Yolanda Eisenstein Honored for Excellence in the Advancement of Animal Law

On behalf of TIPS and the Animal Law Committee (ALC), we are honored today to present the “Excellence in the Advancement of Animal Law Award” to Yolanda Eisenstein. This annual award recognizes exceptional work by an ALC member who, through commitment and leadership, has advanced the humane treatment of animals through the law.

We had an incredibly strong set of nominees this year. Part of what made Yolanda stand out is that she has excelled at all of the five primary categories that we consider in evaluating nominees.

The first category for the award is Excellence in Advancing the Practice of Animal Law. Yolanda established her private animal law practice in 2007. She was the first lawyer in Dallas, TX whose practice focused on the rights, needs, and welfare of animals. She has handled a variety of animal law matters, including pet trusts, pet...
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*American Bar Association Reg. 1973*
Dear ABA TIPS Animal Law Committee Members:

It is an incredible honor to serve as chair of the Animal Law Committee (ALC). I say this thinking of all of the dedicated and very talented professionals that are members of the ALC – many of whom I have had the great privilege to work with and come to know as colleagues and friends.

It is my role and duty, in this position, and my vision for the coming year, to make sure the ALC serves its membership well. Toward this goal, our strength is in numbers and depth. That is, I intend to draw as many of you into our work and activities as possible. I have been in leadership roles with non-profits and involved with Bar associations for years and years. Grounded in this background, I have no hesitation to ask others to get involved and lend their knowledge and talents! My preference is to lead from behind, creating opportunities for our members to grow in their professional lives, or for our more seasoned members—contribute in ways that they may not ordinarily be able to do so in their practice.

There is no shortage of meaningful ALC work—work that truly has an impact on the advancement of animal law. A side note, for a moment, in this vein, we need to place a big spotlight of acknowledgment and deep gratitude on our Section’s leadership. The TIPS leadership, the Section Council and, in particular, our House of Delegates representatives, are not animal law practitioners but they "get it" and have themselves, many of them animal lovers, “become it” as to what we do in animal law. Our TIPS leadership is crucial to our work generating meaningful resolutions that place the American Bar Association squarely in support of important advancements in animal law. They acknowledge animal law as an emerging area of law and that our work on resolutions will be a continuing effort. Getting resolutions adopted by the ABA House of Delegates is no small task. Our hats are off to the TIPS leadership.

I have had the experience myself, more than once, of presenting one of our ABA resolutions to a village or city corporate counsel, or city attorney, to help them through a confounding local animal issue. They could not be more grateful for the discussion of law and depth of analysis provided in the accompanying reports. The ABA sanction associated with these resolutions plays no small role. These resolutions help local officials move forward in a direction they knew they wanted to go, and knew the public wanted, and yet for which they needed support grounded in the substance of the law.

Jane McBride
Chair, TIPS Animal Law Committee
Currently in the works is our resolution on Military Pets. The proposed resolution urges Congress, the Department of Defense, and Defense contractors to adopt breed-neutral pet policies for families living in military base housing. I myself was very surprised to learn that there is great inconsistency among military bases as to the policy regarding the dog breeds allowed in military housing. And, these policies can change, leaving military families currently in base housing in the difficult position of having to move off base. Military families are transferred often, which means they may have to abandon a pet (today, many if not most families consider their pets members of the family) due to the transfer.

Our member, Katie Barnett, who first brought the issue to light, practices animal law in Lawrence, Kansas. She is often contacted by military personnel faced with the issue. Very unfortunately, the military’s assertion regarding the breed of the subject animal is based on nothing more than the appearance of the animal—because it looks like a Rottweiler, German Shepherd or Bully breed mix—and, as set out in a prior TIPS Animal Law HOD resolution, as well as this proposed resolution, the appearance of the dog cannot be relied upon for true breed composition. Thus, not only is the discrimination itself arbitrary, but it’s application is arbitrary.

The ALC has worked from a perspective of gaining the co-sponsorship of ABA committees involved with work relative to the military and has already received commitments in this regard. I am pleased to report that the TIPS Council unanimously approved the resolution at the Fall Training meeting setting the stage for our dedicated ALC members to secure co-sponsors among other ABA committees and move the resolution forward at ABA Midyear. I would like to acknowledge Katie Barnett, AJ Albrecht, and Daina Bray for their tireless work on the resolution itself and the current effort moving it forward to the House of Delegates.

As we continue to move this resolution forward, we will be reaching out to all of you across the country, seeking your assistance in obtaining support from your state and local bar associations—asking that you reach out to the associations themselves and also their delegates to the ABA House.

We have two more resolutions in the works—one on police encounters with dogs and a second on military working dogs—the latter is a joint effort with the ABA International Section Animal Law Committee.

Beside the resolution work, we are heavily engaged in an effort with the National Judicial College, generating coursework in animal law for state, local, tribal and administrative law judges. Joan Schaffner, Bruce Wagman, and myself have worked as the drafting committee, but I have reached out to a number of our other committee members as well as my colleagues with the Illinois State Bar Association to gain
input for our initial proposal. We will continue to engage our membership in this effort as this work continues.

I wanted to give a nod to AJ Albrecht and Joan Schaffner for their quick response to requests we received from the Section publications staff to contribute to section periodicals. This summer, AJ Albrecht authored a piece for TortSource on our public service project with Safe Humane at the ABA Annual Meeting in Chicago. This fall, on a very short deadline, Joan Schaffner provided The Brief with a Committee Profile. It is a wonderful synopsis of ALC and its work. Joan, with her years of dedication to ALC, was in a unique position to generate this piece and we are very grateful to her for doing so.

Our ALC business meetings, conducted by phone, are scheduled for the second Friday of the month, at noon central. ALL committee members are invited to join the calls. Email notices with the agenda and the last meeting’s minutes are sent in advance. We have Lunch and Learn programs scheduled for the first three meetings so far. On November 9, ALC members David Hopkins and Angela Peters, both family law practitioners, will present on the amendment to the Illinois Marriage Dissolution Act requiring courts to take into consideration the well-being of pets in a dissolution. On December 14, ALC members Lee Greenwood and Kara Holmquist will discuss the recently signed PAWS II legislation in Massachusetts, a considerable upgrade in animal protection provisions generated by the task force created by the original PAWS legislation. On January 11, ALC member and chair elect Fran Ortiz will present on topics she artfully discusses at our Shelter Law programs—ownership issues relevant to regulatory and sheltering concerns and law applicable to the transport of shelter animals. We look forward to a full calendar of lunch and learn programs for our committee business meetings this year.

So why am I pictured here with a saw-whet owl? This little guy served as an ambassador animal at a fundraiser for the Illinois School of Veterinary Medicine’s Wildlife Hospital—a patient who could not be released back to the wild. My first and deep continuing interest in animals lies with wildlife. As chair, we are allowed the prerogative of choosing the theme for the winter/spring newsletter issue. My choice this year is endangered species. We will be partnering on this issue with the ABA Section on Environment, Energy and Resources (SEER) Endangered Species Committee. We partnered with them last year in the production of the Yellowstone Grizzly webinar and will continue collaboration this year with our winter/spring issue.

With that, my formerly dangerous dog, relieved of that designation by the great work of ALC members Bruce Wagman and Molly Wiltshire, who successfully defended Roy in a City of Chicago appeal, is at my feet desiring his breakfast. He does not
quite understand his person's obsession with the computer particularly when it is keeping him from his breakfast. He wants you all to know he is not dangerous! Right now he is hungry and would really like his human's attention.

Please be active. This is your Committee. As with everything, you get out of it what you put into it. Even if you just have only a little bit of time, find a way to participate just a little bit. And, please enjoy what is yet another great issue of our newsletter.

Warm Regards,

Jane McBride
Chair, TIPS Animal Law Committee
Animal Law Subcommittee Updates

ANIMALS IN AGRICULTURE

The Animals in Agriculture Subcommittee is recruiting new members! To join our sub-committee, please email the Co-Chairs.

By: Stefanie Wilson & Alex Cerussi
Co-Chairs:
Stefanie Wilson
stefaniew@mercyforanimals.org
Alex Cerussi
alexcerussi1@gmail.com

ANIMALS IN SCIENCE AND TECHNOLOGY

The Animals in Science and Technology Subcommittee has proposed a Lunch & Learn presentation on how the CA Cruelty-Free Cosmetics Act went from an idea in February to being passed into law in October. If any ALC members are interested in mentoring law students and newly licensed lawyers who want to work in, or are working in, animal law, please contact Leslie Rudloff.

By: Leslie Rudloff
Chair: Leslie Rudloff
LRudloff@pcrm.org

COMPANION ANIMALS

The Companion Animal Subcommittee welcomes new members with an interest in joining the Subcommittee. If you have any updates about companion animals in your jurisdiction, or if you are interested in joining the Subcommittee, please send an e-mail message to one of the Companion Animal Subcommittee Co-Chairs.

By: Lenore M. Montanaro
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EQUINE

The Equine Law Subcommittee hosted a great Lunch & Learn presentation over the summer with member Elaine Ramesh presenting “Beyond the Basics: Creating the Next Generation of State Laws Supportive to Horse Use and Ownership.” The presentation was so good that the Subcommittee is going to schedule it again for those who could not attend the first time. Additionally, the Subcommittee is

By: Elaine Fresch
Chair: Elaine Fresch
efresch@selmanlaw.com
scheduling a Lunch & Learn presentation this fall on the subject of “back of the ticket” waivers and their enforceability. For equine practitioners, and anyone involved in a sport including other animal shows, trying to enforce waivers to restrict liability of clients is very important. Be on the lookout for Committee emails containing more information regarding this upcoming presentation. The Subcommittee is always looking for new members, so please e-mail the Chair if you are interested in joining.

INTERNATIONAL ISSUES

China kills more than 10 million of the estimated 30 million dogs slaughtered for human consumption annually. There are no dog farms in China. The dogs slaughtered often are stolen pets, hundreds transported in crowded, squalid conditions for days, and then ultimately butchered publicly on rural markets and in residential areas exposing young children to the violence. Working in conjunction with the International Section Animal Law Committee and Peter Li, China Policy Specialist, Humane Society International, subcommittee members Daina Bray, Marcy Stras, and Joan Schaffner, transported four dogs, victims of the China dog Meat trade to the United States, as ambassadors to raise the visibility of this horrific practice. All four dogs—Ellie (pictured), Dashu, Xaosu, and Happy—have been adopted into loving homes and are thriving! Thanks to all who helped in their rescue!

By: Joan Schaffner

WILDLIFE

The Wildlife Subcommittee thanks Laura Hagen for her service as former Chair of the Subcommittee and wishes her the best in her new role at the PETA Foundation. The Subcommittee extends a warm welcome to our new Chair, Kimberly Fullerton, who joins with a passion for improving the lives of animals and a large network in the wildlife arena. Ms. Fullerton plans to lead events on topics including elephants in captivity as she recently organized a documentary screening for the Baltimore Environmental Film Series on the topic. The Subcommittee is eager for the events to come under Ms. Fullerton’s leadership!

By: Deepti Bansal
ANIMALS IN AGRICULTURE

Government Subsidies in the Aftermath of Hurricane Florence

In 2006, to remedy the devastation caused by Hurricane Katrina, Congress passed the Pets Evacuation and Transportation Standards Act (PETS Act). The PETS Act requires government evacuation plans during natural disasters to include companion animals. Unsurprisingly, farm animals were denied, and continue to be denied, similar protections.

As of September 18, 2018, approximately 5,500 pigs and 3.4 million chickens and turkeys had perished as a result of flooding caused by Hurricane Florence. Despite mass casualties, the USDA's Farm Service Agency (FSA), under its Disaster Assistance Program, Livestock Indemnity Program (LIP), continues to provide compensation to producers for dead livestock absent any incentive for producers to provide adequate shelter to livestock during inclement weather. Under the LIP, producers are compensated 75% of the animals' market value up to $125,000 annually as long as their adjusted gross income does not exceed $900,000. The 2018 Farm Bill aims to expand the LIP program to cover financial losses sustained when livestock are not killed but are injured by an eligible cause of loss and sold for a reduced price. The Farm Bill also seeks to remove the per-person and legal entity program year payment limitation of $125,000, further warranting concern for the treatment and protection of farm animals in natural disasters.

ANIMALS IN SCIENCE AND TECHNOLOGY

California Bans the Sale of Animal Tested Cosmetics

Governor Jerry Brown (D) signed a landmark bill into law on September 28, 2018. Hillary Hanson, California Just Officially Banned the Sale of Animal Tested Cosmetics, HUFFINGTON POST, 2018 WLNR 30129072, (Sept. 28, 2018). The California Cruelty-Free Cosmetic Act introduced by State Senator Cathleen Galgiani in February of this year, and co-sponsored by Physicians Committee for Responsible Medicine (PCRM) and Social Compassion in Legislation, prohibits manufacturers “to import for profit, sell, or offer for sale” any cosmetic product that was developed or made using animal testing after January 1, 2020. The bill was endorsed by 100 cosmetics companies, including John Paul Mitchel Systems and Lush Cosmetics. A violation
of this statute would result in a fine up to $500 for the first violation and up to $1000 for each subsequent violation. An exception to the bill allows companies to continue to pay for animal testing on products or ingredients in countries where it is required by law, for example, China. These companies can continue to sell these products in California if the animal test was not specifically used to determine the safety of the product for sale in the state. Despite this limitation, this law represents a major step away from animal-tested cosmetics. California has joined the EU, India, and Israel in banning the importation and sale of new cosmetics that have been tested on animals. Monica Engebretson, *India Joins the EU and Israel in Surpassing the US in Cruelty-Free Cosmetic Testing Policy*, *Huffington Post, 2013 WLNR 17993756*, (Sept. 22, 2013). Supporters of the California law believe that beauty industry will continue to move away from animal-based cosmetics.

**COMPANION ANIMALS**

**Massachusetts Law Requires Veterinarians to Report Known or Suspected Abuse**

In response to the events that occurred in the Massachusetts “Puppy Doe” case, Daniel Libon, *Puppy Doe Trial: Czerkawski Gets Prison Time*, *Quincy Patch* (Mar. 27, 2018), the Massachusetts legislature passed a law to require that veterinarians must report known or suspected abuse of an animal. The law requires that a veterinarian who, while in the normal course of business, observes an animal whom the veterinarian knows, or reasonably suspects has been, the victim of animal cruelty must report the animal cruelty to a police officer or special state police officer. *Mass. Gen. Law Chapter 112, Section 58B*.

To support Massachusetts veterinarians to fulfill their obligations under the law, the Cummings School of Veterinary Medicine at Tufts University, the Animal Rescue League of Boston, and Animal Folks (MN) have collaborated to produce the manual titled: *Reporting Animal Cruelty, The Role of the Veterinarian: Establishing Protocols to Identify and Report Suspected Animal Cruelty in Massachusetts*. Please note that the images are quite graphic and are not intended for viewing by the general public.

The manual provides an explanation of Massachusetts law and supporting material so that veterinarians can develop protocols for their clinic or practice to guide the reporting of cases of animal neglect, cruelty, and abuse. It also discusses the importance of “The Link” among various forms of abuse. The manual is a replication
of the 2016 version published by Animal Folks for Minnesota. There is also a version that has been adapted for Oklahoma.

The manual will be distributed to animal control officers, veterinary students, and others with an interest in “The Link,” reporting procedures, and laws.

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**EQUINE LAW**

**Oregon County Circuit Court Dismisses Horse’s Complaint Seeking Monetary Damages For Injuries Stemming from Neglect**

An unusual Oregon case featuring a horse as plaintiff seeking compensation from his former owner was decided September 17, 2018. Justice v. Vercher, Case #18CV17601 (WA Cnty. Cir. Ct. Sept. 17, 2018). The genesis of the lawsuit began in March 2017 when neighbors discovered that an 8 year-old Quarter Horse named Shadow was in poor condition—underweight, weakened, and suffering from frostbite. The neighbors convinced owner Gwendolyn Vercher to surrender
Shadow to a horse rescue organization where he was re-named Justice. Charged with criminal neglect of her horse, Ms. Vercher pled guilty to misdemeanor and was ordered to pay $3,700. Then a civil lawsuit was filed on behalf of Justice and his guardian Kim Mosiman claiming negligence per se under common law and requesting an award of $100,000 to pay for Justice’s future care. Defendant Vercher filed a motion to dismiss for plaintiff’s lack of legal capacity to sue and for failure to state facts sufficient to constitute a claim on August 14, 2018. After oral argument, the Judge granted the motion, finding that a non-human animal lacks the legal status of qualifications necessary for the assertion of legal rights and duties in a court of law. It is anticipated that the decision will be appealed.

INTERNATIONAL ISSUES

Mexico City Moves to Ban Bullfighting

An initiative to amend Mexico City’s “Public Spectacles and Animal Protection” bills to ban bullfighting was recently introduced in Mexico City Congress. Although home to the biggest bullfighting arena in the world, a recent survey indicated that 73 percent of Mexicans believe the practice should be outlawed nation-wide. Three major political parties have endorsed the bill that “would ban any sport or spectacle that involves the killing or abuse of animals.” Charlotte Pointing, Mexico City One Step Closer Toward Bullfight Ban, LIVEKINDLY (Oct. 26, 2018).

WILDLIFE

The Worst Red Tide in 12 Years Devastates Florida’s Wildlife

Florida’s wildlife has been devastated by a harmful algae bloom (HAB), commonly referred to as a “red tide.” More than 2,000 tons of dead marine animals have been removed from Florida beaches since the HAB began in November 2017. Florida’s Red Tide Has Produced 2,000 Tons of Dead Marine Life and Cost Businesses More Than $8 Million, CNN (Aug. 23, 2018). The HAB has killed a myriad of fish, a 26-foot juvenile whale shark, and an estimated 12 dolphins, 115 manatees, and 364 sea turtles. Florida’s Gulf Coast Battles Deadly and Smelly Red Tide, NPR (Aug. 14, 2018). Many of the turtles were Kemp’s Ridley sea turtles, which are considered to be the most endangered sea turtle in the world. The Deadly Toll of the Red Tide, NY TIMES (Aug. 31, 2018).
In response to conditions resulting from the HAB, Florida Governor Rick Scott issued Executive Order 18-221 in August 2018. The Executive Order declared a state of emergency and provided $13 million in emergency funding. The Florida Fish and Wildlife Conservation Commission (FWC) directed an additional $1.2 million in funding for research and production of redfish at the FWC Stock Enhancement Research Facility, which spawns and raises hatchery fish for stock enhancement in Florida’s waters. The FWC also instituted catch-and-release regulations for redfish and snook through May of 2019.

The algae organism, Karenia brevis, is naturally-occurring microscopic algae that has been documented in Florida’s waters since the 1840s and occurs nearly every year. However, this event is the worst HAB Florida has endured since 2006. Scientists are still researching HABs, but many agree that climate change and agricultural runoff severely affect our ability to control algae blooms.

In a state defined by tourism and beautiful beaches, the HAB’s effect on wildlife is shaping politics. Voters are listening closely to campaign promises and scrutinizing past legislation which could have contributed to current conditions. It will be interesting to see what effect this HAB will have on future legislation.

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https://www.americanbar.org/diversity-portal/SpeakersDirectors.html

For more information or questions regarding the directory email: diversity@americanbar.org
ANIMALS IN AGRICULTURE

Californians to Vote on Landmark Animal Welfare Law

The law is Proposition 12: an ambitious effort to ban caged-confinement of hens, pigs, and calves, and the sale of products that do not conform to the law’s space requirements for individual animals. Andrew O’Reilly, California ballot measure on cage-free rules divides activists, farmers, Fox News (Oct. 22, 2018). Proponents say it is necessary because no federal law protects farmed animals during their lives on factory farms, and consumers oppose extreme confinement of animals used for food. Opponents say that the law doesn’t go far enough and still allows animals to be in cages during a phase-in period, or that the law will raise food costs. Id.

USDA to Issue Waivers for Faster Chicken Slaughter

The USDA announced that it would issue waivers to chicken slaughterhouses to run at up to 175 birds per minute (bpm). Petition To Permit Waivers of Maximum Line Speeds for Young Chicken Establishments, 83 Fed. Reg. 49,048 (Sept. 28, 2018). The regulatory maximum is 140 bpm set by the Obama administration in 2014. USDA stated that “regulatory flexibility” is needed to promote innovation. Line speeds are a controversial issue, with consumer safety, workers’ rights, and animal protection aligned in opposition. Litigation over the final rule is expected.

ANIMALS IN SCIENCE AND TECHNOLOGY

Dogs and Cats Used for Research Get a Second Chance

On July 2, 2018, Rhode Island, with the passage of the Research Animal Retirement Act, became the ninth U.S. state to require publicly-funded higher education research facilities to offer dogs and cats no longer used for research, testing or educational purposes up for adoption. H.B. 7414, 2018 Gen. Assemb., Reg. Sess. (R.I. 2018).

By: Stefanie Wilson & Alex Cerussi

By: Marcia Kramer

A record number of states, including Hawaii, Indiana, Iowa, Massachusetts (which passed the bill in the Senate), New Jersey, Pennsylvania and Washington, also introduced legislation in 2018, though these bills did not pass. NAVS Urges Support for New and Continuing Legislation Promoting Adoption of Lab Animals, NAT’L ANTI-VIVISECTION SOCIETY (July 10, 2018). New Jersey, however, with bills in the Assembly and Senate, has a two-year session ending in 2019 and may be the next state to adopt this measure. A.B. 3274, 2018 Leg., Reg. Sess. (N.J. 2018); S.B. 2826, 2018 Leg., Reg. Sess. (N.J. 2018).

California, Connecticut, Illinois, Minnesota, Nevada and New York passed laws in previous years promoting the adoption of dogs and cats no longer being used in research to help solve a perceived problem that still-healthy animals are being euthanized when their usefulness to university research institutions is over. Margo Sullivan, RI Passes Law To Help Adopt Research Animals, CRANSTON PATCH (July 5, 2018, 10:29 PM). While some institutions do have dog and cat adoption programs in place, they are generally limited to staff or students and the number of animals adopted through these programs is low.

According to information published by the U.S. Department of Agriculture’s Animal and Plant Health Inspection Service in 2017, more than 18,146 cats and 64,707 dogs were used as subjects of scientific and medical research, and for educational purposes. U.S. Dep’t Agric., Fiscal Year, 2017, Ann. Rep. Animal Usage by Fiscal Year (Sept. 27, 2018). A majority of these laws allow veterinarians at the research facility to determine whether individual animals are healthy and suitable for adoption. If approved for adoption, the institution can offer animals first through their own adoption program. If the animals are not adopted, or there is no institutional program, the institution would have to work with a reputable local shelter or rescue organization to place the animals.

While these measures do not stop the use of dogs and cats for research, they do heighten an awareness of the responsibility of research institutions towards the dogs and cats they use and their ultimate disposition.
COMPANION ANIMALS

Massachusetts Unanimously Passes Comprehensive Animal Protection Bill

Massachusetts now has one of the most comprehensive animal protection bills as law. An Act to Protect Animal Welfare and Safety in Cities and Towns (“PAWS II”) passed unanimously in both the Senate and House and was signed into law on August 9, 2018. S.B. 2646, 190th Gen. Court, Reg. Sess. (Mass. 2018). PAWS II is an enormous step forward for animal protection law in Massachusetts and includes the following provisions:

• Establishes a commission to explore mandatory reporting of animal cruelty
• Ensures property owners check vacant properties for abandoned animals
• Prohibits the automatic euthanasia of animal fighting victims
• Ensures more efficient enforcement of animal control laws
• Prohibits sexual contact with an animal
• Prohibits the drowning of animals
• Requires insurance companies to record and report circumstances surrounding dog-related incident claims to the MA Division of Insurance, the clerks in the Senate and House, and the ways and means committees for three years (last report to be filed by Jan 1, 2022). Id.

PAWS II builds upon the original PAWS Act that was passed in 2014 and was born out of the horrific discovery of the companion puppy forever known as Puppy Doe in 2013.

EQUINE

New York Becomes 48th State to Enact Limited Liability Statute for Equine Businesses

In October 2017, New York became the 48th state to enact a limited liability statute applicable to equine businesses. N.Y. GEN. OBLIG. LAW §§ 18-301–303. (California and Maryland remain without such a law.) The Safety in Agriculture Tourism Act provides a broad array of agricultural tourism businesses with limited protections from suits arising from risks associated with public visitors to farm properties. Id.
Although the Act is not in the form shared by the equine activity liability acts of most other states, equine businesses may benefit from it in some of the same ways. Of note, the Act specifically excepts out from the granted immunity equine therapy businesses.

To be protected under the Act, businesses must meet certain requirements and responsibilities listed in the Act, such as posting “warning signs” for risks associated with the activity and providing adequate training to employees. Id. A failure to follow any of the numbered responsibilities under the law results in loss of the immunity from suit that is otherwise provided.

Attempts in New York to pass a measure similar to other states’ equine activity liability acts have yet to succeed, with the latest stuck in committee. See, S.B. 3831A, 202nd Leg., Reg. Sess. (N.Y. 2017); A.B. 4366A, 202nd Leg., Reg. Sess. (N.Y. 2017).

### INTERNATIONAL ISSUES

**Canadian Senate Passes Bill to Criminalize Captivity and Breeding of Cetaceans and the Import and Export of Shark Fin Products**

After almost three years of debate and study, S-203, passed by the Canadian Senate on October 24, 2018, would outlaw the keeping of cetaceans in captivity and impose fines up to $200,000 for violations. John Paul Tasker, Senate passes bill that would ban whale, dolphin captivity in Canada, CBC News (Oct. 24, 2018). The bill primarily targets the Vancouver Aquarium and Marineland in Niagara Falls, Ontario, which currently houses some 55 cetaceans and has been the focus of controversy for years based on the deaths of beluga whales in their care. John Law, Beluga whales deaths at Marineland spark outrage, Toronto Sun (May 31, 2013). Although the bill’s breeding ban phases out the captivity of cetaceans over time, advocates hope that many of the cetaceans will be retired to an “open water seaside sanctuary in either B.C. or Nova Scotia.” Tasker, supra.

Further, the Senate passed S-238 that would ban the import and export of shark fin products. As the third largest importer of shark fins, this ban could have a significant effect on the world’s shark population “which has declined nearly 80 percent over the last 50 years.” Id.

By: Joan Schaffner
WILDLIFE

A Frog's Day in Court

The Supreme Court heard oral argument on October 1, 2018 for *Weyerhaeuser Co. v. U.S. Fish and Wildlife Serv.*, a case of critical importance for the dusky gopher frog (“DGF”). *Weyerhaeuser Co. v. U.S. Fish and Wildlife Serv.*, No. 17-71 (U.S. Oct. 1, 2018). Central to the dispute is whether land that is uninhabitable without alterations can be designated as critical habitat under the Endangered Species Act, and if so, whether the United States Fish and Wildlife Service (“Service”) has the discretion to define what would be reasonable modifications. *Id.*

In a divided decision, the Court of Appeals for the 5th Circuit upheld the Service designation of the petitioner’s privately-owned commercial property as critical habitat for the DGF. *Markle Interests v. U.S. Fish & Wildlife Serv.*, 827 F.3d 452 (June 30, 2016). Despite petitioner’s contention that the land was uninhabitable by the species and therefore outside the statutory definition of critical habitat, the Court deferred to the Agency’s interpretation. *Id.; 16 U.S.C.§ 1532(5)(A)(ii).* Going further, the Court rejected petitioner’s claim that the Service erred in not considering the economic impacts associated with the ‘reasonable’ modifications the Service determined were necessary to make the land habitable. *Markle, 827 F.3d at 475-476.*

Whether the Supreme Court will agree with the 5th Circuit and affirm the Agency’s designation of the petitioner’s property as critical habitat is unclear. Somewhere between Justice Kagan’s hypothetical suggestion that the risk of extinction may outweigh the burden of “slight” habitat modifications, and Justice Alito’s, “Who should pay for the preservation of this public good?” inquiry, there’s room for division.

A temporary injunction halting commercial development of the land in question was instituted by the 5th Circuit and will remain in place until the Court renders its decision in a few months.
Food Law + Environmental Law = Food Animal Law

Introduction

As animal law moves into its fourth decade as an independent field of American legal practice, it continues to grow exponentially. More and more animal welfare organizations are developing dedicated legal teams, focused not just on corporate management but on legislative and litigation work. And there is a surfeit of lawyers in big firms who are very anxious to offer their time and skills to individuals and organizations with cases involving animals, especially cases that will benefit either individual animals, or the treatment of the endless number of animals used in commercial practices around the country. And with respect to that last group of animals, the work done by animal lawyers addressing various aspects of our treatment and use of animals whose flesh and products we eat has developed into its own subspecialty. Creative legal work in this area has leaned on and borrowed from concepts and laws familiar to those practicing environmental law, and the even newer-than-animal-law discipline of food law. The lawyers working in this growing area have been involved in a shaping of new legal strategies and approaches that are both fresh and exciting, and that are illustrative of the way that the best work in animal law has often been forged out of a carefully designed combination of legal theories, statutes that are not necessarily related directly to animals but are applied to circumstances involving animals, and public policy doctrines that support the kinds of changes sought by animal lawyers.

Animal law has grown up as a field, in large part, through the creative efforts and deep thinking of practitioners trying to crack the shell of the law to find justice for animals. And one of the areas that has shown the most development, and relied in part on laws originally written for other purposes, has been that involving food animals—animals used in commercial production to produce food for the world. The animals involved are both those we eat (cows, pigs, chickens), and those whose products we eat (eggs from hens, milk from cows and goats).

Read more on page 29
What Are Hoarding Situations and What May Be Done To Lower the Occurrence Of Animal Hoarding?

Introduction: Animal Hoarding Is A Complex Issue

“Animal hoarding is a multi-faceted problem that develops for different reasons in different cases.”

Unfortunately, each case is as unique as the people involved. To continue to work together toward ending violence against people and animals as described by the National Link Coalition’s well-documented “Link” between various forms of abuse, we must discuss all forms of cruelty toward people and animals. This includes the importance of analyzing animal cruelty in the context of hoarding situations.

The hoarding of animals should be considered a mental disorder and all efforts should be made to lower the rate of recidivism. The effort to recognize animal hoarding as a mental disorder would benefit animals, individuals, families, prosecutors, animal protection organizations, and society as a whole.

What Is Hoarding?

All animals have needs. Many animal welfare professionals believe that these needs are understood in the concept of “The Five Freedoms.” These freedoms include (1) freedom from hunger and thirst; (2) freedom from discomfort; (3) freedom from pain, injury, or disease, (4) freedom to express normal behavior; and (5) freedom from fear and distress.

Hoarding situations threaten the five freedoms and expose countless animals to experience unnecessary suffering, cruelty, and death. The hoarding of animals may be a criminal failure to provide proper food, drink, shelter, sanitary environment, or protection from the weather.

Animal Hoarding Transcends the Ownership of Animals

Hoarding disorder is a DSM-5 diagnosis assigned to individuals who excessively save items and to whom the notion of discarding items causes extreme stress. Animal hoarding may be defined as:

To be sensitive to those with mental illness, among other reasons, the author specifically and intentionally avoids describing people involved in hoarding-like situations as “hoarders.”

Read more on page 31
Creating a Life in Animal Law

“You have the power within your reach to create what you desire.”

– Lailah Gifty Akita

This effort aims to help you [help yourself] find or create your own opportunities to make a difference for animals (and people) through Animal Law. Those activities and opportunities may start modestly and progress a step at a time towards building a career or a practice or they may consist of a particular project or specific cause or matter better suited to your life situation. The point is, as our journeys demonstrate, and others' work has illuminated, the great challenges in making this a better world for (nonhuman) animals and people (human beings) mean that there are ample opportunities to build and create your own difference-making experiences.

The field of Animal Law began as an effort to provide greater protection to animals through the law and that is its goal today. The Animal Law Committee is dedicated to furthering the practice of Animal Law and its mission is to address all issues concerning the intersection of animals and the law to create a paradigm shift resulting in a just world for all.

By way of introduction, we are here to learn and grow with you as we continue with our own work within Animal Law. Our shared commitment to better serving animals and their interests, as well as professionalism in Animal Law, combined with our own unique experiences gives us deep background and understanding about the subject in ways practical and helpful. More importantly, we love reaching out to help and learn from others.

Background

Yolanda, recently honored with the Excellence in the Advancement of Animal Law Award, authored the landmark ABA book, Careers in Animal Law: Welfare, Protection, and Advocacy, as well as The American Bar Association Legal Guide for Dog Owners. She has chaired the TIPs Animal Law Committee and State Bar of Texas Animal Law Section. She has taught Animal Law at SMU Dedman School of Law where she has served as Adjunct Professor, lectured extensively, especially on ethics in the practice of Animal Law, and worked tirelessly on Animal Law and animal protection in Texas (where she sits on the advisory board of the Texas Humane Legislation Network) and throughout the United States.

Jim is the author of Excellence Beyond Compliance: Enhancing Animal Welfare Through the Constructive Use of the Animal Welfare Act and numerous articles on Animal Law and professional development; and writes a column for the

Read more on page 34
Pet Law And Custody, By Barbara J. Gislason

Is Alternative Dispute Resolution (ADR) going to the dogs? In August 2017, the ABA Section of Family Law published *Pet Law and Custody* by Barbara J. Gislason. This is an important book for both family law and ADR practitioners to keep on their desks. In the United States, 68% of U.S. households own a pet.1 While pets are considered family members and beloved companions in the twenty-first century, they are often treated as personal property under the rule of law. This book represents a serious effort to bridge that gap.

Gislason’s book addresses the myriad of ways in which conflicts arise over a pet and reveals the complexity of different legal practice areas impacting each other. She thoroughly describes the progression of pet law in seven substantive areas, from contract and tort law to family and criminal law, while introducing a vision for a legal system for pets where ADR processes are better utilized. For the first time in animal law literature, an entire chapter is devoted to the use of ADR in addressing and solving companion animal related conflicts. Practitioners now have, in effect, a well-developed treatise to help clients who are suffering through a legal struggle over their pets.

Many divorce professionals could tell the story of a near-final divorce settlement agreement exploding when it came time to talk about “who gets the dog.” This groundbreaking 702-page book is an all-inclusive compendium of every imaginable conflict or disagreement that might arise in the context of pet custody. It provides practitioners with recent case law, as well as valuable practical templates. The appendix includes guidelines, examples, and templates for subjects such as adoption contracts, joint custody and ownership agreements, and replevin pleadings.

As an ADR professional myself, I found Chapter 3 to be an extraordinary demonstration of how ADR can resolve conflicts over companion animals in everyone’s best interest. It explains the how and why of implementing mediation, arbitration, or collaborative law into client discussions about their animals and explores subjects ranging from mutual bias, to the difference between a human-versus animal-centered approach, to conflicts of interest.

Whether you are a practitioner of ADR, family, trust and estate, real estate, civil or criminal law, this book should be on your shelf. It is an invaluable resource that will serve you and your pet-owning clients. I highly recommend it.  

Reviewed by: Debra Vey Voda-Hamilton

Hamilton Law and Mediation, PLLC

Debra Vey Voda-Hamilton is the principal at Hamilton Law and Mediation, PLLC, the first solo mediation practice in the U.S. dedicated to helping people resolve conflicts involving animals. Debra is the go-to person for information regarding the use of mediation in disagreements over animals for the NY Times, Wall Street Journal, the Chicago Sun Times, Bloomberg, and the US News and World Report. She graduated from Benjamin N. Cardozo Law School in 1983 and was admitted to practice in New York in 1984.
Summer Experience in Ecuador with Defend Them All

Introduction

This summer I participated in a summer externship program through the Defend Them All Foundation in Cuenca, Ecuador. Defend Them All is dedicated to the mission of improving legal protections for animals and the environment in developing countries. To that end, Defend Them All works with local advocates to directly address issues by engaging in community education, legislation, and effective enforcement. Lindsey Zehel, an attorney based in Portland, Oregon, is the Founder and Executive Director of Defend Them All and has led this trip for the last two summers. In addition to Lindsey, four law students participated in this opportunity: two students pursuing degrees at Vermont Law School (one who had recently earned a Master of Environmental Law and Policy), one student pursuing a degree at the University of Alberta, and myself. Collectively our unique perspectives and experiences in environmental justice, environmental law, environmental science, animal law, and local government allowed for success in Ecuador.

The group arrived in Cuenca, Ecuador at the end of July and quickly learned about the problems facing animals and the environment in this developing region. These problems include the overpopulation of street dogs as well as the water pollution and habitat destruction associated with mining practices. Since Ecuador aspires to be an economic competitor in the global market, the country is developing rapidly, which can lead to lasting impacts on the environment, animals, and communities.

Street Dog Overpopulation

To address the street dog overpopulation, Cuenca enacted its first animal protection ordinance in 2015. Despite this victory, problems with enforcement have persisted, and the presence and mistreatment of street dogs remains a major issue. Through Rescate Animal Cuenca, a local organizational partner that rescues and facilitates the adoption of abandoned and abused dogs, we learned of one specific example of this ordinance’s weakness. A previously rescued, rehabilitated, and rehomed dog named Mila was barking on the sidewalk adjacent to her home when a neighbor shot her. The owners wanted to press charges but were unable to do so because the prosecutor involved refused to move forward with the

Read more on page 36

Megan Amos

Megan Amos is a 3L at Lewis & Clark Law School focusing on animal law and environmental law. Megan graduated from University of Virginia, where she majored in Philosophy and minored in Religious Studies. She is one of the Student Vice Chairs of the Animal Law Committee as well as the Student Chair of the International Issues subcommittee. She is particularly interested in the intersection between animal protection and human health.
Student Spotlight

Greetings! This is the first of many Student Spotlights: a short column in which we hope to strengthen the student experience within our animal law community.

We should introduce ourselves: our names are Megan Amos and Meredith Hou, and we were recently elected Student Vice Chairs of the Animal Law Committee. Megan is a 3L at Lewis & Clark Law School and Meredith is a 2L at The George Washington University Law School. We are honored and excited to be serving in this capacity. Our goals for this column are to inspire student involvement with the ABA, celebrate student accomplishments, and discuss topics particularly relevant to students of animal law.

To that end, we want this column to be a collaborative project! If you have ideas for topics to discuss, please send them our way. Your suggestions are the best way for us to provide content that you want to see! We also strongly believe that showcasing student successes can inspire us all to tackle new challenges. We encourage you to nominate yourself, a friend, or a student group to be featured in this column for accomplishments big and small.

For the next edition of Student Spotlight, we plan to discuss “compassion fatigue.” What is it? What are the common triggers? How does it typically manifest? What can we do to alleviate it? How does the stress of law school contribute to compassion fatigue? We encourage you to share your stories and experiences with this issue.

Until then, please do not hesitate to reach out with questions, nominations, or suggestions!

We can be reached at: mea@lclark.edu and mhou@law.gwu.edu.

Megan Amos

Megan Amos is a 3L at Lewis & Clark Law School focusing on animal law and environmental law. Megan graduated from University of Virginia, where she majored in Philosophy and minored in Religious Studies. She is one of the Student Vice Chairs of the Animal Law Committee as well as the Student Chair of the International Issues subcommittee. She is particularly interested in the intersection between animal protection and human health.

Meredith Hou

Meredith Hou is a 2L at The George Washington University Law School, where she is President of the Student Animal Legal Defense Fund and a Member of GW’s Law Review and Alternative Dispute Resolution Board. She is an avid horsewoman and worked in veterinary medicine prior to law school. Since shifting to a legal career, Meredith has interned at the Animal Welfare Institute and the Humane Society Legislative Fund and is excited to serve as an animal advocate upon graduation.
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custody disputes, adoption contracts for animal rescue groups, and representation of pet owners in relation to code violations like nuisance barking. She also has frequently handled animal law matters pro bono, sometimes asking her clients to donate to an animal charity in lieu of paying her.

The second category is Excellence in Legislation Promoting the Interests of Animals. Since 2009, Yolanda has been very involved with the Texas Legislative Humane Network, a nonprofit that advocates for strong, enforceable anti-cruelty laws. She is a Past Director and currently serves as Of Counsel to the Network. One of her most rewarding projects with the Network was successfully working toward a law to regulate the sale of companion animals, which had faced strong opposition from puppy mill interests in the state.

The third category for the award is Excellence in Publication on Animal Law. Yolanda is a prolific animal law author and editor. She recently co-edited the ABA book *Wildlife Law: A U.S. Perspective*, and also recently authored a chapter on anti-cruelty laws in a multidisciplinary treatise on animal cruelty. She has written two animal law books published by the ABA: the *Legal Guide for Dog Owners* and *Careers in Animal Law*. They are wonderful resources. When our ALC members speak at law schools about animal law, there is great interest in animal law from students, and we always refer them to Yolanda’s *Careers* book. My copy of *Careers in Animal Law* is heavily highlighted and marked up because I used it in my own animal law job search, which was successful. That is not a unique story: the book is a great resource. Yolanda is currently working on a proposal for a new animal law book, and we look forward to seeing what she does next. By the way, in her “spare time,” Yolanda is pursuing a Master’s Degree in Philosophy from the University of Dallas.

The fourth of the five categories is Excellence in the Presentation of an Animal Law Continuing Legal Education (CLE) Program. Yolanda has supported and organized a number of great CLE programs over the years. During her year as ALC Chair, she organized a CLE on international trade issues affecting animals during the ABA annual meeting, and also organized a webinar on animal law and the U.S. Constitution, which focused on property, preemption, and police power. As ALC Chair in 2013, Yolanda instituted our Lunch & Learn program, which continues to this day. We use part of the time during business meetings for presentations on current animal law topics, which has been of great value and interest to our members. Yolanda is also a professor of animal law. She developed and taught the first animal law course and also the first wildlife law course at her alma mater, SMU Dedman School of Law in Dallas.
The fifth and last category that we consider for this award is *Excellence as a Leader of the ALC*. Yolanda was Chair of the ALC in the 2013-2014 ABA year, and she was a most excellent chair, as evidenced by the ALC receiving the Overall Excellence Award from TIPS that year. We had two great public service events during her year and great CLE programs. I wanted to also highlight one of Yolanda’s greatest contributions to the ALC: she is an incredible engager of people. I found my way to my first ABA meeting in 2012. Yolanda works a room. She realized I was a first-time attendee, she welcomed me warmly, assessed me, and then promptly gave me a job. When I did that job, she gave me a slight bigger job, and we continued on from there. Yolanda is the reason that so many of us over the years have found a way to be involved. For those of us who are active in volunteer professional groups, we know that such groups could not exist without engaging leaders like Yolanda.

Yolanda has been a constant presence in the ALC since 2011, which is a great, long run. Unsurprisingly, she has been actively involved in leadership of other animal law groups, including serving as the Chair of the Animal Law Section of the State Bar of Texas. She also created a forum for animal law professors in Texas to network and share ideas.

In describing the criteria for our award, we use “and/or” connectors for the five categories, because it is not expected that someone would excel in all five areas. But Yolanda has. She has made an incredible contribution to the ALC, to TIPS, to our community of animal lawyers, and most importantly, she has done so much to advance the humane treatment of animals through the law. I hope this overview has done justice to the scale of what Yolanda has accomplished in the field of animal law and has given you a sense of the number of people whom she has influenced and engaged along the way. Please join me in recognizing Yolanda.

**Acceptance: 2018 Excellence in the Advancement of Animal Law**

It is an honor to receive this award and a particular honor to be in the company of animal advocates such as Adam Karp, Ledy Van Kavage, and Bruce Wagman.

One never achieves these moments in isolation. It would be remiss of me not to thank my husband for the years of support and encouragement for the work I do. As a matter of fact, I want to acknowledge all spouses and partners who support those of us who work in animal protection. It is not always profitable or popular.

Yolanda Eisenstein
There are many excellent lawyers in the committee, but I would like to recognize Joan Schaffner, who was chair when I joined the committee. She set the bar for successful leadership and encouraged me to play an active role in the committee. And as chair elect, I could not have asked for a better coach than Rebecca Huss. She made stepping into the chair’s role seamless.

And today, we have Daina’s leadership to thank for another excellent year and for positioning the committee for a successful year ahead under Jane McBride.

The Animal Law Committee is an excellent committee, and I am happy to have played a small part in its ongoing success. TIPS’s support has allowed the committee to thrive, and we will continue to break new ground in support of our mission to achieve a just world for all the creatures who inhabit it.
Anticruelty Laws and Food Animals

The anticruelty laws would be the first place a layperson might think of, regarding practices that seemed inhumane, or that caused prolonged pain and suffering. But the anticruelty laws are of limited assistance in the food animal area. There are multiple reasons for this. First, in most states, there are specific statutory exemptions for common animal husbandry practices that might seem cruel, and that surely cause pain and suffering, if they are being done in the context of commercial food production. (Examples of such practices are the unanesthetized debeaking and detoeing of egg-laying hens; the unanesthetized castration of male mammals; and the intensive confinement of pregnant and nursing mother pigs and egg-laying hens.) Second, even if such exemptions are not codified, the practices are often not considered cruel because they are so common. Third, prosecutors in agricultural areas are unlikely to be interested in prosecuting their friends and neighbors for actions that are largely accepted.

With the most obvious avenue (the anticruelty laws) for the most part a dead end, animal lawyers put on their thinking caps and were probably humming along to these lines: “Gonna change my way of thinking/Make myself a different set of rules.”1 But the fact is that no federal law applies to farm animals; the Animal Welfare Act, for example, has an express exemption for farm animals.

So the top tier of animal lawyers are doing what they do so well—building on case law and existing statutes that were not written with animal advocacy in mind, but nevertheless can be easily applied to farming situations. And those rules, and the lawsuits on which they are founded, involve the use of both environmental and food laws in ways that are designed to help society, the environment, and simultaneously make life better for animals in agriculture.

Environmental Laws and Food Animals

The legal and judicial dialogue has shifted somewhat, because of the significant impacts on the environment from large-scale agriculture production, whether in the raising of the animals, or in their slaughter. Concentrated Animal Feeding Operations, or “CAFOs,” the facilities housing thousands and thousands of animals, are the target of these challenges. Advocates have identified multiple violations of laws tied to environmental protection, such as the Clean Air Act,2 Clean Water Act,3 National Environmental Policy Act (NEPA),4 as well as common law principles of nuisance. And scholars have written about the connection between animal agriculture and injuries to the ecosystems.5
Both the Clean Water Act and Clean Air Act have provisions which allow private citizens (or animal protection groups) to sue directly for violations of those laws, rather than relying on government enforcement and regulation. This allows for creative litigation that affects the operations of businesses that are engaged in the type of mass animal production that is of greatest concern. For example, in **Humane Society of the United States v. Hudson Valley Foie Gras LLC**, a New York federal judge granted summary judgment and issued extensive penalties against a foie gras producer based on hundreds of violations of the Clean Water Act. And in **Concerned Area Residents for the Environment et al. v. Southview Farm**, the Second Circuit ruled that the manure spreading operations of a large dairy farm subjected it to the federal law requirements applied to CAFOs. In **Association of Irritated Residents v. Fred Schakel Dairy**, plaintiffs alleged that a large dairy was in violation of state and federal law, including the Clean Air Act, and sought injunctive and declaratory relief, as well as statutory penalties. Finally, in **Cross Timbers Concerned Citizens v. Saginaw**, plaintiffs sued the Environmental Protection Agency, alleging its failure to comply with NEPA in its consideration and evaluation of CAFOs.

These cases, while not grounded in allegations of cruelty, both expose the conditions on “factory farms” and may force a reduction in the operations’ size that could ultimately help the animals involved. And in so doing, they are a vital contribution to the broadening spectrum of animal law. The lawyers who have been doing this work have taken on difficult issues of statutory interpretation, construction, and the need to demonstrate to courts the way in which the environmental laws apply equally to animal operations as to other polluters. It is a valuable and viable addition to the arsenal that animal protection lawyers are bringing to this ever-growing field.

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**Endnotes**

1  Bob Dylan, “Change My Way of Thinking.”
2  42 U.S.C. § 7401 et seq.
3  33 U.S.C. § 1251 et seq.
4  42 U.S.C. § 4321 et seq.
7  34 F.3d 114 (2d Cir. 1994).
8  460 F. Supp. 2d 1185 (E.D. Cal. 2006).
Hoardings... Continued from page 20

1. Failure to provide even minimal standards of sanitation, space, nutrition, and veterinary care for the animals;

2. Inability to recognize the effects of this failure on the welfare of the animals, human members of the household, and the environment;

3. Obsessive attempts to accumulate or maintain a collection of animals in the face of progressively deteriorating conditions; and

4. Denial or minimization of problems and living conditions for people and animals.7

For example, in October of 2018, 73 beagles were found at a Pennsylvania residence where a woman allegedly bred, kept, and sold beagles without a license.8 After the woman passed away, an apparent owner, keeper, or caretaker of the animals may have allowed the animals to exist on the premises, at the expense of the animals’ welfare. Two of the beagles did not survive.9

While “previously known as ‘collecting’” animals, animal hoarding “transcends simply owning or caring for more than the typical number” of companion or other animals.10 Animal hoarding is not limited to companion animals, however, nor does it include only certain species.11 Any non-human member of Kingdom Animalia could be involved in what is typically understood as an animal hoarding situation. In fact, farmed animals, including bred animals for show or sale, are often hoarded at alarming rates.

The Causes And Effects Of Animal Hoarding Are Troubling For Animals And People

There are a multitude of reasons why hoarding occurs and how it manifests. There are also some specific causal patterns exhibited in people that lead to the development of hoarding situations.12 These may include a change in life circumstances, including a loss of resources; loss of a spouse, domestic or life partner, or family member; loss of a job or income; or the inception of an illness or disability.13 A person involved in hoarding may also feel a strong sense and mission to save as many animals as possible, which may lead to an “unavoidable compulsion.”14 Some people involved in hoarding situations may simply own or care for animals “purely to serve [his or her] own needs.”15

Hoardings of animals can negatively impact air quality, cause zoonotic diseases, contribute to elder neglect or self-neglect, and create squalor. More than these issues, though, the hoarding of animals causes unimaginable suffering for the animals involved.16
Cruelty Prosecutions for Hoarding Animals Are Complex

Tracking or prosecuting hoarding cases is difficult because “the whole [situation may be] worse than the sum of its parts.”17 Many hoarding cases are “lost, dismissed, or minimized because the physical condition of some animals had not yet caught up with the deterioration of the environment or lack of care of other animals.”18 Justice may also be difficult when the defendant is someone who needs help for mental illness. Additionally, judges may be wary of “hundreds of individual citations for relatively [seemingly] minor offenses.”19 The sad truth is that “a reduction in the number of citations often went hand-in-hand with a reduction in perceived severity of the offense.”

Prosecutors handling animal cruelty cases may be overwhelmed by the frequency of hoarding cases. These cases often involve the same individuals and animals because of recidivism.20 Until the mental health component of animal hoarding is also addressed, the rate of recidivism may not be reduced.21

What Can Be Done To Lower The Rate Of Animal Hoarding?

There are several ways that communities can lower the rate of animal hoarding. According to expert and founder of the Hoarding Animals Research Consortium, Gary Patronek, “[j]ust as a variety of stakeholders must cooperate to intervene, investigate, and address a hoarding problem, a variety of stakeholders must work together to monitor [an individual involved in a hoarding situation’s] adherence to a plan to manage the situation.”22

Patronek also states that “[a]s with other relapsing conditions, hoarding requires constant follow-up and support from animal welfare and social service agencies. Sadly, for some, hoarding can be a never-ending cycle.”23

Lt. Alan Borgal, Director of Law Enforcement at the Animal Rescue League of Boston urges that if you see something, “say something.”24 People should tell their local authorities about concerns of animals in distress.25 More public awareness is needed about the serious issue of animal hoarding.26 People should also inform their elected officials about the public health and safety issue and mental health issue of hoarding animals.27 He also notes that the “physical abuse of custodian animals in alleged hoarding situations should not be tolerated by law enforcement or prosecutors” and that “aggressive court intervention should be at the highest level.”28

There are many steps that may be taken to address hoarding situations. First, states may implement multidisciplinary teams to train an emergency response to hoarding and oversee a task force to focus on early intervention of hoarding.29
Jurisdictions could provide mental health counseling in all animal hoarding cases and create departmental protocols for early intervention, sentencing, treatment, and rehabilitation.  

Certain jurisdictions with special state police officers or officers empowered to make animal cruelty arrests recognize the importance of these officers and their work on the front lines along with rescuers, social service agencies, and prosecutors. But in all jurisdictions, the issue of animal hoarding should be an “all hands on deck” effort. Prosecutors, law enforcement officers, animal control officers, and animal protection organizations must continue to be strong advocates for animals in all situations of cruelty.

Endnotes


4 Id. at 25.

5 Id. at 47.

6 American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (5th Ed. 2013); see also Gary Patronek, supra note 2, at 24.


9 Id.


12 See Gary Patronek, supra note 1, at 19–20.

13 Id.

14 Id.

15 Id.


17 Gary Patronek, supra note 1, at 32.

18 Id.

19 Id.


21 Gary Patronek, supra note 1, at 31.

22 Animal Rescue League of Boston, supra note 10.

23 Id.

24 Id.

25 Id.

26 Id.

27 Id.

28 E-mail from Lt. Alan Borgal, Animal Rescue League of Boston, to author (Oct. 12, 2018, 19:21 EST) (on file with author).

29 See Tufts Cummings School of Veterinary Medicine, supra note 3, at 7–8.

30 Id. at 8.
San Diego Zoo Global Academy e-Newsletter (Getting Better All the Time) on continuous improvement in animal welfare. He is a Vice Chair of the TIPS Animal Law Committee and has served as Chair of the New York State Bar Association Committee on Animals and the Law and the Suffolk County Bar Association Animal Law Committee. He has taught Animal Law at Hofstra University School of Law where he has served as a Special Professor, lectured extensively on constructive approaches to building consensus and fostering transformative, sustainable change to better serve animals and their interests. His practice is currently limited to Animal Law and he has practiced Animal Law for 29 years.

We welcome constructive comments, inquiries and suggestions for making these efforts more beneficial and impactful so that others can joyfully do more good.

Getting Started

Whether already engaged in sufficient and satisfying Animal Law activities, examining different alternatives to your present situation, or exploring potential paths forward, start here and now. Waiting for the “right” or “most opportune” moment can work out if the intervening period is spent in preparation for such future inspiration or first step. Even that approach is aided by initial examination of what you really want to do or create in this part of your life or career. Yes, just as one might counsel their client or organization, what do you want? What outcome do you envision for yourself?

Because it may be overwhelming for some to identify a particular area within as broad a field as Animal Law (“legal matters involving non-human animals”) or how to proceed even if you have a clearer sense of direction, here are some foundational questions to ponder:

• What is your legal field of expertise?
• Legally, what do you enjoy/what are you good at?
• What obligations, financial or otherwise, factor into your career decisions?
• Can you relocate?
• Can you retool? Go back to school?

Once you assess the “non-Animal Law” aspects of your life, then you can see where Animal Law fits into the picture:

• What do you most want or love to see for animals (and, for example, their care and treatment) and people working with them?
• What most concerns you about (the care and treatment of) animals and people working with them?
• What other activities involving animals’ interests concern you?
• What abilities/capabilities would you most like to draw upon, learn, and perhaps master?
• What type of legal activities do you most enjoy (e.g., drafting, organizing, researching, speaking, teaching, writing) and in what context (administration, legislative, litigation, prosecutorial, regulatory, or something else altogether)? (See above foundational questions.)
• What substantive matter/issue areas are of most interest to you? What challenges/unsolved problems (i.e., opportunities) in those areas do you want to explore? (This is admittedly a broader view of things than “what jobs are available?” which can be a “follow on inquiry”, but, it is helpful to open up your thinking to a greater range of possibilities.)
• What might you want to do in Animal Law? Most importantly, why? Your “why” can be your way to persevere and overcome anything that might otherwise prompt you to stop or turn back.

In connection with this in-depth review it is also important to consider a few other items at the outset, mindful that things may change as you and your consciousness evolve.

• Are you “interested” or “committed” to what you are doing/want to pursue in Animal Law? Again, why? (Note: as author Steve Chandler notes, there is a distinction between “interest” and “commitment” and the way we act in furtherance of each.1 For our purposes here, this is raised to help you sort out how this factors into your professional life – for example, as a one-off project or something much more.)
• What time and other resources do you have to invest?

The world and its animals and people need what you have to contribute. Together, we want to work with each other and with you, to create a unique way for you to make an even greater difference for animals (and people).

“Start by doing what’s necessary; then do what’s possible; and suddenly you are doing the impossible.”
– St. Francis of Assisi

Endnotes
case. The loss of Mila devastated and shocked her family as well as the community as it demonstrated a lack of justice despite the ordinance.

With these flaws in mind, Defend Them All has been working with Rescate Animal Cuenca and other local advocates to create better policies that outline a more holistic strategy for confronting animal cruelty and extreme dog overpopulation in this region. The proposed legislation focuses on the protection of companion animals as well as safeguarding public health.

Defend Them All’s proposal incorporates strong breeding restrictions, obligations of companion animal guardians, and provides an emphasis on education and enforcement. Spaying and neutering animals, with and without guardians, is also a priority within this proposed legislation. While individual owners would be responsible for spaying and neutering the companion animals in their homes, the government would initiate a plan to sterilize street dogs and identify those sterilized dogs in a uniform manner via a small tattoo on a designated area.

One of the highlights of this trip was participating in meetings with elected officials from Guatachapala, a neighboring city, to discuss new legislation that incorporates these policies. The officials were extremely receptive and open to the discussion, even sharing with us their concerns and challenges. After several meetings, the officials agreed to move forward with introducing this legislation to alleviate street dog overpopulation and the associated public health and safety concerns.

**Destructive Mining Practices**

In addition to our focus on companion animals, we also learned about destructive mining practices affecting the region. A Canadian company intends to mine a sensitive ecosystem which is heavily relied upon by indigenous communities for its water source. We met with a professor at the Universidad of Azuay as well as a member of Rio Blanco, an advocacy group drawing attention to the probable environmental impacts of this project. One of the students in our group with a specialty in environmental science assisted by analyzing the project’s Technical Report and the probable environmental impact on the environment and this community. Unfortunately, unlike the street dog population, the government is averse to halting these practices because of the potential influx of jobs and monetary incentives.

**Adventures**

While most of our time was focused on engaging with the community to learn how to best provide assistance to local advocates, there was also time for exploring. We took Spanish classes through the Amauta Spanish School, the organization that
matched us with host families who provided us with a home (far) away from home. We also hiked in Cajas National Park, paraglided in Paute, and cheered on the local soccer team in Cuenca.

Another memorable event was Rescate Animal Cuenca’s annual fundraiser, which we were able to help prepare for and participate in. The organization organized a raffle complete with food, drinks, and live music. A prominent local artist donated paintings, various local businesses donated vouchers for services, and Lindsey even brought a few items from the United States to raffle off. The event was a success; Rescate Animal Cuenca raised money to fund veterinarian costs for rescued dogs and the guests directly supported this worthwhile cause while sipping on mojitos and dancing the night away. Our group was able to meet with those among the Cuenca community that have a passion for making a difference and see firsthand how local support can be a driving factor for change.

Conclusion

This experience highlighted the connections between animal law with other areas of law and policy. Our group continuously evaluated how to address issues. Being in Ecuador allowed us to understand what people are passionate about and communicate effectively. Although the mining project and overpopulation of street dogs are complex issues, we made significant progress in our time in Ecuador. Our experiences demonstrate in many ways that education is critical to effective implementation of legal measures.

This invaluable experience allowed me to grow immensely as an advocate and enact meaningful change. I was able to explore Ecuador and spend time with a group of immeasurably talented individuals. I was constantly inspired by the people I met and motivated by the work in progress. It was truly one of the best experiences of my law school career. If any student is interested in this unique opportunity to participate in international animal law in action, please reach out with any questions. My email is mea@lclark.edu. Lindsey will be leading another group this summer and will open up the application process next semester. There is also the opportunity to volunteer with Defend Them All throughout the school year. Contact defendta@gmail.com if you are interested.
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<td>January 17-19, 2019</td>
<td>Midwinter Symposium on Insurance and Employee Benefits</td>
<td>Danielle Daly – 312-988-5708</td>
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<td>January 23-27, 2019</td>
<td>ABA Midyear Meeting</td>
<td>Arthena Little – 312-988-5672</td>
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<td>April 4-5, 2019</td>
<td>Motor Vehicle Products Liability Conference</td>
<td>Janet Hummons – 312-988-5656 Danielle Daly – 312-988-5708</td>
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<td>April 5-6, 2019</td>
<td>Toxic Torts &amp; Environmental Law Conference</td>
<td>Janet Hummons – 312-988-5656</td>
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<td>May 8-10, 2019</td>
<td>Fidelity &amp; Surety Law Spring Conference</td>
<td>Janet Hummons – 312-988-5656 Danielle Daly – 312-988-5708</td>
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