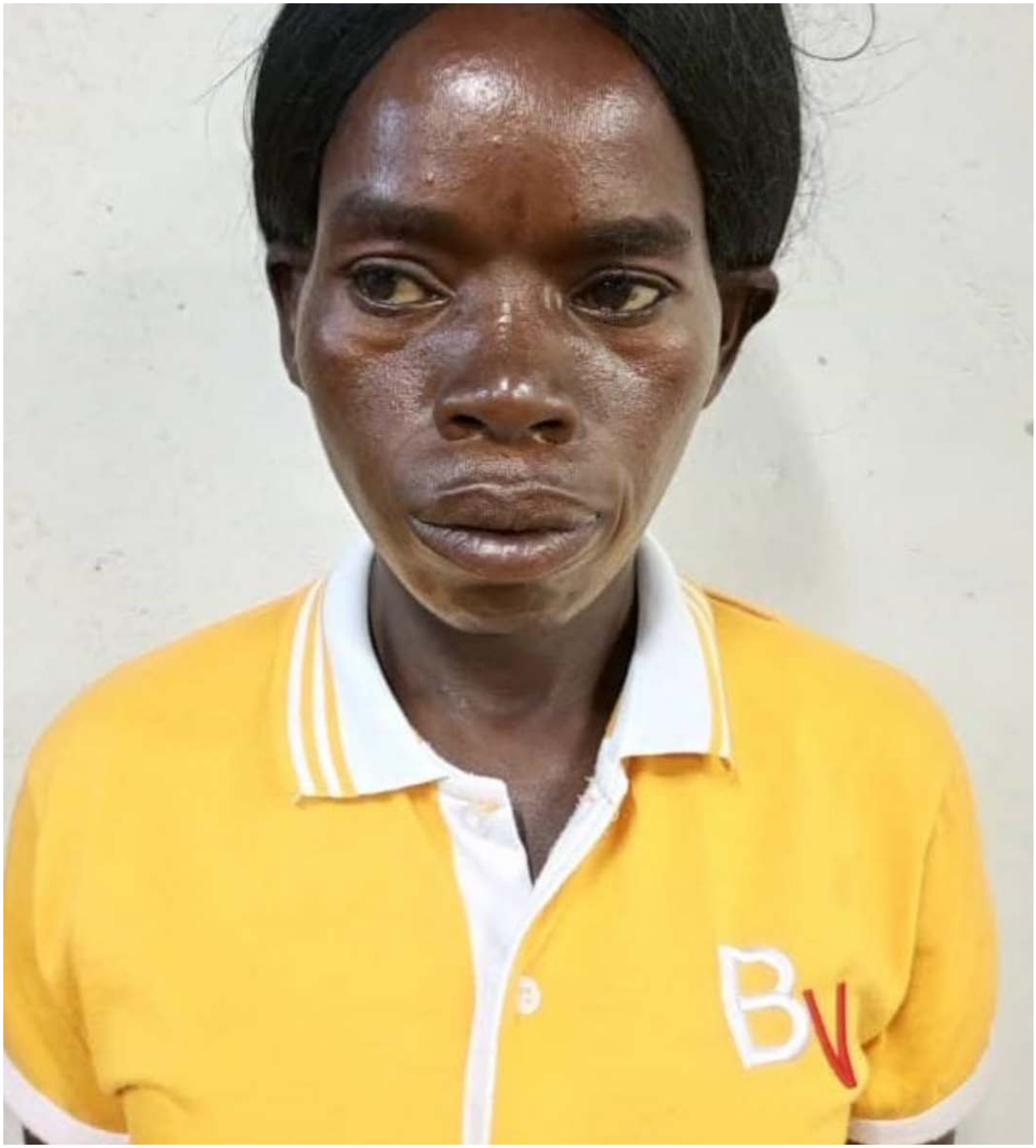
Volunteers Getting WSJ's Nicholas Bariyo at Lilongwe Airport (Malawi)

Victims Waiting for Interview

WSJ Reporter Interviewing Victim

WSJ Reporter Interviewing Victims

WSJ Reporter Interviewing Victims



Victim

Victim

Victim

Victim

Victims

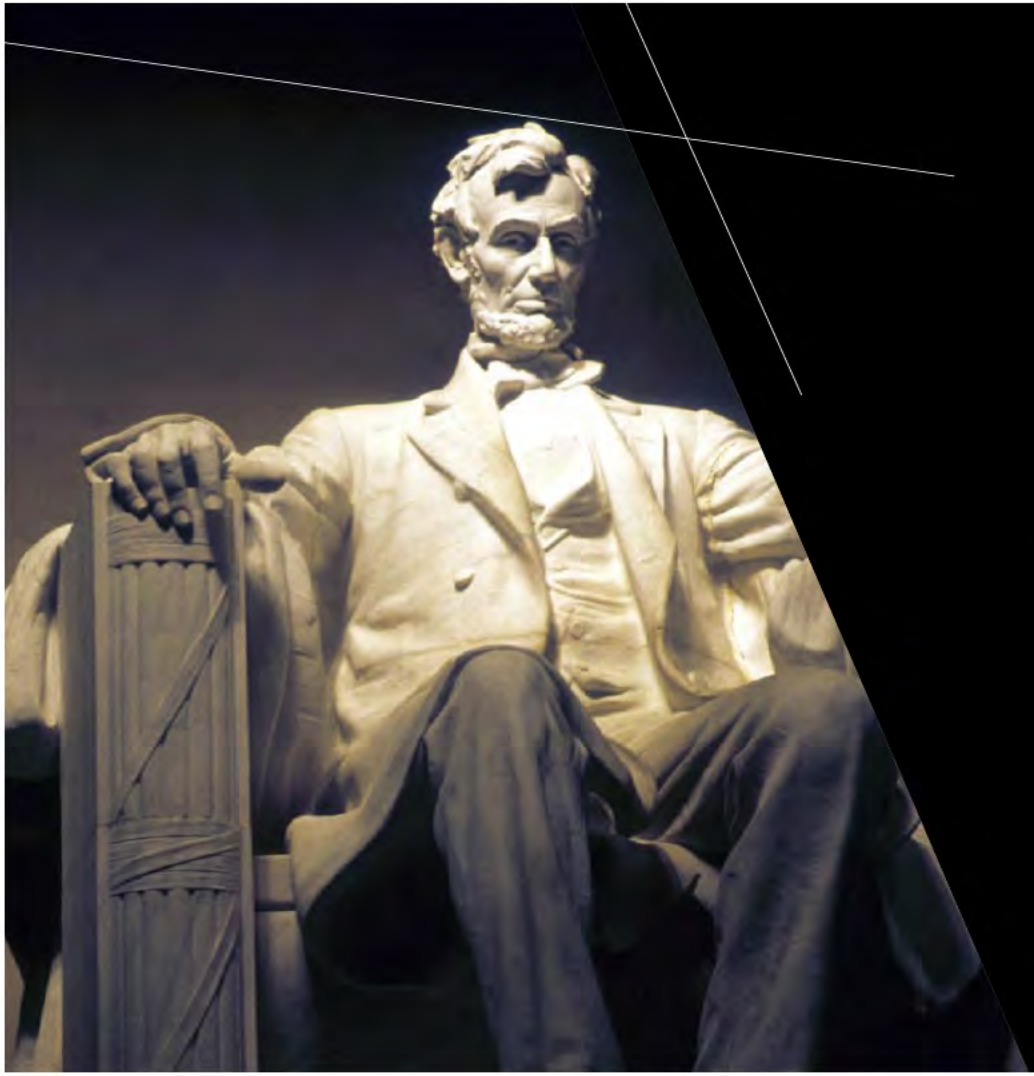
Victim

Victim

Victim Pointing Out Location of Attack

Victim Grave (Son of Man in Photo)

III. U.S. LAWS TO THE RESCUE



FEDERAL FALSE CLAIMS ACT

HISTORY OF FALSE CLAIMS ACT (FCA)

"Qui tam actions appear to have originated around the end of the 13th century, when private individuals who had suffered injury began bringing actions in the royal courts on both their own and the Crown's behalf. *See, e.g.*, Prior of Lewes v. De Holt (1300), reprinted in 48 Selden Society 198 (1931)."

Vermont Agency of Nat. Res. v. U.S. ex rel. Stevens, 529 U.S. 765, 774 (2000)

13th Century

HISTORY OF THE FCA

FCA was based upon a *qui tam* model used in the American colonies and borrowed from England

Qui tam pro domino rege quam pro se ipso in hac parte sequitur

"Who sues on behalf of the king as well as for himself"

HISTORY OF THE FCA

- Eighteenth-century legislatures relied heavily on private litigants to vindicate public rights
- For example, approximately 10% of all public acts passed in Massachusetts between 1692 and 1820 contained at least one provision authorizing enforcement by an informer
- Between 1789 and 1820, Congress deployed informer's actions to implement nearly every one of its constitutionally enumerated powers: to make war, raise and support a military, grant copyrights and patents, regulate immigration, establish post offices, lay and collect taxes, coin money, and regulate commerce between the states and with Indian tribes
- A 1784 statute permitted any informer to recover a *qui tam* penalty against the operator of an unlicensed billiards table

13th Century 1776

HISTORY OF THE FCA

- Congress enacted the 1794 Slave Trade Act imposing *qui tam* penalties on owners and operators of slave ships: forfeiture of the vessel, a $2,000 penalty on any person fitting out a ship for the slave trade, and an additional $200 penalty for each person boarded for purpose of "selling them as slaves." Act of March 22, 1794, § 1, 3 Stat. 347, 347.
- One half of the recovery would go to the United States, and the other to the "use of him or her who shall sue for and prosecute the same." *Id*.
- "Antislavery law enforcement in the early republic casts serious doubt on the claim that Article II was understood at the time to vest the executive with an exclusive enforcement discretion that forecloses Congress from relying on private informers to play a supplemental or independent role in law enforcement." *Public Law Litigation in Eighteenth Century America: Diffuse Law Enforcement in a Partisan World*, 92 Fordham L. Rev. 469, 491 (2023)

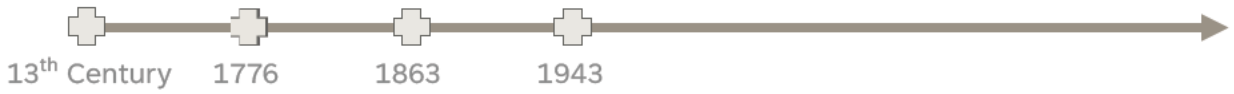
13th Century 1776

HISTORY OF THE FCA

- False Claims Act, sometimes referred to as “Lincoln’s Law,” was signed into law by President Lincoln on March 2, 1863
- Amid the Civil War, reports of shoddy supplies began to appear across the battlefields. Suppliers determined demand was so high they could supply substandard goods for high prices to Government with little repercussion
- After hearing these reports, the first iteration of the False Claims Act was signed into law

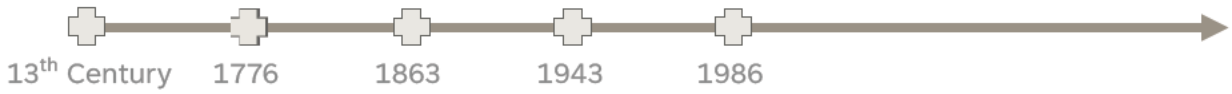
HISTORY OF THE FCA

- FCA was curtailed in 1943 in response to perceived abuses
- *Qui tam* action could not be brought if Government already had the information in its possession
- *See United States ex rel. Marcus v. Hess*, 317 U.S. 537 (1943)



HISTORY OF THE FCA

- FCA was revitalized in 1986 in response to concerns about the growth of government fraud
  - Guaranteed minimum relator share award (15%)
  - Role for whistleblower in pursuing the case with or without Government
  - Cause of action for individuals for retaliation
  - Provided for attorney fees



HISTORY OF THE FCA

- FCA was amended in 2009 and 2010 in response to court decisions
  - Clarified terms “claim” and “obligation”
  - Amended public disclosure bar; government can object
  - 3-year statute of limitations for retaliation claims

HISTORY OF THE FCA

In 2024, FCA was determined to be in direct contradiction of Article II of the U.S. Constitution by Judge Mizelle of Middle District of Florida. Judge Mizelle challenged the constitutionality of the False Claims Act and dismissed Relator Zafirov's *qui tam* with prejudice.

Judge Mizelle stated "a relator enjoys unfettered discretion to decide whom to investigate, whom to charge in the complaint, which claims to pursue, and which legal theories to employ." *United States ex rel. Zafirov v. Florida Medical Associates, LLC*, Case No. 8:19-cv01236, 2024 WL 4349242, at *2 (M.D. Fla. Sept. 30, 2024) (Mizelle, J.). "[L]ike a United States Attorney, Zafirov proceed[ed] on behalf of the "real party of interest in this case," the "United States of America."" *Id*. at 3.

FCA'S CURRENT IMPACT

Highlights

- FCA recoveries exceeded $6.8 billion in the fiscal year ending September 30, 2025
- $5.34 billion arose from lawsuits that were filed under the *qui tam* provisions of the FCA and pursued by either the Government or whistleblowers (78% approximately)
- During the same period, the relator share for the individuals who exposed fraud and false claims by filing *qui tam* actions was approximately $330 million (approximately 6% of total recovery)
- Approximately 1,297 *qui tam* suits filed in fiscal year 2025

ELEMENTS OF FCA VIOLATION

31 U.S.C. § 3729 *et seq*.

- Claim
- Falsity
- Scienter
- Materiality

ELEMENTS OF FCA VIOLATION

CLAIM

- Request for demand or money (claim)
- Claim must involve Government money (federal or state)
- Or an unpaid obligation to Government (reverse claim) such as a rebate or a refund owed to Government
- Presented to Government (directly or through an agent such as a sub-contractor to a contractor to Government)
- Full definition of “claim” is located at 31 U.S.C. § 3729 (b)(2)

ELEMENTS OF FCA VIOLATION

FALSITY

- Claim may be “factually false”
- Claim may be truthful on its face, but still fraudulent (”legal falsity”)
- False certification (expressed and implied) *Universal Health Servs., Inc. v. United States*, 579 U.S. 176, 181 (2016).
- Fraud in the inducement or fraudulent inducement

  “[F]raudulent inducement examines the false statements that induced the government to enter the contract—liability for the specific claims for payment attaches “so long as the original contract was obtained through false statements or fraudulent conduct.”” *United States ex rel. Miller v. Weston Educ., Inc.*, 840 F.3d 494, 504 (8th Cir. 2016)(citing *In re Baycol Prods. Litig.*, 732 F.3d 869, 875–76 (8th Cir. 2013))

ELEMENTS OF FCA VIOLATION

SCIENTER

- Definitions of “knowing” or “knowingly” in the statute at 31 U.S.C. § 3729 (b)(1)
- Need evidence to show defendant:
  - Had actual knowledge
  - Deliberately ignorant
  - Acted in reckless disregard
- Ordinary negligence is not sufficient under FCA
- Specific intent to defraud is not required

ELEMENTS OF THE FCA

MATERIALITY

- "The materiality standard is demanding. The False Claims Act is not "an all-purpose antifraud statute," Allison Engine, 553 U.S., at 672, 128 S.Ct. 2123 or a vehicle for punishing garden-variety breaches of contract or regulatory violations." *Universal Health Servs., Inc. v. United States*, 579 U.S. 176, 194 (2016).
- "Material" means the statement or record has a natural tendency to influence, or be capable of influencing, the payment or receipt of government money or property
- Basically "does the government care about the falsity?"

NOT ELEMENTS - BUT VERY IMPORTANT

FRCP RULE 9(B)

- FCA cases must be pled with “particularity”
- Circuit differences

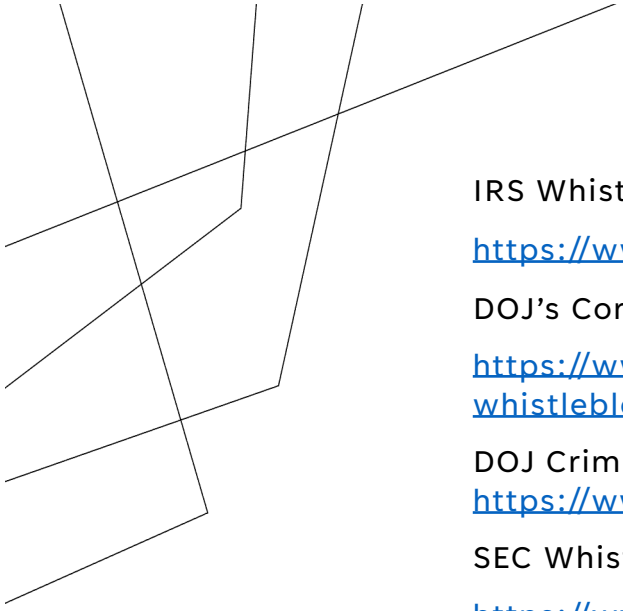
FILING BARS

- First to File Bar (31 U.S.C. § 3730(b)(5))
- Public Disclosure Bar (31 U.S.C. § 3730(e)(4)(A))

FCA RETALIATION CLAIMS

- Often relators suffer adverse actions at work or post-separation after raising fraud concerns
- FCA protects relators under 31 U.S.C. § 3730(h)
- 3730(h) claims have 3-year statute of limitations
- 3730(h) claims can be filed in a stand alone complaint or within the FCA complaint
- If the retaliation claim is filed with the FCA claims on behalf of government, retaliation claims will typically be resolved separately and after government has resolved its claims
- *Damages recoverable by a client for their retaliation claim can, in some cases, be greater than the FCA relator's share award*
- Collect needed retaliation evidence up-front and separate from the FCA; it may be years before revisited

IV. ADDITIONAL U.S. WHISTLEBLOWER PROGRAMS



IRS Whistleblower Program

https://www.irs.gov/compliance/whistleblower-office

DOJ's Corporate Whistleblower Awards Pilot Program

https://www.justice.gov/criminal/criminal-division-corporate-whistleblower-awards-pilot-program

DOJ Criminal Division's May 2025 New Guidance Memo
https://www.justice.gov/criminal/media/1400041/dl?inline

SEC Whistleblower Program

https://www.sec.gov/enforcement-litigation/whistleblower-program

PLUS

Departments of Interior & State OIG Offices

Referral to Local U.S. Attorney's Office

U.K. Serious Fraud Office

THANK YOU

Contact the Speaker:

phillip.brewster@brewsteradvisory.com

Source Credit: FCA Section – The Anti-Fraud Coalition

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Current Issues in Wildlife Law

Regina Lennox
SCI Sr. Litigation Counsel
February 19, 2026

Cases to Discuss

Wolves – job security for SCI attorneys

Black bears – fun with experts and state deference

Coyotes – "principles of sound scientific management"?

CBD, CBD, CBD – when

CBD v. FWS, 801 F. Supp. 3d 1151 (D. Mont. Aug. 2025)

- **Summary:** The FWS denied 3 petitions to re-list wolves in the Western U.S.
- **Issue:** Whether the FWS erred given changes in state law that aim to increase wolf harvest
- **Outcome:** Granted summary judgment in favor of Plaintiffs on most claims
- **Status:** On appeal to the 9th Circuit

CBD v. FWS: Legal Issues

- Did the plaintiffs have standing?
- Did the court have jurisdiction to consider arguments outside the 2011 delisting rule?
- Did the FWS err in failing to consider wolves' historical range?
- Did the FWS err in failing to consider Colorado as a "significant portion" of the gray wolf's range?
- Did the FWS fail to consider the best available science on wolf population numbers and impacts of human-caused mortality?
- Did the FWS fail to properly evaluate the threats from inadequate regulatory mechanisms?

CBD v. FWS: District Court Analysis

"YES"

- (This is why Plaintiffs sue in the District of Montana)
- Yes, Plaintiffs have standing
- Yes, the Court has jurisdiction
- Yes, the FWS erred in failing to fully consider lost historical range and Colorado's role in wolf recovery
- Yes, the FWS failed to consider the best available science
- Yes, the FWS failed to consider the threats of state laws that require increased wolf offtakes

CBD v. FWS: Looking Ahead on Appeal

- The district court's dislike of state management is evident
- The district court did not address all of SCI et al.'s arguments
- The reality of wolf offtakes undercut the district court's decision

Bear Warriors v. FWC, No. 2025-CA-1772

- **Issue:** Whether the FWC violated the state Constitution in authorizing the first black bear hunt in a decade
- **Outcome:** District court denied motion for injunction; denied and granted in part motion to dismiss
- **Status:** Case proceeding to discovery

Bear Warriors v. FWC: Injunction

- Plaintiff sought a temporary injunction to stop the hunt supported by an expert affidavit
- The FWC argued that Plaintiff was seeking to supplant the FWC's regulatory authority based on its own arguments about what constitutes "sound" science
- SCI challenged support for the motion based on an unqualified expert witness (among other things)
- At the 11th hour, Plaintiffs sought to amend their evidentiary support by amending/supplementing their expert report
- SCI objected to this late effort

Bear Warriors v. FWC: Injunction (cont'd)

- The Florida state court denied the injunction
- The court considered argument and questions about the expert's qualifications
- The court limited the expert's testimony only to matters involving survey methods and bear biology, not management decisions
- The FWC's expert provided credible testimony and a rational reason for the FWC's decision to go forward with the hunt

Bear Warriors v. FWC: Motion to Dismiss

- The FWC moved to dismiss the case based on lack of jurisdiction
- The court granted the motion to dismiss in part, dismissing one claim with respect to the FWC's ability to delegate to the Director
- The FWC asserted that Plaintiff could not bring the lawsuit because the FWC acted within its broad constitutional authority
- The court agreed that the state constitution sets a very high bar for overturning an action by the FWC
- However, the court denied the motion in part based on the deferential standard of review for a motion to dismiss

MUCC v. NRC, Nos. 24-000225, 24-000427

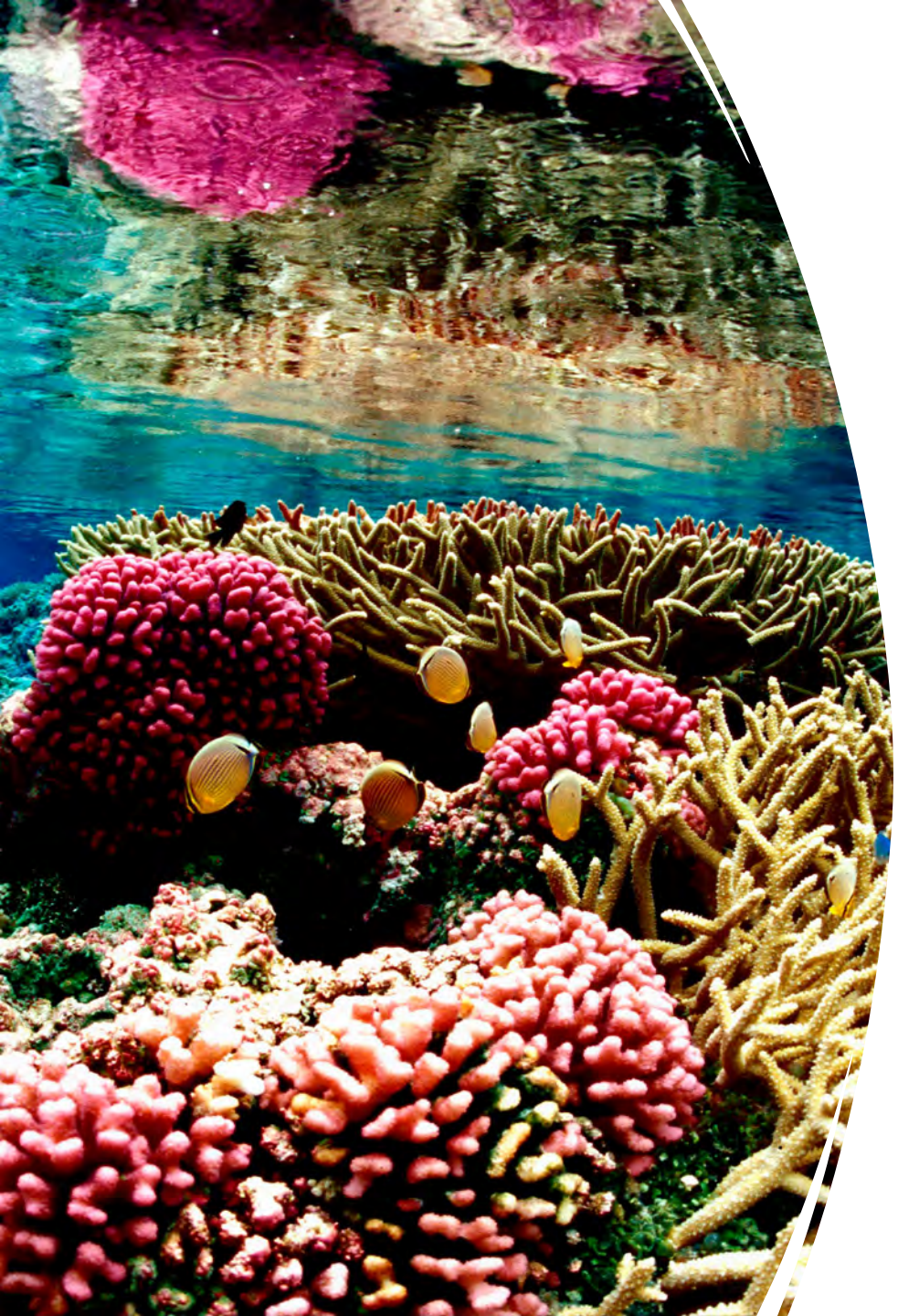
- **Summary:** The Michigan NRC closed the previously year-round coyote season during the coyote denning season, and hunting / trapping groups challenged that decision under Michigan Prop G
- **Issue:** Whether the decision was made based on "principles of sound scientific management"?
- **Outcome:** Court affirmed the NRC's action and held it complied with Prop G
- **Outlook:** The NRC at its January meeting reopened a year-round take of coyote; Humane World for Animals sued

MUCC v. NRC: Legal Analysis

- “The commission shall, to the greatest extent practicable, utilize principles of sound scientific management in making decisions regarding the taking of game. The commission may take testimony from department personnel, independent experts, and others; and review scientific literature and data, among other sources, in support of its duty to use principles of sound scientific management.”
- Does not include politics and other non-scientific considerations
- Does not preclude the NRC from considering social or public perceptions

MUCC v. NRC: Legal Analysis

- The court parsed the terms “sound,” “scientific,” “scientific management,” and “practicable”
- The court disregarded the NRC’s finding on social issues and focused instead on what was stated by department personnel, independent experts and others, and reflected by the proffered scientific literature and data
- The court went through testimony from the DNR biologist and others and the responses of Commission members
- Based on a review of the record (over 3,000 pages), the court upheld the decision



CBD v. NMFS, 2025 WL 719360 (D. Hawaii 2025)

Summary: NMFS listed 20 coral species as threatened due to ocean warming, acidification, and disease related to climate change (primary threats) and collection, overfishing, water pollution, and habitat degradation (additional threats), but did not adopt Section 4(d) rules

Issue: CBD petitioned for such 4(d) rules, arguing that NMFS "shall" issue regulations it deems "necessary and advisable" to provide for the conservation of threatened species

Outcome: District court granted summary judgment in part for NMFS and in part for CBD

CBD v. NMFS: Standard of Review

- CBD petitioned to adopt 4(d) rules
- NMFS denied the petition in a three-page letter
- Court found NMFS offered no reasoned explanation for declining to adopt regulations to protect the threatened coral species from their gravest threat, but the holding only required NMFS to further explain its reasons (not requiring NMFS to adopt 4(d) rules)
- The court applied a highly deferential standard of review for non-action but held the denial of a petition for rulemaking must include a brief statement of grounds for denial and a "reasoned explanation as to why it cannot or will not exercise its discretion
  to initiate rulemaking"

CBD v. NMFS: Section 9 Prohibitions

- Section 4(d): the Secretary "shall issue such regulations as he deems necessary and advisable to provide for the conservation of [threatened] species," 16 U.S.C. § 1533(d)
- Section 9: list of prohibitions for endangered species, potentially extendable to threatened species (by default for FWS but not NMFS)
- CBD sought extension of Section 9 prohibitions
- In declining to extend Section 9 prohibitions on collection and trade, NMFS stated that doing so would provide no meaningful conservation benefit because not a lot of collection and trade, and would be difficult to implement due to species identification challenges, and the court upheld this finding as providing a reasonable explanation

CBD v. NMFS: Climate Change

- NMFS found climate change to be the single greatest threat to the threatened coral species yet failed to adequately explain why it would not adopt regulations to address this threat
- NMFS' reasons were conclusory: "limited effectiveness," otherwise engaging with partners, and focusing on other priorities – none of these explained why not necessary and advisable

CBD v. DOI, 144 F.4th 296 (D.C. Cir. 2025)

Summary: CBD sued BLM over 4,000 permits for oil and gas wells in New Mexico and Wyoming, alleging that BLM failed to adequately consider the climate change and environmental justice impact of the disputed wells

Issue: Whether CBD had standing

Outcome: District court dismissed case for lack of standing; D.C. Circuit affirmed

CBD v. DOI: Standing Arguments

- CBD did not challenge each permit but rather all of them by arguing the issuance of these permits disrupted their organizational mission and harmed the interests of their members who live near the wells
- CBD identified broad “APD Areas” (80x80 miles and larger), not specific harm from each well
- Plaintiffs failed to demonstrate causal links between harms where Plaintiffs live and the APD approvals that Plaintiffs seek to reverse

CBD v. DOI: Standing Arguments (cont'd)

- "Irreducible Constitutional minimum" of standing:
  - Injury that is concrete, particularized, and actual or imminent,
  - Fairly traceable to the challenged action, and
  - Redressable by a favorable ruling
- A plaintiff must demonstrate standing for each claim it seeks to press and for each form of relief sought, even if the various claims are derived from similar facts or raise similar legal questions

CBD v. DOI: Holding

- Plaintiffs failed to establish specific injury within the "geographic ambit of the harms caused by an agency decision to approve an APD" – just alleging contributions to climate change is not enough
- Plaintiffs failed to demonstrate causation; they only alleged general harm to climate-imperiled species and habitats without addressing how those harms flow from the greenhouse gas emissions associated with the challenged wells
- Plaintiffs did not plausibly allege that redressability from the alleged procedural errors

CBD v. FWS, 792 F. Supp. 3d 50 (D.D.C. 2025)

- **Summary:** CBD sued over the FWS' listing of eastern black rail as threatened rather than endangered and its determination that designating critical habitat for eastern black rail was not prudent
- **Issue:** Whether the FWS properly declined to identify critical habitat for the rail based on concerns that it would increase birder interference
- **Outcome:** District court held that FWS was required to make a benefits determination and vacated and remanded FWS' decision that critical habitat designation was not prudent

CBD v. FWS: Critical Habitat

- At issue was the eastern black rail, whose populations and habitat have declined
- 16 U.S.C. § 1533(a)(3)(A) requires the FWS to "designate" critical habitat concurrently with its listing decision "to the maximum extent prudent and determinable"
- Designated critical habitat gains protection under Section 7, which requires federal agencies to consult the FWS before taking action that could jeopardize designated critical habitat
- The court noted that the designation of critical habitat does not affect private parties, states, or local governments or create a refuge, reserve, preserve, etc.

CBD v. FWS: Critical Habitat (cont'd)

- § 1533(b)(2) provides the FWS with discretion to exclude critical habitat if a certain condition is met: the FWS "may exclude any area" from the designation if it "determines that the benefits of such exclusion outweigh the benefits of [designation]," unless the exclusion would result in extinction of the species
- However, "not prudent" findings are limited, and "[m]ost 'not prudent' findings have resulted from a determination that there would be increased harm or threats to a species through the identification of critical habitat," such as an increased risk of poaching; or, if the species is listed for reasons besides habitat loss, the FWS may conclude that designation would simply increase regulatory burdens without providing any benefit to the species

CBD v. FWS: Not Prudent Determination

- Eastern black rail listing noted the primary threat of habitat loss, and a “concern” from interference with birders
- Notwithstanding the risk posed by habitat loss, the FWS “determined that designation of critical habitat for the eastern black rail is not prudent” due to overzealous birders and further facilitate disturbance”
- FWS found that the costs of designating critical habitat for the eastern black rail outweighed the benefits, because designation “would more widely publicize [the] known occupied locations of the” subspecies

CBD v. FWS: Holdings

- Designation of critical habitat is the rule, and the FWS may forgo a designation in whole or in part only after making a cost/benefit finding
- The FWS erred in failing to make a cost/benefit determination and jumping right to “not prudent” simply because it did not intend to designate “all” habitat
- The FWS failed to adequately analyze the benefits of designating critical habitat to ameliorate the threat of habitat loss, compared to the “concern” of overzealous birders

Questions?

- Add password – please email to Litigation@safariclub.org

SCI

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Center for
Conservation
Law and Education

What is the CCLE?

- A dynamic 501(c)(3) organization dedicated to strengthening the future of hunting and wildlife conservation
- A legally independent, separately incorporated organization from SCI
- Operates with its own Board, governance structure, financial accounts, etc.
- Focused on promoting hunting through legal cases, regulatory input, and education of state wildlife agencies and commissions and state and federal policymakers
- Creates change where it matters most: courts, commissions, legislatures, and within the broader conservation community

Purpose of the CCLE

- Defend and promote science-based wildlife management nationwide
- Challenge legal barriers to hunting, fishing, and recreational shooting
- Advance conservation policy nationwide
- Support state-level engagement
- Educate policy makers and conservation partners

CCLE Approved Projects So Far

- Successfully defended Florida's first black bear hunt in a decade
- Challenging New Jersey's unconstitutional ban on suppressors
- Defending the delisting of gray wolves from the ESA
- Educational initiatives aimed at reducing government overreach in Alaska
- Funding legal interns to develop the next generation of wildlife lawyers

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Learn More and

Support this Work!

WHO OWNS THE WILD?

From Free-Taking to Federal Lawsuits: The volatile evolution of North American Wildlife Policy

THE LEGAL ROOTS OF CONSERVATION

529 AD. Emperor Justinian declares air, water, and wild animals *res communes* (common to all).

1215. The Magna Carta. The King holds wildlife in trust for the people, not as private property.

1600s. The American Pivot. Colonists reject English class privilege. Survival requires a policy of *Free-Taking*.

THE TRAGEDY OF THE COMMONS

The Philosophy

"Manifest Destiny" promised inexhaustible resources from sea to shining sea.

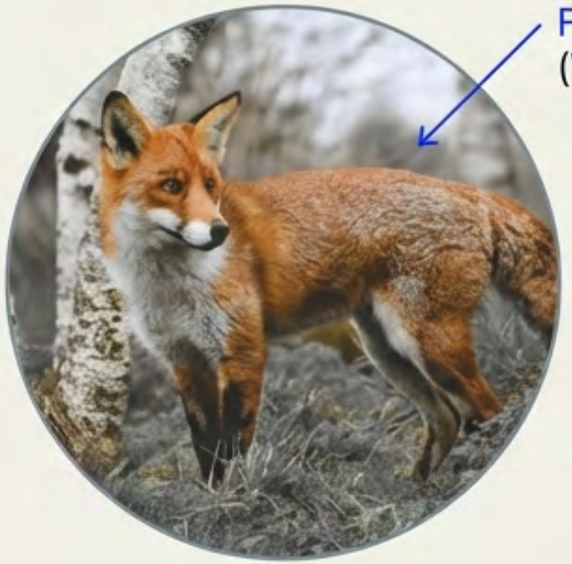
The Consequence

Rational economic incentive drove individuals to consume before their neighbors did.

"If land belongs to everyone, it belongs to no one." — Hardin (1968)

WHEN DOES AN ANIMAL BECOME PROPERTY?

Pierson v. Post (1805)



Key Rule: Pursuit is not enough. Property requires "actual corporeal possession." You must mortally wound or deprive the animal of natural liberty.

Ghen v. Rich (1881)

Key Rule: Custom rules the industry. A "bomb lance" mark acts as a claim of ownership, even if the whale sinks and is found later by another.

THE PILLARS OF PROTECTION

The Weeks Act (1911)

Authorized government purchase of private “cut-over” land.

“No single law has been more important” for Eastern forests. Near Black

Magnuson-Stevens Act (1976)

Extended U.S. control 200 miles offshore. Replaced “freedom of the seas” with a managed zone to stop foreign fleets.

National Wildlife Refuge System

Established a “Wildlife First” mission. Grown from 1 island (1903) to 150 million acres today.

THE BATTLE FOR JURISDICTION

STATE AUTHORITY

Geer v. Connecticut (1896)

States hold wildlife in **public trust** in trust for their people. They regulate the “take.”

FEDERAL SUPREMACY

Missouri v. Holland (1920)

Inter**International Treaties** trump State laws. Migratory birds do not observe state borders.

PROPERTY POWER

Kleppe v. New Mexico (1976) The **Clause** allows Feds to protect animals (even wild burros) on federal land against state wishes.

LITIGATION AS REGULATION

The “Sue-and-Settle” Phenomenon

Environmental groups sue agencies to force regulatory action. The government often settles, creating binding decrees that bypass standard public input channels.

Most Litigious Organizations (EAJA Cases 2009-2012)

THE 20TH CENTURY'S GREATEST SUCCESS STORY

"Whatever its shortcomings, North America's system of wildlife conservation is the 20th century's greatest environmental success story." — Geist & McTaggart-Cowan

From the brink of extinction to 150 million protected acres. The Public Trust Doctrine endures.

State Authority v. Federal Power in Wildlife Management: Lessons from Alaska

JESSIE ALLOWAY

DEPUTY SOLICITOR GENERAL

Federalism: Who Decides?

(inspired by Judge Jeffrey Sutton, *Who Decides?* (2021))

- Allocates decision-making authority
- Question is who decides, not what policy is best
- States as laboratories
- Courts allocate institutional power

Federalism is less about outcomes and more about allocating authority.

Why Federalism Matters for Wildlife

The Traditional Rule: States Manage Wildlife

Our Focus – Using Alaska as an Example

Are courts giving meaningful effect to Congress's preservation of state wildlife authority— or are expansive readings of federal land statutes functionally nationalizing wildlife policy?

Alaska as a Wildlife Laboratory

The Alaska Statehood Act (1958)

- Congress required transfer of fish and wildlife management to Alaska
- Condition: State must provide for conservation “in the broad national interest”
- 1959: Interior certified Alaska’s laws met the standard
- January 1, 1960: Management transferred to the State.

Wildlife authority was part of the statehood bargain.

Alaska as a Wildlife Laboratory

- First state with a constitutional article devoted to natural resources
- Only state to constitutionalize the sustained yield principle
- Resources managed “for the maximum benefit of its people”
- Wildlife must be utilized and maintained on sustained yield
- Sustained yield applies to both predator and prey
- Allows selection between predator and prey populations (“intensive management”)

Alaska as a Wildlife Laboratory

1971 Interior regulation:

- States “have the authority to control and regulate” fish and resident wildlife within state boundaries
- Federal agencies have “certain responsibilities” for conservation

1983 DOI reaffirmed:

- Federal authority exists for specified purposes
- State authority remains the “comprehensive backdrop” absent specific overriding federal law

State authority was treated as the baseline — even on federal land.

ANILCA: The Federal Overlay Returns

- 1980: Congress enacts the Alaska National Interest Lands Conservation Act (ANILCA)
- Expands federal conservation lands in Alaska
- But, Congress sought to "**balance** two goals, often thought conflicting."
  - Protect "the national interest in the scenic, natural, cultural and environmental values of the public lands in Alaska"
  - **At the same time,** provide "adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people.

Sturgeon v. Frost, 587 U.S. 28 (2019)

ANILCA: The Federal Overlay Returns

16 U.S.C. § 3202: Congress Preserves State Authority

- § 3202(a): State authority preserved over "management of fish and wildlife on public lands
- § 3202(b): Secretary's authority preserved "over the management of the public lands."
- § 3202(c): Hunting carried out under state and federal law

Savings Clause = State authority remains baseline unless clearly displaced.

Safari Club International v. Haaland

The State Management Story

- 1998: Kenai brown bears designated a “population of special concern”
- State managed conservatively (1998-2011)
- Population increased ~3% annually (1998-2011)
- State and USFWS agreed population could support additional harvest
- 2012-13: State expanded hunting opportunities – allowed the taking of brown bears over bait.

Safari Club International v. Haaland

The Federal Response

- Service characterized expansion as “predator control”
- Kenai Rule prohibited baiting of brown bears on the refuge
- Ninth Circuit upheld the rule. Characterized refuge authority as "plenary"

Text vs. Outcome

TEXT

ANILCA § 3202

"Nothing in this Act is intended to enlarge or diminish" state authority

OUTCOME

Ninth Circuit – *SCI v. Haaland*

Congress delegated "plenary authority" to the USFWS

National Preserves: Agency Redefines “Sport”

16 U.S.C. § 3202 (National Preserves):

- Preserves managed like parks—except
  - “Taking of fish and wildlife for *sport purposes and subsistence uses . . .* shall be allowed”
  - Under applicable State and Federal law
  - Hunting restrictions require consultation with the State

2024 NPS Interpretation:

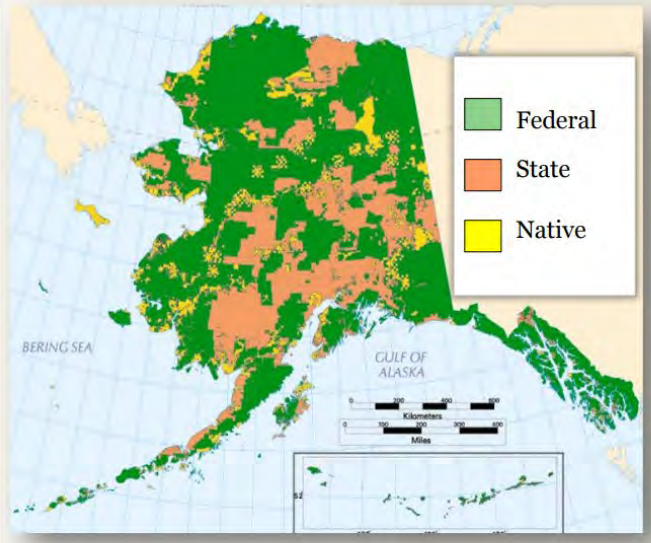
- Interprets sport to incorporate “fair chase”
- Distinguishes sport harvest from subsistence harvest
- Narrows permissible state-authorized methods (no bear baiting unless for subsistence purposes)

If agencies define “sport,” how much room remains for state hunting policy?

Alaska:
60% Federal Land

State *of* Alaska

Provided by the Department of Natural Resources



Land Ownership

- *Total Land in Alaska:* Approx. 365.5 million
- *Federal Land:* More than 200 million acres
- *State Land:* Approx. 100 million acres of uplands, 60 million acres of tidelands, shore lands, and submerged lands, and 40,000 miles of coastline
- *Native Corporation Land:* 44 million acres

Percent Ownership[1]:

- *Federal*: 60.7%
- *State: 27.5%*
- *ANCSA: 11.6%*
- *Private (includes municipal and borough): 0.2%*

[1] Percent Ownership estimates do not include tidelands, shore lands, and submerged lands

Who Decides — After Loper Bright?

- Courts must now independently interpret statutes
- “Plenary authority” language will be scrutinized
- Federalism only works if displacement of state authority is clear and intentional
- Wildlife law is an area where this battle will (and should) continue

The question is not which wildlife policy is best — but who decides.

Questions?

Ethical Bloopers: 10 Times Attorneys Made Headlines

Madeline Demaske

Safari Club International's Litigation Associate

February 18, 2026

Richard Nixon

- Watergate severely damaged public trust in lawyers
- Scandal exposed a lack of ethics training in the profession
- ABA mandated formal legal ethics instruction
- Lead to the ABA Model Rules of Professional Conduct
- Ethics requirements expanded post-Watergate scandal

F. Lee Bailey

- Once one of the nation’s most famous defense attorneys
- Career ended after he mishandled over $20 million worth of stock from a client’s account
- Misconduct included commingling and misappropriating client funds
- Violated ABA Model Rule 1.15
- **Takeaway**: Attorneys must keep client funds and property separate from their own.

ABA Model Rule 1.15: Safekeeping Property

- (a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property...

Safekeeping Property

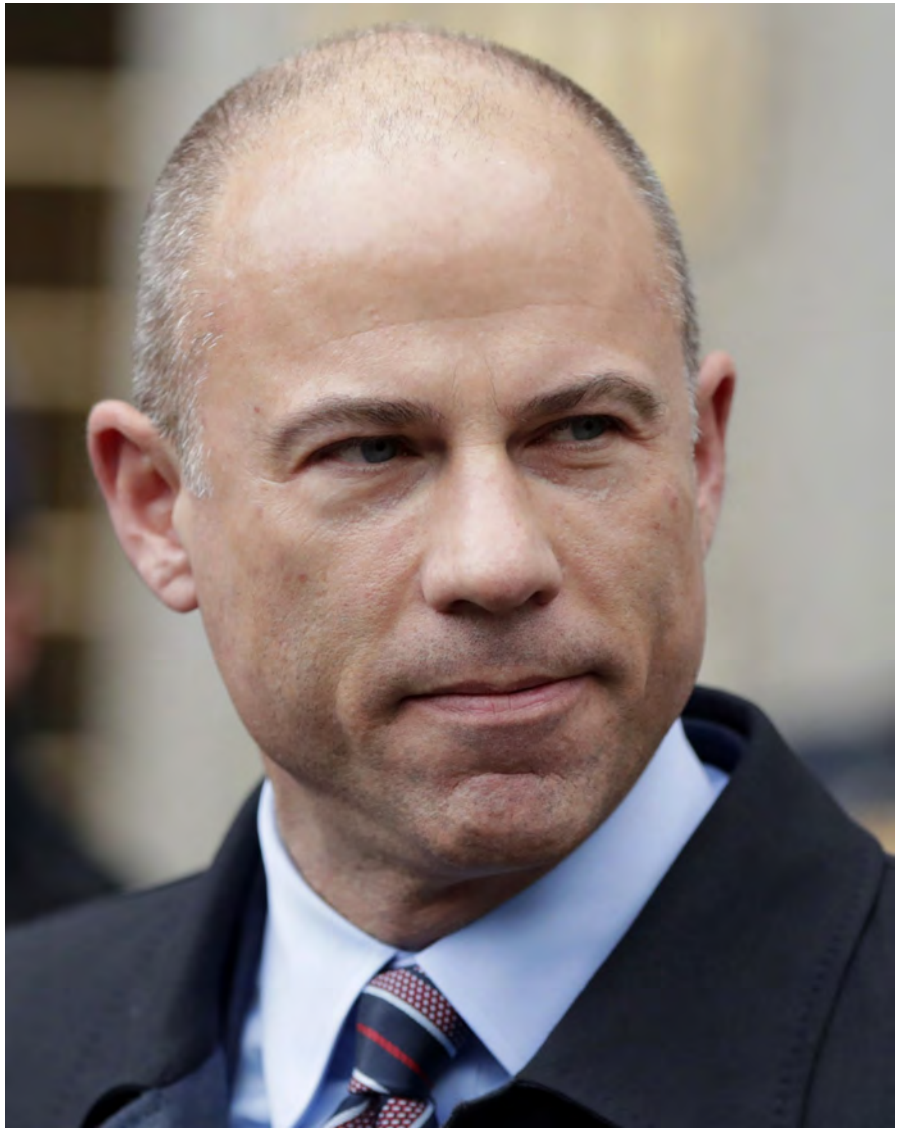
- Use separate trust account for all client and third-party funds
- Do not comingle funds
- Hold advanced fees and expenses in trust until earned or incurred
- Notify, deliver, and account promptly when receiving funds
- Keep disputed funds in trust
- Keep detailed records for at least five years

Why Rule 1.15 matters

Rule 1.15 requires lawyers to operate like fiduciaries and financial stewards. Proper trust-account management isn't optional—it's essential to maintaining licensure and client trust. Errors, even unintentional, can lead to discipline, suspension, or disbarment.

Tom Girardi

- Famous for the Erin Brockovich case
- Accused of stealing millions in client settlement funds
- Clients routinely mislead
- Violated ABA Model Rule 1.15
- **Takeaway**: Attorneys must promptly and transparently distribute settlements funds.



Michael Avenatti

- Rose to national fame representing Stormy Daniels
- Stole millions in client settlement funds and attempted to extort Nike for $25 million
- Disbarred and now incarcerated
- Violated ABA Model Rule 1.15
- **Takeaway**: Trust, transparency, and proper handling of client funds are non-negotiable.

Roy Cohn

- Known for his role in the Rosenberg prosecution and as chief counsel to Senator Joseph McCarthy
- Disbarred in 1986 for serious ethical violations
- Guilty of dishonesty, deceit, and misrepresentation
- Violated ABA Model Rule 1.15 and Rule 8.4
- **Takeaway**: Dishonesty, misappropriation of client duns, and manipulation can lead even the most powerful attorneys to be disbarred.

ABA Model Rule 8.4: Misconduct

It is professional misconduct for a lawyer to:

...

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

...

How to Avoid Violating Rule 8.4

1. Tell the truth
2. Respect the justice system
3. Avoid criminal activity
4. Treat others professionally
5. Never misuse their position for personal benefit

Why Rule 8.4 matters

Rule 8.4 is the catch-all ethics rule used when a lawyer’s conduct shows fundamental dishonesty, abuse of power, or harm to the justice system, even if no other rule is violated.

Richard “Dickie” Scruggs

- Built his reputation on major asbestos and tobacco litigation
- Downfall began with a dispute over Hurricane Katrina legal fees
- ABA sought disbarment and the University of Mississippi took his name off the music building
- Implicates ABA Model Rule 8.4 and Rule 3.5
- **Takeaway**: Bribery, attempts to influence the judiciary, and abuse of power destroy careers and erode the integrity of the legal system.

ABA Model Rule 3.5: Impartiality & Decorum of the Tribunal

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

…

Impartiality & Decorum of the Tribunal

- No improper attempts to influence judges or jurors
- No unauthorized ex parte communications
- Restrictions on talking to jurors after trial
- No disruptive conduct in court
- Improper influence through implication

Why Rule 3.5 matters

Rule 3.5 ensures that courtroom decisions are based on law and evidence, not influence, intimidation, or misconduct. These protections preserve both the impartiality of the judicial system and public confidence in that system.

Armani and Belge

- Represented accused killer Robert Garrow
- Garrow revealed the locations of the victims' bodies
- Did not disclose the locations of the bodies
- Implicates ABA Model Rule 1.6
- **Takeaway**: The "Buried Bodies Case" remains a defining ethics lesson—highlighting the profound tension between an attorney's duty of confidentiality and society's expectation of justice, transparency, and compassion.

ABA Model Rule 1.6: Confidentiality

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

...

Confidentiality

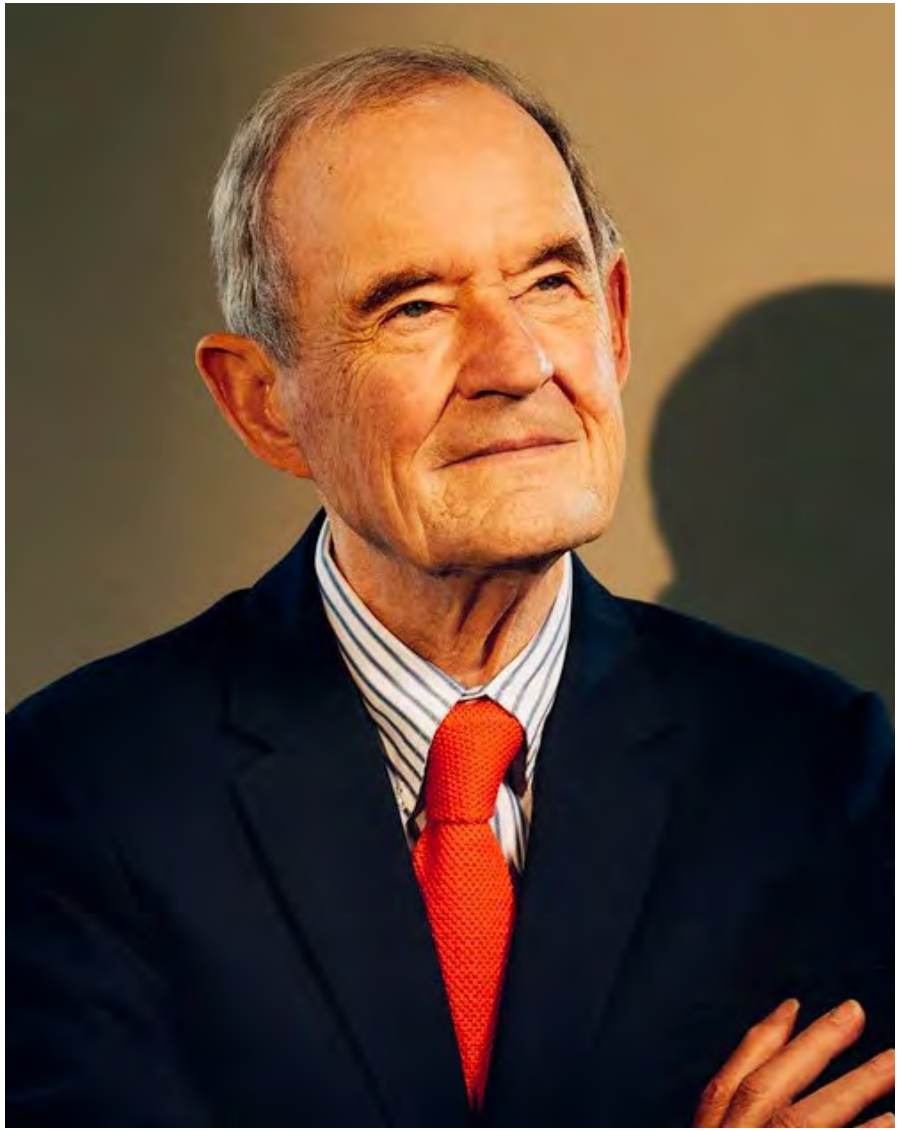
- Under Rule 1.6(a), a lawyer cannot disclose information relating to the representation unless:
  - The client gives informed consent,
  - Disclosure is impliedly authorized, or
  - Disclosure is permitted under one Rule 1.6(b) narrow exceptions.
- What counts as protected information?
  - *Everything*. The confidentiality duty covers all information relating to the representation, regardless of source—not just confidential communications.

Why Rule 1.6 matters

Rule 1.6 is the backbone of the attorney-client relationship. This rule ensures clients can trust their lawyers completely—because effective legal representation depends on full, honest communication.

Lynne Stewart

- Civil rights attorney who represented highly controversial clients
- Crossed legal and ethical lines by smuggling messages
- Automatically disbarred for aiding terrorists
- Implicates ABA Model Rule 1.6 and Rule 8.4
- **Takeaway**: Zeal for your client's cause must never trump your ethical or legal responsibilities.



David Boies

- Most known for his antitrust suit against Microsoft
- Numerous conflict of interest issues
- “How much loyalty do you owe a client when you take on another client?”
- Implicates ABA Model Rule 1.6, Rule 1.7, and Rule 8.4
- **Takeaway**: No loyalty to a powerful client should eclipses an attorney’s ethical obligations.

ABA Model Rule 1.7: Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Practical Examples: Conflict of Interest

Direct Conflict Examples

- Representing both sides in a business negotiation.
- Representing a criminal defendant while also representing a witness whose testimony could harm the defendant.

Material Limitation Examples

- A lawyer's personal financial interest in a company affects their advice to a client suing that company.
- Representing two co-defendants in a case where each is likely to blame the other.

Real-World Example

- Boies represented Harvey Weinstein while his law firm also represented The New York Times

Why Rule 1.7 matters

Rule 1.7 ensures lawyers stay loyal to each client so clients receive unconflicted, unbiased advice. Conflicts that go unmanaged can result in disqualification, malpractice claims, fee forfeiture, and disciplinary action.

Paul Bergrin

- High profile New Jersey defense attorney who represented celebrities to gang members
- Turned his law firm into a criminal enterprise
- Conspired to intimidate, bribe, and even murder
- Misconduct was so extreme that it violated multiple core professional conduct rules
- **Takeaway**: When an attorney crosses from advocate to criminal, the justice system responds decisively.

All of the Rules Paul Bergrin Violated

Primary violations:

- Rule 8.4: Misconduct
- Rule 3.4: Fairness to Opposing Party and Counsel
- Rule 3.5: Impartiality & Decorum of the Tribunal

Additional violations:

- Rule 1.2: Assisting Client Crime or Fraud
- Rule 1.1: Competence
- Rule 1.3: Diligence

Questions?

Materials

- 5 Famous Attorneys Accused of Legal Malpractice
- 1965-1974: Watergate and the Rise of Legal Ethics
- Attorney Paul W. Bergrin Sentenced to Life in Prison for Murder Conspiracy and Racketeering Offenses
- Beyond the Model Rules: The Place of Examples in Legal Ethics
- Buried Bodies Case
- Client Confidentiality: The Buried Bodies Case
- Court Upholds Michael Avenatti's Conviction for Plotting to Extort Up to $25 Million from Nike
- David Boies
- David Boies Fall from Grace

Materials

- Dickie Scruggs
- Did David Boies Push Ethical Boundaries with Dual Role for Weinstein and the New York Times?
- Disgraced Lawyer Tom Girardi Sentenced to Over Seven Years for Deceiving Vulnerable Clients Out of Millions
- F. Lee Bailey Disbarred in Florida
- Former Plaintiffs' Lawyer Tom Girardi Sentenced to More Than 7 Years in Prison for Swindling Tens of Millions of Dollars from Injured Clients
- How and Why Did it Go So Wrong?: Theranos as a Legal Ethics Case Study

Materials

- Lawyer Guilty of Aiding Terrorists
- Lawyer Michael Avenatti Sentenced to 14 Years in Federal Prison for Stealing Millions of Dollars from Clients and Tax Fraud
- Lynne Stewart
- Paul Bergrin
- Roy Cohn
- The Legacy of Watergate
- The Legacy of Watergate for Legal Ethics Instruction

Materials

- Tom Girardi Found Guilty of Embezzling Millions that Prosecutors say Funded Lifestyle Seen on “Real Housewives”
- Top 10 Lawyers Disbarred for Major Misconduct
- Watergate-Era Reforms 50 Years Later

ABA Model Rules of Professional Conduct

- Rule 1.6: Confidentiality of Information
- Rule 1.7: Conflict of Interest: Current Clients
- Rule 1.15: Safekeeping Property
- Rule 3.5: Impartiality & Decorum of the Tribunal
- Rule 8.4: Misconduct