

Will Washington Outlaw Guitars?

The Sixth Amendment of the U.S. Constitution declares that “the accused shall enjoy the right to a speedy and public trial,” and must be “informed of the nature and cause of the accusation.” Based on their conduct in raiding the Gibson Guitar company, agents from the FBI and the Fish and Wildlife Service could stand a refresher course in the law of the land. In November 2009, Fish and Wildlife agents, accompanied by a heavily armed FBI SWAT team, stormed Gibson’s Nashville plant where they confiscated ebony fingerboards that had been imported from Madagascar. On August 24, the Feds gave an encore, rushing into Gibson factories in Memphis and Nashville with weapons drawn to confiscate ebony and rosewood from India. The urgency of this “shock and awe” display of enforcement power would suggest a serious crime had been committed. Yet nearly two years after the first raid, no formal charges have been filed, leaving Gibson management to ponder what exactly they stand accused of.

The absence of a formal indictment has fueled wild speculation, but affidavits filed to secure search warrants indicate that this case is about suspected violations of the amended Lacey Act, the recently expanded bill that gives the Fish and Wildlife department the right to regulate all trade in plant material (including wood). The new, but we hesitate to say improved, Lacey Act makes it unlawful to import, export, sell, or purchase in interstate or foreign commerce any plant that violates any U.S. or foreign law.

There are no laws on the books in the U.S. prohibiting the use of Indian or Madagascar rosewood and ebony. That didn’t stop the industrious John M. Rayfield, a Special Agent at the Fish and Wildlife service, from concluding that Gibson’s use of these woods violated Indian law. The law he cites in his affidavit, “W.E.F. 23.08.2010 Government of India, Ministry of Commerce and Industry,” has nothing to do with overharvesting, illegal logging, or anything else to do with the environment. Rather, it specifies labor content levels for wood thicker than 6 millimeters that is exported from India. In other words Gibson stands accused of using U.S. instead of Indian labor to produce its guitars. Had the company imported a finished guitar from India, using the same rosewood and ebony, they would have been in compliance with Lacey. Importing semi-finished component parts caused the violation. In practice, the Indian authorities have a different interpretation of their law: For decades they have allowed the export of millions fingerboard blanks without challenge.

There isn’t a guitar manufacturer of any scale in the U.S. that doesn’t use some Indian rosewood or ebony for fingerboards, and all of them, to the best of our knowledge, import the same kind of semi-finished blanks that were seized from the Gibson plant. Thus, by the logic of Mr. Rayfield’s affidavit, they are all potentially in violation of Lacey. Lacey applies to sellers, buyers, intermediaries, and anyone else who comes into contact with “illegal” wood, so retailers and consumers could be on the hook as well. If that isn’t sufficiently unsettling, remember that Lacey is “a fact-based, rather than a document-based statute.” Translation: having the right paperwork won’t save you from fines, confiscation of product, or even imprisonment, and the

world of music is populated with unsuspecting felons.

At a time when the U.S. economy has yet to return to 2008 production levels, when unemployment stands at 9.1%, when the 2011 national deficit will top \$1.3 trillion, and when the trade deficit continues to grow, it’s hard to understand why Federal agencies would be spending millions to prosecute a thriving U.S. company that sells an acclaimed product that delights millions, is adding workers to its U.S. payroll, and exports 60% of its production. (Equally baffling is why Congress would pass such a poorly crafted bill as the amended



Lacey Act, but that’s an issue for another editorial.) If Fish and Wildlife and the FBI have a cause of action against Gibson, they should have spelled it out long ago. Absent a compelling case, they should pack it in and let the people of Gibson go about their business serving musicians without interference.

When the Oregonian Congressional Delegation amended the Lacey act, their self-declared aim was primarily economic.

Responding to an influential constituent, they sought expanded import documentation to slow timber imports and thereby boost a Pacific Northwest timber industry that had been hard hit by the downturn in housing construction. Thus, a bill to help loggers in Oregon has hurt guitar makers in Tennessee, proving that the law of unintended consequences is still very much in force.

Responsibility for enforcing Lacey, and making sure that all wood was in compliance with all of the world’s regulations, was handed to the Animal Plant Health Inspection Service (APHIS), an arm of the U.S. Department of Agriculture. In a December 15, 2008 presentation, APHIS officials appeared overwhelmed by the new job. They said that enforcement was a low priority and it would take at least a year to develop reporting requirements and proper forms. Yet 11 months later, the Feds were at Gibson’s door with guns drawn.

We’re not lawyers, but this prosecution (or should we say persecution) of Gibson seems a violation of “due process,” and a clear-cut case of regulatory agencies run amok. And, the problem extends beyond the pain inflicted on a single company. By the reasoning employed by Fish and Wildlife, the entire guitar world—manufacturers, retailers, vintage dealers, teachers, and players—could be implicated in a Lacey sting. This kind of open-ended threat of prosecution is an affront to a legion of decent, hardworking people who provide the tools for musicians; it’s an unnecessary burden on an already struggling economy; and it’s a blow to the credibility of a government that is not universally well regarded by the citizenry. As Gibson CEO Henry Juskiewicz put it, “We feel totally abused. We believe the arrogance of federal power is impacting me personally, our company, and the employees here in Tennessee, and it’s just plain wrong.” He’s right, and his complaint is one that should be taken up by the entire industry.

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