

8th Annual Animal Law Conference

Illinois State Bar Association

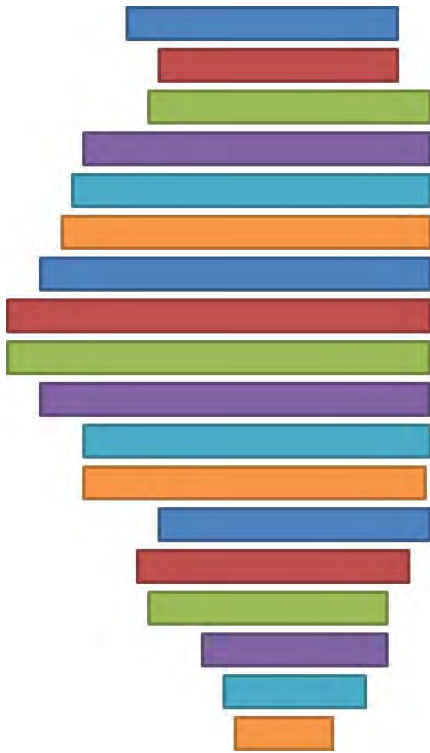
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In fiscal year 2014- 2015, the IBF invested more than **\$767,000** to enhance **access to justice** and to assist lawyers and their families in **need**.



The IBF has **FOUR** programmatic components to further its mission:

Access to Justice Grants
Warren Lupel Lawyers Care Fund
Post-Graduate Legal Fellowships
Illinois JusticeCorps

ILLINOIS BAR FOUNDATION'S MISSION

Illinois Bar Foundation's mission is to ensure meaningful access to the justice system, for those with limited means, and to assist lawyers who can no longer support themselves.

ACCESS TO JUSTICE GRANTS

This year, the IBF awarded 23 grants ranging from \$5,000 to \$15,000 to organizations across the state to provide legal aid, promote pro bono services, or provide legal information for those who can't afford an attorney.

WARREN LUPEL LAWYERS CARE FUND

The IBF supported many attorneys and their families across Illinois to help them get back on their feet and maintain a modest standard of living. More than \$90,000 went to support these attorneys and families.

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The IBF is excited to announce the 2015-2016 Fellowship participants! Calli Burnett is working at Loyola University Chicago's Community Law Center, Bryan McIntyre is working at the University of Illinois' Civil Litigation Legal Clinic, and Marishonta Wilkerson is working at Northern Illinois University's Zeke Giorgi Law Clinic. Fellowships add more attorneys to the legal aid field and help recent law graduates hone the skills they need to practice law.

JUSTICECORPS

This innovative AmeriCorps program enlists student volunteers to serve as guides to make courts across Illinois more welcoming and less intimidating for people without lawyers. Illinois JusticeCorps recruits, trains, and provides the necessary support for college and law students to offer procedural and navigational assistance in courthouses statewide. This fiscal year, the program expanded from 3 to 9 courthouses in Illinois.

SUPPORTED BY

The IBF is supported by attorneys, law firms, and other businesses serving legal communities in Illinois. Thank you for your continued support of these very worthy causes.

YOUR ILLINOIS BAR FOUNDATION

WHERE THE FUNDS GO

45% First District Support

32% Second-Fifth District Support

23% Statewide Support

2015-2016 Grant Recipients

ADMINISTER JUSTICE

CABRINI GREEN LEGAL AID

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CENTER FOR DISABILITY AND ELDER LAW

CHICAGO ALLIANCE AGAINST SEXUAL EXPLOITATION

CHICAGO LAW & EDUCATION FOUNDATION

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DOMESTIC VIOLENCE LEGAL CLINIC

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ILLINOIS EQUAL JUSTICE FOUNDATION

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PUBLIC INTEREST LAW INITIATIVE

THE IMMIGRATION PROJECT

THE PARENT PLACE

THE CHICAGO LIGHTHOUSE

UPTOWN PEOPLES' LAW CENTER

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Join or upgrade your Fellows pledge today and receive a special thank you gift from the Illinois Bar Foundation.

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CREATED IN 1983, THE FELLOWS PROGRAM CONSISTS OF A SPECIAL GROUP OF LAWYERS WHO HAVE COMMITTED, BY DIRECT PAYMENT OR PLEDGE OVER TEN YEARS, SUMS OF MONEY RANGING FROM \$1,000 TO \$25,000 TO HELP FUND THE FOUNDATION'S GRANTS PROGRAMS AND ASSIST LAWYERS IN NEED.

HOW IT WORKS

FELLOWS CAN MAKE MONTHLY, QUARTERLY, OR ANNUAL PAYMENTS TOWARD THEIR SELECTED PLEDGE VIA CHECK, CREDIT CARD, OR RECURRING AUTOMATIC PAYMENTS. ALL FELLOWS PAYMENTS ARE TAX DEDUCTIBLE TO THE EXTENT ALLOWED BY LAW.

WHAT WE DO

THROUGH THE GENEROUS SUPPORT OF OUR FELLOWS AND OTHER DONORS, THE ILLINOIS BAR FOUNDATION IS ABLE TO:

- Award Access to Justice Grants to organizations across the state to provide legal aid, promote pro bono services, or provide legal information for those who can't afford an attorney
- Support lawyers and their families who have fallen on hard times through the Warren Lupel Lawyers Care Fund
 - Fund Post-Graduate Legal Fellowships at three Illinois law schools' legal aid clinics, giving recent law graduates the opportunity to hone skills they will use throughout their careers while adding more attorneys to the legal aid field
 - Facilitate the Illinois JusticeCorps program, an innovative AmeriCorps program which enlists student volunteers to serve as guides to make courts across the state more welcoming and less intimidating for people without lawyers



THE FELLOWS
ILLINOIS BAR FOUNDATION

Membership Application

Deane B. Brown, Chair, The Fellows
Susan Brazas, Vice Chair, The Fellows
Lisa M. Nyuli, Secretary, The Fellows

The mission of the Illinois Bar Foundation is to ensure meaningful access to the justice system, and to assist lawyers and their families that have fallen upon hard times. This year, the Foundation will distribute more than \$400,000 to programs that enhance our system of justice and as payments to lawyers or their survivors who have fallen on hard times due to age, illness or other tragedy.

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**Pledges may be payable over ten years.

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Complete this application and return it to: Illinois Bar Foundation
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Statements or expressions of opinion made by continuing legal education presenters are those of the presenters and not necessarily those of the Illinois State Bar Association or program coordinators. Likewise, materials are provided by the presenters and do not necessarily reflect the opinion of the Association. Legal opinions and analyses provided by presenters, during programs, or in materials are not reviewed by the Association, and are not a substitute for independent legal research.

8th Annual Animal Law Conference

Presented by the ISBA Animal Law Section

Chicago

Friday, March 3, 2017

ISBA Regional Office

20 S. Clark Street, Suite 900

9:00 a.m. – 5:00 p.m.

– or –

Live Webcast

Friday, March 3, 2017

9:00 a.m. – 5:00 p.m.

7.0 hours MCLE credit, including 2.0 hours *approved* Professional Responsibility MCLE credit

Don't miss ISBA's 8th Annual Animal Law Conference that not only features the leading areas of interest in the day-to-day practice of law concerning animals, but also avails the attendee of some of the nation's top experts in specific animal law areas. Family law attorneys, municipal law practitioners, local government counsel, and animal law lawyers – with all levels of practice experience – who attend this seminar will better understand:

- How animal law and environmental law areas intersect;
- What animal law can learn from environmental law;
- What Chicago Tribune reporters David Jackson and Gary Marx learned during their research on agricultural animal abuse in Illinois;
- The controversy between community cat advocates and environmentalists concerned with the predatory nature of cats;
- How mediation can help address the family pet and family hobby farm issues that can arise during a divorce;
- The current state of affairs on animal crime prosecution in Illinois;
- How prepared Illinois is to protect our pets during a natural disaster, as well as the legal considerations of disaster response for animals;
- The ethical issues that can arise in animal law cases; and
- Much more!

Program Coordinator:

Jane E. McBride, Illinois Humane, Springfield

9:00 – 10:00 a.m. What Can Animal Law Learn from Environmental Law?

Don't miss this opportunity to hear from Professor Randall Abate who has compiled 17 chapters written by 22 experts that compare the very different trajectories of and legal intersections between animal law and environmental law.

Prof. Randall S. Abate, Florida Agricultural and Mechanical University College of Law, Florida

10:00 – 10:15 a.m. Break (beverages provided)

10:15 – 11:15 a.m. Whipped, Kicked, Beaten: The State of Cruelty Enforcement for Farm Animals as Revealed by The Chicago Tribune

As part of an overall series on animal agriculture in Illinois, Chicago Tribune reporters David Jackson and Gary Marx delved into the current state of affairs regarding Illinois' cruelty provisions for the protection of farm animals. This segment discusses their research experiences as they wrote the sections that focused on animal abuse at these operations. Amber Porter from the McHenry County State's Attorney's Office addresses the legal framework of animal protection provisions applicable to farm animals in Illinois.

MODERATOR: *Amber Porter, McHenry County State's Attorney's Office, Woodstock*
David Jackson, The Chicago Tribune, Chicago

11:15 a.m. – 12:00 p.m. Legislation Update, Including the State-Wide Community Cat Task Force Initiative

Join us for a comprehensive overview of the animal-related legislation that has taken place over the past year, as well as a brief presentation on the controversy brewing in Illinois between community cat advocates and environmentalist concerned with cats preying on songbirds. A discussion on the Illinois Department of Natural Resource's recent position statement that offers aggressively derisive methods for maintaining and controlling populations of community cats promoted by animal protection interests is also included.

Ledy Van Kavage, Best Friends Animal Society, Maryville

12:00 – 12:30 p.m. Lunch (provided)

12:30 – 1:30 p.m. Use of Mediation to Address Animal Issues in Family Law Matters*

The custody of family pets – including those not commonly thought of as pets, such as horses, lamas, bees, and any other animal that can be part of a household or family hobby farm – are increasingly the subject of controversy in matters of dissolution and property division. This session explores the use of mediation to address (and possibly settle) this area of family law disputes.

MODERATOR: *Hon. William E. Holdridge, Illinois Appellate Court, Third District, Farmington*
Debra Vey Voda-Hamilton, Hamilton Law & Mediation, PLLC, New York
David H. Hopkins, Schiller DuCanto & Fleck, Wheaton
Angela E. Peters, Buffalo Grove Law Offices, Arlington Heights

1:30 – 3:00 p.m. From the Prosecutor's Desk: Notes from the Field

Even though Illinois is recognized year after year as having some of the best animal protection laws on the books nationwide, there still remains numerous instances of animal cruelty and neglect in our communities. Get the information you need on animal crime prosecution in Illinois as our speakers – all of whom concentrate a percentage of their time prosecuting animal crime cases – present a case study from their years of work with these matters and provide perspective as to factors that facilitate effective enforcement of existing law.

MODERATOR: *Amber Porter, McHenry County State's Attorney's Office, Woodstock*
Jennifer Bagby, Cook County State's Attorney's Office, Chicago
Ken Hudson, McHenry County State's Attorney's Office, Woodstock
Alvin Portis, Cook County State's Attorney's Office, Chicago
Rory P. Quinn, Cook County State's Attorney's Office, Chicago

3:00 – 3:15 p.m. Break (*refreshments provided*)

Sponsored by the Illinois Bar Foundation

3:15 – 4:00 p.m. Natural Disasters: Is Illinois Prepared, Legal Ramifications of Not Being Prepared, Legal Considerations in Preparedness Planning

In 2006, the Pets Evacuation and Transportation Standards Act became Public Law 109-308, which mandates that in order to be eligible for FEMA funding for natural disaster response for pets, communities must include an animal annex in their county emergency response plan. Many communities undertook such planning back in 2007 and 2008, but have not revised it since. Illinois, as a whole, has traditionally had a Memorandum of Understanding with the International Fund for Animal Welfare as its contract entity to provide response assistance should the Director of the Bureau of Animal Health and Welfare deem that such assistance is needed. This panel presentation explores the current state of preparedness in Illinois, as well as the legal considerations of disaster response for animals.

MODERATOR: *Jane E. McBride, Illinois Humane, Springfield*

Stephen F. Hedinger, Sorling, Northrup, Hanna, Cullen and Cochran, Ltd., Springfield

Allison Anderson, Will County Emergency Management Agency, Joliet

4:00 – 5:00 p.m. Identifying and Resolving Ethical Issues Arising in Animal Law*

Don't miss this lively segment that examines a number of hypothetical scenarios – each of which are presented by the facilitators to highlight the potential issues and discussing the applicable Rules of Professional Responsibility. Using ISBA's polling software, audience members will interact by responding to a set of multiple choice questions, followed by a discussion weighing the various analysis and potential solutions with the aid and advice of our ARDC speaker.

Scott W. Kummer, Boyd & Kummer LLC, Chicago

Anna E. Morrison Ricordati, AMR Law Group LLC, Chicago

Richard M. Seligman, Richard M Seligman P.C., Highland Park

Lisa M. Velez, Cassiday Schade LLP, Chicago

Jonathan Wier, Attorney Registration & Disciplinary Commission, Chicago

What Can Animal Law Learn from Environmental Law?

- *Prof. Randall S. Abate, Florida Agricultural and Mechanical University
College of Law, Florida
randall.abate@famuedu*

This segment includes all materials received by the course book publication deadline.
Please contact the speaker for any other materials used at the program.

Animal Law and Environmental Law - Parallels and Synergies



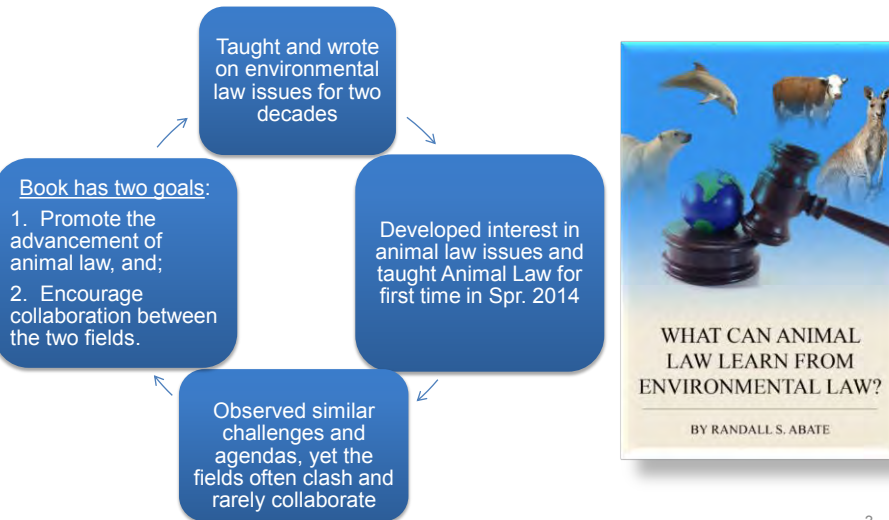
Prof. Randall S. Abate
Florida A&M University College of Law
Orlando, FL

Roadmap

- Evolution of the Book Concept
- Lessons from History, Politics, and Law
- Comparative Evolution of the Movements
- Select Lessons for Animal Law
 - Information Access and Dissemination
 - Standing and Personhood
 - International Law Dimensions
- Opportunities for Collaboration
 - Climate Change Law and Policy
 - Food Law and Policy
 - Common Goals and Means
- Questions and Discussion



Evolution of the Book Concept



Lessons from History, Politics, and Law



History – The importance of connecting the issues to human health and welfare

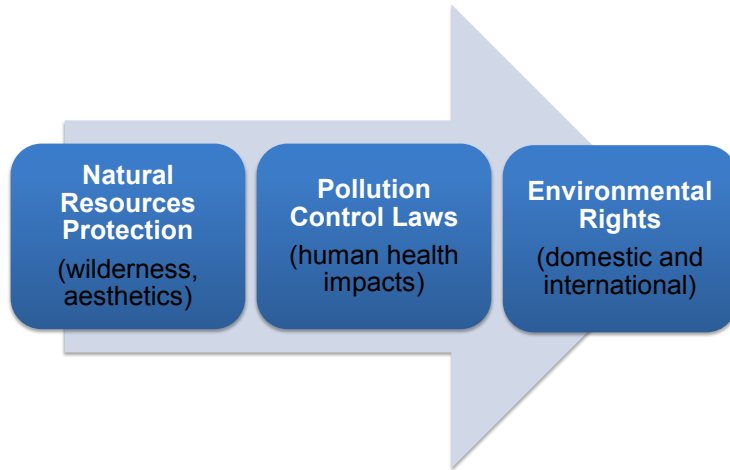


Politics – The struggle to establish mainstream legitimacy



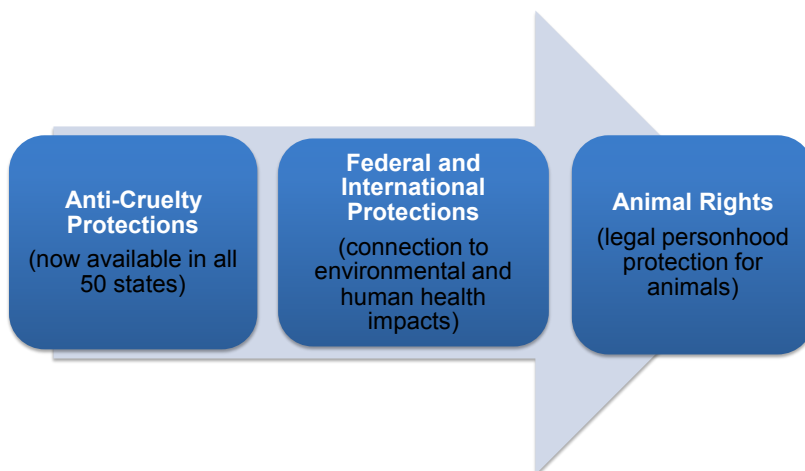
Law – The importance of effective federal legislative initiatives and good science

The Evolution of Environmental Law



5

The Evolution of Animal Law



6

Building on Environmental Law's Success in Accessing and Disseminating Information

- **Access to Information**
 - Transparency: DMRs under the CWA
 - Community empowerment: EPCRA
- **Dissemination of information**
 - Env't'l Impact Assessment: NEPA
 - Power of delay and publicity
- **Transferring this legacy of success to animal law**
 - Meat labelling – **Chap. 3**
 - Public awareness building through education and demand reduction strategies
 - Overcoming obstacles: Ag-gag laws

7

The Power of Public Information: *Animal Protection Documentaries*

Unlocking the Cage (2016)

- Describes NhRP's habeas corpus cases
- <http://www.unlockingthecagethefilm.com/>



Blackfish (2014)

- Describes SeaWorld's treatment of captive orcas
- <http://www.blackfishmovie.com/>

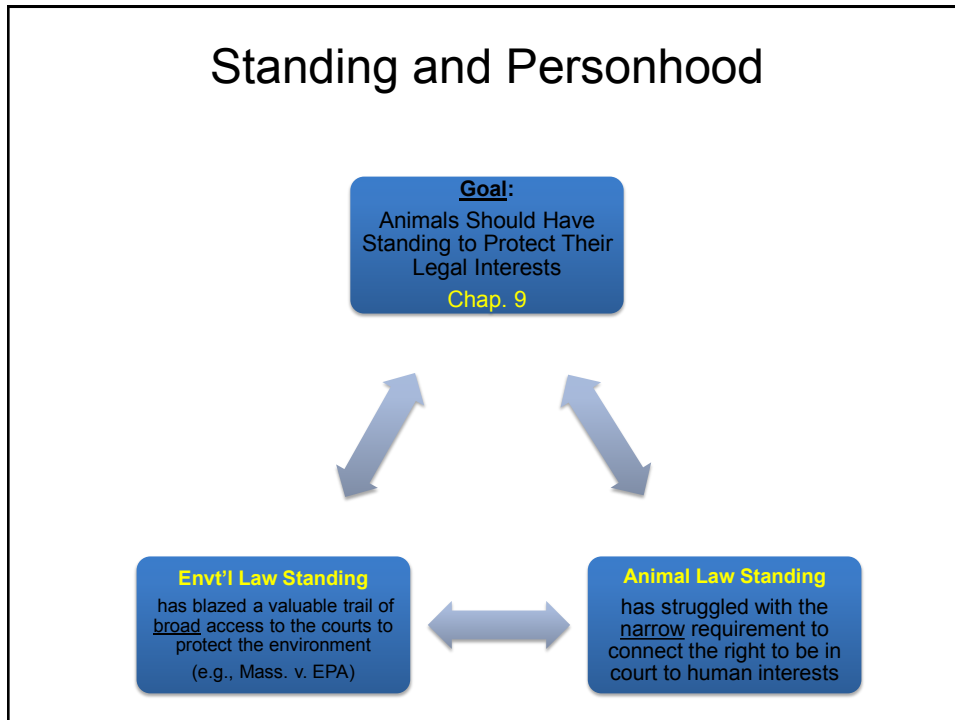


Cowspiracy (2014)

- Describes environmental impact of animal agriculture
- <http://www.cowspiracy.com/about/>

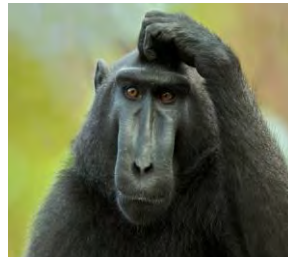
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Standing and Personhood



Legal Personhood Protections Recognized in Other Contexts

- Corporations
- Ships
- **Natural Resources**
- Future Generations
- Artificial Intelligence



<http://www.theverge.com/2016/6/22/11999458/eu-proposal-robots-electronic-persons-liability>

How can primates and mammals (sentient creatures capable of complex thinking and emotion) be excluded from this list?

Personhood for Natural Resources

Whanganui River in New Zealand

- Granted legal personhood under an agreement with the local Maori
- Rights are represented by two guardians

Great Barrier Reef in Australia

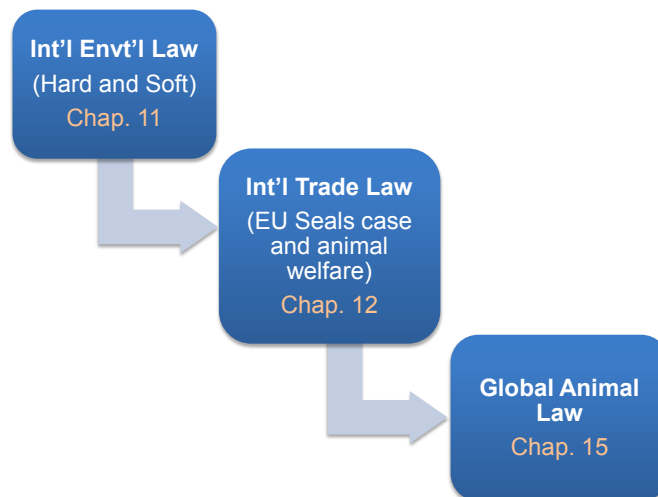
- Proposal being considered to grant legal personhood status to help combat devastating impacts from ocean acidification

Little Mahoning Watershed in Pennsylvania

- Intervention in watershed's name to contest lawsuit seeking to overturn a local ban on injection of fracking wastewater

11

International Law Dimensions *Transboundary Scope and Building Global Consensus*



12

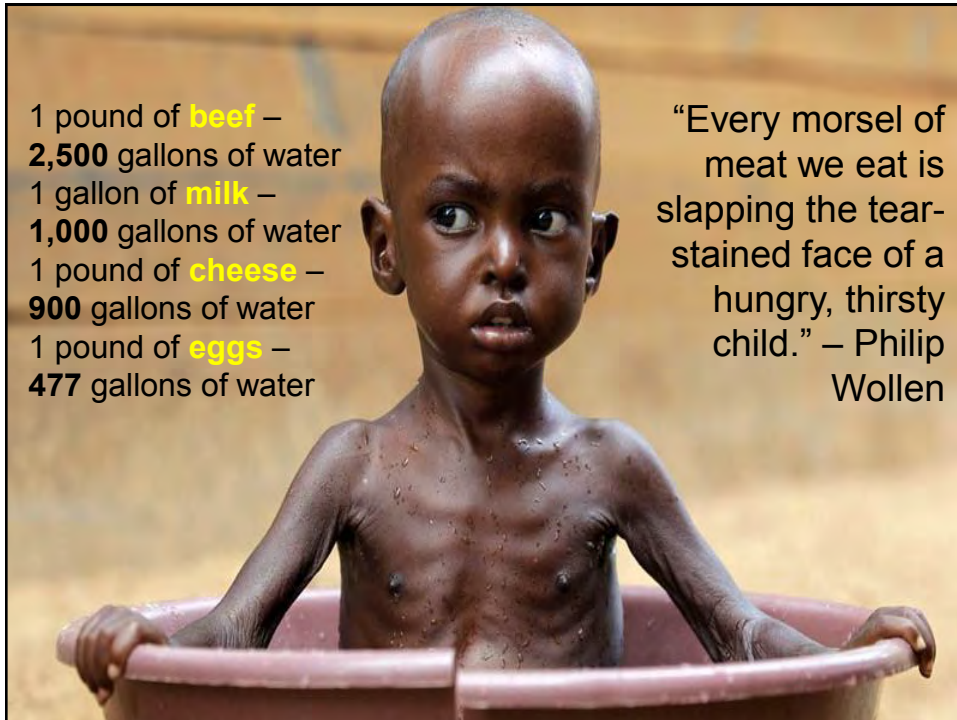
Opportunities for Collaboration

Climate Change, Food, and Common Goals and Means

Three Parameters of Harm from CAFOs

- **Animal Welfare**
CAFOs abuse animals, but that isn't enough for many people
- **Public Health**
CAFOs are contributing significantly to our public health crisis on an individual and collective basis
- **Environment**
CAFOs are trashing the planet.
Methane is a significantly more potent GHG than carbon dioxide
Chap. 5





Importance of Food Advocacy to Promote a Transition to a Plant-Based Diet

- Addresses all three categories of CAFO impacts
- Most people would reduce or eliminate meat and dairy consumption if fully informed of these impacts
- Impossible without accessing and disseminating the information to the public



Why Not?
 You eat other animals,
 don't you?

Collaborate on Common Goals and Means: Stewardship, Demand Reduction, and Litigation

Common Goal:

Protect the vulnerable and voiceless

Common Means:

- Draw on stewardship and intrinsic value to protect non-humans
- Demand reduction – role of documentaries and local movements
- Importance of creative and persistent litigation as public information



17

Thank you!

Prof. Randall S. Abate

Florida A&M University
College of Law
Orlando, FL

randall.abate@famu.edu



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Chapter 16: Animal Protection and Environmentalism: The Time Has Come to Be More Than Just Friends

Joyce Tischler and Bruce Myers

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The animal protection movement and the environmental movement have historically operated separately and apart from each another. They have had different objectives, different constituencies, and, often, different approaches. A reference to these two movements in the same sentence is commonly followed by a description of some dispute—perhaps over invasive species control, hunting, or animal testing. The narrative that animal advocates and environmentalists are fundamentally at odds is well established and oft repeated.

This chapter offers a different take on the relationship between the animal protection and environmental movements. Whatever may have been true in the past, the reality today is that these two movements have a great deal in common—including in many instances shared aims, shared constituencies, and shared approaches.¹ Across the many substantive areas where the two movements and their respective legal and policy frameworks come together around the same subject matter—from industrial animal agriculture to species extinction to chemical regulation reform and beyond—there is more common ground than reason for discord. And for the lawyers who work to advance the values of animal protection and environmental protection, the kinship between the movements runs even deeper. Each aims to ensure the protection of the non-human “other,” be it a tropical ecosystem or a piglet, deemed by the law to be mere property—and someone else’s property, at that. In this sense alone, the two social movements share a special connection. Differences persist, and sometimes they are profound. But, as this chapter also will discuss, each movement has its own internal differences, and sometimes they, too, are profound.

Why is it important to highlight the opportunities for collaboration and shared reform between these two movements? The first reason is obvious and practical: to build broader and deeper collaboration, which adds new voices and, ideally, new resources to efforts that had been pursued by one or the other movement individually. Second, many people who self-identify as environmentalists also care deeply about the welfare of individual animals, and vice versa. Recognizing where the issue areas overlap and common interests exist simply acknowledges where many of the members and supporters of these movements already are, or may be headed. Third, these overlapping interests and common aims may point the way to shared legal and policy reforms that benefit animals, the environment, and humans.

Part I of this chapter highlights key commonalities and differences between the movements—substantive, procedural, and practical. Part II then exam-

1. Indeed, every chapter in this book identifies connections between the two movements.

ines the prospects for greater collaboration and shared reform efforts. There is little doubt that the two movements have become intertwined in important ways. Given the enormous challenges that each faces in the 21st century, there is every reason to not only encourage inter-movement collaboration, but also think beyond alignment and coalition-building and consider undertaking mutually beneficial reforms based on shared principles.

I. Two Movements

What do the terms “animal protection movement” and “environmental movement” actually mean? The movements that swirl around the fields of animal law and environmental law, and infuse them with their passion and dynamism, can be hard to define given the fluid nature of social movements and the intense disagreements that take place within them.

The animal protection movement is comprised of people who believe that the lives and interests of animals² matter, if not always to human beings, then to the animals themselves. Animal advocates support the reduction or elimination of pain, suffering, abuse, and neglect, as well as eliminating the exploitation and unnecessary death of animals. This focus on animals includes farmed animals, animals used in research and testing, wildlife and captive wildlife, animals used in entertainment, and companion animals. Though decades younger than the environmental movement, the animal protection movement has gained substantial momentum in the United States and now has a global reach.

The animal protection movement has built national and international organizations, as well as grassroots organizations. The movement encompasses the work of advocacy and educational organizations, humane societies and shelters, dog and cat rescue groups, sanctuaries for farmed animals and captive wildlife, anti-vivisection societies, and others who work to change the way society views and treats animals. At the individual level,

2. As used in this chapter, the word “animal” refers to any mammal, bird, amphibian, or living being other than a human. It is not intended as a scientific or philosophical definition. See SONIA S. WAISMAN, PAMELA D. FRASCH & BRUCE A. WAGMAN, *ANIMAL LAW CASES AND MATERIALS* (5th ed. 2014). Whether the law considers a living being to be an “animal” in a particular context can be quite significant. For example, if a court deems the answer to be “no,” then that being may not receive protections offered by state anti-cruelty laws. The federal Animal Welfare Act (AWA), 7 U.S.C. §2132(g), defines the term “animal” to specifically *exclude* rats, mice, and birds “bred for use in research,” “horses not used for research purposes,” and “other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. . . .” This exclusion from the definition of “animal” under the AWA has had dire consequences for the beings listed.

the movement attracts lawyers and other legal professionals, veterinarians, physicians, psychologists, politicians, sports figures, celebrities, and grass-roots activists. The animal protection movement is actually a mixture of organizations and individuals who hold distinct but interconnected ideologies: those who are proponents of animal rights (i.e., *enforceable* legal rights for animals, and the abolition of all forms of animal use or exploitation), those who advocate for animal protection or welfare (acknowledging continued use of animals, but demanding humane treatment), and those who embrace both ideologies.³

The environmental movement comprises a vast range of advocacy and educational efforts involving pollution prevention; regulation of toxics and hazardous materials; natural resource and energy conservation; protection of land, ecosystems, and species; and healthy, sustainable interactions between people and the natural world. Environmentalism pulls in diverse subjects, from environmental justice for low-income communities and communities of color, to the safeguarding of public health, to the built environment, to ecotourism and improved livelihoods as vehicles for conservation, to the protection of biodiversity. Environmentalism reaches land, air, climate, and water—from the ocean to surface waters and groundwater—and the full scope of human activities that impact our land, water, and climate.

The environmental movement's work is identified with numerous nonprofit organizations: large organizations that are regional, national, or international in their reach, as well as countless local and grass-roots groups that advocate for their own community or watershed. Earth Day, an annual, global celebration of the movement, draws over 1 billion participants per year and is thought to be the largest civic observance in the world.⁴ Though environmental policy debates can spark intense disagreement, self-identified environmentalists are found throughout all sectors, industries, and government—and “environmentalism” is typically held as a value. A 2015 Gallup Poll found that 57% of Americans are either sympathetic to the environmental movement (41%) or active participants in it (16%).⁵ The environmental movement is a very big tent—so large, in fact, as to defy easy definition.

3. For simplicity's sake, the term “animal protection movement” will be used throughout this chapter to refer to all three of these approaches.

4. Earth Day Network, *About Earth Day Network*, <http://www.earthday.org/about-earth-day-network-3> (last visited May 3, 2015).

5. Gallup, *Environment*, <http://www.gallup.com/poll/1615/environment.aspx> (last visited June 25, 2015). In polling data, dated Mar. 5-8, 2015, a mere 11% of respondents said they were unsympathetic towards the movement, and 30% were neutral.

A. Commonalities and Mutual Concerns

The animal protection and environmental movements have much in common, beginning with their issue areas. Not only do the substantive interests of animal advocates and environmental advocates significantly overlap, in many instances these interests are also well aligned—suggesting an opportunity to pursue aims jointly. Several key areas are surveyed below. Though there are others, the focus here is on animal agriculture, and in particular the use of “concentrated animal feeding operations”; species extinction; protection of native predators; and the need to reform chemical regulation and modernize the use of chemical testing.

I. Substantive Areas of Shared Interest

The most striking example of shared interests—and how those interests can align—relates to concentrated animal feeding operations (CAFOs),⁶ commonly referred to as “factory farms.” The animals most commonly raised in CAFOs are pigs, chickens, turkeys, dairy cows, and their offspring. As was detailed more specifically in Chapter 4, the CAFO model of production has a range of consequences for animals, the environment, and people. In a CAFO, animals typically live their lives in industrial sheds, housed either individually or in groups that offer them no privacy and limit their mobility to the point that, as they grow, they cannot walk freely or even move without touching other animals. They have been bred to grow quickly, take up as little space as possible, and produce large amounts of meat, milk, and eggs. Animals housed in a CAFO building cannot graze in a field, feel the sun, breathe fresh air, or engage in the wide variety of behaviors and activities that come naturally to their species. If they become sick or injured, in many instances, they may not receive veterinary medical care or timely euthanasia.⁷

6. The term “concentrated animal feeding operation” appears in the Clean Water Act, which expressly includes CAFOs within the definition of a “point source.” 33 U.S.C. §1362(14), CWA §502(14). EPA’s definition of CAFO is determined by the number of animals confined. A large CAFO will have an “inventory” of at least 1,000 beef cattle or 2,500 pigs each weighing over 55 pounds; 10,000 pigs each weighing less than 55 pounds; 700 mature dairy cows; 1,000 veal calves; 55,000 turkeys; 30,000 laying hens or broilers (chickens raised as meat) or 5,000 ducks if there is a liquid manure handling system; 82,000 laying hens or 125,000 broilers or 30,000 ducks, if there is not; 10,000 sheep or lambs; or 500 horses. See U.S. EPA, *Regulatory Definitions of Large CAFOs, Medium CAFOs, and Small CAFOs*, http://water.epa.gov/polwaste/npdes/afu/upload/sector_table.pdf (last visited May 3, 2015).

7. See generally, e.g., PEW COMMISSION ON INDUSTRIAL FARM ANIMAL PRODUCTION, *PUTTING MEAT ON THE TABLE: INDUSTRIAL FARM ANIMAL PRODUCTION IN AMERICA* (2008) and a follow-up report released five years later, JOHNS HOPKINS CENTER FOR A LIVABLE FUTURE, *INDUSTRIAL FOOD ANIMAL PRODUCTION IN AMERICA: EXAMINING THE IMPACT OF THE PEW COMMISSION’S PRIORITY RECOMMEN-*

CAFOs can also have significant environmental impacts. Water pollution from CAFOs and the row crops grown to feed CAFO animals is substantial. According to the latest compilation of data submitted by the states to the U.S. Environmental Protection Agency (EPA) pursuant to Clean Water Act reporting requirements, “agriculture” is the number one probable source of impairment of the nation’s assessed rivers and streams.⁸ Far downstream, the nutrient runoff from animal operations and the row crops used to produce their feed contributes to massive, oxygen-starved dead zones that form in places like the northern Gulf of Mexico and the Chesapeake Bay.⁹ CAFOs also produce large amounts of hydrogen sulfide, ammonia, methane, nitrous oxide, and other harmful gases.¹⁰ Such pollutants may cause health problems for CAFO workers and nearby residents.¹¹

These impacts on animal welfare, water, and air are but some of the consequences associated with CAFOs. As noted earlier in this volume and documented in various reports and studies released over the past decade, the intensive confinement model of meat and dairy production is linked to a wide range of other impacts: e.g., significant anthropogenic greenhouse gas emissions; increased antibiotic resistance in humans due to the non-

DATIONS (2013); UNION OF CONCERNED SCIENTISTS, *CAFOs UNCOVERED: THE UNTOLD COSTS OF CONFINED ANIMAL FEEDING OPERATIONS* (2008); *THE CAFO READER: THE TRAGEDY OF INDUSTRIAL ANIMAL FACTORIES* (Daniel Imhoff ed., 2010).

8. Agriculture also is among the top three probable sources of impairment of the nation’s assessed lakes, reservoirs, ponds, and wetlands. U.S. EPA, *Watershed Assessment, Tracking & Environmental Results—National Summary of State Information*, http://ofmpub.epa.gov/waters10/attains_nation_cy.control (last visited May 3, 2015). Groundwater pollution resulting from CAFOs is also receiving increased attention. *See, e.g.*, *Community Ass’n for Restoration of the Env’t v. Cow Palace, LLC*, No. 13-CV-3016-TOR, 2015 WL 199345, at *7 (E.D. Wash. Jan. 14, 2015) (noting, in RCRA citizen suit for groundwater pollution from dairy, that “Plaintiffs cite to several instances in which the Dairy applied considerably more nitrogen than the crop could possibl[y] use; for example, in 2012, although soil samples from the top two feet of the soil column showed nitrate levels in excess of what the alfalfa crop could use, the Dairy proceeded to apply 7,680,000 gallons of manure onto the already sufficiently fertilized field”) (emphasis in original).
9. Agriculture is the largest relative contributor of nitrogen to the Gulf of Mexico and Chesapeake Bay ecosystems—larger than urban/suburban runoff and larger than atmospheric deposition. INTERAGENCY WORKING GROUP ON HARMFUL ALGAL BLOOMS, HYPOXIA, AND HUMAN HEALTH, *SCIENTIFIC ASSESSMENT OF HYPOXIA IN U.S. COASTAL WATERS* 15 (Sept. 2010). “Although coastal hypoxia [oxygen deprivation] can be caused by natural processes, a dramatic increase in the number of U.S. waters developing hypoxia is linked to eutrophication due to nutrient (nitrogen and phosphorus) and organic matter enrichment resulting from human activities. Sources of enrichment include . . . nonpoint source runoff from croplands, [and] lands used for animal agriculture.” *Id.* at 1.
10. *See* NATIONAL RESEARCH COUNCIL, *AIR EMISSIONS FROM ANIMAL FEEDING OPERATIONS: CURRENT KNOWLEDGE, FUTURE NEEDS* 50-56 (2003), available at <http://www.nap.edu/catalog/10586/air-emissions-from-animal-feeding-operations-current-knowledge-future-needs>; *see also* Victor Katch, *Buyer Beware!*, MICHIGAN TODAY, Jan. 15, 2014, <http://michigantoday.umich.edu/raising-the-steaks-buyer-beware/>.
11. *See* INSTITUTE FOR AGRICULTURE AND TRADE POLICY, *CONCENTRATED ANIMAL FEEDING OPERATIONS: HEALTH RISKS FROM AIR POLLUTION* (Oct. 2004), available at http://www.iatp.org/files/421_2_37388.pdf.

therapeutic use of antibiotics in CAFO animals to promote growth and protect them from crowded conditions; decimation of traditional farming communities in the United States; unsustainable use of scarce water resources; soil damage and sedimentation; and loss of biodiversity.¹² A full examination of the many impacts of CAFOs is beyond the scope of this chapter. It suffices to say that while environmentalists and animal protectionists may focus on different aspects of the CAFO model of food production, most agree that it represents a damaging and ultimately unsustainable form of agriculture.

The animal protection and environmental movements are both deeply concerned with the loss of threatened and endangered animals—individually and at a species level. A species is deemed “endangered” when it is in danger of extinction throughout all or a significant portion of its range, and “threatened” if it is likely to become endangered in the foreseeable future.¹³ The effects of human activity on the earth’s resources include deforestation, mass pollution, climate change, the overexploitation of other species, and the introduction of non-native species into environments where they cause problems.¹⁴ Although estimates vary, one Harvard biologist projected that we are losing 30,000 species annually, which equates to roughly three species per hour.¹⁵ “In fact, 99 percent of currently threatened species are at risk from human activities, primarily those driving habitat loss, introduction of exotic species, and global warming.”¹⁶ A primary driver of these activities is CAFOs, the industrial system of food production, discussed above.¹⁷

These significant changes in the ecosystem have long-ranging effects for the environment, animals, and humans. Scientists have classified approximately 1.7 million animal and plant species on earth;¹⁸ however, it is esti-

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12. See generally, e.g., sources at *supra* note 7; HENNING STEINFELD ET AL., U.N. FAO, *LIVESTOCK’S LONG SHADOW: ENVIRONMENTAL ISSUES AND OPTIONS* (2006) and U.S. CENTERS FOR DISEASE CONTROL AND PREVENTION, *ANTIBIOTIC RESISTANCE THREATS IN THE UNITED STATES* 36 (2013) (“[s]cientists around the world have provided strong evidence that antibiotic use in food-producing animals can harm public health. . .”).
 13. Endangered Species Act of 1973 §3(6), (20), 16 U.S.C. §1532(6), (20).
 14. See MILLENNIUM ECOSYSTEM ASSESSMENT BOARD, *ECOSYSTEMS AND HUMAN WELL-BEING* (2005), available at <http://www.millenniumassessment.org/documents/document.356.aspx.pdf> [hereinafter *MILLENNIUM WHITE PAPER*].
 15. Niles Eldredge, *The Sixth Extinction*, ACTION BIOSCIENCE (June 2001), <http://www.actionbioscience.org/evolution/eldredge2.html#primer>.
 16. CENTER FOR BIOLOGICAL DIVERSITY, *The Extinction Crisis*, http://www.biologicaldiversity.org/programs/biodiversity/elements_of_biodiversity/extinction_crisis/ (last visited May 3, 2015). The annual loss of species has surpassed its natural “background” rate of extinction of one to five species per year and is now estimated to be between 1,000-10,000 times its original rate.
 17. RICHARD A. OPPENLANDER, *FOOD CHOICE AND SUSTAINABILITY: WHY BUYING LOCAL, EATING LESS MEAT AND TAKING BABY STEPS WON’T WORK* (2013).
 18. IUCN Red List, *Table 1: Numbers of Threatened Species by Major Groups of Organisms (1996-2014)*, http://cmsdocs.s3.amazonaws.com/summarystats/2014_3_Summary_Stats_Page_Documents/2014_3_RL_Stats_Table_1.pdf (last visited May 3, 2015).

mated that there are up to 8.7 million species (not including microscopic species).¹⁹ It is projected that by the year 2100, more than half of all animals and plants on earth will become extinct.²⁰

As species in an ecosystem become extinct, the ecosystem's biological diversity, or biodiversity (the variation of life/species) decreases.²¹ Biodiversity is vital because it helps ensure disease control, clean water, oxygen, climate stability, pollination of crops, food-chain stability, and nutritiously varied and abundant food. Biodiversity is not easily regained once it has been lost. Diminished levels of biodiversity result in a weaker environment, with ecological systems less equipped to handle stressors such as climate change, disease, or the introduction of non-native species.²²

The International Union for the Conservation of Nature (IUCN) publishes the Red List of Threatened Species, which tracks "taxonomic, conservation status and distribution information on plants, fungi and animals," around the world. As of 2014, IUCN had evaluated over 76,000 (only 4%) of the identified species. Of the species evaluated, over 29% (22,413) are classified as threatened.²³ This number has increased steadily since IUCN's 1996 evaluation of threatened species. The fact that an increasing number of animals become threatened and go extinct every year has significant implications for the remaining animals. One of the most consequential is the loss of genetic diversity. Genetic diversity allows species to more easily adapt to changing conditions, and strengthens a population's resilience to disease.²⁴ While the magnitude of genetic diversity in wild species is unknown, there is a documented decrease in genetic diversity of species that have been over-exploited. As species die off and genetic diversity decreases, the resilience of ecosystems diminishes, making it harder for other species to survive.²⁵

While human activity significantly impacts the environment, these impacts are most closely felt by the millions of individual animals whose very survival becomes more difficult. The destruction of habitat is the primary cause of endangerment for birds and amphibians, globally imperiling 86% of

19. ANTHONY D. BARONSKY, *DODGING EXTINCTION: POWER, FOOD, MONEY, AND THE FUTURE OF LIFE ON EARTH* 9 (2014).

20. See generally E.O. WILSON, *THE FUTURE OF LIFE* (2002).

21. The terms "biodiversity" and "genetic diversity" are often used interchangeably. However, here it is largely used to reference variance in species, whereas genetic diversity is primarily used to reference the genetic diversity within species.

22. *The Extinction Crisis*, *supra* note 16.

23. IUCN Red List, *supra* note 18. Species the IUCN classifies as "threatened" include critically endangered (CR), endangered (EN), or vulnerable (VU).

24. Biology Online, *Genetic Diversity*, http://www.biology-online.org/dictionary/Genetic_diversity (last visited May 3, 2015).

25. MILLENNIUM WHITE PAPER, *supra* note 14, at 12. The "resilience" of an ecosystem refers to the "level of disturbance" an ecosystem can experience without transforming to a different function or structure.

birds and 88% of amphibians,²⁶ and threatening 37% of mammals.²⁷ Thus, human activity that degrades the environment is a major concern, not only for ecosystems, but for the many species of animals, and the millions of individual animals who depend on that environment for their survival.²⁸ Curbing these losses—and ultimately reversing extinction trends—is a priority for both the animal protection movement and the environmental movement.

Native carnivores, such as wolves, coyotes, mountain lions, foxes, and bears, are an integral part of a healthy ecosystem. However, in the United States and around the world, populations of predators are declining, and in some cases threatened with extinction, due to governmental policies aimed at eliminating them. Wildlife Services, a branch of the U.S. Department of Agriculture's (USDA's) Animal Plant and Health Inspection Service, has killed millions of wild animals.²⁹ The stated reason for this mass slaughter is to protect the ranching industry from losses of livestock due to predation.³⁰ Most livestock losses, however, are not due to predation by wildlife, but rather result from weather, disease, and other causes. The extermination methods used, including steel-jaw leghold traps, snares, aerial gunning, lethal poisons, and denning (killing of infant animals in their dens with poison gas or manually), often cause suffering and slow deaths, and may kill non-targeted and even endangered wildlife species. These tactics have proven to be expensive, cruel, and damaging to the environment.

Experts in conservation biology agree that the presence or absence of predators has a significant impact on the other animals and plants in an ecosystem.³¹ For example, researchers studying gray wolves in North

26. David S. Wilcove, *Endangered Species Management: The U.S. Experience*, in CONSERVATION BIOLOGY FOR ALL 226 (Navjot S. Sodhi & Paul R. Ehrlich eds., 2010), available at http://www.conbio.org/images/content_publications/Chapter12.pdf.

27. *Id.* at 227.

28. Campaigns to combat extinction, and to educate the public on the subject and its drivers, abound. See, e.g., The Convention on Biological Diversity LifeWeb, *Zero Extinction Campaign*, <http://lifeweb.cbd.int/campaigns/zeroextinction> (last visited May 3, 2015); Center for Biological Diversity, *Population and Sustainability*, http://www.biologicaldiversity.org/programs/population_and_sustainability/index.html (last visited May 3, 2015); and Center for Biological Diversity, *Take Extinction off Your Plate Program*, <http://www.takeextinctionoffyourplate.com> (last visited May 3, 2015).

29. See, e.g., Tom Knudson, *The Killing Agency: Wildlife Services' Brutal Methods Leave a Trail of Animal Death*, SACRAMENTO BEE, Apr. 28, 2012, <http://www.sacbee.com/news/investigations/wildlife-investigation/article2574599.html>.

30. See U.S. Dep't of Agric., *Protecting Livestock From Predators*, http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/wildlifedamage?urlile=wcm%3apath%3a%2Faphis_content_library%2Fsa_our_focus%2Fsa_wildlife_damage%2Fsa_operational_activities%2Fsa_livestock%2Fct_protecting_livestock_predators (last visited May 3, 2015).

31. Predator Defense, *The Ecological Role of Coyotes, Bears, Mountain Lions, and Wolves*, www.predatordefense.org/docs/ecological_role_species.pdf (last visited May 3, 2015). See also Joe Scott, *Predators and Their Prey—Why We Need Them Both*, CONSERVATION NORTHWEST Q. (Spring/Summer 2011), available at www.conservationnw.org/what-we-do/predators-and-prey/carnivores-predators-and-their-prey.

America have found that when wolves are eliminated from an ecosystem, this causes a chain reaction; ungulate populations such as elk tend to increase and overgraze plants, impacting the habitat of other species of wildlife, resulting in a loss of biodiversity and degradation of the ecosystem.³² Non-lethal methods, such as better fences, guard dogs, range riders, night penning of livestock, and training livestock herds to bunch up rather than scatter, have proven to be a more effective and less expensive way to deter predation.³³

Environmentalists and animal advocates are calling for a paradigm shift in the way that native carnivores are viewed and treated. Rather than eliminate carnivores to satisfy a small group of ranchers and agriculturalists, groups such as the Natural Resources Defense Council (NRDC) and Project Coyote are calling on Wildlife Services and state agencies to adopt management policies that are based on science and reason, use non-lethal methods to reduce human-wildlife conflicts,³⁴ and respect the important role of “predators in sustaining healthy and resilient ecosystems.”³⁵

Fundamental to the regulation of toxic chemicals in commerce is the presence of a strong federal law governing toxics and sound underlying science—both of which are needed to give confidence to regulators, environmentalists, public health advocates, and industry. Unfortunately, there is widespread agreement that the federal law governing toxics, the Toxic Substances Control Act (TSCA) is broken—and, increasingly, that the animal-based toxicology on which regulatory decisions are made is dated and inadequate, in addition to being painful and cruel. Environmental advocates want a law that works, and animal advocates want a testing regime that minimizes or eliminates the use of animals in chemical toxicity testing.³⁶

Environmentalists have long been frustrated with the 1976 law, whose key provisions have changed little since it was enacted.³⁷ For chemicals deemed to be “existing” under TSCA—including roughly 60,000 that were grandfathered in at the time of the law’s passage—EPA has the burden to dem-

32. *Id.*; Daniel S. Licht, et al., *Using Small Populations of Wolves for Ecosystem Restoration and Stewardship*, 60 *Biosci.* 147-53 (2010), available at <http://bioscience.oxfordjournals.org/content/60/2/147.full>.

33. *Non-Lethal Predator Control Program Could Provide Assistance to Lassen County Ranchers*, LASSEN TIMES, Mar. 3, 2009, <http://www.projectcoyote.org/newsreleases/lassennewsarticle.pdf>.

34. Natural Res. Def. Council, *Reform Wildlife Services’ Predator Control*, <http://www.nrdc.org/wildlife/animals/wolves/predatorcontrol.asp> (last visited May 3, 2015).

35. Project Coyote, *Who We Are*, <http://www.projectcoyote.org/whowere.html> (last visited May 3, 2015).

36. Toxic Substances Control Act, 15 U.S.C. §§2601 et seq. (1976). See generally Donald B. Myers Jr. & Paul A. Locke, *Modernizing U.S. Chemicals Laws: How the Application of Twenty-First Century Toxicology Can Help Drive Legal Reform*, 20 N.Y.U. ENVTL. L.J. 35 (2012).

37. *Id.* at 38.

onstrate that they pose a hazard if it wishes to regulate their use.³⁸ This has turned out to be quite difficult, as EPA famously lost its bid to ban even asbestos under TSCA after years of litigation.³⁹ Today, we face a “toxic data gap,” as relatively few of the over 80,000 chemicals in commerce to which humans, ecosystems, and wildlife are potentially exposed have been adequately tested.⁴⁰

At the same time, the issue of animal testing is of critical importance to the animal protection movement. Generally speaking, to predict whether a chemical, pharmaceutical, pesticide, or other substance will be harmful to humans, the substance is administered to fully conscious animals. The animals are watched to determine whether and how much harm is done, and the results are extrapolated to determine whether that substance will be harmful to humans. In the LD50 test (lethal dose 50%), for example, animals are forced to ingest the substance to determine what dose will kill 50% of them.⁴¹ In the Draize test, the substance is placed into the animal’s eye (usually rabbits are used), and then the level of damage is observed.⁴² Damage may include redness, swelling or ulceration, as well as bleeding or blindness. The Draize skin test consists of applying a substance to animals’ shaved skin, to determine the level of damage, which may include burning, itching, swelling, and inflammation.⁴³ Animal advocates have long opposed these tests as extremely painful and outdated.⁴⁴ These tests require a large number of animals, are expensive to conduct, and are slow to produce results.⁴⁵

38. *Id.* at 45-46.

39. *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201 (5th Cir. 1991).

40. See Myers & Locke, *supra* note 36, at 38.

41. See Canadian Centre for Occupational Health and Safety, *OSH Answer Fact Sheets—What Does LD50 Mean?*, <http://www.ccohs.ca/oshanswers/chemicals/ld50.html> (last visited May 3, 2015); see also U.S. EPA, *Ag 101—Lethal Dosage (LD50) Values*, <http://www.epa.gov/agriculture/ag101/pestlethal.html> (last visited May 3, 2015).

42. INTERAGENCY COORDINATING COMMITTEE ON THE VALIDATION OF ALTERNATIVE METHODS (IC-CVAM), ICCVAM-RECOMMENDED PROTOCOL: REVISED OECD TEST GUIDELINE 405 (DRAIZE TEST FOR ACUTE EYE IRRITATION/CORROSION), Appendix B, at B-4 (n.d.), available at http://ntp.niehs.nih.gov/iccvam/docs/ocutox_docs/aahe/appb-protocol.pdf; MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/draize%20test>; see also Chantra Eskes, Valérie Zuang & Thomas Hartung, *The Way Forward for Eye Irritation Testing*, ALTTOX.ORG, Dec. 6, 2007, <http://alttox.org/the-way-forward-for-eye-irritation-testing/>.

43. See, e.g., American Anti-Vivisection Society, *Animals in Science, How Animals Are Used, Testing*, <http://aavs.org/animals-science/how-animals-are-used/testing/> (last visited May 3, 2015); National Anti-Vivisection Society, *Animals and Product Testing*, <http://www.navs.org/science/animals-in-product-testing> (last visited May 3, 2015).

44. See, e.g., National Anti-Vivisection Society, *Animals and Product Testing*, <http://www.navs.org/cruelty-free/animals-and-product-testing> (last visited May 3, 2015); American Anti-Vivisection Society, *Problems With Animal Research*, <http://aavs.org/animals-science/problems-animal-research/> (last visited May 3, 2015); New England Anti-Vivisection Society, *Product Development and Drug Testing*, <http://www.neavs.org/research/testing> (last visited May 3, 2015).

45. *Id.*

Nearly a decade ago, the U.S. National Research Council (NRC) assembled a committee of experts to consider how toxicity testing could be improved. The committee concluded that the current system of toxicity testing is outdated and cannot meet the demands of science and protection of the public in a cost-effective, ethical, and timely manner. In a report titled *Toxicity Testing in the 21st Century: A Vision and a Strategy*,⁴⁶ the NRC proposed a new, transformative paradigm for chemical testing, one that moves away, over time, from using live animals and replaces them with alternatives, such as *in vitro* cell and tissue cultures, computer models and simulations, and other methods.⁴⁷ Ultimately, these new methods will not only be more predictive of harmful effects in humans, they will also be faster and less expensive than the use of animals.

The NRC has cautioned that implementing its recommendations will require substantial resources, as well as the cooperation of regulatory agencies, scientists, industry, public health advocates, environmentalists, and the public. Animal protection and environmental organizations have met with these stakeholders to sort through many of the questions about how to develop non-animal scientific techniques that will be more cost-effective, faster, and better predictors of toxicity.

EPA has played a leadership role in working to implement the NRC “vision.” Through its Office of Research and Development, for example, EPA entered into a five-year Memorandum of Understanding with two National Institutes of Health in an effort to “guide the construction and governance of a detailed research strategy to make the NRC Committee’s vision a reality.”⁴⁸ Though much remains to be done, this science-driven process is an exciting opportunity to create progress for the protection of human health and the environment, while achieving a significant reduction in the use of animals in testing.

2. Similar Legal Hurdles

Given the commonalities and shared substantive interests that connect the environmental and animal protection movements, it is no surprise that the two movements also confront many of the same legal hurdles. The first and

46. TOXICITY TESTING IN THE 21ST CENTURY: A VISION AND A STRATEGY, THE NATIONAL ACADEMIES PRESS (2007), available at <http://www.nap.edu/catalog/11970/toxicity-testing-in-the-21st-century-a-vision-and-a>.

47. AltTox.org, *Toxicity Testing Overview*, <http://alttox.org/mapp/toxicity-testing-overview/> (last visited May 3, 2015).

48. Tripartite Memorandum of Understanding on High Throughput Screening, Toxicity Pathway Profiling, and Biological Interpretation of Findings 3 (entered into Feb. 2008), available at <https://toxtestingdc.files.wordpress.com/2010/06/20-memo-of-understanding-on-high-throughput-screening.pdf>.

probably most important parallel is, in many instances, a lack of adequate legal tools to protect the values that are the focus of each movement.

It is true that environmental law and animal law are in very different places in their evolution. As explained in earlier chapters, environmentalists can draw on a wide array of laws—many of which include robust citizen-suit provisions backed by 40 years of jurisprudence validating their implementation—that are the envy of the animal lawyer.⁴⁹ And the nation's premier environmental law, the National Environmental Policy Act (NEPA), mandates an environmental analysis and consideration of alternatives for every major federal action.⁵⁰ The environmental movement also has in EPA a federal administrative agency dedicated to its issues. And even traditional common law tools, such as nuisance claims, bolster the environmentalist's toolkit.⁵¹ By any measure, environmentalists have at their disposal an impressive set of legal and institutional tools, as well as access to a mature regulatory structure.

And yet, times have changed. It is not as easy being green as it used to be, at least not for the lawyers. The environmental movement, now at middle age and showing wear, is asking itself whether it has the *right* legal tools to face the environmental challenges not of the early 1970s, but of the early 21st century. Environmental advocates are running into legal barriers as they take on the great environmental issues of the day, and as a surfeit of environmental laws omits or exempts many of the activities causing environmental harm. These include big-ticket topics as varied as global climate

49. See generally *supra* Chapters 1 and 9.

50. National Environmental Policy Act, 42 U.S.C. §§4321-4347, NEPA §§2-209. NEPA requires federal agencies to take a "hard look at environmental consequences." *E.g.*, *Natural Res. Def. Council v. Morton*, 458 F.2d 827, 838 (D.C. Cir. 1972).

51. *E.g.*, *Owens v. Contigroup, Inc.*, 344 S.W.3d 717 (Mo. App. 2011) (upholding multimillion dollar jury award for nuisance caused by hog operations); *Texas Family's Nuisance Complaint Seen as Win Against Fracking*, (National Public Radio, May 2, 2014) (describing jury verdict of almost \$3 million in nuisance lawsuit challenging fracking and natural gas operations).

change,⁵² nonpoint-source water pollution,⁵³ toxic chemical exposures,⁵⁴ and the diverse environmental and public health impacts of industrial agricultural operations.⁵⁵ And as for EPA, the number of lawsuits filed against it by environmental advocates indicates that the Agency is far from being in lockstep with the movement.⁵⁶

The animal protection movement, too, finds itself searching for the right legal tools to advance its mission—though unlike the environmental movement, animal advocates for the most part never had these tools in the first place. The Animal Welfare Act (AWA), for example, is notoriously limited in its reach, lacks a citizen-suit provision, and is administered by USDA, an

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52. The federal Clean Air Act continues to be the environmental tool of choice for responding to climate change, but regulation from EPA has come slowly and engendered intense resistance from some states and industry. *E.g.*, *West Virginia v. EPA*, D.C. Cir. No. 14-1146 (pet. filed Aug. 1, 2014) & *In re Murray Energy Corp.*, D.C. Cir. No. 14-1112 (pet. filed June 18, 2014), and No. 14-1151 (pet. filed Aug. 15, 2014) (pending challenges, consolidated for oral argument, to EPA's proposed rules to regulate greenhouse gas emissions from power plants). Attempts to combat climate change by way of common law tools such as nuisance and public trust have, to date, failed. *See, e.g.*, *American Elec. Power Co. v. Connecticut*, 131 S. Ct. 2527 (2011) (holding that federal common law public nuisance claims brought against large carbon dioxide emitters are displaced by the Clean Air Act and the EPA actions authorized by the Act); *Alec L. v. Jackson*, 863 F. Supp. 2d 11 (D.D.C. 2012) (dismissing climate change case brought under public trust doctrine), *aff'd*, *Alec L. ex rel. Looz v. McCarthy*, 561 Fed. Appx. 7 (D.C. Cir. 2014), *cert. denied*, 135 S. Ct. 774 (2014).
53. The federal Clean Water Act fails to place regulatory controls on nonpoint source pollution, the greatest overall threat to the nation's waters. *See, e.g.*, ENVIRONMENTAL LAW INSTITUTE, ALMANAC OF ENFORCEABLE STATE LAWS TO CONTROL NONPOINT SOURCE POLLUTION 1 (1998) ("Nonpoint source discharges, which consist generally of polluted runoff from farms, forests, land development and other activities, are not regulated under the federal Clean Water Act's National Pollutant Discharge Elimination System permitting program. Instead they are addressed primarily through non-regulatory means, such as planning, incentive and cost-share mechanisms, voluntary Best Management Practices (BMPs), and other approaches."); OLIVER A. HOUCK, THE CLEAN WATER ACT TMDL PROGRAM: LAW, POLICY, AND IMPLEMENTATION (2d ed. 2002) (noting in the context of discussing Clean Water Act "total maximum daily load" program that nonpoint sources are the dominant source of pollution in every state and the near-exclusive source in some western states) (citations omitted).
54. Congressional action to modernize the Toxic Substances Control Act has been stalled for years amid intense disagreement among stakeholders. *E.g.*, Jerry H. Yen, *Proposed Reform of the Toxic Substances Control Act (TSCA) in the 113th Congress: S. 1009 Compared With S. 696 and Current Law* 1 (Cong. Res. Serv. Report No. R43136, Oct. 23, 2013) ("a diverse set of stakeholders generally concur that TSCA needs to be updated, although there is disagreement about the extent and nature of any proposed revisions"). *See also* discussion at *supra* notes 36-48 and accompanying text.
55. Despite the far-reaching impacts of industrial agriculture on the environment, people, and animals, there persists in American law what one law professor has succinctly characterized as "a vast 'anti-law' of farms and the environment." J.B. Ruhl, *Farms, Their Environmental Harms, and Environmental Law*, 27 *ECOLOGY L.Q.* 263, 266-67 (2000) ("farms are virtually unregulated by the expansive body of environmental law that has developed in the United States in the past 30 years").
56. From 1995 through 2010, the U.S. Department of Justice defended EPA in nearly 2,500 environmental lawsuits. Local and national environmental groups brought just under one third (30%, combined) of these cases. U.S. Government Accountability Office, *Environmental Litigation: Cases Against EPA and Associated Costs Over Time* 13-17 (Aug. 2011). Nor has EPA been in lockstep with industry; private companies and trade associations (48%, combined) were responsible for nearly half of the lawsuits brought during that time period. *Id.*

agency heavily criticized for its close relationships with the sector it is charged with overseeing.⁵⁷ And, much as environmental protection laws tend not to reach farms and agricultural operations, there is precious little in the way of legal protection afforded to farmed animals.⁵⁸

Another shared obstacle for the two movements is the difficulty faced by public-interest litigators in satisfying the requirement of demonstrating “standing” to sue in federal court pursuant to Article III of the Constitution.⁵⁹ The doctrine of standing, much of it elaborated in the crucible of environmental protection lawsuits,⁶⁰ is a constant concern for animal and environmental advocates.

This leads us to the most important legal barrier common to these two movements—and one that truly binds them. Animal welfare advocates and environmental advocates are usually seeking to protect what the law views as mere property—be it personal property or real property, privately or publicly held property, living or dead property. A wetland, a stand of elms, a riparian ecosystem, a pig in a CAFO, and a deer killed in a hunt are treated as property under the law.⁶¹ People are generally free under the law to make whatever use they like of the animals and natural resources in their possession, minimally limited by cruelty laws and legal prohibitions against nuisance and waste. These uses, often for commercial advantage, can harm or destroy individual animals, resources, and ecosystems—sometimes on a large scale.⁶² The shared aim of ensuring protection for the non-human “other,” notwithstanding the competing wishes of the property owner, represents a powerful link

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57. See, e.g., Emily Gallagher, *Who Runs the USDA?*, ANIMAL LEGAL DEF. FUND, Aug. 6, 2012, <http://aldf.org/blog/who-runs-the-usda/>; Stephen Wells, *Captive Orcas Finally Have the Attention of Congress—But Is the USDA Listening?*, ANIMAL LEGAL DEF. FUND, June 19, 2014, <http://aldf.org/blog/captive-orcas-finally-have-the-attention-of-congress-but-is-the-usda-listening/>; *USDA Criticized for Helping “Industrialize” Organic Farming*, PRWEB, May 10, 2006, <http://www.prweb.com/releases/2006/05/prweb383656.htm>. See also *Animal Legal Def. Fund, Inc. v. Secretary of Agric.*, 813 F. Supp. 882, 887 (D.D.C. 1993) (chiding USDA for issuing “wide open regulations” and delegating its rulemaking authority to the regulated entity).
58. Animal Legal Def. Fund, *Farmed Animals and the Law*, <http://aldf.org/resources/advocating-for-animals/farmed-animals-and-the-law/> (last visited May 3, 2015). No federal law exists to establish husbandry standards for animals in CAFOs and AFOs. The federal Humane Transport Act (28 Hour Law), 49 U.S.C. §80502, covers the transport of animals interstate; the federal Humane Methods of Livestock Slaughter Act, 7 U.S.C. §§1901-1907 covers only slaughter, and the AWA, 7 U.S.C. §2132(g), specifically excludes farmed animals from its protections. The majority of state anti-cruelty laws exempt farmed animals, or standard, normal, or customary practices from their protections.
59. See generally *supra* Chapter 9.
60. See, e.g., *Sierra Club v. Morton*, 405 U.S. 727 (1972); *Hunt v. Washington State Apple Advertising Comm’n*, 432 U.S. 333 (1977); *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).
61. See generally *supra* Chapter 10.
62. Widespread harm can take place all at once, or by way of “death by a thousand cuts,” as is arguably the case with the filling and elimination of small wetlands and headwater streams around the United States as a byproduct of commercial and residential development and agriculture. Broad-scale environmental protection, of necessity, is very concerned with cumulative harms and additive impacts.

between the animal protection and environmental protection movements. On this basis alone, the two movements enjoy a special kinship.

Another barrier routinely encountered by both movements is the inability to obtain and ensure public access to important information. Maximizing transparency by industry as well as government is essential. The more the public understands what is happening to animals and to the environment and why, and what the practical alternatives are, the more the public will be motivated and empowered to support reform. Full public participation in government decisionmaking, access to justice via the courts, citizen empowerment—all of these depend on the free flow of information.⁶³

The principle of access to information is already well established in environmental law. The Toxics Release Inventory (TRI), for example, was created in the mid-1980s pursuant to the Emergency Planning and Community Right-to-Know Act (EPCRA) to provide communities with information on toxic chemical releases.⁶⁴ TRI disclosure requirements create a strong incentive for covered industries to exercise care in their handling and use of chemicals. Government, similarly, must satisfy various environmental reporting requirements; states, for example, are bound to report in detail under the Clean Water Act on the nature and extent of their waters that are impaired by pollutants,⁶⁵ and NEPA compels federal agencies to study likely environmental impacts resulting from major projects and other federal actions and consider alternatives to the proposed action.⁶⁶ Permitting requirements—under the Clean Water Act and Clean Air Act, for example—also provide legal “hooks” for citizens to obtain valuable information. In contrast, the principle of access to information is lacking in animal law.

And yet obstacles to open information-sharing are commonplace. Disputes over the scope of protecting “confidential business information” (CBI) remain a barrier to reforming TSCA, a matter of great importance to both

63. See generally Carl Bruch & Meg Filbey, *Emerging Global Norms of Public Involvement*, in *THE NEW PUBLIC: THE GLOBALIZATION OF PUBLIC PARTICIPATION 2* (2002) (“Public involvement is generally recognized to include three elements, or ‘pillars’: public access to information, public participation in decision-making processes, and public access to judicial and administrative redress. . . . Access to information can be either ‘passive’ or ‘active.’ Passive access to information ensures that governmental and other entities must provide information to the public, but generally only upon receiving a specific request. Active access to information imposes affirmative obligations on governmental authorities to collect and publicly disseminate certain information.”).

64. Emergency Planning and Community Right-to-Know Act (EPCRA) §313, 42 U.S.C. §11023 (toxic chemical release forms). U.S. EPA, *Toxics Release Inventory (TRI) Program*, <http://www2.epa.gov/toxics-release-inventory-tri-program> (last visited May 3, 2015).

65. *E.g.*, 33 U.S.C. §§1313(d), 1315(b) & 1324, CWA §§303(d), 305(b) & 314 (listing of impaired waters and submission of total maximum daily loads, water quality reporting, and clean lakes reporting).

66. See *supra* note 50 and accompanying text.

animal and environmental advocates.⁶⁷ Despite the requirement that most sectors of the economy must report to EPA on their greenhouse gas emissions, Congress each year exempts large factory farms from this legal mandate by way of the appropriations process.⁶⁸ And industry has challenged EPA's public release of CAFO-specific information (including physical addresses and other operational details) as violating the Freedom of Information Act.⁶⁹ Ultimately, when it comes to agricultural policy, secrecy is baked in; the U.S. Department of Agriculture is prohibited by federal law from disclosing farm-specific information provided to it by agricultural producers in connection with federal farm subsidy programs.⁷⁰

The concern that environmentalists and animal protectionists share regarding access to agricultural information does not end with their objections to information being withheld. In recent years, a wave of "ag-gag" laws proposed at the state level actually criminalizes efforts by activists and investigative reporters to photograph or videotape at a factory farm without the facility owner's permission. These laws are intended to protect industry by targeting investigators and whistleblowers who might expose cruelty or violations of food safety laws. Animal and environmental organizations are working together to challenge the legality of such statutes—especially with respect to violations of constitutional rights.⁷¹

67. See, e.g., American Bar Association Section of Environment, Energy, and Resources, *TSCA Trade Secret and Confidential Business Information Briefing Paper 2* (Mar. 2014) ("There is a natural tension when addressing CBI protection in the context of TSCA, one goal of which—essential to the central objective of chemical risk management—is to collect and disseminate information about the properties and risks of thousands of chemical substances. Unless protected from disclosure as CBI under TSCA section 14, this information may be publicly available (in some form) and utilized by a host of regulatory bodies, including state agencies and foreign regulators. The CBI provisions of the existing law and the changes proposed by recent legislation must be understood in this context.").

68. See generally *supra* Chapter 5.

69. A federal district court recently granted summary judgment to defendant EPA and environmental intervenors, holding that industry plaintiffs lacked standing. *American Farm Bureau Fed'n v. EPA*, No. 13-cv-1751 (D. Minn. Jan. 27, 2015). An appeal is pending. Animal advocates face a similar hurdle. See *Animal Legal Def. Fund v. U.S. Food & Drug Admin.*, 2013 U.S. Dist. LEXIS 120417 (N.D. Cal. Oct. 23, 2013) (denying FDA access to hen population information at egg facilities due to CBI exception).

70. 7 U.S.C. §8791. For a critique, see Rena Steinzor & Yee Huang, *Agricultural Secrecy—Going Dark Down on the Farm: How Legalized Secrecy Gives Agribusiness a Federally Funded Free Ride*, Center for Progressive Reform Briefing Paper No. 1213 (Sept. 2012).

71. *Animal Legal Def. Fund v. Otter*, 44 F. Supp. 3d 1009 (D. Idaho 2014) (animal and human rights organizations, journalists, and workers' associations challenged Idaho's ag-gag law, IDAHO CODE §18-7042, on the grounds that it violates their constitutional rights of freedom of speech and the press, and equal protection, and that federal laws protecting whistleblowers preempt Idaho's law under the Supremacy Clause); *Animal Legal Def. Fund v. Herbert*, No. 2:13cv00679 RJS, 2013 WL 4017889 (D. Utah filed July 22, 2013) (animal rights groups, journalists, a citizen charged with violating the Utah ag-gag law, and an undercover investigations consultant challenged Utah's ag-gag law, UTAH CODE ANN. §76-6-112 (West 2012), which makes recording and disclosing the

These common legal obstacles, particularly with respect to access to information, hamper the effectiveness of each movement. At bottom, both movements are best served by ensuring the free flow of information concerning human impacts on animals and the natural environment, and the reasons why those impacts are occurring. The more that the public grasps and appreciates the status quo, the more the public may be willing to support or even call for reform.

3. Similar Practical Barriers

a. Industry and Ideological Opposition

Animal protection and environmental lawyers are a stubborn and passionate lot when it comes to advancing their causes. But their opposition can be just as stubborn and passionate.

Depending on the issue, this opposition could come from corporations and other businesses carrying out operations in the affected industry, or aggrieved individuals, or foundations that are philosophically opposed to, for example, what they see as excessive government regulation or insufficient protection of personal property rights.

Industry opposition to animal and environmental advocates can be voiced by the affected individuals and commercial entities themselves or by the many groups and associations that represent their interests—e.g., the American Farm Bureau Federation (Farm Bureau), the U.S. Chamber of Commerce, or the many associations that speak for members who are agricultural producers, developers, oil companies, chemical manufacturers, etc. Whether these large players engage in litigation, either directly or through *amicus curiae* briefs, or put forth advertising or media campaigns, they bring a strong voice and, often, financial backing. Most animal and environmental advocates perceive a vast disparity in resources between their organizations and the industries whose activities are the subject of their concern.

While industry opposition to animal or environmental aims may not necessarily be consciously intended to cause harm, or even to espouse a philosophy,⁷² most businesses seek to maximize profit and efficiency, mini-

truth about agricultural operations a crime, in violation of the First Amendment, the Supremacy Clause, and the Fourteenth Amendment).

72. Despite a lack of ill intent, some businesses may unwittingly turn the other cheek to the impacts of their production and disposal systems, as this passage illustrates:

I was driving through Maine one late summer day when I stopped to admire a river running through a pretty wooded area. I noticed big, slick bubbles of industrial discharge corroding the vegetation along the riverbank, and I wondered: Who wants this to happen? Not the

mize costs, and out-compete others.⁷³ Political leaders, policymakers, and media tend to support what amounts to a pro-industry ideal. The role of animals and the environment in this equation is *to be used*, without consideration of the damage done.⁷⁴ Animals, rivers, mountains, valleys, and even farm and industrial workers have little or no voice or power in this system.

The reach and power of the corporations that dominate the meat industry is evidenced by the almost total lack of laws that protect farmed animals. No federal law protects animals while they are in the CAFO or otherwise being raised for food. The AWA does not apply to farmed animals.⁷⁵ Other federal laws are equally inapplicable to animals for the 99% of their short, miserable lives in the CAFO.⁷⁶ The meat industry holds sway with many legislators at the state level, and, not surprisingly, the majority of U.S. states expressly exempt farmed animals, or standard animal husbandry practices, from their anti-cruelty provisions, even though the husbandry practices may be painful and cruel.⁷⁷

Opposition to the aims of the animal movement and the environmental movement is not limited to affected industries. The movements are also opposed on ideological grounds, especially by proponents of a smaller federal government, less regulation, and enhanced personal property rights. Think tanks, foundations, public interest law firms, and other organizations advance what they see as their own public policy agenda, which can be very much at odds with the goals of the animal and environmental movements.

owners of the company, the shareholders. Not the managers or employees, who want to live in a healthy environment. Not the board of directors, not the community, not the government. I could not think of anyone connected with the company emitting the effluent who wanted the result I saw. This was an unintended consequence of the corporate structure. The very aspects of the company's design that made it so robust, so able to survive changes in leadership, in the economy, in technology, were the aspects that led to this result[:] pollution that no one wanted, and everyone would pay for.

ROBERT A.G. MONKS & NELL MINOW, POWER AND ACCOUNTABILITY 3 (1991), available at <http://www.corporations.org/system/pnal>.

73. This perspective is explained elegantly by attorney and author Andrew Kimbrell in *Cold Evil: The Ideologies of Industrialism*, in CAFO: THE TRAGEDY OF INDUSTRIAL ANIMAL FACTORIES 17-21 (2010).

74. *Id.*

75. Animal Welfare Act, 7 U.S.C. §2132(g). (“The term ‘animal’ . . . excludes . . . (3) other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber.”). See also *supra* note 2.

76. See *supra* note 58. The 28 Hour Law requires that animals transported across state lines for slaughter be unloaded every 28 hours for food, water, and rest. It excludes poultry, and until recently was not applied to trucks, which are the most common form of transportation for livestock. The Humane Methods of Livestock Slaughter Act applies only to animals undergoing slaughter, and requires that livestock be rendered insensible to pain prior to being slaughtered. This law excludes poultry and declares that ritual slaughter is humane.

77. Joyce Tischler, *U.S. Lags Far Behind Europe in Protections for Farmed Animals*, ANIMAL LEGAL DEF. FUND, Aug. 15, 2011, <http://aldf.org/blog/u-s-lags-far-behind-europe-in-protections-for-farmed-animals/>.

These are the harsh realities that confront environmentalists and animal protectionists. In the face of significant industry resources and coordination, the movements must develop strategies that help them to level the playing field. They may take the issues directly to the voters, through ballot measures and citizens' initiatives. This approach has enabled animal activists to ban battery cages for egg-laying hens, veal crates for calves, gestation crates for pigs, and tail docking of cattle in several states.⁷⁸ Other strategies are litigation and lobbying, and yet another is appealing directly to business' economic interest in keeping their growing number of animal welfare and environmentally minded customers happy.

b. Limited Funding and Staffing Resources

Most of the animal protection and environmental organizations today were established in the latter half of the 20th century by people who sought to protect the natural environment or animals, but had little or no knowledge of how to fundraise in support of this work. Having passion for social change is not enough; nonprofit organizations rely on support from individual donors and foundations to survive. Building and maintaining a nonprofit agency with stable funding is challenging, and nonprofit organizations in both movements face a continual struggle and plenty of competition as they strive to raise the funds necessary to implement their programs. In times of economic downturn, donors may be less able to donate, and some nonprofits must close their doors or cut staff. Moreover, nonprofits that rely on government grants have seen major sources of income dissipate in the past few decades.

Both movements rely on talented and committed advocates (and volunteers) to conduct their work. These individuals do so because they are passionate about the cause, but nonprofits are perennially understaffed. Moreover, staff salaries typically cannot compete with the salaries for comparable positions in government, or industry, or for attorneys in private law practice, which can also place the nonprofit at a disadvantage.

4. Similar Internal Debates

Passionate social activists often disagree with one another—passionately. In the animal rights/protection movement, there is a long-standing debate between activists who believe that abolition of the oppression and abuse of

78. REBECCA F. WISCH, STATE BALLOT MEASURES, PROPOSITIONS, AND CITIZEN INITIATIVES (1998 TO PRESENT), ANIMAL LEGAL & HISTORICAL CTR. (2014), available at <https://www.animallaw.info/topic/state-ballot-measures-propositions-and-citizen-initiatives-1998-present>.

animals is the only ethical and effective course of action, and those who argue that abolition in the near future is unattainable and, therefore, that incremental change is the more effective course of action.⁷⁹ The same kinds of tensions are evident within the environmental movement, where some “mainstream” organizations work closely with lawmakers and industry to effectuate change incrementally through compromise, while other groups are quicker to sue, engage in civil disobedience, or otherwise challenge the status quo. These sorts of moral/practical debates are important, in that they help to shape a movement, but they can also be divisive when the debate becomes vituperative and advocates refuse to work cooperatively with others who disagree with their approach and tactics.

Internal tensions are another example of commonality between the environmental and animal protection movements. They are also evidence that spirited disagreement is not necessarily a bar to collaboration, shared goals, or success.

5. Similar Need to Improve Communication of Problems and Solutions

Arguably the most effective, far-reaching tool for both of these movements is outreach to the public and the ability to provide accurate, meaningful education. A question frequently heard in discussion among animal and environmental advocates is: how can we more effectively reach a broader audience?⁸⁰ How do we educate the public, convince them to care, and persuade them to take action?

Animal and environmental advocates often grapple with complex legal, scientific, philosophical, and economic issues. They must gather the requisite evidence, articulate the problem clearly, and offer solutions in language that informs, persuades, and inspires. The success of both of these movements

79. See, e.g., Jonathan R. Lovvorn, *Animal Law in Action: The Law, Public Perception, and the Limits of Animal Rights Theory as a Basis for Legal Reform*, 12 ANIMAL L. 133 (2006); THE GREAT APE PROJECT: EQUALITY BEYOND HUMANITY (Paola Cavalieri & Peter Singer eds., 1993) (a collection of essays that advocate for the extension of legal rights to great apes); Steven M. Wise, *Hardly a Revolution—The Eligibility of Nonhuman Animals for Dignity-Rights in a Liberal Democracy*, 22 VT. L. REV. 793 (1998); Telephone interview by Joyce Tischler with Steven Wise, President, The Nonhuman Rights Project (Dec. 6, 2010) (“I could take all these animal cases and it would be only a slight drop in the bucket of animal abuse. I would spend an entire career nibbling at the edges. The only way I could make a substantial impact was to focus on making systemic change.”).

80. See generally BILL MOYER, *DOING DEMOCRACY: THE MAP MODEL FOR ORGANIZING SOCIAL MOVEMENTS* (2001). A lifetime social activist, Bill Moyer analyzed the stages that social movements go through, and how success or failure can be acknowledged. One can look to the civil rights movement of the 1960s for examples of effective communications that mobilized support for the movement, including marches and demonstrations, boycotts, and sit-ins.

rests on their ability to build momentum for change by engaging members of the general public. And, they must do so on a limited budget, and often in the face of characterizations of their work as extremist or radical, or as potentially damaging to the economy, jobs, or livelihoods.

B. *Differences and Areas of Disagreement*

It is exciting to note the many areas where environmentalists and animal protectionists find common ground. However, one cannot ignore that, traditionally, the two movements have disagreed in fundamental ways. These disagreements have occurred at both the movement level and with respect to particular issues.

I. Movement-Level Differences

While animal activists engage in internal debates about abolition versus regulation, certain animal activists refuse to work with environmentalists, assuming that the latter have goals that would not serve the best interests of the animals. These animal rights activists prefer to take direction from the civil rights movement (i.e., legal rights, abolitionism), and are unwilling to make the philosophical compromises that would enable them to work with the decidedly more incremental approach typically taken by environmentalists.

Similarly, on the environmental side, there can be reluctance to place too much weight on the value of individual animals' lives, if doing so will conflict with broader ecosystem protections. Another tension results from the presence of a sizable constituency within the environmental movement—the so-called “hook and bullet groups”—that advocates for hunting and fishing. Factor in the vast majority of environmentalists who eat meat, and there are pronounced differences between many environmentalists and animal advocates.

Politics also comes into play. Although the birth of modern environmental law is intimately associated with a conservative Republican president—Richard Nixon signed into law NEPA, the Marine Mammal Protection Act, and the Endangered Species Act, and he also established the Council on Environmental Quality (CEQ) and EPA—the environmental movement today is commonly viewed as a movement of the political left.⁸¹

81. However, exceptions abound. Sportsmen's groups are an important part of the environmental constituency, and they are less likely to be associated with the left. Also, in 2013, the Environmental Law Institute awarded its prestigious annual Environmental Achievement Award to George P. Shultz and Thomas F. Steyer, jointly, to recognize their leadership to reduce climate change and advance clean energy. The citation for the award notes their “outstanding bipartisan leadership” in preserving A.B. 32, the California Global Warming Solutions Act, and in creating the Californians for Clean Energy

Animal rights and protection, on the other hand, often reaches across the aisle, finding strong advocates across political parties. For example, retired Republican Sen. Robert Dole (Kan.) championed amendments to the federal Animal Welfare Act that codified increased protections for animals used in research and testing.⁸² And in February 2015, Reps. Earl Blumenauer (Or.) and Mike Fitzpatrick (Pa.), a Democrat and a Republican, respectively, announced the reconvening of the Congressional Animal Protection Caucus to build support for animal welfare legislation.⁸³ Many animal advocates are concerned that there could be an increased and unhelpful politicization of their issues if they become too aligned with environmentalists and their positions.

Another important difference between the movements is the extent to which they have embraced the role of science. Animal advocates have traditionally advanced arguments based primarily on social justice, an appeal to compassion and conscience, and emotion to promote rights and stronger protections for animals. Environmentalists, on the other hand, tend to rely on science to seek to demonstrate the need for stronger protections for the environment.⁸⁴ The emotional appeals of animal advocates are at times a point of embarrassment for environmentalists.

2. Issue-Specific Differences

a. The Role of CAFOs in Climate Change

Industrial food animal production is a major contributor to climate change, as well as other environmental problems. The industrial livestock-climate

& Jobs Network. Environmental Law Institute, *George P. Shultz and Thomas F. Steyer Receive 2013 Environmental Achievement Award From Environmental Law Institute*, <http://www.eli.org/award-dinner/2013-award-recipient> (last visited May 3, 2015).

82. Animal Welfare Institute, *Senator Robert Dole*, <https://awionline.org/content/senator-robert-dole> (last visited May 3, 2015).

83. *E.g.*, *Animal Welfare Groups Welcome Reps. Mike Fitzpatrick and Earl Blumenauer as New Co-Chairs of Bipartisan Congressional Animal Protection Caucus*, ASPCA, Feb. 4, 2015, <http://www.aspc.org/about-us/press-releases/animal-welfare-groups-welcome-reps-mike-fitzpatrick-and-earl-blumenauer-new>.

84. For example, the website of the Safer Chemicals, Healthy Families coalition pressing for reform of toxic chemical laws provides information on “chemicals linked to serious environmental and health problems, including cancer and reproductive disorders” and invites visitors to “[c]heck out our fact sheets which draw from the leading peer-reviewed science.” See <http://saferchemicals.org/get-the-facts/> (last visited May 3, 2015). Science undergirds many, if not most, environmental debates. The lengthy ongoing legal and policy dispute over the proper scope of the Clean Water Act with respect to streams and wetlands is intertwined with and deeply dependent on the underlying science. See, e.g., U.S. EPA Office of Research and Development, *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence (Final Report)* (Jan. 2015) (surveying more than 1,200 publications from the peer-reviewed scientific literature and summarizing the scientific evidence regarding the effects that streams, non-tidal wetlands, and open waters have on larger downstream waters such as rivers, lakes, estuaries, and oceans).

connection is the subject of Chapter 5, which explores in depth the nature of the problem and potential legal avenues through which animal protection lawyers can engage in hopes of improving animal welfare over the long run. As the World Preservation Foundation (WPF) points out, “the livestock industry and public demand for animal-based foods are some of the most significant common denominators driving biodiversity loss, climate change, deforestation, food and water security and oceanic ecosystems collapse.”⁸⁵ Citing the WPF report, James McWilliams argues that the impact of livestock production is equal to burning coal, natural gas, and oil, and that a “global vegan diet (of conventional crops) would reduce dietary emissions by 87 percent, compared to a token 8 percent for ‘sustainable meat and dairy.’”⁸⁶ Pointing to this close connection between livestock production and climate change, Jeremy Rifkin, president of the Foundation on Economic Trends, has openly expressed his frustration with the lack of response from environmentalists.⁸⁷

Despite a growing body of evidence, the environmental movement has not to date prioritized mitigation of greenhouse gases attributable to the CAFO model of food production.⁸⁸ Instead, the environmental movement has focused almost exclusively on greenhouse gas emissions attributable to energy production and transportation. Animal activists have criticized environmentalists for sidestepping the clear link between animal agriculture and climate. Some have suggested that the environmental movement is too closely tied to the ranching industry, and, as such, is unwilling to risk partnerships that it deems valuable on other environmental issues. Others have suggested that environmentalists fear stirring up industry opposition, for example from the farm lobby, which is a powerful presence at the federal and state levels. McWilliams suggests that humans have a primal

85. WORLD PRES. FOUND., REDUCING SHORTER-LIVED CLIMATE FORCERS THROUGH DIETARY CHANGE: OUR BEST CHANCE FOR PRESERVING GLOBAL FOOD SECURITY AND PROTECTING NATIONS VULNERABLE TO CLIMATE CHANGE (n.d.), available at <http://www.worldpreservationfoundation.org/Downloads/ReducingShorterLivedClimateForcersThroughDietaryChange.pdf>.

86. James McWilliams, *Agnostic Carnivores and Global Warming: Why Enviros Go After Coal and Not Cows*, FREAKONOMICS, Nov. 16, 2011, <http://freakonomics.com/2011/11/16/agnostic-carnivores-and-global-warming-why-enviros-go-after-coal-and-not-cows/>.

87. See *Earth Day Warning: The Link Between Meat Eating and Climate Change*, ANIMAL LEGAL DEF. FUND, Apr. 18, 2007, <http://aldf.org/press-room/press-releases/earth-day-warning-the-link-between-meat-eating-and-climate-change/>.

88. See Linnea Laestadius, *Meat Consumption and Climate Change: The Role of Non-Governmental Organizations*, CLIMATIC CHANGE (June 12, 2013) (concluding that advocacy efforts to reduce domestic meat consumption in light of climate change remain quite limited, particularly among environmental nongovernmental organizations (NGOs) in the United States and Canada). *But see Don't Eat a Cow, Man!*, SIERRA CLUB ATLANTIC CHAPTER, Mar. 1, 2009, <http://atlantic2.sierraclub.org/content/dont-eat-cow-man> (the Atlantic Chapter of the Sierra Club has tackled this issue directly by advocating for a plant-based diet).

response to being told what to eat, and thus, environmentalists may view the promotion of a plant-based diet as a dead-end approach. The documentary film *Cowspiracy* focuses on this apparent “oversight” and even attempts to embarrass environmentalists.⁸⁹

At bottom, animal protectionists see environmentalists ignoring an anthropogenic driver of the climate crisis; environmentalists see a risk of diluting the necessary focus on the burning of fossil fuels in an already difficult political climate. Although some proponents of environmental protection are now highlighting the livestock-climate link,⁹⁰ the overall disconnect continues to be a point of contention between the two movements.

b. Hunting, Trapping, and Fishing

Hunting has long been a controversial issue, with advocates and opponents claiming that their views are based on sound science and protection of the environment. Environmental organizations are not in lockstep with one another on hunting and trapping. Most will oppose hunting if it harms the environment or sensitive habitat; some will oppose it on other grounds, such as the protection of whales who are not endangered; some support hunting; and others take a stance of neutrality. Environmentalists generally will not oppose hunting if it means killing animals from species that are not threatened or endangered, or where hunting involves traditional “game” animals. The typical environmental view of animals is that they are a renewable resource, and may be killed if done in a sustainable manner.

Thus, the National Wildlife Federation (NWF) states: “Hunters and anglers are a core constituency to preserving our conservation legacy. Since 1936, [NWF] has been at the forefront on issues concerning hunters and anglers, protecting and enhancing fish and wildlife habitat for all species.”⁹¹ The Sierra Club supports hunting, with certain exceptions, stating:

89. *COWSPIRACY: THE SUSTAINABILITY SECRET* (Kip Andersen 2014), <http://www.cowspiracy.com/>. Environmental advocates are interviewed in the film and are surprisingly unaware of the significant connection between livestock production and climate change.

90. See the Center for Food Safety’s Cool Foods Campaign, *available at* <http://www.centerforfoodsafety.org/video/2519/cfs-videos/food-and-climate/3212/be-climate-smart-with-cool-foods> (last visited May 3, 2015); and the Center for Biological Diversity’s Take Extinction Off Your Plate project, *available at* <http://www.takeextinctionoffyourplate.com/> (last visited May 3, 2015).

91. National Wildlife Federation, *Hunters & Anglers*, <http://www.nwf.org/Sportsmen.aspx> (last visited May 3, 2015).

Acceptable management approaches include both regulated periodic hunting and fishing when based on sufficient scientifically valid biological data and when consistent with all other management purposes and when necessary [for] total protection of particular species or populations. Because national parks are set aside for the preservation of natural landscapes and wildlife, the Sierra Club is opposed to sport hunting in national parks.⁹²

However, the Sierra Club opposes the use of traps and snares.⁹³ In 2001, the board of directors of Ducks Unlimited adopted a policy position on the hunting of waterfowl: “Ducks Unlimited, Inc. supports the sustainable use and harvest of renewable resources based on sound science. We support waterfowl hunting, when conducted in an ethical and sustainable manner, as a legitimate and acceptable use of a renewable resource.”⁹⁴

On the other hand, animal protection groups, such as the American Society for the Prevention of Cruelty to Animals (ASPCA), generally oppose hunting⁹⁵ and trapping.⁹⁶ The Humane Society of the United States appears to take a more nuanced approach:

The HSUS actively works to eliminate the most inhumane and unfair sport hunting practices, such as the use of body-gripping traps and snares; bear baiting; the hound hunting of bears, bobcats, mountain lions and wolves; contest killing events; and captive-hunting on fenced properties. We oppose live pigeon shoots and other forms of staged hunting where the animals are bred or stocked simply to be shot as living targets. We also oppose the trophy hunting of rare or endangered populations and the use of lead ammunition, since less toxic alternatives are workable and available in the marketplace.⁹⁷

92. Sierra Club, *Wildlife and Native Plants* (Board policy adopted Dec. 1994), <http://www.sierraclub.org/policy/wildlife/wildlife-and-native-plants> (last visited May 3, 2015).

93. Sierra Club, *Policy on Trapping of Wildlife* (Board policy adopted May 2012), <https://www.sierraclub.org/sites/www.sierraclub.org/files/uploads-wysiwig/Trapping-Wildlife.pdf> (last visited May 3, 2015).

94. See Ducks Unlimited, *Hunting Position Statement* (passed May 2001), <http://www.ducks.org/hunting/du-and-hunting/du-and-hunting-position-statement> (last visited May 3, 2015).

95. “The ASPCA is opposed to hunting animals for sport, even if the animals killed in this way are subsequently consumed. The ASPCA does recognize that wildlife management may be necessary in situations where animal and human interests collide, but urges that management strategies be non-lethal wherever possible and never include avoidable suffering or distress.” See <https://www.aspc.org/about-us/aspc-policy-and-position-statements/hunting> (last visited May 3, 2015).

96. “The ASPCA is opposed to the farming, ranching, trapping, shooting or otherwise killing of fur-bearing animals for clothing and accessories.” See <https://www.aspc.org/about-us/aspc-policy-and-position-statements/fur> (last visited May 3, 2015).

97. Humane Soc’y of the United States, *Statement on Wild Animals—Hunting*, http://www.humanesociety.org/about/policy_statements/statement_wild_animals.html#Hunting (last visited May 3, 2015). “There is no justification for any form of trapping except live trapping in those rare cases in which such live trapping demonstrably benefits animals or provides necessary benefits to ecological systems. This kind of trapping may be accepted only after less intrusive alternatives have been attempted and

While most animal protectionists self-identify as pro-environment, when compelled to choose between protection of the environment and the protection of the individual animals in the environment, animal advocates generally stand on the side of the animals, arguing that sentient beings have a right to remain alive. Animal advocates object to the treatment of sentient beings as mere resources, renewable or otherwise.

c. Invasive Species Versus Native and Endangered Plants and Animals

As discussed in Chapter 14, most invasive species were introduced into the environment as a result of human activity. From the perspective of many environmentalists, invasive species are a threat to native wildlife and must be removed from the ecosystem. This generally means killing them. Animal protectionists protest such efforts, focusing on the cruelty involved in killing these animals, the right of these animals to remain alive, and a belief that the invasive species ought not to be punished, since it is not the animals' fault that humans introduced them into new environments.⁹⁸

The conflicting viewpoints around invasive species raise uncomfortable questions for both movements. Will animal advocates avoid involvement in resolving these conflicts; will they refuse to reach compromises that allow for the killing of invasive animals who are damaging native species and ecosystems? And, can environmentalists value not only the ecosystem, but also the lives of individual invaders? One encouraging development has been emerging agreement between the two movements on invasive species *prevention*—i.e., a shared focus on preventing the establishment of non-native invasive species in the first place.⁹⁹

exhausted, and it must be done responsibly, efficiently, and by a humane method that captures the animal alive without injury." *Id.*

98. See "Refuges" *No Sanctuary for Feral Pigs*, PETA, July 12, 2011, <http://www.peta.org/blog/refuges-sanctuary-feral-pigs/>.

99. See, e.g., Invasive Fish and Wildlife Prevention Act, H.R. 996, 113th Cong. (2013). This bill, supported by animal protection and environmental groups, would establish an improved regulatory process to prevent the introduction and establishment in the United States of non-native wildlife and wild animal pathogens and parasites likely to cause harm to the economy, the environment, people, or animals.

II. Charting a Shared Course for the Future

A. *The Need for Enhanced Collaboration*

Despite the differences between the movements, collaboration already exists. Today, environmental and animal protection organizations work together far more closely than in previous decades. Joint campaigns, educational activities, and lawsuits abound, including, for example, a lawsuit challenging the U.S. Navy's use of sonar and explosives, which create undersea noise and harm/kill marine mammals;¹⁰⁰ a symposium focused on the impacts of CAFOs on animals, the environment, and public health;¹⁰¹ a campaign and lawsuit challenging a California county's current contract with Wildlife Services to annually kill hundreds of predators without assessing the environmental impacts or considering alternatives to the slaughter;¹⁰² constitutional challenges to state ag-gag laws that make it a crime to photograph and video in order to document cruelty occurring inside CAFOs;¹⁰³ joint offerings of monetary rewards for information leading to the identification, arrest, and conviction of persons illegally killing wildlife;¹⁰⁴ successfully suing the National Marine Fisheries Service to substantially increase protected habitat for North Atlantic right whales;¹⁰⁵ and lawsuits against the U.S. Food and Drug Administration (FDA) for its failure to assess the environmental impacts of controversial additives to farmed animal feed.¹⁰⁶ These and other joint activities enable animal advocates and environmentalists to share common ground, learn from each other, discuss differences, and build trust. Through such collaborative efforts, good working relationships among environmental and animal advocates, scholars, policy experts, and other practitioners

100. *Natural Res. Def. Council, Inc. v. National Marine Fisheries Serv.*, 409 F. Supp. 2d 379 (S.D.N.Y. 2006).

101. *Factory Farming: Impacts on Animals, Humans, and the Environment*, ANIMAL LEGAL DEF. FUND, Mar. 28, 2015, <http://aldf.org/animal-law-symposium/>.

102. *Animal Legal Def. Fund v. Mendocino County*, No. SCUK-CVPT-14-67916 (Super. Ct. Mendocino County 2014). Plaintiffs include Animal Legal Defense Fund, the Center for Biological Diversity, Natural Resources Defense Council, Project Coyote, and the Animal Welfare Institute. See <http://aldf.org/cases-campaigns/current-cases/>.

103. See *supra* note 71 and accompanying text.

104. *Groups Seeks Public's Help to Protect Hawaiian Monk Seals*, HUMANE SOC'Y WILDLIFE LAND TRUST, Dec. 12, 2014, http://www.hswlt.org/news/press-releases/group-to-help-monk-seals-2014.html?credit=web_id328513016.

105. Press Release, Humane Soc'y of the United States, *Feds Agree to Protect More Habitat for East Coast's Most Endangered Whales by 2016* (Nov. 24, 2014), available at http://www.humanesociety.org/news/press_releases/2014/11/feds-agree-protect-more-habitat-east-coast-most-endangered-whales-2016.html#.VHNQeNKuhFA.facebook.

106. *Humane Soc'y of the United States et al. v. Hamburg*, No. 3:14-cv-04933 (N.D. Cal. filed Nov. 6, 2014); *Center for Food Safety et al. v. Hamburg et al.*, No. 3:14-cv-04932 (N.D. Cal. filed Nov. 6, 2014).

have been established, and traditional lines between the two movements are breaking down. There is every reason to believe that the breadth and depth of these shared efforts will grow.

The animal and environmental movements are not defined only by the nonprofit organizations that provide leadership and direction, run campaigns, lobby, and file lawsuits on their issues. Nor, to be sure, are the movements defined by their lawyers. Rank-and-file animal protectionists and rank-and-file environmentalists are the base and the soul of these movements, but they probably do not perform animal protection or environmental work for a living. Strategies to help bring these people across the historical divide between the movements should be explored. This groundwork can be done, for example, at festivals, conferences, and other large public gatherings. Vegfest, an annual vegetarian festival that takes place in cities around the United States, features animal and environmental groups and issues—in addition to great food. Various green festivals abound, and Earth Day provides an annual occasion for parties, gatherings, and meetings where the connection among these issues can be highlighted.

For attorneys and law students, major national conferences provide a chance to explore this intersection and to network with like-minded colleagues—e.g., the annual Public Interest Environmental Law Conference at the University of Oregon School of Law and the annual Animal Law Conference at Lewis & Clark Law School.¹⁰⁷ Additionally, animal law is joining environmental law on the curricula of law schools in the United States and abroad.¹⁰⁸ At Lewis & Clark Law School, one of the leading environmental law schools in the United States, the Center for Animal Law Studies (CALs) also offers the most comprehensive animal law curriculum in the world, including courses on environmental and animal law advocacy.¹⁰⁹ CALs regularly attracts students interested in both animal and environmental law. And, classes on animals in agriculture allow students to explore the intersection of animal, environmental, and food policy law.¹¹⁰

107. At the 2014 Animal Law Conference, for example, the authors of this chapter, together with Professor David Cassuto of Pace Law School, convened a panel presentation on “Animal Protectionists & Environmentalists: The Benefits of Collaboration.”

108. “There are 150 law schools in the U.S. and Canada, and 11 in Australia and New Zealand that have offered a course in animal law.” Animal Legal Def. Fund, *Animal Law Courses*, <http://aldf.org/animal-law-courses/> (last visited May 3, 2015).

109. Lewis & Clark Law School, *Center for Animal Law Studies*, http://law.lclark.edu/centers/animal_law_studies/curriculum/ (last visited May 3, 2015).

110. *Id.*

B. *Beyond Collaboration*

I. A New Vision for Systemically Improving the Well-Being of Animals, the Environment, and Human Beings

A premise of this chapter is that it is in the best interest of both the environmental movement and the animal protection movement to seek new opportunities to work together, or at least to work in alignment with each other in areas of shared interest. As we have discussed, that is already happening, and there is room to increase both the depth and breadth of collaboration. Improved collaboration can be seen as a *means* to an end—i.e., environmentalists can more effectively achieve their environmental goals by drawing on the voice, enthusiasm, and resources of animal advocates, and animal advocates can more effectively achieve their animal protection goals by drawing on the voice, enthusiasm, and resources of environmentalists. But what about the *end* itself—can we also revisit the underlying goals, or how those goals are framed? Might there be shared goals to pursue, or at least shared principles to guide these joint efforts?

While environmental organizations and animal organizations are sometimes at odds on specific issues, the reality in 2015 is that many animal advocates consider themselves environmentalists, and many environmentalists see themselves as animal advocates. The disconnect between the two movements is not as significant as it used to be, and some of this new overlap could be the result of a gradual generational shift. Certainly areas of disagreement, even strong disagreement, persist. But to suggest that these disagreements are a bar to meaningful collaboration or even shared goals assumes too much. After all, disagreements *within* each movement can be fierce.

There is an opportunity to build on gathering public sentiment—particularly in the area of food system reform—to promote a new vision for systemically improving the well-being of animals, the environment, *and* people. Nearly as important as where such a transformative vision ultimately may lead in terms of legal or policy reform is the set of principles that are necessary to embrace to guide the way. Some of these principles are outlined below.

Prioritize the mutual well-being of animals, the environment, and humans. Promoting the mutual well-being of the environment, animals, and human beings is itself a value. Many people already view themselves as advocates of environmentalism and animal protection, and where these values overlap, why is there necessarily a need to choose one over the other? The label for this area of overlap—e.g., another dimension of big-tent environmentalism,¹¹¹ a subset of animal protection, or something altogether new—seems less important than the fact of its existence. Environmental protection and animal protection intersect in an essential way, and yet this interconnectedness has never been fully realized in law or policy. What such laws and policies would look like is ripe for discussion. It is no longer sensible to maintain animal protection, environmental protection—and, for that matter, public health—in separate silos, each to be advanced and promoted in isolation from, or at the expense of, the others.

Compromise will be required, as it will be impossible to fully promote the mutual well-being of animals, the environment, and humans in every instance. Indeed, there will be times when values conflict and one must be deemed to outweigh the other. Underlying these conflicts will be a lingering tension between, on the one hand, the view of animals as individuals with inherent value, and, on the other hand, the view of animals as resources to be defined by their use to humans and their place in ecosystems. The two movements will have to work around this tension as best they can.¹¹² Nevertheless, opportunities where it *is* possible to advance multiple values should be pursued. At a minimum, situations where advancing one of these interest areas would unnecessarily undermine the other should be avoided.

Rely on sound science. Both movements share the language of science, and any recommendations for joint legal and policy reform should be defensible under the latest research from a range of scientific disciplines—from toxicology to animal behavior to neurology to climatology to ecology. Advocates in both movements bring intense passion, but sound science provides the surest footing for effective advocacy. Understanding the latest science is already

111. The rigid notion that the welfare of individual animals must always be sacrificed at the altar of species-level, or ecosystem-level, protections overlooks the breadth of the environmental movement. This is not a novel idea: some foundational environmental laws already define the term “environment” very broadly. The Toxic Substances Control Act, to take one example, defines “environment” to include “water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.” 15 U.S.C. §2602(5).

112. It may be time to revisit what is meant by the broad and flexible concept of “sustainability” when it comes to the interaction of animal protection and environmental protection. Sustainability is a touchstone for most environmentalists, signaling the wise use and protection of resources now and by future generations, and yet animal protectionists tend to see it as supporting a reflexive, pro-hunting stance.

shaping environmental debates around, for example, greenhouse gas regulation and the legal scope of protections afforded by the Clean Water Act.¹¹³ And the animal protection movement has professionalized and now relies more heavily than in the past on science-based evidence to support its arguments. For example, increasing awareness of animals' cognitive and emotional capacities¹¹⁴ is strengthening claims that animals deserve enhanced protections, and rights, under the law. Environmentalists and animal advocates both have an opportunity to invoke science in making their case—to lawmakers, regulators, judges, and the public.

Where the science points to the conclusion that cutting-edge approaches to toxicity testing could be better for animals, people, and the environment; or that the non-therapeutic use of antibiotics necessitated by intensive confinement of farmed animals is a threat to the medical effectiveness of antibiotics in humans; or that greenhouse gases from livestock production are a significant contributor to anthropogenic climate change; there may be an opportunity to fashion reform solutions that benefit everyone.

Consider the economics. The economic implications of promoting legal and policy reform around animal protection, environmental protection, and public health safeguards must be considered. Environmentalists and animal advocates are rightly wary of placing dollar values on natural resources and the lives of individual animals. When push comes to shove, history has shown that economic development will usually outweigh both environmental and animal protection.¹¹⁵ Nevertheless, opponents of the kinds of reform contemplated in this chapter will rely on economic analyses and likely seek to reframe debates over increased environmental and animal protection in terms of revenue foregone and jobs lost. At a minimum, then, the two movements must be prepared to critically analyze economic arguments that are biased in favor of industry and strive to find economic analyses that broaden the discussion. For example, certain costs involved in maintaining the current CAFO system are both externalized and hidden. When these costs are

113. See *supra* note 84 and accompanying text.

114. See, e.g., Marc Bekoff, *The Question of Animal Emotions*, in MENTAL HEALTH AND WELL-BEING IN ANIMALS 15, 17 (2005); THE CAMBRIDGE DECLARATION ON CONSCIOUSNESS, CAMBRIDGE UNIV. (July 7, 2012), available at <http://fcmconference.org/img/CambridgeDeclarationOnConsciousness.pdf>; Gregory Berns, *Dogs Are People, Too*, N.Y. TIMES, Oct. 5, 2013, available at http://www.nytimes.com/2013/10/06/opinion/sunday/dogs-are-people-too.html?pagewanted=all&_r=0; MARC BEKOFF, MINDING ANIMALS: AWARENESS, EMOTIONS AND HEART (2002); JAAK PANSKEPP, AFFECTIVE NEUROSCIENCE: THE FOUNDATIONS OF HUMAN AND ANIMAL EMOTIONS (1998); JEFFREY M. MASSON & SUSAN MCCARTHY, WHEN ELEPHANTS WEEP: THE EMOTIONAL LIVES OF ANIMALS (1996); and David O. Wiebers, *Healing Society's Relationship With Animals*, SUNRISE MAG., June-July 1995, at 164-65, 167.

115. In the environmental field, however, natural resource damage assessment (NRDA) and cost-benefit analysis (CBA) do play prominent roles in the public discourse.

brought into the equation, they show that the CAFO system is economically unsustainable, which offers an opportunity for the two movements to work together to promote greater public awareness.¹¹⁶

Insist on broad, informed public engagement. A hallmark of both movements—and really, one of their triumphs—has been to promote the broad sharing of information and the ability of the public to meaningfully participate in governmental decisionmaking on the basis of that information. “Good governance” approaches that ensure transparency, promote information sharing and public engagement, and support access to justice should be a feature of any shared legal and institutional reforms pursued by the two movements.

Underlying this principle is the need to educate the public on animal and environmental concerns, and also how they come together. After all, it is the motivated layperson, not nongovernmental organizations (NGOs)¹¹⁷ or their scientists, lawyers, and policy experts, who will be the engine driving long-term policy change at the federal and state levels. For example, joint efforts will lend greater credibility to the outreach needed on how the food system works, how animals within it are treated, what the environmental consequences are, who benefits from existing frameworks, and what the economically viable alternatives are. Many of us still do not consider where our food comes from, or how chemicals are tested. We assume that animals could not be that bad off, and that at the very least, the laws on the books must surely protect animals from suffering and cruelty, and humans from pollution. By working together, we can rally a larger, more robust base of support for improved laws and regulations.

Accept incremental change and promote broad-based implementation. There will always be advocacy organizations and individuals within each movement that seek immediate abolition of the harm and resist compromise. That is the nature of any social movement. Yet policy change often occurs slowly, and it can materialize in unpredictable ways and when least expected. Therefore emphasizing pragmatism and welcoming incremental change over the long term is essential. Making sustainable changes to societal norms, laws, and institutions takes time and patience. These two movements are not housed solely within the NGOs that promote their values. It is important to engage the movement base, as well as people outside of the movements. When for-profit corporations producing consumer products

116. See generally, e.g., DAVID R. SIMON, MEATONOMICS (2013).

117. NGOs operate in many countries. They are neither part of the government nor traditional for-profit business. Some have charitable tax-exempt status; others do not. American animal protection and environmental organizations are generally NGOs.

harm animals or the environment through their practices, the consumers of those products are in a unique position to demand reform and influence the decisionmaking of those companies. While businesses that use animals may not respond to NGOs' demands, they are often more receptive to the demands of their customers. For example, Smithfield Foods, the largest producer of pork in the United States, announced that it is phasing out the use of gestation crates, and urged its suppliers to do the same, in response to demand from its customers.¹¹⁸ And in late 2014 at the Climate Summit in New York City, numerous large companies made or renewed commitments to zero net deforestation.¹¹⁹ Joint consumer campaigns by animal and environmental advocates can lead to a more informed base of consumers, who then reach out to industry.

2. Future Directions

This is the exciting part: thinking about where concerted joint efforts and renewed attempts to articulate and pursue shared goals could lead with respect to long-term legal, policy, and institutional reforms that benefit animals, the environment, and people.

A promising starting point is the industrial system of food production. Environmentalists and animal protectionists tend to agree that CAFOs damage the environment and harm animals. This straightforward acknowledgment points toward multiple opportunities to create broad-based joint challenges to the system. For example, the available science supports a common understanding, and the two movements can work together to encourage new governmental reports or scholarly studies that offer greater detail about the short- and long-term effects of this prevailing intensive confinement system. The economics of the CAFO system have rightfully earned the title "voodoo economics," given that costs, such as the cost to clean up waterways damaged by CAFO animal waste, are not borne by the industry that creates the harm. Further, governmental subsidies to CAFO producers are hidden from public view, and, if openly analyzed through our joint effort, the true cost of meat can be more effectively conveyed and acknowledged.

The lack of transparency in this form of agriculture is a concern to both movements, as well as other constituencies that value an open democracy. A

118. See, e.g., Christopher Doering, *Smithfield Urges Farmers to End Use of Gestation Crates*, USA TODAY, Jan. 7, 2014, <http://www.usatoday.com/story/news/nation/2014/01/07/hog-crates-ban/4362353/>.

119. See, e.g., New York Declaration on Forests, Action Statement, and Action Plans (provisional copy) (Sept. 23, 2014) (noting that a "groundswell of new corporate zero deforestation policies have been announced by consumer goods companies in the last year").

joint, long-term effort could more effectively obtain and share information about how the animals inside factory farms are housed and treated, the use of questionable chemicals such as ractopamine in animal feed,¹²⁰ and the disposal of CAFO waste and subsequent degradation of the environment. Joint campaigns that demand an end to secrecy surrounding food production—or, to put it in positive terms, that assert a right to know where one's food comes from—would highlight the need for open and truthful sharing of information, so that an informed populace can have meaningful choices in deciding what to purchase and eat.

Working together on food system reform could also provide animal protectionists and environmentalists with the opportunity to reach beyond their traditional, core constituencies and engage with other social movements. For example, CAFOs can harm farm workers, who are often immigrants and have little power to negotiate for better working conditions. Farming communities situated near CAFOs bear the brunt of the degradation of water and air quality, and loss of real estate value. Public health advocates are concerned about the negative effects on human health of the use of antibiotics in farmed animal feed for growth promotion. Many individual farmers who are under contract to raise animals for large companies are frustrated with their contractual arrangements, from the loss of control over their working conditions, to the reality of a livelihood that barely supports their families. Groups concerned about genetically modified food, the availability of certifiable organic food, locally raised food, and similar issues, are also natural reform allies.

Animal protection lawyers and environmental lawyers, each specialists in their own field, are already filing lawsuits that seek remedies for both the environmental and animal protection problems caused by CAFOs. Joint legislative and regulatory efforts at the federal and state levels could focus greater attention on the appropriations that support the current CAFO system, and could help to encourage economic and tax incentives that offer more healthful and less harmful alternatives.

Joint communication efforts could help to bridge the wide gap between how the CAFO system works and how the American consumer perceives the

120. Ractopamine hydrochloride is used to stimulate animal growth and produce leaner meat. FDA has approved its use for pigs, cattle, and turkeys. It has been found to have significant negative health impacts on the animals, and residues of the drug have been found in the meat, causing concern about negative impacts on the health of humans consuming the meat. One hundred sixty countries either ban or restrict the use of ractopamine in animal feed. See Press Release, ANIMAL LEGAL DEF. FUND, Public Interest Groups Challenge FDA on Use of Controversial Animal Growth Drug (Dec. 20, 2012), available at <http://aldf.org/press-room/press-releases/public-interest-groups-challenge-fda-on-use-of-controversial-animal-growth-drug/>.

operation of the food system. Combining knowledge and resources, the two movements can more accurately portray the CAFO system for what it is: a brutal industrial system that mechanizes animals, degrades the environment, and harms human health through unsustainable practices.

Climate change is now recognized as the most pressing environmental, animal, and human protection concern of our generation. Dealing with this problem effectively demands a realistic assessment of the causes, which include animal agriculture, and a holistic approach to seeking solutions. This is an opportunity for environmentalists and animal advocates to work together to shape a food system that is realistically sustainable; internalizes the true costs of industrial agriculture; respects and protects air quality, water quality, farming communities, and workers; and values the lives and well-being of animals.

Although the food system provides an obvious area for shared efforts in the future, there are others. The new, science-driven paradigm for transforming chemical testing put forth by the National Research Council requires broad-based support in order to become a reality. It is in the best interests of environmentalists and animal protectionists to set aside former disagreements about animal testing, take an honest look at the state of the science and its trajectory, and work together to assure policies and practices that can serve all stakeholders.

Over the long term, the federal institutional structures responsible for administering and implementing relevant laws may need to be reconsidered. EPA was established in 1970, bringing under one roof most of the federal governmental efforts to protect and conserve the environment, and affirming that safeguarding a healthy natural environment is a core American value. A comparable federal animal protection agency to oversee the laws implicated in the protection of animals could also be established. Perhaps such an effort could start with a federal council, similar to the White House Council on Environmental Quality (CEQ),¹²¹ or a federal commission, modeled after the U.S. Commission on Civil Rights.¹²² More than 90 federal statutes impact some aspect of animal protection,¹²³ and these laws are administered by a wide variety of agencies, including USDA, the Bureau of Land Management, National Oceanic and Atmospheric Administration, the U.S. Fish and Wildlife Service, and others. Given the current

121. CEQ is described at <http://www.whitehouse.gov/administration/eop/ceq/>.

122. The U.S. Commission on Civil Rights is described at <http://www.usccr.gov/>.

123. See HENRY COHEN, CONG. RESEARCH SERV., BRIEF SUMMARIES OF FEDERAL ANIMAL PROTECTION STATUTES (2009), available at <https://www.animallaw.info/sites/default/files/aruscohen2009fedlaw-summaries.pdf>.

deadlock in Congress, this is impractical in the near term, but it merits discussion. Bringing oversight for these laws under the auspices of a single federal institution would acknowledge the important role that animals play in our society, and the growing recognition of their cognitive and emotional abilities. It would also help to correct the often contradictory approaches of the various agencies that currently enforce these federal laws, and affirm the core American value of protecting animals.

Perhaps there should be even bolder long-term efforts to increase legal recognition for natural resources and animals. Modifying the property status of the non-human “other” as a matter of law for purposes of particular statutes or ordinances is another potentially powerful tool to help ensure greater protections. While one approach would be to argue that animals and the environment should be accorded legal or quasi-legal rights, another approach would be to frame and communicate the issue as a common-sense, incremental effort to acknowledge that certain injuries are being left un-remedied. Even a child comprehends that her dog—or the river that she swims in—has value and meaning far in excess of a table, a car, or any other inanimate object, and thus is deserving of greater protection. A new dialogue on animal and environmental rights could raise consciousness and further legitimize the topic in public discourse.

Conclusion

This chapter offers a new, holistic vision for the future of the environmental and animal protection movements. As the authors of this chapter have come to know each other, as friends and colleagues, we have learned that both on an individual and institutional level, we have a lot in common. This has led us to reach out to others in our respective movements, and we are delighted to find that we are not alone; many of the ideas expressed here resonate with others, as well. We are eager to explore what such a new paradigm would look like, how it would work, and what we could accomplish together. Combining the resources, imagination, and experiences of these two movements has the potential to create a renewed vitality and greater potency of support for the protection of the earth and all of its inhabitants, animal as well as human.

TAB 2

Whipped, Kicked, Beaten: The State of Cruelty Enforcement for Farm Animals as Revealed by The Chicago Tribune

MODERATOR: *Amber Porter, McHenry County State's Attorney's Office, Woodstock*

- *David Jackson, The Chicago Tribune, Chicago*
djackson@chicagotribune.com

This segment includes all materials received by the course book publication deadline.
Please contact the speaker for any other materials used at the program.

These are links to the Chicago Tribune's articles about abuse in Illinois hog confinements:

[Whipped, kicked, beaten: Illinois workers describe abuse of hogs](http://www.chicagotribune.com/news/watchdog/pork/ct-pig-farms-abuse-met-20160802-story.html)

<http://www.chicagotribune.com/news/watchdog/pork/ct-pig-farms-abuse-met-20160802-story.html>

[Pork industry, activists debate cruelty recorded in undercover videos](http://www.chicagotribune.com/news/watchdog/pork/ct-pig-farms-undercover-videos-met-20160802-story.html)

<http://www.chicagotribune.com/news/watchdog/pork/ct-pig-farms-undercover-videos-met-20160802-story.html>

[Pork producers defend gestation crates, but consumers demand change](http://www.chicagotribune.com/news/watchdog/pork/ct-pig-farms-gestation-crates-met-20160802-story.html)

<http://www.chicagotribune.com/news/watchdog/pork/ct-pig-farms-gestation-crates-met-20160802-story.html>

[New animal abuse allegations surface at Illinois hog confinement](http://www.chicagotribune.com/news/watchdog/pork/ct-pig-farms-abuse-update-met-20161227-story.html)

<http://www.chicagotribune.com/news/watchdog/pork/ct-pig-farms-abuse-update-met-20161227-story.html>

And here is a brief explanation of that reporting:

The Illinois pork industry has been accorded remarkable government secrecy. In response to Tribune open records requests, state officials said they didn't know how many hog confinements existed in Illinois and denied a request for the locations of facilities known to the state, citing the privacy of the owners. The football-field-long sheds are off limits to the public for bio-security reasons.

The industry's labor force includes locals and immigrants with few other employment options who told reporters they feared retribution if they talked. However, reporters were able to put 19 workers on record to describe in their own words the systemic mistreatment of pigs they witnessed and in one case inflicted.

The worker accounts were the only way to expose the violence -- there were few government reports in Illinois, which has under-resourced livestock protection programs as well as felony eavesdropping laws that have discouraged undercover activists.

Many of these workers had been injured, fired or involved in litigation with their employers. To guard against bias, the reporters used open-ended interviews, conducted background checks and sought corroboration from fellow employees.

Giving pork producers information and time to respond to the worker accounts, the Tribune for the first time published internal industry data on animal abuse allegations in the facilities, with detailed commentary from industry leaders.

For the team's report on the crates that hold birthing sows for much of their lives, the team spent days documenting one 6,000-sow gestation barn, examined scientific papers and talked to animal researchers to understand how the crates evolved and why many call them more humane than the alternatives.

The team also gathered and analyzed all known undercover animal welfare videos from U.S. hog confinements since 1998, check criminal charges and gather industry responses for a study of the videos produced by advocates.

Whipped, kicked, beaten: Illinois workers describe abuse of hogs



Confining breeding sows in tight crates is among the long-standing farm practices that are exempted from animal cruelty laws in Illinois. (Stacey Wescott / Chicago Tribune)

By **David Jackson and Gary Marx**

Chicago Tribune

AUGUST 4, 2016, 8:56 PM

Weeks after taking a job as a breeding technician at Eagle Point Farms, an anguished Sharee Santorineos sat down and wrote a three-page whistleblower complaint.

"I seen pigs that are pregnant beat with steel bars," said her letter to the Illinois Bureau of Animal Health and Welfare. "I seen them kicked all over their body."

Santorineos knows about raising animals. At a friend's rural Illinois farmhouse, she grows pigs and poultry that they eventually will have slaughtered.

Still, what she saw at the western Illinois confinement appalled her, and she hoped her December 2015 letter would prompt a thorough state investigation.

Instead, like other worker allegations about animal abuse in Illinois' 900-plus hog confinement facilities, Santorineos' account went nowhere.

After Eagle Point executives gave a state bureau inspector a guided tour of the 6,000-pig operation, he wrote a single-page report.

"I did not observe anyone mistreating the animals," it said. "No violations found. Docket is closed."

The state has regularly discounted or dismissed such worker complaints, a Tribune investigation has found. In the Illinois hog confinements that send 12 million pigs to market annually, the bureau did not find a single animal welfare infraction or violation during the past five years, the Tribune found in reviewing thousands of pages of bureau records.

A lack of inspectors — the bureau has just six — contributes to the scant enforcement, while weak Illinois and federal livestock protection laws do little to safeguard animals.

Questions about how the pigs, cows and poultry we eat are treated — what the animals are fed, how they are medicated and how they live and die — are putting new pressures on a U.S. livestock industry that until recently has focused almost exclusively on productivity and profit.

Animal rights activists have lifted the welfare of livestock into the public consciousness by taking jobs in hog confinements and secretly recording pigs being pummeled, dragged with hooks and pinned for life in crates. But Illinois law makes it a potential felony to record a conversation without the consent of all parties, and no undercover stings have emerged from the state.

Using worker compensation claims, court records and animal abuse reports filed with the state Agriculture Department, Tribune reporters for the first time pieced together a disturbing portrait of abusive treatment in pig confinements here amid lax scrutiny from the state.

In on-the-record interviews, Santorineos and more than a dozen other Illinois swine-confinement workers told the Tribune they witnessed fellow employees whip pigs with metal rods and gouge them with pliers and ballpoint pens to hurry the animals from one stall to the next or onto the trucks that took them to slaughter.

They described employees abusing pigs for amusement and encouraging colleagues to take out their frustrations on the animals.

Worker accounts of cruelty and torture arose in hog confinements across the state run by market-leading firms.

Some workers said their supervisors meted out punishment to speed up lame or unwilling pigs. "He'd

kick them," said Kelley Shannon, a former employee of a Professional Swine Management confinement in western Illinois. "I'm talking, full-bore kick. Bloody its nose and punch a pig so hard it damn near popped its eye out."

Pork industry representatives and Professional Swine executives told the Tribune they do not tolerate mistreatment and increasingly are taking proactive steps, including internal hotlines for workers to report problems.

Facility operators also cautioned that former workers can be biased. They are likely to embellish, industry representatives said, because they are angry at their bosses, upset about their experiences or simply trying to impress journalists.

When the state receives an allegation of abuse, it is the job of an obscure and understaffed bureau in the Illinois Department of Agriculture to investigate.

The six inspectors in the Bureau of Animal Health and Welfare, down from 12 in 2005, must handle complaints about not just the mistreatment of livestock but also dead goldfish in dirty pet store tanks, dogs in kennel cages and filth in petting zoos.

The number of animal welfare violations the bureau issued across all of these settings fell from 200 in 2005 to 29 last year, while referrals for prosecution dropped during that period from 22 per year to just one, state records show.

When the bureau fielded a 2013 whistleblower allegation that employees were hitting pigs with metal bars at the Win Production LLC hog confinement in Scott County, a state inspector's investigation consisted largely of a few phone calls. In his report, he wrote that he spoke with a facility manager whose name was listed only as "Betty" and an owner "whose name eludes me at this time."

In that phone call, facility executives denied the allegation. The veterinarian at the facility, Alan Wildt, sent the inspector a short email stating he had visited the farm monthly for years and had "never witnessed any production practices that could be considered abusive."

On the basis of that email and the phone calls, the inspector reported: "There is no proof the (abuse) claim can be verified so the docket is closed."

Illinois state veterinarian Mark Ernst, who oversees the animal welfare bureau, said his inspectors do not have police powers and typically do not question fellow workers who might corroborate a whistleblower's account.

"Our investigations are handled a little differently than what you would think of as a criminal investigation," Ernst said. "The primary goal is to try and get compliance and to educate those people so

they don't make the same mistake."

A lot of pressure



Smart, strong-willed and muscular, pigs can be frustrating to handle even when raised on pastures or small family farms. Still, Illinois' massive, modern-day confinements create new pressures that contribute to animal abuse.

Pig handlers deal with hundreds or thousands of animals at a time. Animals bred for their lean meat can be aggressive and resistant to handling, and some facilities use feed additives that promote hog growth but also can stimulate hyperactivity and belligerent behavior. For immigrant workers, a language barrier can impede communication about acceptable handling practices.

"A lot of things have come together that put workers and animals under a lot of pressure," said Emily Patterson-Kane, a top animal welfare scientist with the American Veterinary Medical Association and a former "pigger" in Scotland.

Some workers told the Tribune their colleagues often abused pigs when hustling the animals from pen to pen or onto slaughter trucks.

Hog confinement workers are trained to walk behind groups of animals, usually shaking "rattle paddles" to make a sharp noise that repels pigs. But the leader can't be guided that way if workers are trying to move more than a handful of pigs, meat industry consultant Temple Grandin told the Tribune.

"The No. 1 mistake that people make is trying to move too many market pigs at a time," said Grandin, a professor at Colorado State University.

In those situations, workers said, it becomes tempting to abuse the pigs to make them move. Terry Clement, a former employee at a downstate Christensen Farms facility, said young female pigs, called gilts, would often freeze as they were moved into the area where they were to be isolated in metal cages known as gestation crates.

"I've seen a lot of guys beat on the gilts," Clement said. "I've seen their backs. Big long scratches that bleed."

He added: "I seen pregnant sows being beat on with the rattle paddles. I've seen them scratched on the back with pens. We had fiberglass sort boards — you'd catch them hitting the hogs with those."

When a supervisor walked the floor, "you had to go by the book," Clement said. "But when he wasn't there, everybody just wanted to hurry up and go home."

Christensen Farms CEO Glenn Stolt did not challenge the Tribune accounts of abuse from Clement or other former company workers, calling them "troubling," but said his firm has significantly strengthened its protections for the animals by bolstering training, implementing an anonymous employee hotline and conducting unannounced audits. In a costly pilot program, the company in May installed video monitors inside one facility.

With 113 workers in its Illinois hog confinements, Christensen Farms last year had nine internal reports of animal abuse across the state, company officials said. The company deemed two instances to be "willful" and terminated both employees. One admitted kicking a sow, and the other let baby piglets go hungry rather than train a new employee how to feed them.

"My expectation is that it's zero, and that's the expectation we communicate all the time," Stolt said. "There is no place for any animal abuse."

Ernst, the state veterinarian, said he couldn't estimate how often pigs are abused in Illinois confinements.

"You've got to keep in mind, any good producer, this is their livelihood. It's how they feed their families and put their kids through school. And obviously if they don't have healthy and happy animals, it's going to be very difficult for them to make a living. The very good ones, I think they're right on top of it, and like anything else, you also have the other end of the spectrum."

Still, some executives told the Tribune they rarely enter their facilities, leaving to line workers the difficult job of handling the pigs day to day.

Facilities often pay little more than minimum wage and use the agricultural exemption from overtime laws. Confinement workers described bruising attacks from frantic pigs, as well as headaches and persistent respiratory ailments caused by animal dander and gases from the waste storage pits below.

"I wouldn't recommend anyone to do that job," said Jacob Allen, whose eight-month term at a southern Illinois facility run by The Maschhoffs LLC ended when a charging 250-pound pig shoved him into a gate, according to Allen's claim with the Illinois Workers' Compensation Commission and a Tribune interview.

But in his economically challenged part of the state, Allen said, "there's not much else, so you take what you can get."

“

The pigs got beat up so bad they don't move.

— Former pig farm worker Raymond Hamilton

Grandin, who has worked in the field for decades, recalled how commonplace abuse was in "the bad old days of the '80s and early '90s."

Back then, Grandin estimated, "20 percent of the people did a good job of handling pigs."

Today that percentage is much higher, she said. But when facilities are understaffed or employees have to perform repetitive tasks for hours — such as vaccinating, impregnating, castrating or moving hundreds of pigs — "workers get tired, they get frustrated and impatient. It's very difficult to care," she said.

"I've been around for a long time and there's some people that — they enjoy hurting animals and they should not be there."

'We hit 'em hard'

Even at facilities run by a company that champions animal welfare, the Tribune found allegations of mistreatment.

The Maschhoffs, the nation's third-largest pork producer, was one of the first large companies to create a top-level animal welfare division eight years ago, and workers said their barn bosses did not tolerate mistreatment.

"Maschhoffs wouldn't even let you use a clothespin (to prod a pig). They'd fire you on the spot," said Randall Hall, who worked until 2012 at one company complex.

But when supervisors weren't around, "workers beat the pigs with paddles, with hoses, boards and metal rods," said Raymond Hamilton, who worked until last year at a facility in downstate Carlyle.

"The pigs got beat up so bad they don't move," Hamilton said.

When a pig buckled under that kind of abuse, employees euthanized the animal with a shot between the eyes from a livestock bolt gun, workers said.

"I've seen one guy actually shoot one because he done stressed it out too bad. He's like, 'Oh we got to kill this,'" said former Maschhoffs worker Joshua Owens.

"Some of the employees, it was fun to them to be mean to an animal," Owens said. "When the bigwigs came, they straightened up."

Maschhoffs President Bradley Wolter said he was outraged to hear allegations of abuse from a Tribune

reporter.

"I am just appalled by it. It goes against everything I believe in and we believe in as a company," Wolter said. "We're in the practice of pig production and there is a nobility to it. These animals trust us to take care of them. We don't think there is anybody else on the planet that cares more about these animals than we do."

Wolter said employees make about 70 to 100 calls per year to the company's internal animal abuse hotline, and since 2015 Maschhoffs has terminated seven of its 1,300 workers nationwide after finding evidence of abuse, neglect or mistreatment of a pig. The firm recently alerted government authorities to an abuse allegation at one facility that is not in Illinois, Wolter said, although he provided no further details.

"Do I believe we have individuals that lose their temper and harm an animal? The data says it happens. We've terminated those people. It disgusts me," Wolter said.

One Illinois worker discharged by Maschhoffs, Michael Cavins, told the Tribune he frequently witnessed co-workers abuse pigs to get them to move — and soon took part in the violence.

"Yes, that happened. We hit 'em hard with the paddles to get 'em to move," Cavins said. "That was one of the reasons I was discharged."

Cavins told the Tribune he had worked with pigs for more than a decade and Maschhoffs had retrained him on how to move animals without harming them. Yet he joined other workers who aggressively moved the sows, until a supervisor spotted him.

"I wish I'd went by the book and not even done it," Cavins said. "I just hit 'em too hard. It's going on all the time; they're constantly being hit when the supervisors aren't around."

'It doesn't look pretty'

Deliberate torture of farm animals can be a crime in Illinois, but only veterinarians are mandated to report it — not facility workers, supervisors or operators. Many Illinois confinement veterinarians visit the facilities only once or twice a month, and none has reported abuse in the facilities since 2011, the Tribune found. No companies have reported incidents to the state bureau during that time.

Illinois also is among the 38 states where long-standing farm practices are exempted from animal cruelty laws. These include castrating piglets and clipping their tails, teeth and ears without pain relief, as well as confining breeding sows in tight gestation and farrowing crates.

"Normal husbandry practices means anything farmers have done in the past, even if they are extremely

cruel," said Joan Schaffner, a George Washington University Law School associate professor. "If you were to do the same thing to your dog or cat, it would clearly be criminal."

Another example of practices that livestock handlers accept but consumers find deeply disturbing is the way piglets are euthanized.

Breeding facilities like Eagle Point cull deformed and underweight piglets because high-speed slaughterhouses require uniformity in animal weight and size, so that their processing machines and line workers can quickly make repetitive motions that pull the carcasses apart.

Illinois confinement workers often are trained to euthanize the runts and sick animals by grabbing their back legs and smashing the animals' heads into the concrete floor or metal crates. If done correctly, veterinary experts say, this head blow destroys a piglet's brain and causes no pain.

State veterinarian Ernst said of the practice: "It doesn't look pretty, but it is instantaneous and humane."

Ernst added that the head smashing can be emotionally difficult for workers who took jobs in livestock confinements because they wanted to care for animals. "That is a challenge, getting people trained up to do these duties."

It was certainly a problem for Santorineos, who refused to kill pigs and recoiled at the actions of her co-workers.

Some workers who failed at killing a piglet on the first try would frequently toss it aside and leave it to die, she and other Illinois confinement employees told the Tribune. The workers also described stressed colleagues whipping piglets against the floor out of anger and frustration.

Santorineos told the Tribune that the youngest Eagle Point workers would bet on how many hits it would take to put out a piglet.

The American Veterinary Medical Association says "blunt force trauma" can be a merciful way to kill piglets less than 3 weeks old. But the association's most recent guidelines recommend that producers consider alternatives ranging from a bolt gun to small carbon dioxide chambers, electrocution and barbiturate overdose supervised by a veterinarian.

Some companies are already making changes. Starting in September, Maschhoffs will exclusively use carbon dioxide chambers to euthanize piglets, company officials said.

And U.S. pork retailer Tyson now discourages the head-smashing technique. The company in 2014 issued a letter telling pig suppliers the practice "had been historically acceptable" but did not meet the

expectations of consumers.

Bill Hollis, a partner with Professional Swine Management, the Carthage, Ill.-based company that manages Eagle Point and 26 other confinements in Illinois, Iowa and Missouri, said he was unaware of the Tyson advisory.

Santorineos said she was threatened with termination for refusing to euthanize piglets at Eagle Point and then fired for wearing street clothes in a restricted area. Days later, she filed her abuse allegations with the state.

While she was employed she sent notes to her confinement supervisor detailing injuries to pigs, but nothing came of it, she said. "The farm boss ... told me not to worry about it," Santorineos wrote in her complaint to the state.

"The sows get beat when they are trying to move them from the big barn to the farrowing room," she told the Tribune. "Their legs give out. They walk real slow. (Workers) take the rods that hold the cages closed and beat 'em and kick 'em."

Regarding Santorineos' allegations, Hollis said he concluded that "there was no animal abuse or mistreatment." Still, the firm held a retraining session for Eagle Point employees.

Professional Swine is managed by veterinarians but does not contact the state bureau when abuse allegations surface, company officials said. Instead it conducts internal investigations. The firm says it has dismissed four employees so far this year for mistreatment and animal welfare infractions at its facilities.

At Tyson's behest, Eagle Point went through a scheduled, four-hour-long animal welfare audit in July 2015. The third-party inspection reported "no willful acts of abuse observed" on that morning.

A former co-worker of Santorineos', Beverly Hopping, told the Tribune that she also complained fruitlessly to her supervisor about animal abuse. "They did nothing about it. I went to them many times," Hopping said.

"There was a guy who was really mean to the hogs," she said. "He would leave deep scrapes on them. Some of them would be bleeding."

When piglets had a rupture following a botched castration, "they just take them by the back legs and smash them on the ground," Hopping said. "Sometimes they wouldn't die immediately. They kept kicking and twitching. They told us that is part of our jobs. Some people there would do it just for spite."

Eagle Point fired Hopping in January.

Santorineos said some workers also tormented the animals by sticking vaccination needles in an eye into their spines, making them shudder convulsively. "They would laugh about how long they would shake."

Patterson-Kane said she believes few confinement workers take pleasure in inflicting pain.

"A really tiny proportion might be sadists, but workers don't get up in the morning and say, 'I'd like to beat me some pigs,'" Patterson-Kane said. "Somehow they've gotten frustrated. They are trying to meet a performance standard and get something done, and they don't see another way to do it. That's a failure of the system."

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Pork industry, activists debate cruelty recorded in undercover videos

By **David Jackson and Madison Hopkins**

Chicago Tribune

AUGUST 3, 2016, 4:16 AM

Undercover videos by animal welfare activists have documented the cruelty that can occur inside America's large hog confinements — facilities that are off-limits to the public and largely unregulated by government agencies.

The clips have influenced consumers and pressured some of the nation's most powerful food companies to terminate employees, end supply contracts and introduce sweeping changes such as phasing out the narrow metal "gestation crates" that hold birthing pigs for much of their lives.

The Tribune gathered all known undercover videos of U.S. hog confinements since 1998 — 20 in total — and checked them against records showing the outcome of any criminal charges and industry responses. When available, the newspaper included commentary from industry animal-handling experts on which practices were acceptable and which were not.

Criminal animal cruelty charges were filed against at least 23 employees following the release of six videos, the newspaper found. Eighteen of the workers were convicted and punished with short jail stints, small fines or probation terms that prohibited working with animals for a period of time. In nine additional cases, workers were fired or large pork producers and retailers cut ties with the hog confinement.

Portions of the undercover film reveal behavior that some industry officials call sadistic. One clip shows a worker punting piglets into the air like footballs and others capture employees encouraging their colleagues to take out their frustrations on the animals.

Some workers also engage in what industry experts call unnecessary rough handling as they drag animals by the snout and beat injured hogs.

Other videos capture animal handling practices that may upset consumers but are supported by the nation's top veterinarian association and by academic researchers who study animal welfare. Workers castrate piglets without pain relief, for example, and euthanize runts by smashing their heads on the ground. They also grind up the internal organs of piglets that die from viruses and feed the mixture to

mother pigs to immunize herds against disease.

Animal welfare activists told the Tribune they send undercover workers into hog confinements whenever they have an opportunity; they say the recordings reveal cruelty that is commonplace in those facilities.

Pork industry representatives call the videos propaganda. Some animal-welfare organizations declare openly that their goal is to end livestock production, not reform it. Many videos feature musical scores and dramatic voice-overs. And the footage released publicly typically shows only a few sensational moments, when hours and even months of activity were filmed.

"To say we caught 12 drunk drivers so everyone's driving drunk, that's really pushing the envelope in terms of credibility," said Charlie Arnot, CEO of The Center for Food Integrity (CFI), an industry-supported group that assembles experts to comment on the animal rights films. "It doesn't mean that there aren't legitimate issues, but it's an overstatement."

The undercover animal welfare videos have changed industry practices but also led to so-called "ag-gag" laws that make it a crime to record audio or take photographs on farms without the owner's consent or to apply for employment under false pretenses. Some laws also require anyone with evidence of animal cruelty to turn it over to authorities within 24 hours, undercutting the groups' ability to continue investigating.

Twenty-five states have attempted to pass such laws and six have succeeded. An Illinois bill was introduced in 2012 but did not pass.

Proponents say the laws protect farmers from misleading publicity while critics say they suppress free speech and criminalize whistleblowers who would expose animal abuse.

The Tribune could identify no undercover animal-rights investigations on hog confinements in Illinois, a state where it is a potential felony to record a conversation without the consent of all parties. Animal welfare groups said they have conducted only limited operations in the state for that reason.

Below are summaries of six instances in which videos had an impact on producers. Viewers considering watching the videos should be aware that they contain graphic images of violence toward animals, disturbing audio and strong language.

•West Coast Farms, 2013, Okfuskee County, Okla. (video by Mercy for Animals)

The facility owner told the Tribune he fired six employees, and the giant food corporation Tyson cut ties with the operation. The owner said he sold his facility weeks later. A panel from CFI said the video captured "abuse and egregious misbehavior by employees."

•MowMar Farms, 2008, Greene County, Iowa (video by People for the Ethical Treatment of Animals)

Six workers were convicted of livestock abuse or neglect and also were fired, according to files from Greene County District Court and a statement from MowMar Farms that said: "We took steps to correct the issues." One of the processing companies that used the facility, Hormel, called the abuses "completely unacceptable" and adopted a new program to evaluate its suppliers at random. MowMar called the footage "reprehensible" but said it took ownership of the facility after much of the recorded abuse occurred.

•Christensen Farms, 2015, Rock County, Minn. (video by Last Chance for Animals)

Christensen Farms told the Tribune it fired five workers, disciplined five others, stepped up auditing, and improved worker education and training. Local law enforcement authorities investigated, but no charges were filed, according to records from the Rock County attorney's office.

•Seaboard Foods, 2015, Phillips County, Colo. (video by Mercy for Animals)

Seven workers were fired, and Seaboard issued a statement calling the behavior "unacceptable and inexcusable." The company said in that 2015 statement that it was retraining its farm managers. A CFI panel said the video showed sick animals not getting prompt veterinary care and "rough handling" when workers hit pigs with equipment.

•Pipestone System's Rosewood Farms, 2013, Pipestone County, Minn. (video by Mercy for Animals)

The facility said in a news release at the time that it fired one employee, reassigned another and provided additional training for all remaining workers.

•Wyoming Premium Farms, 2012, Platte County, Wyo. (video by Humane Society of the United States)

Seven employees were convicted of animal abuse, Platte County files show. Tyson told the Tribune that it cut ties with the facility and implemented a new animal welfare auditing program. A CFI panel said the video was "an incredibly disturbing, saddening and horrific example of the worst kind of animal handling."

Madison Hopkins is a graduate student at Northwestern University's Medill journalism school who worked with the Tribune as a research assistant.

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Pork producers defend gestation crates, but consumers demand change



Phil Borgic defends the use of gestation and farrowing crates. His 6,000-animal breeding operation produces 160,000 pigs per year. (Stacey Wescott / Chicago Tribune)

By **David Jackson and Gary Marx**

Chicago Tribune

AUGUST 3, 2016, 4:15 AM

With a gentle, expert touch, pork industry executive Phil Borgic inspects the sow in the tight metal crate.

For almost her entire life, iron bars will hold this mother pig on the slotted concrete floor of Borgic's 6,000-animal breeding operation as she produces litter after litter. She can step a few inches forward or backward but not turn around. Her heaving belly, waving head and dark-rimmed eyes are the only parts she seems free to move.

These enclosures, called gestation crates — and separate farrowing crates that hold sows while they give birth and suckle their newborns — have unleashed a furious battle between pork producers who call

them safe and opponents who say they amount to animal torture.

In public announcements that are reshaping the U.S. pork industry, giant food retailers from McDonald's to Kmart and Safeway have vowed in coming years to stop buying pork from producers that hold breeding sows in crates.

"These social, intelligent, curious animals are put in a coffin for their entire lives. It's hard to imagine a more miserable existence," said Paul Shapiro, vice president of the Humane Society of the United States.

Top U.S. pork producer Smithfield Foods in 2007 announced its transition to "crate-free" pig breeding by 2022; the switch, involving 800,000 sows per year, will cost an estimated \$360 million, according to a company filing with the U.S. Securities and Exchange Commission. Leading pork producer Cargill has said it will by next year convert its own breeding facilities and eliminate contract growers that use crates.

But in Illinois, Borgic is among the influential pig breeders who resist the national trend. He defends the crates as more merciful than the primary alternatives — communal pens or outdoor lots — and says they are critical to holding down the grocery store price of pork, a leading Illinois export and the most widely consumed meat in the world.

All sides of the debate cite studies in support of their positions, though much of the peer-reviewed research about pig well-being in crates is funded by the pork industry in the interest of improving and refining its methods.

Borgic, a board member of the National Pork Producers Council, cited accounts from European breeders whose "free access" arrangements allow sows to choose between group areas and tight stalls. A sow will tend to hang out and sleep in a single compartment, Borgic said — "she feels safe."

Recalling how his family operation began moving pigs from pastures to confinements in the 1970s, Borgic said: "We started using the stalls to protect the sows. I let science and the market tell me what to do. I've done both. I know in my heart and my brain what is better."

His unapologetic defense of maternity crates was shared by other leading Illinois pork producers, who credit the individual stalls for bigger litters, heavier piglets and reduced workforce costs.

"Everybody looks at pigs and thinks of themselves," said David Conrady, whose Logan County-based TriPork Inc. markets nearly 11,000 pigs per year. His animals have hearts similar to humans' and highly evolved minds, he notes, but they are destined to make food, not serve as companions or pets.

"They're raised for a purpose. We've got to feed the world first," Conrady said.

Borgic's football field-long nurseries produce 160,000 pigs per year, sending the weaned piglets to contract growers around the Midwest or to his own confinement facilities.

As he shakes a handful of feed on a newborn's squirming torso to dry its skin, some of his 25 workers hustle through their specialized, assembly-line roles. Two castrate piglet after squealing piglet while others move a male boar on a dolly down the dimly lit rows to ensure the sows are in heat before artificially inseminating them in their 2-by-7-foot crates.

After a few years, when the size of their litters decline, the sows are sent to slaughter and made into Jimmy Dean and Hillshire Farm sausages, Borgic said.

Starting with Florida in 2001, animal rights groups have successfully pushed for legislation banning hog crates in several states, though Ohio is the only one that is among the top 10 states in hog sales, according to U.S. Department of Agriculture data.

But American consumers' growing desire for cruelty-free animal handling has influenced food retailers, who in turn are forcing the U.S. industry to change its livestock husbandry practices.

Janeen Johnson, an associate professor of animal sciences at the University of Illinois whose research has been funded in part by the pork industry, criticized retailers for dictating livestock handling practices to producers whose families have been raising pigs for generations.

"The science has not supported change," Johnson said. "If sows are placed in group pens, you're going to see mortality go up and efficiency go down. A lot of these producers may shut their doors."

Placed together in communal settings, sows can fight for food and establish pecking orders in which the weakest eat less, if at all. In the individual crates, feed can be precisely calibrated to the pig's stage in her life cycle, and workers can easily track the well-being of individual animals, the research studies show.

The most advanced group-pen models use electronic ear tags linking sows to feeding systems that dispense the proper meal dose based on the animals' needs, but the machinery is expensive and requires expert workers.

Some researchers have found that sows had the highest stress levels, as measured by cortisol concentrations, when they were introduced to group pens and a pecking order was established. After that, there was little stress-level difference between sows in crates and those in pens.

Some studies have linked the crated sows' lack of exercise to weakened bones, lameness and leg injuries, while others report more foot problems in communal pens with similar concrete floors.

And scientists are split over the significance of certain behaviors seen in crated pigs: chewing compulsively on the metal bars or wagging the head incessantly. These gestures make them look miserable, but studies have found the chewing also can occur in group pens.

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New animal abuse allegations surface at Illinois hog confinement



Rodney Beard, shown at his job as a janitor for an Illinois manufacturer, previously worked at Cedarcrest LLC, a 6,400-sow confinement in western Illinois. He said he became a pariah for reporting animal abuse by fellow workers and that he was fired after making a complaint. (Stacey Wescott / Chicago Tribune)

By **David Jackson and Gary Marx**
Chicago Tribune

DECEMBER 28, 2016, 5:11 AM

Illinois' large hog confinements are sealed from the public for biosecurity reasons and often set back on private roads. Their low-paid labor force includes local residents and immigrants who have few other job opportunities and told Tribune reporters they feared retribution if they spoke out.

But as leading pork producer Professional Swine Management expands in Fulton County in western Illinois, three former employees have come forward in interviews with the Tribune to allege livestock abuse at the company's Cedarcrest LLC facility, a 6,400-sow confinement about 7 miles southwest of Lewistown.

One of them, Rodney Beard, said some workers beat the animals with the sharp edges and corners of the large plastic "sort boards" that pig handlers use to guide animals. "Not flat-ways, they'd be doing it sideways," said Beard, 55, lowering his arms in a chopping motion.

"Some of these young kids, they got off on it. They got a thrill out of it," added Beard, who said he worked at Cedarcrest for about three months in 2014.

Beard said he was fired after he reported two workers for beating pigs — then was blamed by the workers for the abuse.

"You're labeled a troublemaker if you go turn people in," he said. "What was (done) in there stayed in there. They stressed that."

Beard's son, Anthony, who said he worked at Cedarcrest from 2011 to 2014, said he also witnessed workers beating pigs with boards and with leather straps when they would not move fast enough.

"If people knew what happens behind closed doors, I guarantee they would look at bacon different," he said.

Former Cedarcrest worker Justin Jockisch, 26, who said he was fired in September following disputes with supervisors, said he witnessed Cedarcrest workers striking pigs "with the metal rods that hold the gates in place. It's every day."

Piglets often huddled around the mother sows when workers tried to move them, Jockisch said, and workers were allowed to guide the animals gently with their rubber work boots. But when the piglets didn't move quickly enough, he said, "you'll see them kick them."

Professional Swine executives declined to comment on the employees or their allegations, but the company has previously told the Tribune that it does not tolerate abuse and did not believe worker accounts of mistreatment.

Former workers can be biased and are likely to embellish because they are angry at their bosses or upset about their experiences, the company has said.

The Tribune reported in August in its "Price of Pork" investigation that workers at Illinois swine confinements rarely file complaints of animal mistreatment with the Illinois Bureau of Animal Health and Welfare, the arm of the state Agriculture Department that oversees animal welfare laws.

The understaffed bureau did not find a single animal welfare infraction or violation at a hog confinement during the past five years, the Tribune found in a review of thousands of pages of bureau records.

One such complaint was filed last year by Sharee Santorineos, who worked at Eagle Point Farms LLC, a 6,000-sow Professional Swine facility also in Fulton County.

Santorineos' three-page letter to the bureau alleged animals were punched, kicked and gouged with metal rods to move them. But Eagle Point executives gave a state bureau inspector a guided tour, and his report was only a few sentences long.

"I did not observe anyone mistreating the animals," it said. "No violations found. Docket is closed."

Professional Swine said in August that it had dismissed four employees in the previous eight months for mistreatment and animal welfare infractions at its 27 facilities in Illinois, Iowa and Missouri.

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Twitter @poolcar4

Twitter @garyjmarx

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(720 ILCS 5/14-2) (from Ch. 38, par. 14-2)

Sec. 14-2. Elements of the offense; affirmative defense.

(a) A person commits eavesdropping when he or she knowingly and intentionally:

(1) Uses an eavesdropping device, in a surreptitious manner, for the purpose of overhearing, transmitting, or recording all or any part of any private conversation to which he or she is not a party unless he or she does so with the consent of all of the parties to the private conversation;

(2) Uses an eavesdropping device, in a surreptitious manner, for the purpose of transmitting or recording all or any part of any private conversation to which he or she is a party unless he or she does so with the consent of all other parties to the private conversation;

(3) Intercepts, records, or transcribes, in a surreptitious manner, any private electronic communication to which he or she is not a party unless he or she does so with the consent of all parties to the private electronic communication;

(4) Manufactures, assembles, distributes, or possesses any electronic, mechanical, eavesdropping, or other device knowing that or having reason to know that the design of the device renders it primarily useful for the purpose of the surreptitious overhearing, transmitting, or recording of private conversations or the interception, or transcription of private electronic communications and the intended or actual use of the device is contrary to the provisions of this Article; or

(5) Uses or discloses any information which he or she knows or reasonably should know was obtained from a private conversation or private electronic communication in violation of this Article, unless he or she does so with the consent of all of the parties.

(a-5) It does not constitute a violation of this Article to surreptitiously use an eavesdropping device to overhear, transmit, or record a private conversation, or to surreptitiously intercept, record, or transcribe a private electronic communication, if the overhearing, transmitting, recording, interception, or transcription is done in accordance with Article 108A or Article 108B of the Code of Criminal Procedure of 1963.

(b) It is an affirmative defense to a charge brought under this Article relating to the interception of a privileged communication that the person charged:

1. was a law enforcement officer acting pursuant to an order of interception, entered pursuant to Section 108A-1 or 108B-5 of the Code of Criminal Procedure of 1963; and
2. at the time the communication was intercepted, the officer was unaware that the communication was privileged; and
3. stopped the interception within a reasonable time after discovering that the communication was privileged; and
4. did not disclose the contents of the communication.

(c) It is not unlawful for a manufacturer or a supplier of eavesdropping devices, or a provider of wire or electronic communication services, their agents, employees, contractors, or vendors to manufacture, assemble, sell, or possess an eavesdropping device within the normal course of their business for purposes not contrary to this Article or for law enforcement officers and employees of the Illinois Department of Corrections to manufacture, assemble, purchase, or possess an eavesdropping device in preparation for or within the course of their official duties.

(d) The interception, recording, or transcription of an electronic communication by an employee of a penal institution is not prohibited under this Act, provided that the interception, recording, or transcription is:

- (1) otherwise legally permissible under Illinois law;
- (2) conducted with the approval of the penal institution for the purpose of investigating or enforcing a State criminal law or a penal institution rule or regulation with respect to inmates in the institution; and
- (3) within the scope of the employee's official duties.

For the purposes of this subsection (d), "penal institution" has the meaning ascribed to it in clause (c)(1) of Section 31A-1.1.

(e) Nothing in this Article shall prohibit any individual, not a law enforcement officer, from recording a law enforcement officer in the performance of his or her duties in a public place or in circumstances in which the officer has no reasonable expectation of privacy. However, an officer may take reasonable action to maintain safety and control, secure crime scenes and accident sites, protect the integrity and confidentiality of investigations, and protect the public safety and order.

(Source: P.A. 98-1142, eff. 12-30-14; 99-352, eff. 1-1-16.)

(510 ILCS 70/3) (from Ch. 8, par. 703)

Sec. 3. Owner's duties.

(a) Each owner shall provide for each of his or her animals:

(1) a sufficient quantity of good quality, wholesome food and water;

(2) adequate shelter and protection from the weather;

(3) veterinary care when needed to prevent suffering;

and

(4) humane care and treatment.

(b) To lawfully tether a dog outdoors, an owner must ensure that the dog:

(1) does not suffer from a condition that is known, by that person, to be exacerbated by tethering;

(2) is tethered in a manner that will prevent it from becoming entangled with other tethered dogs;

(3) is not tethered with a lead that (i) exceeds one-eighth of the dog's body weight or (ii) is a tow chain or a log chain;

(4) is tethered with a lead that measures, when rounded to the nearest whole foot, at least 10 feet in length;

(5) is tethered with a properly fitting harness or collar other than the lead or a pinch, prong, or choke-type collar; and

(6) is not tethered in a manner that will allow it to reach within the property of another person, a public walkway, or a road.

(c) Subsection (b) of this Section shall not be construed to prohibit:

(1) a person from walking a dog with a hand-held leash;

(2) conduct that is directly related to the cultivating of agricultural products, including shepherding or herding cattle or livestock, if the restraint is reasonably necessary for the safety of the dog;

(3) the tethering of a dog while at an organized and lawful animal function, such as hunting, obedience training, performance and conformance events, or law enforcement training, or while in the pursuit of working or competing in those endeavors; or

(4) a dog restrained in compliance with the requirements of a camping or recreational area as defined by a federal, State, or local authority or jurisdiction.

(d) A person convicted of violating subsection (a) of this Section is guilty of a Class B misdemeanor. A second or subsequent violation of subsection (a) of this Section is a Class 4 felony with every day that a violation continues constituting a separate offense. In addition to any other penalty provided by law, upon conviction for violating subsection (a) of this Section, the court may order the convicted person to undergo a psychological or psychiatric evaluation and to undergo any treatment at the convicted person's expense that the court determines to be appropriate after due consideration of the evaluation. If the convicted person is a juvenile or a companion animal hoarder, the court must order the convicted person to undergo a psychological or psychiatric evaluation and to undergo treatment that the court determines to be appropriate after due consideration of the evaluation.

(e) A person convicted of violating subsection (b) of this Section is guilty of a Class B misdemeanor.

(f) As used in this Section, "tether" means to restrain by tying to an object or structure, including, without limitation, a house, tree, fence, post, garage, shed, or

clothes line at a person's residence or business, by any means, including, without limitation, a chain, rope, cord, leash, or running line.

(Source: P.A. 98-101, eff. 1-1-14.)

(510 ILCS 70/3.01) (from Ch. 8, par. 703.01)

Sec. 3.01. Cruel treatment.

(a) No person or owner may beat, cruelly treat, torment, starve, overwork or otherwise abuse any animal.

(b) No owner may abandon any animal where it may become a public charge or may suffer injury, hunger or exposure.

(c) No owner of a dog or cat that is a companion animal may expose the dog or cat in a manner that places the dog or cat in a life-threatening situation for a prolonged period of time in extreme heat or cold conditions that:

(1) results in injury to or death of the animal; or

(2) results in hypothermia, hyperthermia, frostbite,

or similar condition as diagnosed by a doctor of veterinary medicine.

(c-5) Nothing in this Section shall prohibit an animal from being impounded in an emergency situation under subsection (b) of Section 12 of this Act.

(d) A person convicted of violating this Section is guilty of a Class A misdemeanor. A second or subsequent conviction for a violation of this Section is a Class 4 felony. In addition to any other penalty provided by law, a person who is convicted of violating subsection (a) upon a companion animal in the presence of a child, as defined in Section 12-0.1 of the Criminal Code of 2012, shall be subject to a fine of \$250 and ordered to perform community service for not less than 100 hours. In addition to any other penalty provided by law, upon conviction for violating this Section, the court may order the convicted person to undergo a psychological or psychiatric evaluation and to undergo any treatment at the convicted person's expense that the court determines to be appropriate after due consideration of the evidence. If the convicted person is a juvenile or a companion animal hoarder, the court must order the convicted person to undergo a psychological or psychiatric evaluation and to undergo treatment that the court determines to be appropriate after due consideration of the evaluation.

(Source: P.A. 99-311, eff. 1-1-16; 99-357, eff. 1-1-16; 99-642, eff. 7-28-16; 99-782, eff. 8-12-16.)

(510 ILCS 70/3.02)

Sec. 3.02. Aggravated cruelty.

(a) No person may intentionally commit an act that causes a companion animal to suffer serious injury or death. Aggravated cruelty does not include euthanasia of a companion animal through recognized methods approved by the Department of Agriculture unless prohibited under subsection (b).

(b) No individual, except a licensed veterinarian as exempted under Section 3.09, may knowingly or intentionally euthanize or authorize the euthanasia of a companion animal by use of carbon monoxide.

(c) A person convicted of violating Section 3.02 is guilty of a Class 4 felony. A second or subsequent violation is a Class 3 felony. In addition to any other penalty provided by law, upon conviction for violating this Section, the court may order the convicted person to undergo a psychological or psychiatric evaluation and to undergo any treatment at the convicted person's expense that the court determines to be appropriate after due consideration of the evaluation. If the convicted person is a juvenile or a companion animal hoarder, the court must order the convicted person to undergo a psychological or psychiatric evaluation and to undergo

treatment that the court determines to be appropriate after due consideration of the evaluation.
(Source: P.A. 96-780, eff. 8-28-09.)

(510 ILCS 70/3.03)

Sec. 3.03. Animal torture.

(a) A person commits animal torture when that person without legal justification knowingly or intentionally tortures an animal. For purposes of this Section, and subject to subsection (b), "torture" means infliction of or subjection to extreme physical pain, motivated by an intent to increase or prolong the pain, suffering, or agony of the animal.

(b) For the purposes of this Section, "animal torture" does not include any death, harm, or injury caused to any animal by any of the following activities:

(1) any hunting, fishing, trapping, or other activity allowed under the Wildlife Code, the Wildlife Habitat Management Areas Act, or the Fish and Aquatic Life Code;

(2) any alteration or destruction of any animal done by any person or unit of government pursuant to statute, ordinance, court order, or the direction of a licensed veterinarian;

(3) any alteration or destruction of any animal by any person for any legitimate purpose, including, but not limited to: castration, culling, declawing, defanging, ear cropping, euthanasia, gelding, grooming, neutering, polling, shearing, shoeing, slaughtering, spaying, tail docking, and vivisection; and

(4) any other activity that may be lawfully done to an animal.

(c) A person convicted of violating this Section is guilty of a Class 3 felony. As a condition of the sentence imposed under this Section, the court shall order the offender to undergo a psychological or psychiatric evaluation and to undergo treatment that the court determines to be appropriate after due consideration of the evaluation.

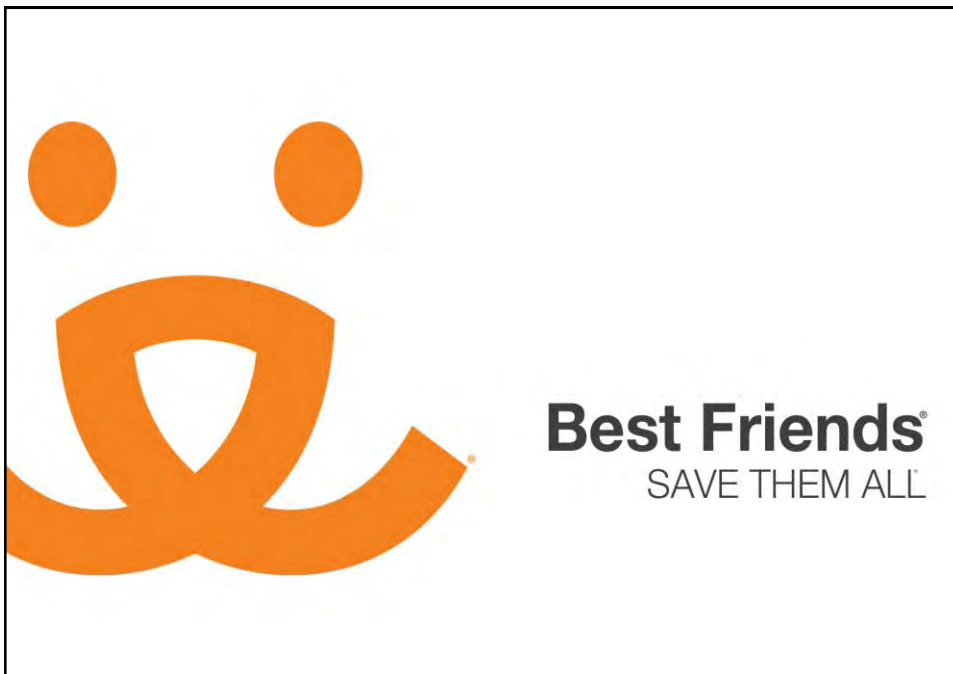
(Source: P.A. 91-351, eff. 7-29-99; 92-650, eff. 7-11-02.)

TAB 3

Legislation Update, Including the State-Wide Community Cat Task Force Initiative

- *Ledy Van Kavage, Best Friends Animal Society, Maryville*
ledyv@bestfriends.org

This segment includes all materials received by the course book publication deadline.
Please contact the speaker for any other materials used at the program.







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Sr. Legislative Attorney

Past Chair of American Bar
Association's Animal Law
Committee

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618-550-9469

Karma



IL Humane Euthanasia in Animal Shelters Act

Justice
for all!



www.bolderadvocacy.org





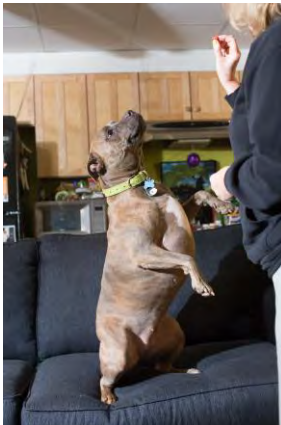
501 (c) 3 Nonprofits

Tax Treatment

- Tax-exempt
- Contributions tax-deductible
- Private foundation grants

Lobbying Activities

- Limited
- Cannot support or oppose candidates for public office



Yes, nonprofits can lobby: 501(c)(3) public charities can lobby within generous limits set by federal tax law.



Insubstantial Part Test (Default Test)



The Insubstantial Part Test means that you cannot make lobbying a substantial part of what you do.

("Substantial" is not defined.)



501(h) Expenditure



IRS Form 5768 One-time election

To maximize the amount of lobbying in which a public charity can engage, you can choose the 501(h) expenditure. It establishes specific dollar limits that are calculated as a percentage of a charity's total exempt purpose expenditures.



Total Lobbying Expenses



- 501(h)
- 20% of first \$500,000
- 15% of next \$500,000
- 10% of next \$500,000
- 5% remaining
- \$1 million cap (annual expenditures over \$17 million)

Volunteer and other efforts do not count toward lobbying limits.



Direct:

Communication with a legislator that expresses a view about specific legislation

Grassroots:

Communication to the general public that expresses a view about specific legislation and has a call to action



Ballot Initiatives

Members of
the public ARE
“legislators”



These are NOT legislators:

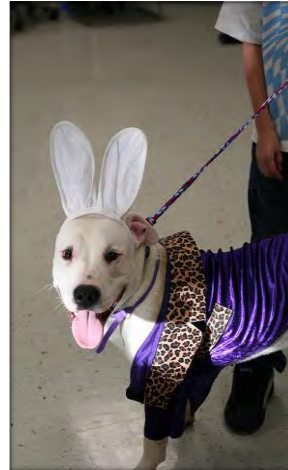
- School boards
- Zoning boards
- Housing authorities
- Sewer and water districts
- Other “special purpose bodies”





Lobbying Exceptions

- Nonpartisan analysis, research or study
- Self-defense
- Request for technical assistance
- Examination and discussions of broad social, economic and similar problems



What makes a great sponsor?

- Leadership
- Record
- On the Committee
- Majority party
- Respected
- Even Tempered





HB 708 - Rep. Welch

Peace officer must arrest or issue a notice to appear (cruelty treatment, aggravated cruelty, animal torture, animal fighting or dog fighting)



HB 2661 – Rep. Sente

Paramedics, EMTs may transport a police dog injured in the line of duty





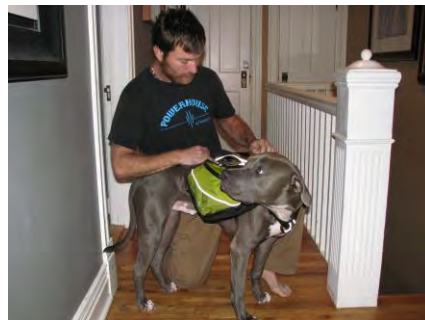
HB 638 – Rep. Cabello

Probable cause
required for a “vicious”
or a “dangerous “ dog.



HB 541 - Rep. Burke

Can't permit a dog to
injure or kill a guide,
hearing or support
dog.





HB 1771 & SB 1467 – Rep. Costello & Sen. Anderson

Can use a crossbow to “take” any animal



HB 3250 – Rep. Winger

Taxpayer credit = adoption fees for the adoption of a cat or dog from a county animal control facility, humane society or animal rescue organization, not to exceed \$100 per taxpayer. (No more than 3 animals per year)





HB 3247 – Rep. Winger

Creates deduction for vet clinics in an amount equal to the value of any free spaying or neutering services provided by the clinic to a not for profit animal rescue or shelter service, not to exceed \$2,500 per year per clinic



SB 1981 - Sen. Harmon

Prohibits
bobcat trapping





SB 641- Sen. Holmes

Amends the IL Pet Population Control fund to allow counties to use registration fees for food stamps or SSD benefit programs for a animal control facility, animal shelter, organization or resident who humanely traps feral cats for TNR



SB 1882 & HB 2824 – Sen. Hastings & Rep. Costello

Microchipping- pet stores & rescues

Requires shelters to contact pet stores or rescue groups if owner doesn't reclaim

Requires Dept of AG website check (problematic since website deleted by administration)

Home Rule Exemption would prohibit cities from banning pet shops





HB 2897 – Rep. Severin

Helping Paws Service Dog Program - Includes training for service dogs for veterans with PTSD



HB 3731 & HB 3003 – Rep. Moylan & Rep. Cavaletto

Increases penalty for torturing, mutilating, injuring disabling, poisoning or killing service, police, search and rescue or accelerant detection dogs





SB 1884 - Sen. Holmes

Research dogs and cats adoption act



SB 1903 - Sen. Silverstein

No companion animal may be put in a manner that places the animal in a life-threatening situation for a prolonged period of time in extreme heat or cold...(change from dog or cat)





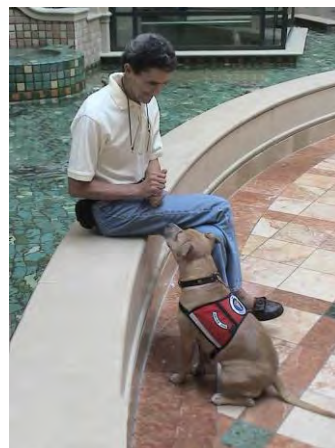
SB 1510 - Sen Holmes

Amends the Humane Care for Animal Act: person who commits specified offenses against more than one animal may be charged with a separate offense



HB 3659 - Rep. Swanson

US Armed Forces can adopt at a discounted rate or no charge, Dept. of AG shall charge ½ fee for licensing or renewal for animal shelter license





HB 3438 - Rep. Crespo

Individual convicted of violation of 3.01 (c) HCAC shall pay the owner of the companion animal 3 times the value of the immediate, completed, or ongoing veterinary treatment



HB 3668 – Rep. Meier

Exempts nonprofit animal organization that spends at least 80% of its annual solicited contributions on animal shelters and activities from registering with the AG





HB 3861 - Rep. Hammond

Equine stable owners
to be licensed by the
Dept of Financial and
Profession Regulation



SB 1342 – Sen. Holmes

No elephants
protected under the
federal endangered
species act of 1973 in
traveling animal acts.





HB 3162 – Rep. Manley

Establishes a service dog license program



TAB 4

Use of Mediation to Address Animal Issues in Family Law Matters

MODERATOR: *Hon. William E. Holdridge, Illinois Appellate Court, Third District, Farmington*

- *Debra Vey Voda-Hamilton, Hamilton Law & Mediation, PLLC, New York*
Dhamilton@hamiltonlawandmediation.com
- *David H. Hopkins, Schiller DuCanto & Fleck, Wheaton*
dhopkins@sdflaw.com
- *Angela E. Peters, Buffalo Grove Law Offices, Arlington Heights*
angela@aepbuffalo.com

This segment includes all materials received by the course book publication deadline.
Please contact the speaker for any other materials used at the program.

**MEDIATION OF PET CUSTODY, VISITATION,
and/or POSSESSION ISSUES, together
with MOCK MEDIATION**

Who Gets Brucie?

Legal Conference of ISBA
Animal Law Section

March 3, 2017

Chicago, Illinois

PRESENTERS:

Debra Vey Voda-Hamilton, Esq.	(NY)
Angela E. Peters, Esq.	(IL)
David H. Hopkins, Esq.	(IL)
Hon. Wm. E. Holdridge	(IL)

Mock Mediation Roles

Mediator
Emma Gottrocks
Hamilton Gottrocks
Himself

GOTTROCKS' DISPUTE: WHO GETS BRUCIE?

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• Article, entitled <i>Pet Custody, Visitation, and Mediation</i> , by Angela C. Peters, Esq.	xviii – xx
• Summary, entitled <i>Factual Elements to be Considered in a Typical Marital Pet Allocation Case</i> , by David H. Hopkins, Esq.	xxi
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*Note: The dispute arises in In re the Marriage of Emma Gottrocks and Hamilton Gottrocks, now pending in the Domestic Relations Division of the Circuit Court of Cook County, Illinois.

**FACT SUMMARY AND OVERVIEW OF LEGALISTIC ISSUES IN
EMMA and HAMILTON GOTTROCKS'
DISPUTE OVER "BRUCIE"**

Factual Background

Brucie was imported in early 2011 by the Husband, Hamilton Gottrocks, from a Welsh Cocker Spaniel breeder in Wales. Hamilton and his wife, Emma, are dedicated dog fanciers. Emma concentrates on the show ring (handling many of Hamilton's mother's dogs) and Hamilton concentrates on field trialing, having grown up with "field Labradors," trained and run by his father. Hamilton's purchase of Brucie was effectuated with a \$20,000 check drawn on one of his non-marital bank accounts. Promptly after the purchase, Hamilton registered Brucie with the American Kennel Club, in his own name as the owner, as he had always done with his field Labs. (Brucie's call name is derived from a great show winning American Cocker Spaniel, My Own Brucie, who twice won Best in Show at Westminster.)

While Brucie came from Welsh field trial stock, he is a superlative specimen of the breed, both for show and field purposes, a potential "Secretariat" in either the conformation ring or in field trials. After arrival at the Gottrocks' home, Brucie's training was solely in the field, including about four months during which Hamilton trained Brucie (three to four times per week) and then six months of "field trial boot camp" with a professional field trial trainer. After boot camp, Brucie returned to the Gottrocks' home; and, while Hamilton continued with some field training, Brucie phased into being the primary entry used by one of the Gottrocks' twin sons, Todd, in Junior Showmanship Competition, and into being shown by Emma in conformation. Brucie won his show championship swiftly, as well as some Best in Shows. He has also sired three litters, all from "show" females. Ultimately, at the Westminster Kennel Club Dog Show, Todd won first place in Junior Showmanship with Brucie, and Emma piloted Brucie to 2nd in the Sporting Group. These successes were attributed by some fanciers, at least in part, to Brucie's incredible showmanship in the ring.

After winning at Westminster, Todd retired from Junior Showmanship competition. Each party's proposed plan for Brucie would entail about the same amount of time for Brucie to be with Todd and his brother, Rod. By agreement, the parties have entered into an Agreed Joint Custody Judgment, one that allocates parenting time for the parties' two sons on an equal basis. (In working out parenting issues, as well as in resolving by agreement certain economic matters, including maintenance, child support, college expenses, and all other property issues, both parties refrained from dwelling upon some "nasty elements" in their split-up.)

Emma's passionate goal for Brucie is to "take a couple more shots" at a Westminster Best in Show. Hamilton's passionate goal is to refine Brucie's field trial training and pursue a field trial championship for him, which, if successful, would make Brucie the first dual champion of his breed. Both parties have expressed their concerns

about “time running out” because of Brucie’s age, each claiming the need to be able to pursue her or his goal in the next two years or so, during Brucie’s prime. Both parties state that their goals could probably not be pursued simultaneously, as the wear on Brucie’s feathering in the field entails the risk of undermining his show career, at least temporarily (i.e., for a 3-6 months period for re-growth of coat, depending on the actual degree of “wear and tear”). Both parties have declined to put a value on the dog; and, in fact, each has stated that “Brucie is priceless.” Both parties have expressed tentative willingness to share some possession time between themselves as to Brucie.

At a certain point in time, Emma had taken Brucie to a Veterinarian for a sperm draw; and enough semen was obtained and frozen to facilitate four breedings. Unfortunately, for a period, Brucie has been on “medical leave” due to a serious illness that has been life-threatening and that (at least temporarily) has left him sterile. The current medical prognosis, though, is strongly in favor of a total recovery from sterility. Both parties have stated that, like Brucie himself, his stored frozen semen is “priceless” if Brucie remains sterile. In all events, the parties have agreed to a 50/50 split of the frozen semen. At the time Brucie’s illness hit, Emma’s fast action to secure emergency surgery (in the middle of the night) probably saved his life.

* * * * *

Legalistic Issues Presented

- **Classification:** At the outset, was Brucie marital or non-marital property?
- **Transmutation:** If Brucie was originally non-marital in character, did transmutation from non-marital to marital property ever subsequently occur?
- **Allocation:** If Brucie is marital, how should he be allocated—to one or the other party, or, to both of them jointly--and can there be shared “possession time” so as to facilitate one (and only one) party’s competition goal?

* * * * *

Crux of the Parties’ Impasse

- **“Real” Issue:** Which party’s competition goal for Brucie is to be prioritized?

**Nipped in the Bud
Not in the Butt**



How to use mediation
to resolve conflicts over animals in divorce.
ISBA - Animal Law Committee
Annual Meeting Program
March 3rd, 2017
By
Debra A. Vey Voda-Hamilton




Hamilton Law & Mediation, PLLC
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Using ADR in Conflicts over Animals

How mediation and collaborative process
helps matrimonial & animal law
practitioners
to more effectively represent their clients.



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Today we will address:

**How ADR Helps Identify The Real
Problems In:**

-Divorcing with pets






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ADR Helps

- Take a step back
- Look at the whole situation
- Breathe through the anger
- Listen without responding

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For each Practice Area ADR Enables Emotional Assessment

- Reality Test
- Establish equilibrium




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ADR Creates a platform on which common goals in Divorce can be met

With Respect to:

- Party Welfare
- Animal Welfare





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ADR helps parties progress to a Win-Win Solution

- Lead with the positive.
- Proactive not Reactive
- Keeping *what's best for all** paramount

*Justice Matthew Cooper Travis vs. Murray – (NY)



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Lets take a step back

- How can ADR be:
 - Helpful to facilitate conversation
 - Enable discussion
 - Create a Platform for solution
 - Be seen as the ethical choice when people are in disagreement over an animal or an animals life is at issue




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First lets look at
THE IMPACT OF CONFLICT ON OUR BRAIN
 and our clients brain

- Studies show *defensiveness diminishes* our capacity to solve problems
- Chemical flooding in our brains/bodies stimulate 3/FFF
- We become *reactive not responsive*
 - The brain is incapable of intervening in time to stop reactivity



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THE "SCIENCE" OF CONFLICT

LIMBIC BRAIN- BENEATH THE CEREBRUM

AMYGDALA- EMOTIONAL ALARM SYSTEM, FIGHT OR FLIGHT

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WHAT DOES THIS MEAN

in conflicts over animals in particular...

- EVEN IF WE DON'T INTEND TO BE REACTIVE, OUR ALARM SYSTEM ENGAGES BECAUSE OF CONFLICT
- RESEARCH NOW SHOWS OUR REACTION TO AN INSULTING REMARK EQUALS THAT TO A PHYSICAL THREAT
- IF OUR LIMBIC SYSTEM IS SET OFF – ALARM STAYS ACTIVE FOR 20-60 MINUTES

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WHAT CAN WE DO

TO MORE EFFECTIVELY AND ETHICALLY ADDRESS ISSUES THAT ARISE OVER ANIMALS IN DIVORCE?

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WITH ADR



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DIVORCE PRACTITIONERS AND PARTICIPANTS GAIN:

- CLARITY
- PERSPECTIVE
- PERCEPTION
- UNDERSTANDING
- EMPATHY

ON BOTH SIDES BY USING ADR

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TRADITIONAL COMMUNICATION

- Competitive
- Creates defensive reactions
- Power based
- Creates/fosters struggle
- Based in Win/Lose

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**We Process facts using our own
CONFIRMATION BIAS**

- **Common Misconceptions:**
Opinions are the result of years of rational, objective analysis
- **Truth:**
Opinions are the result of paying attention to information which confirms/challenges your preconceived notions



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**VALUABLE MNEMONIC
In Conflicts over Animals
*VERB***

- **Value:** What someone believes
- **Emotion:** What someone feels
- **Reasoning:** What someone thinks
- **Behavior:** What someone does



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**HOW CAN AN ADR PROFESSIONAL
HELP YOU WORK
MORE EFFECTIVELY/EFFICIENTLY?**



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The ADR Professional:

- Leads the parties in a more neutral discussion
- De-escalates the situation
- Enables reality checking




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APPRECIATE THAT ADR PROFESSIONALS PROVIDE THE FOLLOWING:



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- Ignorance of what occurred in either person's past to illicit this reaction – (confirmation bias)
- Remain calm and seek solutions
- Help the parties process fact from belief enabling them to regain:
 - a good relationship
 - a positive solution experience
 - a feeling of win/win



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THREE EASY COMMUNICATION STRATEGIES


THAT NIP CONFLICT IN THE BUD

--ON THE SPOT SOLUTIONS--



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- Stop
- Drop and
- Roll



Handle fiery confrontations with ease



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STOP



- Stop Talking
 - Shifts momentum of conflict
 - Focus on listening
 - Be solution oriented
 - Breath & count




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LISTENING FOR SOLUTION


- Stay in the here and now
- Neither solve nor defend
- Momentum
- Verizon – can you hear me now?!
- Allow for more than one solution
- Be open to listening to all solutions
– regardless of absurdity
- Keep ears open / mouth shut

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DROP

- The need to be right
–Incredibly powerful
- Yet most difficult of action to perfect
- If you have a strong need to be right
–cannot shift momentum



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On Being Right


- If you need to be right –
less likely solution oriented
- F – Focus on what is working
- R – Respect another opinion
- E – Embrace a peaceful vision /
solution
- E – Elevate your observation



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WHY IS *DROP* SO HARD?

- Duty to zealously represent
- Professional Liability
- Professional knows the answer
- Belief client's are incapable of solving for best outcome
- Fear of losing control of the situation
- Lawsuits are more lucrative/scary



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ROLL

- Help client/allow yourself to let criticism roll off your back
- Enable client to vent
- Choose how you will respond
–DO NOT respond in the moment and regret at leisure



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ROLL



- Acknowledge without engaging
- Appreciate vs. Agreement
- Build a bridge
- Maintain equilibrium
- Apology



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SPIN DOCTOR

- Learn from what is going right
- Learn from what is not going well

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THE FRAMEWORK FOR A PEACEFUL WORKING RELATIONSHIP

- AWARE
 - A - Appreciate
 - W - Working toward a common goal
 - A - Address issues one at a time
 - R - Respect everyone's time, effort and opinion
 - E - Enable listening




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REALITY CHECK MEDIATION VS. LITIGATION

Avoid, Conciliate, Negotiate, Mediate, Arbitrate, Litigate, War

<u>Mediation</u>	<u>Litigation</u>
Confidentiality	Public Record
Emotions Addressed	Avoid Emotion
Unique Solution	Bound by Law
Timely Resolved	Time Consuming
Free/Low Cost	Expensive
Shared Expense	Bear Full Expense



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BUILD BRIDGES

- Retain high road
- Regain equilibrium which enables bridge to be built
- Bridge to somewhere/nowhere
- Construct a positive exchange
- Understand future relationship is key
- Make sure a wanted NOW response
 - doesn't create a negative later reaction


Gary Friedman – Information Gathering – Examining The Reality The Parties Face, Center for Understanding, Newsletter (June 2014)



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SELF-EMPOWERMENT

- Advocate for *your* CLIENTS and the ANIMAL'S best interest
- Pre-empt problem by asking open ended questions of client and adversary
- Respond pro-actively

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WORKABLE TEMPLATES YOU LEARNED TODAY


- **STOP, DROP AND ROLL**




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QUESTIONS

????



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JOIN THE DISCUSSION

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Nipped in the Bud-Not in the Butt
-How to Use Mediation to Resolve Conflicts over Animals.



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PET CUSTODY, VISITATION, and MEDIATION

By Angela Peters

A. TREATMENT OF PET ISSUES IN THE CURRENT LAW

Although there are no established laws on pet custody or visitation in Illinois or other states in the U.S., these issues are on the rise. Judges recognize that people have a very emotional attachment to their pets, and they are treating dogs more like children than like tables or chairs.

Ten years ago, a claim asserting a quasi-parental right to shared custody of the family dog would have been laughed out of court. Judges often state that there is not a lot they can do with pet issues in court, that dogs are simply property. Judges comment that: "I can only apportion them as property." "I can't order that the dog travel back and forth with the child and that the parent exercising custody care for it." "Even as part of a temporary hearing, there is no explicit provision enabling me to award temporary possession of the dog." "There is absolutely nothing that I can do about pets of children whose parents never married. Children are not allowed to own property." "Actually, guardianship of a minor's estate is the closest tool."

Courts often reject requests for shared custody or visitation of companion animals, citing reasoning such as a lack of statutory authority to support shared custody of personal property, DeSanctis v. Pritchard, 803 A.2d 230, 232 (Pa.Super.Ct. 2002), appeal denied, 818 A.2d 504 (Pa. 2003) hesitation to "open the floodgates" or judicial economy, Bennett v. Bennett, 655 So.2d 109, 110 (Fla.Dist.Ct.App. 1995) and the problems that would be presented in attempting to enforce such a decree (consider methods of enforcement and which agency would take responsibility for ensuring proper participation by the parties). *Id.* at 110-11.

Courts are also required to enforce visitation orders (through an injunction or restraining order, but not through damages, 27C C.J.S. Divorce Sec. 1043 (2009). See Eller v. Eller, 524 N.Y.S.2d 93 (N.Y.App.Div.2d Dept. 1988) and sometimes also by suspending the violating parent's visitation rights 27C C.J.S. Divorce Sec. 1044 (2009) See Robbins v. Robbins, 460 So.2d 1355, 1357 (Ala.Civ.App. 1984) involving children, 27C C.J.S. Divorce Sec. 1042 (2009). See Hartzell v. Norman T.L., 629 N.E.2d 1292, 1295 (Ind.Ct.App. 1994) which may add to judges' hesitancy to create such an order for a companion animal, considering the complications required enforcement would effect.

In IRMO Enders and Baker, 2015 IL.App (1st) 142435, the Court determined that there was no basis to grant pet visitation to the Husband, as the Wife would maintain possession of the two dogs. On appeal, the husband argued that the trial court erred in denying his request for visitation with the parties' two dogs. Specifically, husband contended that the court should make it clear that an Illinois court has the authority to

order pet visitation. Husband asserted that visitation would be in the best interest of the parties. (However, the case report contains no cite by the husband as to just what this authority is.)

The Appellate Court stated that, "whether a court has the authority to order pet visitation is a question of first impression in Illinois. Although we could not find an Illinois case that addressed visitation with regard to pets, the trial court cited to a decision from New York that did not allow dog visitation. Travis v. Murray, 977 N.Y.S.2d 621, 631 (N.Y. Sup. Ct. 2013). The New York Supreme Court declined to apply the "best interests" of the dog standard because dogs do not rise to the same level of importance as children. Travis, 977 N.Y.S.2d at 631. The court applied a "best for all concerned" standard, maintaining that "household pets enjoy a status greater than mere chattel." (Internal quotation marks omitted.) Travis, 977 N.Y.S.2d at 631. However, the court stated that awarding visitation "would only serve as an invitation for endless postdivorce litigation." Travis, 977 N.Y.S.2d at 631.

B. CONTRACTUAL REMEDIES IF PET AGREEMENT IS PART OF THE MARITAL SETTLEMENT AGREEMENT OR ORDER

(a) To promote amicable settlement of disputes between parties to a marriage attendant upon the dissolution of their marriage, the parties may enter into an agreement containing provisions for disposition of any property owned by either of them,...

(b) The terms of the agreement, except for those providing for the support, custody, and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence, produced by the parties, on their own motion or on request of the court, that the agreement is conscionable.

(c) If the court finds the agreement unconscionable, it may request the parties to submit a revised agreement or upon hearing, may make orders for the disposition of property, maintenance, child support, and other matters.

(d) Unless the agreement provides to the contrary, its terms shall be set forth in the judgment, and the parties shall be ordered to perform under such terms, or if the agreement states that its terms shall not be set forth in the judgment, the judgment shall identify the agreement and state that the court has approved its terms.

(e) Terms of the agreement set forth in the judgment are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

(f) Except for terms concerning the support, custody, or visitation of children, the judgment may expressly preclude or limit modification of terms set forth in the judgment if the agreement so provides....

Breach of Contract Remedies:

In breach of contract cases, any of the following can apply:

Cancellation: The court cancels the contract and decides that the parties are no longer bound by it.

Specific Performance: This is when the court forces the breaching party to perform the service or deliver the goods that they promised in the contract. This is typically reserved for cases when the goods or services are unique and no other remedy will suffice, <http://smallbusiness.findlaw.com/business-contracts-forms/what-is-the-most-common-legal-remedy-for-breach-of-contract>.

Specific Performance: A court decree that requires the breaching party to perform their part of the bargain indicated in the contract. For example, if one party has paid for a delivery of goods, but the other party did not ship them, a specific performance decree might require the goods to be properly delivered.

Contract Rescission: The former contract which is the subject of dispute is "rescinded" (cancelled), and a new one may be formed to meet the parties' needs. This is a remedy typically given when both parties agree to cancel the contract or if the contract was created through fraud.

Contract Reformation: The former contract is rewritten with the new contract reflecting the parties' true intent. Reformation requires a valid contract to begin with and often is used the parties had a mistaken understanding when forming the contract.

The court has a preference in favor of accepting the resolution of dissolution of marriage issues by agreement of the parties. This Section 502 and the case law provide that the terms of the parties' agreement, except those concerning the children of the parties, are binding upon the court, unless the court finds the agreement to be unconscionable, procured by fraud or coercion, or contrary to any rule of law, public policy or morals. IRMO Maher, 95 Ill.App.3d 1039, 420 N.E.2d 1144 (2nd Dist., 1981).

750 ILCS 5/510(b) states: "The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this State." The conditions that may justify reopening a property distribution include fraud, misrepresentation, concealment, coercion, mutual mistake of fact, and the like. "Whether a trial court has jurisdiction to modify a property distribution provision pursuant to 510(b) of the Act should be construed within the confines of 2-1401 of the Code of Civil Procedure." IRMO Hall, 404 Ill.App.3d 160, 935 N.E.2d 522 (2nd Dist., 2010). Also, see, Illinois Practice of Family Law, author's note 17, 750 ILCS 5/510.

The court should be bound by the parties' contractual agreement regarding the pet in the Judgment for Dissolution of Marriage unless an appropriate basis is found to vacate that provision, as described above.

**FACTUAL ELEMENTS TO BE CONSIDERED IN
A TYPICAL MARITAL PET ALLOCATION CASE**

by David H. Hopkins, Esq.

In light of the Illinois *Enders* case’s reliance on the New York case (*Travis*, set out in Appendix I) it appears that, theoretically, “shared possession,” with joint ownership could be effectuated under Section 503 of the IMDMA. A careful reading of both cases, however, points to actual “shared possession” not being a likely result in most adjudicated cases.

Travis involved two litigants, who each sought “sole residential custody” of a miniature dachshund. While approving a nuanced standard—i.e., “best interests for all concerned”—the NY appellate court made clear that, on remand, the trial court was to make an award of possession of the dog that would be “unqualified....” In *IRMO Enders and Baker*, 2015 Ill App (1st) 142 435, 48 N.E.3d, a case involving only the request of a husband for “visitation rights to two dogs jointly owned by the divorcing spouses, the Illinois Appellate Court endorsed the view that “pets enjoy a status greater than mere chattel,” but affirmed the trial court’s denial of the husband’s request, stressing concern as to endless post-divorce litigation.

Set out below is a list of factors* to serve as a starting point for analysis in any typical marital pet allocation case. In general, the following factors are “extrapolations” from IMDMA Section 503 and from IMDMA provisions relative to allocation of decision-making responsibility for children:

1. **Contribution(s) to and past participation in care of pet.**
2. **Needs [human, not canine] and actual reason(s) custody, visitation or possession is being sought.**
3. **Proposed “custodial” arrangements including financial elements. [Note: Kids can be key!]**
4. **Past cooperation with other party [or lack thereof], both as to pet and to other matters.**
5. **Prior agreement/course of conduct in “sharing” of pet.**
6. **Distance between new residences.**
7. **Willingness to continuing pet’s relationship with other party and/or with children.**
8. **Other factors unique to the case.**

*Note: No Illinois case or statute yet provides a definitive list of factors.

Chapter 9
TACTIC 6: ACKNOWLEDGE
AND APPRECIATE

Resolving conflict is rarely about who is right. It is about acknowledgment and appreciation of differences.

—Thomas F. Crum¹

WHAT DO ACKNOWLEDGE AND
APPRECIATE MEAN?

You need to ACKNOWLEDGE the other person is sharing their point of view, and you need to APPRECIATE the fact that they're doing it. Note that APPRECIATING is different from ACKNOWLEDGING. ACKNOWLEDGING means you are in the room, you are present, you are facilitating the conversation along with the mediator and the other party, and you are engaging with the other party in an effort to find a resolution. APPRECIATING is placing value on the fact that another party has shared their point of view with you. It doesn't mean you're agreeing with them—it just means you're APPRECIATING the fact that they are sharing their own ideas about the conflict and how to resolve it.

APPRECIATING the fact that someone is sharing their own ideas about the conflict and how to resolve it does not mean you're agreeing with them.

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HOW DO I ACKNOWLEDGE AND APPRECIATE?

Reflect the Other Person's Words Back to Them

If you reflect back to people what they say when they are angry—not with a condescending tone but just exactly what they say—there are several things that could happen. They may feel heard, understood, respected, and appreciated. They may self-correct because they realize how harsh they sound and they don't mean to come across like that. Or they may set you straight because you didn't hear them correctly. The mediator will reflect what both parties are saying so they can hear it out of the mediator's mouth as well.

Role-play in Advance

During conflict coaching or in preparation for mediation, I sit down with a client and role-play how the conversation with the other party might go. In the process, I help clients to recognize their own voice and hear things the other party will say that need to be ACKNOWLEDGED and APPRECIATED.

Get Feedback from an Observer

In my conflict resolution workshops, I have participants break up into groups and engage in mock mediations. One person plays the mediator, two other group members play the people in conflict, and yet another functions as a neutral observer. The observer often notices a lot of verbal and nonverbal communication that the people engaged in the conflict are com-

An observer can offer a huge insight that gets the person thinking about how they're coming across and helps them become less confrontational.

— 100 —

pletely unconscious of. The feedback gained through this exercise can be very valuable.

For example, if someone in a mock mediation exercise thought he had said nothing confrontational during the session, he might ask the observer for feedback and be surprised when the observer says, "That thing you said really pissed me off, and I'm not even the one you said it to." That can be huge insight that gets the person thinking about how he's coming across and helps him adjust his use of language to become less confrontational.

Understand the Costs and Benefits of Valuing APPRECIATION and ACKNOWLEDGMENT

If you ACKNOWLEDGE and APPRECIATE someone, they will feel that you're listening to them and giving them the respect they deserve. The cost of not doing so is that you will lose the friendship, lose the business, lose the relationship with your pet, or whatever it is that's worth keeping.

For example, if you're a veterinarian and you value the relationship with your clients—and all the prospective clients they might talk to in person or online—then the cost of not talking to them and not listening to them is losing those current and future relationships. If you do not want to pay that cost, then you must ACKNOWLEDGE and APPRECIATE your client in a way that allows you to ADDRESS and resolve the conflict.

Realize That the Primary Goal Is Understanding, Not Agreement

Agreement is never what I go into a discussion looking for. Instead, the goal is for you to better understand me and for me to better understand you. If we can come to an agreement, that's great, but if not, at least I'll know how you feel and you'll know how I feel. Therefore, engage with the other person in the belief that reaching

an agreement is secondary to finding out how that person feels and APPRECIATING their feelings. In fact, going through the process of understanding and APPRECIATING each other starts to defuse the conflict. It allows both of you to be right even though you have different points of view. Even further, it helps you start to find that gray area where you can become creative in resolving your dispute via a win/win solution.

Also, while there may be great value in agreeing, there may be costs involved, too. For example, in a divorce, you may want to keep your relationship with the dog but never see your ex again. The cost of reaching an agreement might be having to see your ex every time you see your dog.

If we can come to an agreement, that's great, but if not, at least I'll know how you feel and you'll know how I feel.

If you can't bear to pay that cost, you may instead have to pay the cost of hiring someone to transport the dog from your ex's house to your house on a regular basis. If you and your ex will pay for this transportation, you'll both have to decide whether that's a cost you're willing to bear so the dog stay in both your lives. It's possible that you both decide that the cost of seeing each other once a month while you hand off the dog is less "expensive" than the alternative. Or perhaps you're not willing to pay either of these costs to KEEP your relationship with the dog. Figuring this out is part of the process of finding the sweet spot.

Therefore, you may not want to make coming to an agreement paramount until you can work out the costs and benefits of any such agreement. If you only see costs in making an agreement, agreeing won't be much of a priority. Alternatively, if you enter into a discussion feeling that you have to come to an agreement or bust, then the process may quickly become demoralizing when it doesn't seem to be leading to agreement. Finally, you may be so wedded to a particu-

lar position that agreement on anything but what you want will be impossible. If, on the other hand, you go in with the simple belief that it is beneficial to have a conversation so you can understand the other person better, without the idea that you have to come to an agreement, then you can often reach a better place from which to construct an agreement that truly satisfies all parties.

If you go in with the belief that it is beneficial to have a conversation so you can understand the other party better, then you can often reach a better place from which to make an agreement.

1. Thomas H. Crum, *The Magic of Conflict: Turning a Life of Work into a Work of Art* (New York: Simon and Schuster, 1987), p. 49.

Chapter 10
PUTTING IT ALL TOGETHER

I find the great thing in this world is not so much where we stand, as in what direction we are moving.

—Oliver Wendell Holmes Sr.¹

Mediation works because when you STOP, DROP, and ROLL, you put out the flames of conflict. If you STOP talking and just listen, DROP the need to be right, and let what the other party says ROLL off your back, then the fire of emotional conflict cannot burn you, nor can it be fed by the fuel of anger and disagreement. Using STOP, DROP, and ROLL enables anyone who has a pet, takes care of people's pets for a living, or lives near other people's pets to have conversations that are less confrontational, more constructive, and more likely to lead to peaceful resolutions. Employing STOP, DROP, and ROLL also enables pet owners to hear what their veterinarian, ex-spouse, or neighbors have to say without taking it as an attack.

Then, once the parties have used STOP, DROP, and ROLL so that they all feel heard and respected by each other, they are able to ADDRESS their conflict, getting all the facts out on the table and all their proposed solutions up on the board. Using the techniques described in this book, the parties and their mediator can look at the conflict objectively, understanding what's at the root of it and which solutions would be acceptable to everyone.

Driving all of this is a desire among the parties to KEEP their relationship, even if they don't realize it at the time. To allow all that to happen, the parties must ACKNOWLEDGE and APPRECIATE

each other, realizing that the energy they're expending to simply understand each other is a worthy effort all by itself that should be honored.

If the people involved do all of this, they will be able to resolve their conflict and retain their relationship at an affordable price—the exact opposite of what would have happened if they had gone to litigation.

1. Oliver Wendell Holmes Sr., *The Autocrat of the Breakfast Table* (1858; Boston: James R. Osgood and Co., 1873), p. 68, www.gutenberg.org/ebooks/751.

**42 Misc.3d 447
977 N.Y.S.2d 621
2013 N.Y. Slip Op. 23405**

**Shannon Louise TRAVIS, Plaintiff,
v.
Trisha Bridget MURRAY, Defendant.**

**Supreme Court, New York County, New
York.**

Nov. 29, 2013.

[977 N.Y.S.2d 622]

Rhonda J. Panken, Esq., New York, for the
Plaintiff.

Sherri Donovan, Esq., New York, for the
Defendant.

MATTHEW F. COOPER, J.

People who love their dogs almost always love them forever. But with divorce rates at record highs, the same cannot always be said for those who marry. All too often, onetime happy spouses end up as decidedly unhappy litigants in divorce proceedings. And when those litigants own a dog, matrimonial judges are called upon more and more to decide what happens to the pet that each of the parties still loves and each of them still wants. This case concerns one such dog, a two and a half year-old miniature dachshund named Joey.

Joey finds himself in a tug-of-war between two spouses in the midst of a divorce proceeding to end their extremely short and childless marriage. In fact, the only issue in this case is what will become of the parties' beloved pet. Plaintiff, Shannon Louise Travis (plaintiff), alleges

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that the defendant, Trisha Bridget Murray (defendant), wrongfully took Joey at the time the couple separated. Consequently, by way of this motion, she seeks not only an order requiring defendant to return Joey to her, but an order awarding her what she terms “sole residential custody” of the dog.

Background

The first divorce case I heard involving a dog was a post-judgment proceeding in 2010. The dog in question, Otis, was a fifteen year-old yellow Labrador retriever. The ex-wife alleged that her ex-husband had taken Otis from her home without her permission and had refused her and their children access to him. As a result, she filed a motion seeking an order giving her “full custody” of the dog. During the same time period, the February 1, 2010 issue of *New York* magazine hit the newsstand. The magazine's cover featured a photograph of a Boston terrier staring up with a face exhibiting equal parts bemusement and bewilderment. Like many of us, the dog was no doubt considering the question that appeared next to the photograph: “A Dog Is Not a Human Being Right?”

With its finger on the pulse of our collective New York psyche, the issue's lead story, “The Rise of Dog Identity Politics,” vividly described a canine-centric city where dogs play an ever more important role in our emotional lives (John Homans, *The Rise of Dog Identity Politics*, New York, Feb. 1, 2010 at 20). It detailed many aspects of what the writer referred to as the “humanification” of our pets, from the foolishness of high-end doggie boutiques to the morality of spending untold sums of money to prolong a dog's naturally limited life with extensive medical procedures. I intended to discuss the story in my Otis decision.

However, before that decision was complete, the ex-wife, for reasons that included Otis's advanced age and failing health, withdrew her motion. Sadly, Otis died



a few months later, thus in his own way resolving once and for all the strife that had surrounded him during the last year of his life. Because Joey, the dog at issue here, is so young, with a life span of at least another 10 years, it is unlikely that the battle being fought over him will be abated by death, as was the case with Otis. Rather, all indications are that this court will be called upon to decide with whom Joey will spend the rest of his years.

Coincidentally, with a new canine case before me, another of New York City's major publications ran an opinion piece examining the unique relationship between dogs and people. The piece, "Dogs Are People, Too," which appeared in the Sunday Review section of the *New York Times*, urges that dogs be granted what the author calls "personhood." In taking this position, the author, a neuroscientist, relies on M.R.I. scans that he contends show dogs to have a range of emotions similar to those of human beings (Gregory Berns, *Dogs Are People, Too*, *New York Times*, Oct. 6, 2013, § SR at 5, col. 1).

The earlier *New York* magazine story and the more recent *Times* opinion piece highlight the distinct trend towards looking at dogs as being far more than property, a trend that has only intensified over the last few years. Whereas the *New York* story looked at "dog humanization" from a slightly ironic perspective, the *Times* piece, with its insistence upon dog-personhood, is quite serious in its call for dogs to be treated much the same way we treat people.

Neither of the two articles mention dog custody. In fact, it appears that the last time the subject was discussed in the New York press was on August 22, 1999, when

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the *Times* ran a story in the Style Section entitled "After the Breakup, Here Comes the Joint-Custody Pet" (Alexandra Zissu, *After*

the Breakup, Here Comes the Joint-Custody Pet, *New York Times*, Aug. 22, 1999, § S). What is even more surprising, considering New Yorkers' dedication to their dogs and their propensity for litigation, is that there are so few reported cases from the courts of this state dealing with pet custody in general and no cases at all making a final award of a pet to either side in the context of a divorce. As a result, courts are left with little direction with respect to questions surrounding dog custody: Can there be such a thing as "custody" of a canine? If so, how is a determination to be made? And if not, how does the court decide what happens when a couple divorces and each of them wants the beloved dog as her own?

Facts and Parties' Contentions

Plaintiff and defendant were married on October 12, 2012. Before their marriage, they resided in the same Upper Manhattan apartment that they continued to occupy after the marriage. On February 6, 2011, while the parties were living together but before they married, plaintiff bought Joey from a pet store. At the time of his purchase, Joey was a ten week-old puppy.

On June 11, 2013, defendant moved out of the marital apartment while plaintiff was away from New York on a business trip. Defendant took some furniture and personal possessions with her. She also took Joey. According to plaintiff, defendant first refused to tell her where Joey was but then later claimed that she had lost him while walking in Central Park.

Plaintiff filed for divorce on July 11, 2013. Two months after the commencement of the divorce, plaintiff brought this motion. In her application, plaintiff requested that defendant be directed to immediately account for Joey's whereabouts since the date he was removed from the marital apartment, that he be returned to plaintiff's "care and custody," and that she be granted an "order of sole

residential custody of her dog.” Once the motion was made, defendant revealed that Joey was never lost in Central Park, but instead was living with her mother in Freeport, Maine. Thus, this leaves the last two prongs of the motion to be resolved.

Plaintiff argues that Joey is her property because she bought him with her own funds prior to the marriage. She alleges that defendant, in effect, stole the dog when she removed him from the marital apartment and subsequently relocated him to Maine. Moreover, asserting that she “was the one who cared for and financially supported Joey on a primary basis,” plaintiff contends that it is in Joey’s “best interests” that he be returned to her “sole care and custody.”

Defendant opposes the motion in all respects. In so doing, she states that Joey was a gift to her from plaintiff as a consolation for her having to give away her cat at plaintiff’s insistence. Defendant further contends that she shared financial responsibility for the dog, that she “attended to all of Joey’s emotional, practical, and logistical needs,” and that “Joey’s bed was next to [her] side of the marital bed.” Finally, defendant submits that it is in Joey’s “best interests” not to be with plaintiff, but instead to be with her mother in Maine, where defendant can see him regularly and where he is “healthy, safe and happy.”

Thus, both sides invoke two different approaches in determining which one should be awarded Joey. The first approach is the traditional property analysis, with plaintiff maintaining that Joey is her property by virtue of having bought him and defendant maintaining that the dog is hers as a result of plaintiff having gifted him to her. The second approach is the

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custody analysis, with each side calling into play such concepts as nurturing, emotional

needs, happiness and, above all, best interests—concepts that are firmly rooted in child custody analyses.

Discussion

Whatever one may think of treating our dogs like people—whether it is called “humanification,” “personhood,” or some other means of endowing dogs with humanlike qualities—it is impossible to deny the place they have in our hearts, minds and imaginations. From Odysseus’s ever-faithful dog Argo in Homer’s *The Odyssey*, to the All-American collie Lassie, to the Jetsons’ futuristic canine Astro, to Dorothy’s little dog Toto too, they are beloved figures in literature, movies and television. And in real life, where would we be without St. Bernards and their casks of brandy in the Alps, Pavlov’s conditioned-response subjects, Balto the hero sled-dog racing to the rescue in the Arctic, or, of course, the Nixon daughters’ little cocker spaniel Checkers? ¹

It is also obvious that dogs, and household pets in general, receive an ever increasing amount of our time, attention and money.² Where once a dog was considered a nice accompaniment to a family unit, it is now seen as an actual member of that family, vying for importance alongside children. The depth of this familial attachment is evidenced by statistics cited in “Bones of Contention: Custody of Family Pets,” which appeared in the 2006 *Journal of the American Academy of Matrimonial Lawyers* (Ann Hartwell Britton, *Bones of Contention: Custody of Family Pets*, 20 J. Am. Acad. Matrim. Law 1 [2006]). These statistics show that 76% of pet owners feel guilty about leaving their pets at home, 73% have signed a greeting card “from the dog,” 67% take their pets to the veterinarian more often than they go to their own doctors, 41% take their dogs on vacation with them, and 38% telephone their pets so the animals can hear their voices when they are away. Perhaps even more striking is the article’s report that “a Gallup Poll showed

most pet owners would not trade their pets for even \$1 million in cash.”

While the dog owners of New York might uniformly regard their pets as being far more than mere property, the law of the State of New York is in many ways still largely at odds with that view. The prevailing law, which has been slow to evolve, is that, irrespective of how strongly people may feel, a dog is in fact personal property—sometimes referred to as “chattel”—just like a car or a table (*see Mullaly v. People*, 86 N.Y. 365 [1881]; *Schrage v. Hatzlacha Cab Corp.*, 13 A.D.3d 150, 788 N.Y.S.2d 4 [1st Dept. 2004]; *Rowan v. Sussdorff*, 147 App.Div. 673, 132 N.Y.S. 550 [2d Dept. 1911]; *ATM One, LLC v. Albano*, 2001 N.Y. Slip Op. 50103[U], 2001 WL 1722773 [Nassau Dist. Ct. 2001]). This means that if a veterinarian negligently dispatches your treasured Yorkshire terrier, the most you can count on recovering as compensation is the animal's fair market value (*see*

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Jason v. Parks, 224 A.D.2d 494, 638 N.Y.S.2d 170 [2d Dept. 1996]). And unless your Yorkshire terrier was a pure-bred show dog, that fair market value, as opposed to sentimental, will be relatively small no matter how wonderful the dog was or how heartbroken and traumatized your family is by its loss (*see Smith v. Palace Transp.*, 142 Misc. 93, 253 N.Y.S. 87 [N.Y. Mun. Ct. 1931] [a fox terrier]; *Mercurio v. Weber*, 2003 N.Y. Slip Op. 51036[U], 2003 WL 21497325 [Nassau Dist. Ct. 2003] [Dexter and Bentley, Yorkshire terriers]). Similarly, if that same veterinarian successfully treats the dog but for some reason refuses to return it, your remedy is to bring an action for replevin—the same remedy you would have if an automobile mechanic refused to return your Volvo or your Ford (*see Merriam v. Johnson*, 116 App.Div. 336, 101 N.Y.S. 627 [1st Dept. 1906]).

Replevin is the means by which non-matrimonial actions regarding ownership and possession of dogs have generally come before New York courts (*see e.g. Le Conte v. Lee*, 35 Misc.3d 286, 935 N.Y.S.2d 842 [Civ. Ct., N.Y. County 2011] [Bubkus, a maltese]; *Webb v. Papaspiridakos*, 23 Misc.3d 1136 [A], 2009 N.Y. Slip Op. 51152[U], 2009 WL 1605949 [Sup. Ct., Queens County 2009] [Precious, a Jack Russell terrier]; *Saunders v. Reeger*, 50 Misc.2d 850, 271 N.Y.S.2d 788 [Suffolk Dist. Ct. 1966] [Misty, an Irish setter]; *see also Cent. W. Humane Socy., Inc. v. Hilleboe*, 202 Misc. 881, 884, 116 N.Y.S.2d 403 [Sup. Ct., Westchester County 1952] [discussing the value of dogs in general and an owner's property rights in them]; *Mongelli v. Cabral*, 166 Misc.2d 240, 632 N.Y.S.2d 927 [Yonkers City Ct. 1995] [small claims action over Peaches, a Molluccan Cockatoo]). With the standard for replevin being “superior possessory right in the chattel” (*Pivar v. Graduate Sch. of Figurative Art of the N.Y. Academy of Art*, 290 A.D.2d 212, 735 N.Y.S.2d 522 [1st Dept. 2002]), it is the property rights of the litigants, rather than their respective abilities to care for the dog or their emotional ties to it, that are ultimately determinative.

Even in the one reported case where a New York court awarded temporary possession of a pet in the context of a divorce proceeding, *C.R.S. v. T.K.S.*, 192 Misc.2d 547, 746 N.Y.S.2d 568 [Sup. Ct., N.Y. County 2002], the award to the wife of the couple's “five year-old chocolate labrador retriever” was based solely on the fact that the dog was an “interspousal gift” to her. Any doubt that the court in *C.R.S.* was utilizing a strict property analysis in its granting of temporary possession is confirmed by the direction in the decision that “[t]he determination of the final distributive award of the dog will be made at trial. A credit for any proven value of the dog could be made at that time” (*id.* at 550, 746 N.Y.S.2d 568). The clear implication is that the Labrador retriever was to be “distributed” just like any other item of

marital property subject to equitable distribution, be it a television or a set of dishes.³

Nevertheless, at the same time that the traditional property view has continued to hold sway, there has been a slow but steady move in New York case law away from looking at dogs and other household pets in what may be seen as an overly reductionist and utilitarian manner. One of the first of these cases, *Corso v. Crawford Dog and Cat Hospital, Inc.*, 97 Misc.2d 530, 415 N.Y.S.2d 182 [Civ. Ct., Queens County 1979], involved a veterinarian who

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wrongfully disposed of the remains of the plaintiff's poodle and then attempted to conceal the fact by putting the body of a dead cat in the dog's casket. Finding that the distressed and anguished plaintiff was entitled to recover damages beyond the market value of the dog, the court held that "a pet is not just a thing but occupies a special place somewhere in between a person and a personal piece of property" (*id.* at 531, 415 N.Y.S.2d 182).

In this same vein, the Appellate Division, Second Department, in a 2008 case brought by a cat owner against an animal shelter, cited the extensive array of laws that exist in New York for the protection of pets (*Feger v. Warwick Animal Shelter*, 59 A.D.3d 68, 870 N.Y.S.2d 124 [2d Dept. 2008]). The court, after observing that "[t]he reach of our laws has been extended to animals in areas which were once reserved only for people," went on to underscore that "[t]hese laws indicate that companion animals are treated differently from other forms of property. Recognizing companion animals as a special category of property is consistent with the laws of the State ..." (*id.* at 72, 870 N.Y.S.2d 124).

Courts in other states have also had occasion to deviate from the strict pets-equal-

property viewpoint to find that household pets have a special status surpassing ordinary personalty or chattel. In a widely-cited decision involving a "mixed-breed dog, Boy," the Vermont Supreme Court, drawing on *Corso's* statement that a pet is "somewhere in between a person and a personal piece of property," noted that "modern courts have recognized that pets do not fit neatly within traditional property law principles" (*Morgan v. Kroupa*, 167 Vt. 99, 702 A.2d 630 [1997]).

Likewise, the Wisconsin Supreme Court in *Rabideau v. City of Racine*, 243 Wis.2d 486, 491, 627 N.W.2d, 795, 798 [2001] [internal footnotes omitted], stated the following:

[W]e are uncomfortable with the law's cold characterization of a dog ... as mere "property." Labeling a dog "property" fails to describe the value human beings place upon the companionship that they enjoy with a dog. A companion dog is not a fungible item, equivalent to other items of personal property

(see also *Juelfs v. Gough*, 41 P.3d 593 [Alaska 2002] [in a "custody" battle over Coho, a chocolate Labrador retriever, giving some credence to the ex-wife's claim that "a pet is not just a thing"]; *Bueckner v. Hamel*, 886 S.W.2d 368, 377-378 [Tex.App.-Houston [1st Dist.] 1994] [Freckles, a one year-old Dalmatian and Muffin, a two year-old Australian shepherd] ["Society has long since moved beyond the untenable Cartesian view that animals are unfeeling automatons and, hence, mere property"], *writ denied* [1995]; *Goodby v. Vetpharm, Inc.*, 182 Vt. 648, 927 A.2d 792 [2007] ["Pets may be distinguished from other chattel by the mutual relationship: Pet owners love their pets and their pets love them back"]).

It is from this state though, and from the First Department in particular, that we have one of the most important statements from a

“modern court” as to the “de-chattelization” of household pets. The case *Raymond v. Lachmann*, 264 A.D.2d 340, 695 N.Y.S.2d 308 [1st Dept. 1999] is certainly the most relevant to the inquiry as to how a court should best proceed when dealing with a dispute like the one over Joey. In *Raymond*, the court was called upon to resolve the issue of who was entitled to “ownership and possession of the subject cat, Lovey, nee Merlin.”⁴ In a short, poignant opinion, the court wrote:

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Cognizant of the cherished status accorded to pets in our society, the strong emotions engendered by disputes of this nature, and the limited ability of the courts to resolve them satisfactorily, on the record presented, we think it best for all concerned that, given his limited life expectancy, Lovey, who is now almost ten years old, remain where he has lived, prospered, loved and been loved for the past four years (*id.* at 341, 695 N.Y.S.2d 308).

Raymond is significant for both what it does and does not do. The decision is a clear statement that the concept of a household pet like Lovey being mere property is outmoded. Consequently, it employs a new perspective for determining possession and ownership of a pet, one that differs radically from the traditional property analysis. This new view takes into consideration, and gives paramount importance to, the intangible, highly subjective factors that are called into play when a cherished pet is the property at issue. The factors touched upon in the decision include the concern for Lovey's well-being as an elderly cat and the special relationship that existed between him and the person with whom he was living, a relationship that is described, rather nicely, as one where Lovey has “loved and been loved.” In making its determination to keep Lovey in his present home, the First Department apparently concluded that the

intangibles transcended the ordinary indicia of actual ownership or right to possession such as title, purchase, gift, and the like.

After reviewing the progression of the law in both New York and other states, it can be concluded that in a case such as this, where two spouses are battling over a dog they once possessed and raised together, a strict property analysis is neither desirable nor appropriate. Although Joey the miniature dachshund is not a human being and cannot be treated as such, he is decidedly more than a piece of property, marital or otherwise. As a result, whether plaintiff bought Joey from the pet store with her own funds or whether defendant received him from plaintiff as a gift is only one factor to consider when determining what becomes of him.

But if not a strict property analysis, what should be the process by which Joey's fate is decided and what standard should be applied in making that determination? Should the court adopt a custody analysis similar to that used for child custody? And if so, is the well-established standard of “best interests of the child” to be replaced by that of “best interests of the canine?”

Because of the paucity of New York case law addressing these matters, it is useful to turn once again to decisions from the courts of other states. There are a small number of cases that actually use the term “custody” in making an award of a dog to a spouse or ex-spouse (*see e.g. Juelfs*, 41 P.3d 593 [granting “sole custody” of Coho the chocolate Labrador retriever to ex-husband]; *Van Arsdale v. Van Arsdale*, 2013 WL 1365358, *4 [2013], 2013 Conn. Super. LEXIS 574 [“The parties shall have joint legal custody of the labrador retrievers but the labrador retrievers' principal place of residence shall be with plaintiff”]).

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One decision, *Placey v. Placey*, 51 So.3d 374 [Ala. Ct. Civ. App. 2010], in which the court relied on an Alabama animal protection statute in awarding “a dog named Preston” to one family member over another, goes so far as to expressly refer to the “best interests” of the dog.

The majority of cases from other jurisdictions, however, have declined to extend child custody precepts to dog disputes. Some have been plainly dismissive (*see e.g. Desanctis v. Pritchard*, 803 A.2d 230, 232 [Pa. Super. Ct. 2002] [shared custody of a dog, Barney, not permissible because he is personal property and as such, said arrangement would be “analogous, in law, to [custody of] a table or a lamp”]). Particularly notable is the language used in *Clark v. McGinnis*, 298 P.3d 1137 [Kan. Ct. App. 2013] [table; text at 2013 WL 1444421, 2013 Kan App Unpub. LEXIS 305 [Kan. Ct. App. 2013]]. There, the Kansas Court of Appeals declined to award the appellant “custody” of Dinky, one of the parties’ three dogs. In holding that the “argument that child custody laws should be applied to dogs is a flawed argument,” the court observed, with the classic Midwestern gift for stating the obvious, that “[o]ne relevant difference between children and dogs is that children are human beings and dogs are domestic animals” (*id.* at 2013 WL 1444421, *2, 2013 Kan. App. Unpub. LEXIS 305, *7).

Still, there is a good body of case law from other states that, while not embracing the application of child custody principles to cases of dog ownership and possession, takes a nuanced position that considers at least some of the factors traditionally associated with child custody (*see e.g. Baggett v. Baggett*, 2013 WL 4606383, *12 [Tenn. Ct. App. 2013] [“As to ownership of the parties’ dogs, it is evident that the trial court considered their needs and the ability of the parties to care for them”]; *Aho v. Aho*, 2012 WL 5235982, *5 [Mich. Ct. App. 2012] [“[T]he trial court found that awarding Finn

[the dog] to plaintiff was proper in order to keep all of the animals together”]; *see also Wolf v. Taylor*, 224 Or.App. 245, 250, 197 P.3d 585 [Ore. Ct. App. 2008] [while not directly addressing issue of whether agreement regarding visitation of a dog is enforceable, positing that it “certainly is an interesting question”]).

With the exception of *Placey*, the Alabama case, even the decisions employing custody or custody-like considerations to dog disputes have uniformly rejected the application of a “best interests” standard. As the Vermont Supreme Court stated in *Morgan*, a case pitting the former owner of a lost dog against its finder: “[T]he trial court was correct that family law provides an imperfect analogue. However strong the emotional attachments between pets and humans, courts simply cannot evaluate the best interests’ of an animal” (167 Vt. at 103, 702 A.2d 630). Similarly, in *Houseman v. Dare*, 405 N.J.Super. 538, 544, 966 A.2d 24, 28 [2009], a case in which former fiances ended their engagement but proceeded to remain tied to one another through extensive litigation over their dog, the court acknowledged that “sincere affection for and attachment to” a pet is a special subjective value that needs to be considered “in resolving questions about possession.” But the New Jersey court, quoting *Morgan* with respect to a court’s inability to evaluate an animal’s best interests, stated: “We are less confident that there are judicially discoverable and manageable standards for resolving questions of possession from the perspective of a pet, at least apart from cases involving abuse or neglect contrary to public policies expressed in laws designed to protect animals” (*id.* at 545, 966 A.2d 24).

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Although the opinion by the First Department in *Raymond* can be read as a firm declaration that household pets enjoy a status greater than mere chattel, the decision,

irrespective of its use of language that is in some ways suggestive of a child custody, does not direct that the resolution of a pet dispute be undertaken by engaging in a process comparable to a child custody proceeding. Nor does it state that a court should utilize a best interests standard in determining to whom the pet should be awarded. In fact, the term “best interests” appears nowhere in the decision. Instead, the term that is used is “best for all concerned” (*id.* at 341, 695 N.Y.S.2d 308). Thus, when the parties here cite *Raymond* for the proposition that Joey’s “best interests” must be considered in determining their competing claims for him, the citation is inapposite (*see Dubin v. Pelletier*, 2012 WL 5983184 [R.I. Super. Ct. 2012] [in determining possession of a Norfolk terrier “fondly referred to as Mr. Big,” citing *Raymond* for its standard of “best for all concerned,” but noting that the *Raymond* court was “not engaging in best interests analysis”]).⁵

Child custody battles are difficult, painful and emotionally wrenching experiences for all concerned: the parties, the children, the attorneys and the court. The New York State Court of Appeals, in writing about one facet of child custody, relocation, could have been describing custody cases in general when it stated that such cases “present some of the knottiest and most disturbing problems that our courts are called upon to resolve” (*Tropea v. Tropea*, 87 N.Y.2d 727, 736, 642 N.Y.S.2d 575, 665 N.E.2d 145 [1996]). A determination in a custody proceeding must be guided by the overriding and well established standard of the child’s best interests (*Eschbach v. Eschbach*, 56 N.Y.2d 167, 451 N.Y.S.2d 658, 436 N.E.2d 1260 [1982]; *see also Zafran v. Zafran*, 306 A.D.2d 468, 469, 761 N.Y.S.2d 317 [2d Dept. 2003] [“In child custody determinations, a court must decide what is in the best interests of the child, and what will promote his or her welfare and happiness”]). A court needs a tremendous amount of information upon which to make a best

interests finding. This almost always necessitates the appointment of an attorney for the children; the appointment of a forensic psychiatrist or psychologist to evaluate the children and the parties as well as to conduct collateral interviews with teachers, child care providers, pediatricians and the like; the taking of extended testimony, both from lay and expert witnesses; and the court hearing from the children themselves in an *in camera* proceeding.

Obviously, the wholesale application of the practices and principles associated with child custody cases to dog custody cases is unworkable and unwarranted. As has been noted in decisions previously cited, it is impossible to truly determine what is in a dog’s best interests. Short of the type of experimental canine M.R.I.s discussed in the *New York Times* piece “Dogs are People, Too,” there is no proven or practical means of gauging a dog’s happiness

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or its feelings about a person or a place other than, perhaps, resorting to the entirely unscientific method of watching its tail wag. The subjective factors that are key to a best interests analysis in child custody—particularly those concerning a child’s feelings or perceptions as evidenced by statements, conduct and forensic evaluations—are, for the most part, unascertainable when the subject is an animal rather than a human.

Even if there were a method to readily ascertain in some meaningful manner how a dog feels, and even if a finding could be made with regard to a dog’s best interests, it is highly questionable whether significant resources should be expended and substantial time spent on such endeavors. It is no secret that our courts are overwhelmed with child custody cases, cases in which the happiness and welfare of our most precious commodity,

children, are at stake. To allow full-blown dog custody cases, complete with canine forensics and attorneys representing not only the parties but the dog itself, would further burden the courts to the detriment of children. Such a drain of judicial resources is unthinkable. This does not mean, however, that cases like this one, in which it appears that each spouse views the dog as a family member and sincerely believes that he would be better off in her care, should be given short shrift. After all, matrimonial judges spend countless hours on other disputes that do not rise to a level of importance anywhere near that of children. If judicial resources can be devoted to such matters as which party gets to use the Escalade as opposed to the Ferrari, or who gets to stay in the Hamptons house instead of the Aspen chalet, there is certainly room to give real consideration to a case involving a treasured pet.

With this in mind, it is appropriate that the parties here be given a full hearing. Full does not mean extended; the hearing shall not exceed one day. The standard to be applied will be what is “best for all concerned,” the standard utilized in *Raymond*. In accordance with that standard, each side will have the opportunity to prove not only why she will benefit from having Joey in her life but why Joey has a better chance of living, prospering, loving and being loved in the care of one spouse as opposed to the other. To this end, the parties may need to address questions like: Who bore the major responsibility for meeting Joey's needs (i.e., feeding, walking, grooming and taking him to the veterinarian) when the parties lived together? Who spent more time with Joey on a regular basis? Why did plaintiff leave Joey with defendant, as defendant alleges, at the time the couple separated? And perhaps most importantly, why has defendant chosen to have Joey live with her mother in Maine, rather than with her, or with plaintiff for that matter, in New York?

At this juncture, it should be made clear that, absent an appeal, the one-day hearing to determine who gets Joey will be the final proceeding on this issue. The award of possession will be unqualified. This means that whichever spouse is awarded Joey will have sole possession of him to the complete exclusion of the other. Although regrettably a harsh and seemingly unfeeling outcome, it is the only one that makes sense. As has been stated, our judicial system cannot extend to dog owners the same time and resources that parents are entitled to in child custody proceedings. The extension of an award of possession of a dog to include visitation or joint custody—components of child custody designed to keep both parents firmly involved in the child's life—would only serve as an invitation for endless post-divorce litigation, keeping the parties needlessly tied to one another and to the court (*see*

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Prim v. Fisher, 2009 WL 6465236 [Vt. Super. Ct. 2009] [“Judicial economy would not be served by overseeing joint custody of a pet” golden retriever named Kaos]; *Juelfs*, 41 P.3d at 597 [“[T]he parties were unable to share custody of Coho without severe contention”]).⁶ While children are important enough to merit endless litigation, as unfortunate as that litigation may be, dogs, as wonderful as they are, simply do not rise to the same level of importance.

Conclusion

The changes in the way society regards dogs and other household pets all but insures that cases involving the type of dispute seen here will only increase in frequency. In *Raymond*, the First Department referred to “the limited ability of the courts to resolve” such cases (*id.* at 341, 695 N.Y.S.2d 308). It is my hope that the analysis engaged in here, including the survey of cases from both New York and other states, will help other courts more successfully deal with the conflict that

ensues when a couple separates, a marriage ends, and a Joey, an Otis, a Bubkus, or a Lovey is left in the wake.

In accordance with the foregoing, plaintiff's motion is granted to the extent of setting the case down for a hearing to determine who shall have final possession of the dog, Joey. The hearing will proceed on a date to be arranged between the court and counsel for the parties.

This constitutes the decision and order of the court.

Notes:

¹ Full disclosure: I own a dog, a rescued pit bull mix named Peaches. She is loving, loyal and kind, and at age 12 is still able to leap tall buildings in a single bound in order to catch a frisbee.

² According to *The Atlantic*, Americans spent \$52 billion on their pets in 2012 (Derek Thompson, *TheAtlantic.com*, *These 4 Charts Explain Exactly How Americans Spend \$52 Billion on Our Pets in a Year*, <http://www.theatlantic.com/business/archive/2013/02/these-4-chartsexplain-exactly-how-americans-spend-52-billion-on-our-pets-in-a-year/273446/> [Feb. 23, 2013]). This sum, which is greater than the gross national product of Bulgaria, is twice the annual amount we spent on our pets 20 years ago.

³ That the judge in *C.R.S.* was none too pleased with having to deal with a dog is made obvious by her comment: "The court notes that the time and money expended litigating this issue could have been used to negotiate and fund a settlement" (*id.* at 550, 746 N.Y.S.2d 568).

⁴ Because the case before me is about a dog, this decision, with the exception of one cited case concerning a bird, has largely focused on dogs. Yet, it must be acknowledged that cats, for reasons that might be hard to fathom by dog-owners, also play an important role in our lives as companion pets. And even though cats are far less visible in this city, as they neither walk on leashes—usually—nor play in dog runs, they are clearly experiencing a wave of popularity not equaled since ancient Egypt, when their hieroglyphic images adorned obelisks and tombs.

⁵ Two of the New York cases previously cited, *Feger* and *Le Conte* attribute a best interests standard to *Raymond*. Like the parties here, the courts in the two cases apparently confused the decision's use of the term "best for all concerned" with the more familiar term "best interests." It should be recognized that the court in *Le Conte* nonetheless engaged in a thoughtful analysis of matters bearing on the well-being of the dog Bubkus before ultimately finding that the plaintiff had a "superior possessory right" and was thus "entitled to the return of his canine companion" (*Le Conte*, 35 Misc.3d at 288, 935 N.Y.S.2d 842). As a result, it might be said that the plaintiff got Bubkus and the defendant got nothing.

⁶ Although courts should not entertain applications for "joint custody or visitation" with regard to a pet, the parties are, of course, always free, and in fact are encouraged, to informally make their own arrangements (*see Le Conte*, 35 Misc.3d 286, 288, 935 N.Y.S.2d 842 ["While there is no legal obligation to do so, the court hopes the parties will find a way for Bubkus to continue to spend time with both parties"]). These arrangements, however, cannot be judicially sanctioned by way of a "so ordered" stipulation or agreement, and they will not be enforceable in



a post-judgment or any form of court proceeding.

From the Prosecutor's Desk: Notes from the Field

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This segment includes all materials received by the course book publication deadline.
Please contact the speaker for any other materials used at the program.



**ISBA 8th Annual Animal Law Conference
March 3, 2017**

Jennifer Bagby

Assistant State's Attorney
Deputy Supervisor
Felony Review Unit
Cook County State's Attorney's Office

**AGGRAVATED CRUELTY
510 ILCS 70/3.02**

- No person may intentionally commit an act that causes a companion animal to suffer serious injury or death

People v. Samuel Primbas

KEY PLAYERS

- Shelby – 9 year old female Rottweiler
- G.B. – Shelby's 44 year old owner
- Samuel Primbas – offender and acquaintance / distant relative of G.B.
- J.P. – offender's mom and acquaintance of G.B.

FACTS OF THE CASE

- On 11/17/07, at approximately 8:45 a.m., 44 year old GB walked her dog Shelby to a nearby friend's house. The friend, JP, was the offender's mother.
- GB tied Shelby to the deck outside of the house. Shelby was wearing a fluorescent collar and a leash.
- After 10 minutes or so, GB heard noises on the deck and went out to check on Shelby

- Shelby was lying on her side with an apparent GSW to her leg.
- The offender was standing at the bottom of the deck steps.
- Shelby died on the deck within minutes of GB finding her.
- The offender suggested that a neighbor or neighbor kids could have shot Shelby.

- The offender suggested / insisted that they just bury Shelby there at his mother's home so they did.
- The offender made numerous statements later that day and the next day to GB and her family that he had shot Shelby because he thought she was a stray dog.
- The offender tried to give GB a new puppy

- GB returned the next day and Shelby's remains were dug up and re-buried at GB's father's home .
- Shelby was exhumed on 11/23/07 and sent to the University of Illinois for a necropsy.

RESULTS OF NECROPSY

- The cause of death is most likely related to the hemorrhages and the accumulation of blood in the thoracic cavity.
- The presence of a pellet in the perirenal tissues confirms a prior history of gunshot trauma.
- Potentially a pellet shot through the thorax (with the pellet passing into the abdomen ending in the perirenal tissue) may have damaged a vessel extending off the aorta leading to the hemorrhage

PROCEDURAL HISTORY

- Offender initially charged with a misdemeanor Cruelty to Animals
- Case upgraded to felony Aggravated Cruelty after necropsy results
- Due to the offender's employment he was not willing to take a felony conviction
- Case went to bench trial

AT TRIAL

- Offender's story changed from shooting Shelby because he thought she was a stray dog to thinking Shelby was a wild coyote on his mother's deck eating garbage. Testified that he saw the "coyote" on the deck, got the gun, shot from below, assumed it ran away but never checked before he went into the garage.

WHAT WE HAD TO PROVE

1. D intentionally committed an act that caused a companion animal to suffer serious injury or death
2. D intended to cause serious injury or death to the animal

MEETING OUR BURDEN

1. *D intentionally committed an act* – D's multiple statements to multiple people that he shot Shelby

MEETING OUR BURDEN *cont.*

2. *D's act caused serious injury or death*

Necropsy established cause of death

MEETING OUR BURDEN *cont.*

3. *D intended to cause serious injury or death*

(This was the real issue in the case)

Circumstantial evidence based on D's changing story and D's actions

RESULTS

- Offender found guilty of Class 4 Aggravated Cruelty
- Offender sentenced to 2 years probation

ON APPEAL

- Case affirmed – 404 Ill. App.3d 297 (1st Dist. 2010)
- Appellate court clarified that intent applies to both performing the act and causing serious injury or death

ISSUES WITH CASE

- Shelby was buried and exhumed twice before the necropsy so some concerns with what they would be able to find
- Zealous advocates

ZEALOUS ADVOCATES

- Certainly appreciated their passion and concern
- The sent numerous letters to the trial judge prior to trial which caused the judge to recuse himself and the case to be reassigned
- The reassignment caused a delay in the case going to trial

ADVOCATES AND VICTIMS

- Make sure to clearly communicate with the victim and advocates, from the beginning of the process, what is appropriate and not appropriate

People v. Jorge Tavares 17 CR 1350

WORTH & BELMONT CRIMINALS Crime & Mayhem

Dog Dies of Hypothermia After 4 Hours In Freezing Temps, Prosecutors Say



Headline and Photo Courtesy of DNA Info

FACTS

- On 12/8/16, around 11:30 a.m., a neighbor observed the offender's dog in the offender's backyard apparently having a seizure
- The neighbor called 911 and took cell phone video of the dog
- When police arrived the dog was on her side, trying to lift her head and whining
- R/O climbed the fence and retrieved the dog

- The officer tried to warm the dog by wrapping her in a blanket and placing her in the squad car
- The officer took the dog to an animal hospital for treatment
- The treating vet attempted to take the dog's temperature rectally but could not get a temp because the dog was frozen
- The dog died minutes later

- The offender gave multiple conflicting and / or false stories to law enforcement such as:
 - He knew the dog had medical issues and had been sick but he put her outside before he went to work at 8:30 a.m.
 - He put her in the heated dog house / kennel with the other dog but she must have escaped into the yard but the kennel was locked and secure and escape proof.

- The offender was arrested initially and charged with a misdemeanor
- The dog was sent for a necropsy
- Animal care and control took the surviving dog
- After necropsy completed offender re-arrested and charged with felony Aggravated Cruelty

NECROPSY FINDINGS

- “Cause of death in this animal is likely to be related to hypothermia”
- “Other gross findings . . . Are fractures of the right and left thoracic wall . . . The fractures along the right thoracic wall involving ribs 5, 6, and 7 . . . May be related to resuscitation efforts . . . The focal fracture of the left 5th rib appears more chronic.”

People v. Jamie Koy

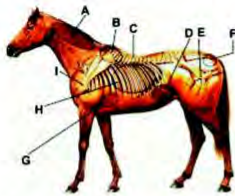
People v. Jamie Koy, part I

- ▶ In April of 2010, Animal Control became aware of three very thin horses owned by Koy. They monitored the situation until Koy moved the horses.
- ▶ In August of 2010, the same horses and two additional horses were found at a new location in as bad or worse shape than observed in May. The McHenry County Sheriff's Department confiscated the horses and charged Koy with Cruel Treatment and Neglect of Owner's Duties.
- ▶ Koy was tried and convicted of all charges in May of 2010.
- ▶ Koy appealed and the Second Circuit upheld the verdict in 2012 IL.App (2d) 111094-U.

People v. Jamie Koy, part 1

- ▶ At trial, Koy tried to argue that the horses had come to her sick because she rehabilitates horses and she was not able to rehabilitate them all.
- ▶ The State countered this by getting testimony about the horses, where they came from and what condition they were in. While some of the horses did have injuries that ended their racing careers, none of them were underweight when she took them.
- ▶ Koy argued that she was not given access to the horses for a period of time in July, because of a dispute with the owner of the property they were on, and that this was really the period that the horses were starved.
- ▶ The landlord testified that he fed the horses during that period, and his testimony was more credible than hers in light of their litigation and the fact that two of her horses were not on his property.

BODY CONDITIONING SCORING CHART



Areas of Emphasis for Body Condition Scoring

- A: Thickening of the neck
- B: Fat covering the withers
- C: Fat deposits along backbone
- D: Fat deposit on flanks
- E: Fat deposits on inner thigh
- F: Fat deposits around tailhead
- G: Fat deposit behind shoulder
- H: Fat covering ribs
- I: Shoulder blends into neck

Illustration by: Sarah Kington, EquiMedia



If you don't know what you're on, visit our online horse feed service: www.saracenhorsefeeds.com or call 01622 718487 for more information.

1 Poor

Animal extremely emaciated; spinous processes, ribs, tailhead, tuber coxae, and tuber ischii projecting prominently; bone structure of withers, shoulders, and neck easily noticeable; no fatty tissue can be felt.



2 Very Thin

Animal emaciated; slight fat covering over base of spinous processes; transverse processes of lumbar vertebrae feel rounded; spinous processes, ribs, tailhead, tuber coxae, and tuber ischii prominent; withers, shoulders, and neck structure faintly discernible.



3 Thin

Fat buildup about halfway on spinous processes; transverse processes cannot be felt; slight fat cover over ribs; spinous processes and ribs easily discernible; tailhead prominent, but individual vertebrae cannot be identified visually; tuber coxae appear rounded but easily discernible; tuber ischii not distinguishable; withers, shoulders, and neck accentuated.



4 Moderately Thin

Slight edge along back; faint outline of ribs discernible; tailhead prominence depends on conformation; fat can be felt around it; tuber coxae not discernible; withers, shoulders, and neck not obviously thin.



5 MODERATE

Back is flat (no crease or ridge); ribs not visually distinguishable but easily felt; fat around tailhead beginning to feel spongy; withers appear rounded over spinous processes; shoulders and neck blend smoothly into body.



6 Moderately Fleshy

May have slight crease down back; fat over ribs fleshy; spongy; fat around tailhead soft; fat beginning to be deposited along side of withers, behind shoulders, and along sides of neck.



7 Fleshy

May have crease down back; individual ribs can be felt, but noticeable filling between ribs with fat; fat around tailhead soft; fat deposited along withers, behind shoulders, and along neck.



8 Fat

Crease down back; difficult to feel ribs; fat around tailhead very soft; area along withers filled with fat; area behind shoulder filled with fat; noticeable thickening of neck; fat deposited along inner thighs.



9 Extremely Fat

Obvious crease down back; patchy fat appearing



For those who know what they're on.

SARACEN
HORSE FEEDS





People v. Koy, part 2

- ▶ On May 1, 2013, While Koy was on probation for the previous case, Animal Control found her with one of the previous horses and four different horses, all malnourished and otherwise in poor condition. The horses were once again confiscated and Koy was arrested.
- ▶ The State's Attorney's Office petitioned for and was granted permanent forfeiture of the horses prior to trial under 510 ILCS 70/3.04(a).
- ▶ Koy appealed the forfeiture and the Second Circuit upheld the trial court's decision in 2014 IL App (2d) 130906.
- ▶ Koy was convicted by a jury on May 6, 2015 of 5 counts of Cruel Treatment, 5 counts of Neglect of Owner's Duties (failure to provide sufficient quantity of good quality, wholesome food), and 5 counts of Neglect of Owners Duties (failure to provide veterinary care when needed to prevent suffering).

People v. Koy, part 2

- ▶ At the second trial Koy's attorney's attacked the science of proving starvation.
- ▶ The State put on three veterinarians who testified to various scientific information about the horses and starvation in general, and all of the experts agreed that the horses had been starved.

Resources

- ▶ Hooved Animal Humane Society, 10714 McConnell Rd, Woodstock, IL 60098, (815) 337-5563.
- ▶ Illinois Department of Agriculture: <https://www.agr.state.il.us/>.
- ▶ Approved Humane Investigators: <https://www.agr.state.il.us/AHI/>.
- ▶ University of Wisconsin Madison, School of Veterinary Medicine: <https://uwveterinarycare.wisc.edu/large-animal/equinecamelid/>.

Starvation

- ▶ It is a rule out diagnosis.
 - ▶ This was proven with Medical testing, or in the case of the deceased horses, necropsies.
 - ▶ This was also proven when the horses were successfully rehabilitated with little more than being fed adequately.
 - ▶ Witnesses had to specifically address other possible explanations.
 - ▶ Witnesses had to lay out a rough time line of the starvation to show that it took place while the defendant had control of the animals.

Animal hoarding

- ▶ “Caregiver” category of animal hoarding is used to describe a person who started off as a caregiver in the normal sense of the word, but also developed a dependency on the sensation of taking care of the animals. Then, when their circumstances change such that a reasonable person would see that they can no longer handle the responsibilities of the animals, they will not let go of the responsibilities or the animals.

People v. C.H.

January 6, 2016

10:00 am –

- Chicago Police Animal Crimes Team Execute Search Warrant

11:00 am –

- Defendant arrives on scene

11:52 am –

- Defendant Mirandized

12:00 pm –

- Defendant placed into custody



Recovered

- 8 Pitbulls
 - 7 Caged
 - 1 Chained
- 4 Handguns
- 1 Shotgun



Charges



- 8 counts of Cruel Treatment
- 8 counts of Owner's Duties

Defendant's Statement

- \$200
- 23 Hours
- Bowls
- No Heat



Pre-Trial

- Exercise Order
- Forfeiture Petition
- Security Petition



Trial



- P.O. Shepard
- Defendant's Statement
- Ruling

Sentencing



- 1 Year Court Supervision
- No Companion Animals
- Enforcement

- having criminal jurisdiction over the alleged charges, asking for permanent forfeiture of the companion animals seized.
4. The Human Care For Animals Act provides that in a forfeiture hearing the burden is on the prosecution to prove by a preponderance of the evidence that the person arrested violated Section 3.01, 3.02, 3.03, or 4.01.
 5. That the animal(s) seized are a unique form of “property” because they are alive, and because of that, it is in the best interests of the animal(s) and the animal control or shelter having custody of the animal(s) seized that is this court make a speedy determination of their status prior to the criminal trial.
 6. That for humane reasons, the State requests that this court hold a forfeiture hearing regarding the animal(s) seized, pursuant to 510 ILCS 70/3.04 (a), wherein this court makes a determination as to the legal status of the animal(s) seized.

WHEREFORE, the People of the State of Illinois respectfully move this Court to set a date for a forfeiture hearing regarding the animal(s) seized.

Respectfully submitted,
Kimberly M. Foxx
State’s Attorney of Cook County

By: _____
Rory Quinn
Assistant State’s Attorney

STATE OF ILLINOIS)
COUNTY OF COOK)SS.
)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT-CRJMIAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS)
)
VS.)
)

COURT ORDER REGARDING ANIMALS IMPOUNDED

The Court, after having fully conducted a forfeiture hearing regarding animal(s) impounded in the above captioned case, makes the following findings:

1 . . That the defendant was charged with a violation of the Humane Care For Ahimals Act, 510 ILCS70/ XXXXXXXX

2. That as a result of these charges animal(s) were seized and impounded.

3. That the state proceeded to Forfeiture hearing.

4. That the State (Has) or (Has Not) proven, by a preponderance of the evidence, that the defendant did in fact commit a violation of the aforementioned Section of the Humane Care For Animals Act.

6. That the defendant was the "owner" of the animal(s) seized within the meaning of the Humane Care For Animals Act in that- defendant is a person who:

- (a) has a right of property in an animal
- (b) keeps or harbors an animal
- (c) has an animal in his care
- (d) acts as custodian of an animal

7. That the defendant's ownership rights in the animal(s)"seized are hereby

(Terminated) or (Upheld)

8. The animal(s) impounded in this care are hereby ordered

(Forfeited) or (Not forfeited)

9. It is hereby ordered that the organization impounding the animal(s)
_____adopt the animal(s) or humanely euthanize the animal(s).

{May) or (may not)

Date _____

Judge of the Circuit Court

STATE OF ILLINOIS)
COUNTY OF COOK)SS.
)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT-CRJMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS)
VS.)
)

COURT ORDER REGARDING ANIMALS IMPOUNDED

IT IS HEREBY ORDERED that all parties present and advised, the defendant, has voluntarily given up any and all ownership in _____. These animal are now property of the Animal Care and Control.

ENTER: _____
JUDGE CIRCUIT COURT OF COOK COUNTY

DATED: _____

WHEREFORE, the People of the State of Illinois respectfully move this Court to set a date for hearing regarding the posting of security for the animal(s) seized.

Respectfully submitted,
Kimberly M. Foxx
State's Attorney of Cook County

By: _____
Assistant State's Attorney

TAB 6

Natural Disasters: Is Illinois Prepared, Legal Ramifications of Not Being Prepared, Legal Considerations in Preparedness Planning

MODERATOR: *Jane E. McBride, Illinois Humane, Springfield*

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This segment includes all materials received by the course book publication deadline.
Please contact the speaker for any other materials used at the program.

8TH ANNUAL ANIMAL LAW CONFERENCE

Natural Disasters: Is Illinois Prepared, Legal Ramifications of Not Being Prepared, Legal Considerations in Preparedness Planning

Legal Framework for Disaster Planning for Animals in Illinois

-Stephen F. Hedinger
Sorling Northrup, Springfield, IL

I. Emergency Planning for Animals – Introduction

On August 29, 2005, as Hurricane Katrina was ravaging the Mississippi delta, Shalanda Augillard, an employee of FedEx in New Orleans, was required by her employer to stay at the New Orleans airport and supervise the delivery of emergency supplies. Aguillard v. Madura, 257 S.W.3d 494 (Ct. App. Tx, 2008). She left her nearly nine year old cocker spaniel, named Jazz, with her mother. Unfortunately, however, Augillard's mother was evacuated from her home by the National Guard, and the rescuers forbade her from bringing Jazz with them. She left Jazz on the second floor of the home with about two weeks worth of food and water. Augillard was one of the first citizens allowed to return to the city after the storm had passed, but when she arrived at her mother's house she found the door kicked in and Jazz missing. Augillard began a search for her dog; she contacted shelters, pet registries, and recovery organizations, and finally she saw on a website called PawMatch.com a picture that Augillard recognized as Jazz.

Aguillard eventually learned from cocker spaniel rescue groups that the dog shown on the website had been taken to Hays County, Texas, and adopted out to Tiffany Madura.

Aguillard filed an action for conversion and injunction in Texas against Madura, who defended by claiming that the dog she had adopted was not, in fact, Jazz. Madura's defense made it necessary for Aguillard to present substantial evidence concerning the identity of the dog. She offered expert testimony concerning two separate DNA samples, one comparing the adopted dog's genetic material with material from Jazz's comb and brush, and one comparing the adopted dog's genetic makeup with the genetic material of Jazz's dam; both revealed essentially conclusive matches. In addition, Aguillard offered the testimony of Jazz's veterinarian, and she herself testified at length about Jazz, Jazz's medical history, and the facts and circumstances that resulted in Jazz being taken from Aguillard's mother's home. Madura countered with testimony of her own veterinarian, as well as her own testimony about the dog's condition when she first took possession, and about medical treatment given to the dog since her adoption.

Despite the strong scientific evidence, the trial court ruled in Madura's favor, and held that Aguillard had failed to establish that she owned the adopted dog. This prompted Aguillard's appeal, and the appellate court, after fully considering the record produced in the trial court, reversed the trial court's judgment and, by order

dated June 20, 2008, entered judgment in Augillard's favor. Hence, nearly three years after the storm separated them, and after untold emotional and financial cost, Augillard was again awarded possession of, and reunited with, her dog.

Jazz's plight was not an isolated incident; by one estimate, some 50,000 or more pets were stranded and displaced by Katrina. McNabb, M., Pets in the Eye of the Storm: Hurricane Katrina Floods the Courts with Pet Custody Disputes, 14 *Animal Law* 71, 75 (2007). Rescue groups took custody of some 15,000 animals, while other animals suffered worse fates. *Id.* Bozes v. Parish of St. Bernard, 252 F.R.D. 313 (E.D. La. 2008), for instance, concerned claimed 4th Amendment violations for the wholesale killing of pets stranded after the storm; the plaintiffs alleged that the city and parish police had adopted a policy to shoot animals running at large in the aftermath of the hurricane, without making an effort to capture the animals or identify their owners.

Similarly, the legal issues faced by Aguillard in seeking to regain possession of her pet were not isolated, either. Litigation over ownership of animals rescued from the Katrina disaster zone stretched across the United States. A very thorough compilation of these cases, along with a discussion of related legal and legislative issues, can be found at McNabb, M., Pets in the Eye of the Storm: Hurricane Katrina Floods the Courts with Pet Custody Disputes, *supra*.

As a result of the overall lack of adequate preparedness for the disaster, of which the lack of consideration for how to manage displaced animals was only one symptom, the White House directed a review of lessons learned by the Department of Homeland Security in responding to Katrina. Along with many other assessments, that study identified a need for state and local emergency response plans to include provisions for the evacuation and management of impacted pets. In turn, Congress followed the recommendation by enacting, in 2006, the Pets Evacuation and Transportation Standards Act of 2006 (the PETS Act).

This article discusses the PETS Act, the Federal Emergency Management Agency (FEMA) and other federal policies and the Illinois legislation and regulations adopted in response to the PETS Act, and other related issues, including the legal benefits to a local Illinois emergency services agency of adopting an emergency plan for animals, and the potential legal consequences of failing to do so.

II. Government Requirements for Disaster Planning for Pets

A. Federal

Congress adopted the PETS Act as an amendment to the existing Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. §5121 *et seq.* Pursuant to the Stafford Act, FEMA, along with other federal agencies as designated by the President, is required to “provide assistance essential

to meeting immediate threats to life and property resulting from a major disaster,” 42 U.S.C. §5170b(a); this assistance is to include “[p]erforming on public or private lands or waters any work or services essential to saving lives and protecting and preserving property or public health and safety...” 42 U.S.C. §5170b(a)(3). The PETS Act added to the examples of such work or services the express obligation for “provision of rescue, care, shelter, and essential needs – (i) to individuals with household pets and service animals; and (ii) to such pets and animals.” 42 U.S.C. §5170b(a)(3)(J). In addition, the Stafford Act generally provides (among other things) that FEMA is to work with state and local emergency management agencies to prepare operational plans to be implemented in times of emergency; in the event a local agency adopts and then follows a plan approved by FEMA, federal money can be provided by FEMA to cover some of the allowed costs of implementing the local plan. Among other things, to be approved an operations plan must “be consistent with the Federal emergency response plans for emergency preparedness” (42 U.S.C. §5196b(a)), and must “provide for the development of State and local emergency preparedness operational plans, including a catastrophic incident annex, pursuant to standards approved by [FEMA].” 42 U.S. C. §5196b(b)(3). The requirements for approvable operations plans were amended by the PETS Act – in addition to directly requiring that federal emergency response efforts include consideration of pets and pet

owners (thereby requiring state and local plans to include such provisions as well, in order to remain consistent), the PETS Act explicitly states that, “[i]n approving standards for State and local emergency preparedness operational plans pursuant to subsection (b)(3), [FEMA] shall ensure that such plans take into account the needs of individuals with household pets and service animals prior to, during, and following a major disaster or emergency.” 42 U.S.C. §5196b(g).

To implement the requirements of the PETS Act, FEMA adopted in 2007 a Disaster Assistance Policy entitled “Eligible Costs Related to Pet Evacuations and Sheltering” (hereinafter the “Policy”). Among other things, the Policy clarified that FEMA would consider “household pets” covered by the statute (and thus eligible for reimbursement) to be defined as: “[a] domesticated animal, such as a dog, cat, bird, rabbit, rodent, or turtle that is traditionally kept in the home for pleasure rather than for commercial purposes, can travel in commercial carriers, and be housed in temporary facilities. Household pets do not include reptiles (except turtles), amphibians, fish, insects/arachnids, farm animals (including horses), and animals kept for racing purposes.”

The Policy also defined “service animals” subject to its terms: “Any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds,

providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.” Policy §VII.A.2.

The Policy provides that only governmental bodies are eligible for direct reimbursement for costs associated with “sheltering and rescuing household pets and service animals,” Policy §VII.B, but that private contractors or private nonprofits (PNPs) can obtain reimbursement through a governmental body, “provided a written statement from an eligible applicant is presented in which the applicant verifies that the contractor or PNP is performing or has performed sheltering or rescuing operations on the applicant’s behalf and the expenses are documented.” Policy §VII.B.2. Eligible costs include certain labor and overtime charges, transportation and equipment costs and charges, facility costs (including rent, utilities, safety/security costs, management and cleaning costs), supplies, food, medicine, emergency veterinary care, costs of carcass disposal, and costs of tracking animal ownership and reuniting animals with owners. Policy §§VII.C and VII.D.

At least one other federal agency has responded to the Katrina disaster by addressing preparedness planning for animals. The United States Department of Agriculture (USDA) considered the problems created by Katrina and similar disasters for dealers, research facilities, exhibitors, carriers and intermediate handlers, all of whom are regulated by the USDA pursuant to the Animal Welfare

Act, 7 U.S.C. §2131 *et seq.* The USDA determined that additional regulations were warranted requiring those facilities to develop contingency plans for all animals regulated pursuant to that statute in order to prepare for potential disasters, and so it adopted the new regulations in 2012 (77 Fed. Reg. 76815-01 (Dec. 31, 2012), 2012 WL 6728214 (F.R.)). The regulations require the creation of plans for emergencies or disasters that might be reasonably anticipated and which could be detrimental to the health and well-being of the animals in their possession. The plans must identify the potential reasonably anticipated emergency situations, outline tasks needed to address the emergency (such as animal evacuation instructions and obtaining needed provisions), identify the relevant chain-of-command, and address how response actions will be handled in terms of materials, resources and training. Facilities are required to review the plans annually and to maintain records of training concerning the plans, and the plans must be available to the USDA upon request. *Id.*

B. Illinois

The Illinois Emergency Management Agency Act, 20 ILCS 3305/1 *et seq.*, identifies the Illinois Emergency Management Agency (IEMA) as the state's lead agency in developing Illinois' emergency management program (20 ILCS 3305/5(f)(1)), and in coordinating both with FEMA and with local emergency response agencies (20 ILCS 3305/5(f)(2)). The statute requires that "[e]ach

political subdivision within this State shall be within the jurisdiction of and served by the [IEMA] and by an emergency services and disaster agency responsible for the emergency management programs.” 20 ILCS 3305/10(a). A key component of the Illinois emergency management scheme is the requirement that each political subdivision develop an emergency operations plan – “[e]ach emergency services and disaster agency shall prepare an emergency operations plan for its geographic boundaries that complies with the planning, review and approval standards promulgated by the [IEMA].” 20 ILCS 3305/10(g). In turn, IEMA is tasked with developing the rules for the content of those plans, and with reviewing and approving finalized submitted plans – “The [IEMA] shall: ... (5) Review and approve, in accordance with [IEMA] rules, emergency operations plans for those political subdivisions required to have an emergency services and disaster agency pursuant to this Act.” 20 ILCS 3305/5(f)(5). Finally, the statute defines what is meant by an emergency operations plan, and in fact the statute was revised following the PETS Act to specifically include consideration of emergency response affecting household pets and service animals: “‘Emergency Operations Plan’ means the written plan of the State and political subdivisions describing the organization, mission, and functions of the government and supporting services for responding to and recovering from disasters and shall include plans that take into

account the needs of those individuals with household pets and service animals following a major disaster or emergency.” 20 ILCS 3305/4.

IEMA’s regulations fleshing out the emergency operations plan requirements make clear that the local governmental agencies responsible for developing the emergency operations plans are the county emergency services and disaster agency, any consolidated or multiple-county emergency and disaster agency, any emergency and disaster agency in a municipality with a population exceeding 500,000, and any municipal emergency and disaster agency declared to be needed by the Governor. 29 Ill. Adm. Code §301.201. The regulations also detail the requirements of the emergency operations plans, and set forth the processes for submittal and review and for training exercises. See generally 29 Ill. Adm. Code Part 301. With respect to the animal planning addressed by the PETS Act, the IEMA regulations merely state that the local planning agency may also include one or more annexes to the emergency operations plan as the local agency determines to be necessary to address, among other things, animal welfare. 29 Ill. Adm. Code §301.240(m).

IEMA has drafted a number of other documents, beyond its regulations, relating both to emergency preparedness in general and to preparations relating to animals in particular. For one thing, IEMA has adopted the state’s Illinois Emergency Operating Plan, along with emergency support function annexes. The

annex Support Function 11 (hereinafter ESF 11) directly concerns “Animal Welfare;” although the annex is primarily concerned with emergencies resulting from contagious animal diseases and conditions, it also touches upon the appropriate responses in the context of animal welfare in the event of natural disasters. (See, e.g., ESF 11 §IV.A.4). Most importantly, the annex identifies the Illinois Department of Agriculture as the lead state agency with respect to animal welfare issues in emergency and disaster response. (ESF 11 §IV.A). The annex also specifically identifies a private not-for-profit organization named Noah’s Wish as one of the “Other Supporting Organizations” (ESF 11, at p. 2), and states that the Illinois Department of Agriculture’s functions includes “coordinat[ing] with Noah’s Wish, other animal welfare support organizations and the local animal control officer to assure all animal welfare issues are being addressed.” (ESF 11 §IV.A.4).

An internet search reveals that apparently Noah’s Wish, a California-based organization which was established in 2002 with the express purpose of advocating for animals impacted by disasters, ceased its nationwide emergency response efforts in or around 2014 (<https://www.noahswish.org/noahs-wish-announcement/>). As a result, of course, Noah’s Wish is no longer available to fulfill the mandate of the Illinois Emergency Operating Plan and ESF 11. Instead, the Illinois Department of Agriculture has entered into a Memorandum of

Understanding (MOU) with a different animal advocacy organization, the International Fund for Animal Welfare, Inc. (IFAW). The original MOU was effective until 2015, and according to the Department's legal counsel, it has been extended through the year 2020. The MOU provides in general terms that the Illinois Department of Agriculture and IFAW will work cooperatively to provide disaster assistance and animal rescue in the event of a disaster of significant proportion. (MOU, at 2). IFAW has committed to providing the Department with a contact list allowing for 24 hour per day/7 days per week availability of responsive personnel, who will be available upon receipt of a request for assistance made by the Department. (MO)U, at 2). The Department will identify an Operations Manager for any incident for which IFAW's assistance is requested, who will be in charge of management of the incident. (MOU, at 2 – 3). The IFAW is to form teams, and the leader of each team is to report directly to the Operations Manager. (MOU, at 2). In the event that IFAW's resources are not sufficient to adequately address the incident, then IFAW is to coordinate with other rescue groups identified through the National Animal Rescue and Sheltering Coalition (NARSC). (MOU, at 3). IFAW has also committed to providing training to Department personnel in issues relating to animal rescue and emergency care. (MOU, at 3).

Finally, one other state statute bears mention, and that is the Emergency Management Assistance Compact Act, 45 ILCS151/1 – 151/99. That statute joins

Illinois with other compact states in mutually agreeing to offer emergency services and responses upon a request from another compact state. The compact requires cooperation and coordination between the signatory states, 45 ILCS 151/5, Article III, and among other things, provides that whenever a receiving state has requested assistance and the sending state provides licensed or certified personnel in response, those licensed or certified personnel shall be deemed to be licensed or certified in the receiving state while addressing the emergency or disaster, subject only to limitations prescribed by the receiving state's governor. 45 ILCS 151/5, Article V. In addition, the compact provides that the officers or employees of a state rendering aid shall be considered to be agents and employees of the receiving state for purposes of tort liability and immunities; except only for willful misconduct, gross negligence and recklessness, no person rendering aid in good faith pursuant to the compact shall be liable for acts or omissions or the use of equipment or supplies in doing so. 45 ILCS 151/5, Article VI.

III. Other Relevant Considerations

A. No Private Cause of Action Under Stafford Act

Several cases have held that the Stafford Act, which the PETS Act amended, does not provide to private citizens any private right of action against non-federal government actors, such as emergency responders, including volunteers. In Bruno v. City of Schenectady, 2014 WL 689664, No. 1-12-cv-0285 (N.D.N.Y., Feb. 20,

2014), the court considered a complaint filed by a homeowner against various responders, including firemen, police officers, and EMTs, for their alleged failure to follow approved emergency response procedures and thereby to have failed to save the lives of the plaintiff's dogs from a house fire, or to allow plaintiff access to the house to save her dogs. Among other rulings, the court dismissed claims under the PETS Act by noting the lack of either any express or implied right to bring such an action expressed in the statute. *Id.* at *19. See also Diversified Carting, Inc. v. City of New York, 423 F. Supp. 2d 85, 94 - 96 (S.D.N.Y. 2005) (cited by Bruno, and dismissing claims for expenses incurred in responding to the 9/11 attack brought under the Stafford Act against non-federal government entities because of lack of any express or implied right to bring such an action); Duffy v. Kent County Levy Court, Inc., 2011 WL 748487, Civ. No. 09-817, at *5 (D. Del. Feb. 23, 2011) (also cited by Bruno, and dismissing suit against various defendants for failure to monitor and manage flood control, resulting in injuries to the plaintiff, on grounds including that the Stafford Act does not create a private right of action).

B. Choice of Law Issues

Animal rescue operations conducted after a natural disaster frequently include participation of volunteers from different states and even different regions of the country. Indeed, the litigation cited by McNabb, M., Pets in the Eye of the

Storm: Hurricane Katrina Floods the Courts with Pet Custody Disputes, *supra*, reveals the widespread and far-flung litigation resulting from the involvement of relief organizations from other states. As could be expected, this situation can create an additional complication in such litigation of determining the correct law to be applied to a particular situation. An example is found in Webb v. Amtower, 178 P.3d 80, Table (Ct. App. Kan. 2008) (unpublished opinion, text available in Westlaw), where the plaintiff lived with her dog in Gulfport, Mississippi, but after the dog was displaced by Katrina it was taken to an emergency animal shelter in Hattiesboro, Mississippi, and then transferred to a Humane Society facility in Escambia County, Alabama, from which it was adopted by persons who took it to Overland Park, Kansas. The appellate court determined that the injury supporting the plaintiff's tort actions (replevin and conversion) occurred in Kansas, which therefore provided the law governing those tort principles; however, those causes of action turn on legal determinations of ownership rights, which required consideration of the laws of either or both Mississippi or Alabama, depending upon the circumstances of the dog leaving Mississippi (including whether there was an abandonment or some other transfer of ownership as a result of occurrences in either or both states). The appellate court sent the case back to the trial court to find answers to all of those questions; the lesson is that in the absence of pre-planned

resolution, issues of ownership and rights to possession can become bogged down in incredibly complex questions of law and fact.

C. Illinois Immunities

As noted above, following the protocols identified by the PETS Act and the subsequent FEMA Policy and IEMA regulations can result in the potential to obtain reimbursement from the federal government for expenses incurred. Another important reason to consider providing emergency animal rescue and shelter under the auspices of an emergency operations plan approved by IEMA is the potential availability of tort immunity for actions performed in that capacity. Pursuant to section 15 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/15, the state and its political subdivisions are immune from liability for any acts short of gross negligence or willful misconduct “while complying with or attempting to comply with this Act or any rule or regulations promulgated pursuant to this Act,” which result in death of a person or destruction of property; however, the immunity expressed by the statute “does not ... apply to political subdivisions and principal executive officers required to maintain emergency services and disaster agencies that are not in compliance with Section 10 of this Act [i.e., 20 ILCS 3305/10], notwithstanding any other provision of law.” As discussed above, among other things section 10(g) requires that “[e]ach emergency services and disaster agency shall prepare an emergency operations plan for its geographic boundaries that

complies with planning, review and approval standards promulgated by [IEMA],” 20 ILCS 3305/10(g), and the definition of “emergency operations plan” expressly requires the planning agency to “take into account the needs of those individuals with household pets and service animals following a major disaster or emergency.” 20 ILCS 3305/4. Arguably these provisions, considered together, mean that the state and its political subdivisions are only entitled to the section 15 immunity if they are in compliance with the requirement, among others, that they plan for the needs of owners of household pets.

To be sure, the limitation on immunity pursuant to the Illinois Emergency Management Agency Act may not affect immunities which may be available pursuant to other statutes. An example of these immunities can be found in the defendants’ motion for summary judgment filed in Gehm v. American Red Cross, No. 06-C-0316 (N.D.Ill.), filed on April 28, 2006 (the pleading is available on Westlaw at 2006 WL 1403243), in an action brought against the Red Cross and a local Baptist church by a woman whose home had been destroyed by the April 2004 tornado that hit Utica. The Red Cross set up a shelter in the local Baptist church, and the plaintiff had gone to and entered the church looking for the emergency services. The interior of the church was not well marked, though, and it was dark inside, and the plaintiff wandered around inside the church until she came to the altar and stage area, where she stepped off of a 16-inch step and was injured.

Both the Red Cross and the church moved for summary judgment in their favor on the basis of the effect of the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 *et seq.*, citing numerous cases that held that not-for-profit entities were protected entities under the statute when conducting activities which could be considered public business. Both the Red Cross and the Baptist church argued that in providing their emergency services they were acting in that “public business” capacity, and in fact were acting under the control and authority of IEMA and local disaster relief agencies, as well. Notably, the Red Cross also argued that it was entitled to immunity pursuant to sections 21(a) and (c) of the Illinois Emergency Management Agency Act, and the Baptist church also argued that it was entitled to the immunity provided by section 21(b) of that statute, based upon their roles in providing emergency response and facilities. (Sections 21(a), (b) and (c) are discussed immediately below). Court records indicate that the case settled prior to the court entering any ruling on the motion for summary judgment, but the motion does provide a ready example of the interplay between the immunities. (See also Office of Attorney General Opinion Letter I-06-052, dated December 29, 2006, included with the attachments to this article, which includes a good discussion of immunities available to volunteers who participate in various emergency response activities, and Webb, C., “Legal Immunities for Local Governments in Public Health Emergencies,” 98 Ill. B.J. 314

(June, 2010), which concerns immunities potentially available to governmental actors from sources in addition to the Illinois Emergency Management Agency Act). Whether or not other immunities may be available to a governmental agency in any given situation, at least to the extent that the immunity provided by section 15 of the Illinois Emergency Management Agency Act provides different, additional, or more specific immunity, development of and compliance with the required emergency operations plan would appear to be wise.

Section 21 of the Illinois Emergency Management Agency Act provides certain immunities in favor of non-governmental actors who provide emergency services. Subsection (a) of that section, 20 ILCS 3305/21(a), provides immunity from negligent premises liability claims to those who own or control premises which grant, without compensation, the use of the premises “for the purpose of sheltering persons during an actual or impending disaster.” Although this immunity does not appear to be available to those providing emergency shelter solely for displaced animals, it does appear to cover those who provide shelter to persons who are allowed to keep their household pets or service animals in an emergency shelter. Subsection (b) provides similar immunity for injuries caused by anyone acting pursuant to a contract with a governmental body under the provisions of the statute, except in the case of willful misconduct. 20 ILCS 3305/21(b). Finally, subsection (c) states that “[a]ny private person, firm or corporation, and any

employee or agent of such person, firm or corporation, who renders assistance or advice at the request of the State, or any political subdivision of the State under this Act during an actual or impending disaster, shall not be civilly liable for causing the death of, or injury to, any person or damage to any property except in the event of willful misconduct.” 20 ILCS 3305/21(c). This potential immunity is clearly available to volunteers, including those providing rescue and care services for animals; however, to qualify for the immunity, the volunteer must be acting at the request of the governmental actor, and the governmental actor must be acting “under this Act,” which could be construed as requiring compliance with, or at least attempted compliance with, the emergency operations plan requirements expressed in section 10 of the Act.

D. Workers Compensation Coverage

An issue similar to the availability of immunities for injuries caused while performing emergency rescue activities is whether workers compensation will be available to those providing emergency services in the event of injuries incurred during the course of providing emergency services. Section 10(k) of the Illinois Emergency Management Agency Act, 20 ILCS 3305/10(k), and the IEMA regulations, 29 Ill. Adm. Code §301.620, provide that volunteers may be eligible for workers compensation benefits if certain requirements are met. Specifically, the volunteer must be at least 18 years old, must be an unpaid volunteer appointed and

sworn in (in accordance with section 20 of the Illinois Emergency Management Agency Act, 20 ILCS 3305/20) to perform disaster functions by IEMA or by an authorized local emergency disaster agency (that is, one with an approved emergency operations plan), and must suffer injury during (i) a disaster recognized as such by IEMA, or (ii) in the course of undergoing training pre-approved by IEMA and consistent with the emergency operations plan, or (iii) during a search-and-rescue operation beyond the capabilities of the local response organization and which is requested by IEMA or the local agency. 29 Ill. Adm. Code §301.620. Again, the need for and compliance with emergency operations plans that comply with both federal and state law may be key to assuring workers compensation coverage.

E. Other Resources

1. TOPOFF 2/TOPOFF 2 Legal Team Handbook

Unknown to many people, in May 2003 a series of coordinated terrorist attacks resulted in the release of toxic biological agents in Seattle and at O'Hare Airport and Union Station in Chicago; when the plague outbreak was finally resolved, some 2,287 individuals were already dead and another 4,433 were dying, and some sixty-four hospitals had become involved with the response. Fortunately the terrorist attacks were a fiction created for training purposes – the scenario was part of the Department of Homeland Security's Top Officials Exercise Series, and

was known as TOPOFF 2. A very concise but interesting discussion of the exercise and of lessons learned can be found in Blum, J., “Too Strange to be Just Fiction: Legal Lessons From a Bioterrorist Simulation, the Case of TOPOFF 2,” 64 La. L. Rev. 905 (Summer, 2004). The article includes reference to a document created as a part of the simulation exercise by the TOPOFF 2 legal team, entitled “TOPOFF 2 Legal Team Handbook, April 2003,” which consists of a comprehensive study of legal issues associated with public health emergencies in Illinois. While the handbook does not address issues related to animal care during such emergencies (beyond touching upon issues relating to quarantines and livestock management), it is a very useful compendium of the sources and provisions of laws that impact emergency response measures. The Legal Team Handbook can be accessed at <http://biotech.law.lsu.edu/manual/states/Il-Topoff2LegalTeamHandbook.pdf>

2. Illinois Emergency Operations Plan/Illinois Disaster Recovery Plan

The Illinois Emergency Operations Plan, including individual annexes and specifically including Emergency Support Function Annex 11—Animal Welfare, and the Illinois Disaster Recovery Plan, can be accessed at the IEMA website:

<https://www.illinois.gov/iema/Preparedness/Pages/DisasterPlans.aspx>

3. IFAW, Inc.

Information about the International Fund for Animal Welfare, with which the Illinois Department of Agriculture has entered into a MOU for provision of

emergency and disaster assistance relating to animal welfare, can be found at IFAW's website.

The "Home" page is: <http://www.ifaw.org/united-states>

The organization's disaster response work is described here:

<http://www.ifaw.org/united-states/our-work/animal-rescue/disaster-response>

The organization's disaster relief network is discussed here:

<http://www.ifaw.org/united-states/our-work/animal-rescue/emergency-relief-networks>

F. List of Attachments

The following are attached:

Attachment 1 – FEMA Disaster Assistance Policy DAP9523.19 – Eligible Costs Related to Pet Evacuations and Sheltering

Attachment 2 – Illinois Attorney General Opinion I-06-052 (Dec. 29, 2006)

Attachment 3 – MOU – Illinois Department of Agriculture/International Fund for Animal Welfare (Aug. 1, 2012)

Attachment 4 – www.illinois.gov/ready page -- "How do I prepare my pets for disaster" (<https://www.illinois.gov/ready/plan/Pages/Animals.aspx>)

Attachment 5 – IEMA flier, "Disaster Declaration Process"

Attachment 6 – Illinois Department of Agriculture flier, "Emergency Preparedness Planning for Pets and Livestock"

Attachment 7 – draft Sangamon County Animal Emergency Operations Plan



FEMA

DISASTER ASSISTANCE POLICY

DAP9523.19

I. TITLE: Eligible Costs Related to Pet Evacuations and Sheltering

II. DATE: October 24, 2007

III. PURPOSE:

The purpose of this policy is to identify the expenses related to State and local governments' emergency pet evacuation and sheltering activities that may be eligible for reimbursement following a major disaster or emergency declaration.

IV. SCOPE AND AUDIENCE:

This policy is applicable to all major disasters and emergencies declared on or after its date of issuance. It is intended to be used by FEMA personnel involved in making eligibility determinations under the Public Assistance Program.

V. AUTHORITY:

Sections 403 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5170b, 42 U.S.C. 5192; the Pets Evacuation and Transportation Standards Act (PETS Act) of 2006, P.L. No. 109-308, § 4, 120 Stat. 1725 (2006); and 44 CFR §§ 206.223(a), 206.225(a).

VI. BACKGROUND:

On October 6, 2006, the PETS Act was signed into law, amending Section 403 of the Stafford Act. Section 403, as amended by the PETS Act, authorizes FEMA to provide rescue, care, shelter, and essential needs for individuals with household pets and service animals, and to the household pets and animals themselves following a major disaster or emergency.

VII. POLICY:

A. Definitions:

1. Household Pet. A domesticated animal, such as a dog, cat, bird, rabbit, rodent, or turtle that is traditionally kept in the home for pleasure rather than for commercial purposes, can travel in commercial carriers, and be housed in temporary facilities. Household pets do not

Attachment 1



FEMA

DISASTER ASSISTANCE POLICY

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include reptiles (except turtles), amphibians, fish, insects/arachnids, farm animals (including horses), and animals kept for racing purposes.

2. **Service Animal¹.** Any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

3. **Congregate Household Pet Shelters.** Any private or public facility that provides refuge to rescued household pets and the household pets of shelterees in response to a declared major disaster or emergency.

B. Eligibility. State and local governments that receive evacuees from areas declared a major disaster or an emergency may seek reimbursement for eligible pet rescue, sheltering, and evacuation-support costs.

1. State and local governments outside the designated disaster area may seek reimbursement under mutual aid protocols through the affected and supported state(s). (44 CFR § 206.223(a)(2)).

2. State and local governments are the only eligible applicants for sheltering and rescuing household pets and service animals. Contractors or private nonprofit (PNP) organizations that shelter or rescue household pets and service animals cannot be reimbursed directly as an applicant. However, contractors and PNPs can be reimbursed for sheltering and rescuing household pets and service animals through a state or local government, provided a written statement from an eligible applicant is presented in which the applicant verifies that the contractor or PNP is performing or has performed sheltering or rescuing operations on the applicant's behalf and the expenses are documented.

C. Household Pet Rescue. State and local governments may conduct rescue operations for household pets directly or they may contract with other providers for such services. Eligible costs include, but are not limited to, the following:

1. Overtime for regular full-time employees.

¹ Department of Justice, Americans with Disabilities Act (ADA), 42 USC 1201 et seq, implementing regulations at 28 CFR § 36.104.



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2. Regular-time and overtime for contract labor (including mutual aid agreements) specifically hired to provide additional support required as a result of the disaster.

3. The use of applicant-owned or leased equipment (such as buses or other vehicles) to provide eligible pet transportation to congregate pet shelters may be reimbursed according to 44 CFR § 206.228(1)(a) (does not include operator labor). The cost of leasing equipment for this purpose may also be eligible for reimbursement.

D. Congregate Household Pet Sheltering. State and local governments may conduct sheltering operations for pets directly, or may contract with other sheltering providers for such services. Eligible Category B congregate pet sheltering costs may include, but are not limited to, the *reasonable* costs for:

1. Facilities.

- Minor modifications to buildings used for congregate household pet sheltering, if necessary to provide increased capacity for the accommodation of shelterees' household pets.
- Facility lease or rent.
- Increase in utility costs, such as power, water, and telephone.
- Generator lease and operation (but not purchase).
- Shelter safety and security.
- Shelter management.
- Shelter and crate/cage cleaning.

2. Supplies and Commodities. Eligible items are those needed for, and used directly on, the declared disaster, and are reasonable in both cost and need. Examples include:

- Food, water, and bowls.
- Crates/Cages.
- Pet transport carriers.
- Animal cleaning tables and supplies.
- Medication for animal decontamination and parasite control to ensure that the animal is not a health threat to humans or other animals.

3. Eligible Labor. If the regular employees of an eligible applicant perform duties in direct support of congregate pet sheltering operations, any overtime pay related to such duties is eligible for reimbursement. However, the straight-time pay of these employees is not eligible. Regular-time and overtime for contract labor, including mutual aid agreements,



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specifically hired to provide additional support required as a result of the disaster or emergency is also eligible for reimbursement.

4. **Equipment.** The use of applicant-owned or leased equipment (such as buses, trucks, or other vehicles) to provide eligible pet evacuation or sheltering support may be reimbursed according to 44 CFR §206.228(1)(a) (does not include operator labor). The cost of leasing equipment may also be an eligible expense for reimbursement.

5. **Emergency Veterinary Services.** For the purposes of screening the health of household pets and service animals, and assessing and treating minor illnesses and injuries, congregate pet shelters may be staffed with emergency veterinary teams. The following costs related to the provision of emergency veterinary services in a congregate pet sheltering environment are eligible for reimbursement:

- Veterinary diagnosis, triage, treatment, and stabilization.
- Provision of first aid, including materials (bandages, etc.).
- Medicine.
- Supervision of paid and volunteer veterinary staff.
- Vaccinations administered to protect the health and safety of congregate shelter and supporting emergency workers including but not limited to tetanus and hepatitis.
- Vaccinations administered to protect the health and safety of congregate shelter pets for transmissible or contagious diseases including but not limited to bordetella/kennel cough.

6. **Transportation.** Transportation of evacuees' household pets and service animals to congregate shelters from pre-established pickup locations is an eligible expense when the means of transportation used is the most cost-effective available.

7. **Shelter Safety and Security.** Additional reimbursable safety and security services may be provided at congregate pet shelters, based upon need.

8. **Cleaning and Restoration.** The costs (to the Applicant) to clean, maintain, and restore a facility to pre-congregate pet shelter condition are eligible.

9. **Removal and Disposal of Animal Carcasses.** The costs (to the Applicant) to remove and dispose of animal carcasses in a safe and timely manner and in compliance with applicable laws and regulations are eligible.



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10. Cataloging/Tracking System for Pets. The reasonable costs (to the Applicant) for tracking animals at congregate pet shelters for the purposes of reuniting them with their owners are eligible.

E. **Service animals.** Service animals will be sheltered with their owners in congregate shelters.

F. **Length of Operation.** Costs of sheltering/caring for household pets will no longer be eligible for FEMA reimbursement when the pet owner transitions out of Section 403 emergency sheltering.

VIII. **ORIGINATING OFFICE:** Disaster Assistance Directorate (Public Assistance Division).

IX. **SUPERSESSION:** This policy supersedes all previous guidance on this subject.

X. **REVIEW DATE:** Three years from date of publication.

//signed//

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate



**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

Lisa Madigan
ATTORNEY GENERAL

December 29, 2006

I - 06-052

TORT LIABILITY:
Liability and Immunity
for Volunteers

Mr. Mike Chamness, Chair
Illinois Terrorism Task Force
Office of Homeland Security
110 East Adams Street
Springfield, Illinois 62701

Dear Mr. Chamness:

I have your letter inquiring whether the volunteers who participate in the Citizens Corps Program, the Homeland Security volunteerism initiative created by President Bush and implemented in Illinois through the Office of Homeland Security's Illinois Terrorism Task Force, are protected from civil liability either by immunity or indemnification. For the reasons which follow, volunteers organized by and acting within the scope of the authority of a State agency or unit of local government, and serving in times of emergency or disaster, may be immune from civil liability arising from negligence depending on the particular facts and circumstances of a given situation. Likewise, indemnification may be available to those volunteers who satisfy specific statutory criteria. Because various statutes may apply in different circumstances, it is not possible to determine the precise boundaries of any potential volunteer's eligibility for immunity or indemnification. Rather, such a determination will require a case-by-case analysis based on the facts unique to each volunteer, the situation, and the surrounding circumstances.

BACKGROUND

According to information you have provided, the Illinois Terrorism Task Force's Committee on Volunteers and Donations oversees the Citizen Corps, a federally created program that encourages units of local government to develop councils to oversee volunteer initiatives and programs for citizens within their jurisdictions. One program, the Medical Reserve Corps, organizes specially trained volunteers such as doctors, nurses, and emergency medical technicians to serve in times of need. As these programs develop, issues have arisen regarding volunteer liability and immunity. You ask, therefore, whether the volunteers who participate in such programs will qualify for the protections afforded by the State Employee Indemnification Act (5 ILCS 350/1 *et seq.* (West 2004)), the Line of Duty Compensation Act (820 ILCS 315/1 *et seq.* (West 2004)), or other Illinois laws.

Before responding to your specific questions, it is helpful to review the Volunteer Protection Act of 1997 (the Volunteer Protection Act) (42 U.S.C.A. §14501 *et seq.* (West 2005)), a Federal statute of general applicability that provides minimum protections to volunteers:¹

(a) Liability protection for volunteers

Except as provided in subsections (b) and (d) of this section, no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if—

(1) the volunteer was acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity at the time of the act or omission;

(2) if appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in the State in which the harm occurred, where the activities were or practice was undertaken within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity;

(3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious,

¹For purposes of the Volunteer Protection Act, "the term 'volunteer' means an individual performing services for a nonprofit organization or a governmental entity who does not receive (A) compensation (other than reasonable reimbursement or allowance for expenses actually incurred); or (B) any other thing of value in lieu of compensation, in excess of \$500 per year[.]" The term includes a volunteer serving as a director, officer, trustee, or direct service volunteer. 42 U.S.C.A. §14505(6) (West 2005).

flagrant indifference to the rights or safety of the individual harmed by the volunteer; and

(4) the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or the owner of the vehicle, craft, or vessel to—

(A) possess an operator's license; or

(B) maintain insurance. 42 U.S.C.A. §14503(a) (West 2005).

The Volunteer Protection Act preempts inconsistent State laws, but does not preempt laws that provide more protection to any category of volunteers performing services for a nonprofit organization or governmental entity. 42 U.S.C.A. §14502 (West 2005). In instances where volunteers may be held liable, the Act limits the imposition of punitive damages (42 U.S.C.A. §14503(e) (West 2005)) and limits volunteer liability for noneconomic damage to the percentage of harm actually caused by the volunteer (42 U.S.C.A. §14504 (West 2005)).

Although the Volunteer Protection Act provides minimal levels of protection to volunteers, there is little case law nationwide, and none in Illinois, discussing the relationship between the Volunteer Protection Act and State immunity and indemnification statutes. Whether the Volunteer Protection Act provides greater protection for volunteers than Illinois law will depend on the particular Illinois statute at issue and the facts of a particular situation.

ANALYSIS

Immunity

Several Illinois laws extend immunity from liability to persons responding to an emergency or a disaster. Not all of the statutes, however, apply to volunteers. Whether a particular statute provides immunity to a qualifying volunteer will depend on the language of that statute and the facts of each case.

Tort Immunity Act

You have described the Citizens Corps as a program encouraging units of local government to develop councils to oversee volunteer initiatives or programs. Based on the apparent involvement of units of local government, the Local Governmental and Governmental

Employees Tort Immunity Act (the Tort Immunity Act) (745 ILCS 10/1-101 *et seq.* (West 2004)) is the most general source² of immunity to cover the efforts of such volunteers.³ The Tort Immunity Act fully immunizes volunteers with respect to the determination of policy and the exercise of discretion (745 ILCS 10/2-201 (West 2004)) and for good faith actions taken pursuant to a law later found to be invalid or unconstitutional (745 ILCS 10/2-203 (West 2004)). Immunity is also provided with respect to the acts or omissions of another person (745 ILCS 10/2-204 (West 2004)), entry upon property (745 ILCS 10/2-209 (West 2004)), and negligent misrepresentation or provision of information (745 ILCS 10/2-210 (West 2004)). The Tort Immunity Act, however, does not immunize negligent health care treatment provided by a public employee who undertakes to prescribe or administer any individual treatment for mental or physical illness. 745 ILCS 10/6-106 (West 2004).

Consequently, the Tort Immunity Act likely would immunize the governmental function aspects of volunteer activity on behalf of a unit of local government, such as policy decisions regarding where to send medical teams and priorities for treatment, without regard to whether persons making those decisions are compensated. However, actual treatment of individual patients would not be immunized by the Tort Immunity Act. Such health care treatment would fall instead under the Good Samaritan Act (745 ILCS 49/1 *et seq.* (West 2004)), which generally immunizes against negligence for emergency care, if such care is provided without fee. Although there is no case law analyzing the relationship between the Good Samaritan Act and the Tort Immunity Act, when participating in the development of emergency management or disaster recovery plans, individuals who are licensed health care professionals likely will have the same immunity as other participants without regard to compensation. A determination of whether a volunteer qualifies for immunity under this Act will depend on the specific facts of each case.

²There are specific provisions regarding immunity and liability for police and correctional activities (745 ILCS 10/4-101 *et seq.* (West 2004)), fire prevention and rescue services (745 ILCS 10/5-101 *et seq.* (West 2004)), and medical, hospital, and public health activities (745 ILCS 10/6-101 *et seq.* (West 2004)).

³Section 1-202 of the Tort Immunity Act (745 ILCS 10/1-202 (West 2004)) defines "employee" to include present and former officers, board members, commissions or committees, agents, volunteers, servants, or employees, whether or not compensated, but not independent contractors. Therefore, when various sections of the Tort Immunity Act immunize the local governmental entity with respect to acts of its employees, the entity is also immunized with respect to acts of volunteers working on its behalf. See 1976 Ill. Att'y Gen. Op. 324. Further, based on the definition of "employee," volunteers for units of local government supervised by paid employees are entitled to the same immunity as public employees under the Tort Immunity Act. *Trotter v. School District 218*, 315 Ill. App. 3d 1, 10-11 (2000), *appeal denied*, 191 Ill. 2d 561 (2000).

Good Samaritan Act

The Good Samaritan Act limits the liability of certain licensed medical professionals and others who respond to emergencies in Illinois.⁴ Generally, the Good Samaritan Act provides that such individuals who, in good faith, render emergency care without fee⁵ will

⁴Specifically, section 25 of the Good Samaritan Act (745 ILCS 49/25 (West 2004)) provides immunity, except for willful or wanton misconduct, to any person licensed under the Medical Practice Act of 1987 (225 ILCS 60/1 *et seq.* (West 2004)) or any person licensed to practice the treatment of ailments in any other state or territory of the United States who, in good faith, provides emergency care without fee to a person.

Similar immunity for providing emergency care without fee is provided for: physician assistants (745 ILCS 49/46 (West 2004)); physical therapists (745 ILCS 49/45 (West 2004)); professional nurses and practical nurses (745 ILCS 49/35 (West 2004)); advanced practice nurses (745 ILCS 49/34 (West 2004)); and emergency medical technicians (745 ILCS 49/70 (West 2004), as amended by Public Act 94-826, effective January 1, 2007). The following professionals, however, are immunized only for providing emergency care without fee to a victim of an accident at the scene of the accident: dentists (745 ILCS 49/15 (West 2004)); optometrists (745 ILCS 49/42 (West 2004)); podiatrists (also applies in case of nuclear attack) (745 ILCS 49/50 (West 2004)); respiratory care practitioners (also applies to victims of a natural disaster) (745 ILCS 49/55 (West 2004)); and veterinarians (also applies to human victims in a catastrophe) (745 ILCS 49/60 (West 2004)).

Licensed professional nurses and practical nurses also have broad immunity from damages and from suit, except for willful or wanton misconduct, when providing nursing services without fee. 745 ILCS 49/40 (West 2004). Persons who have completed certain training courses or received specified certifications have immunity from damages and from suit, except for willful and wanton misconduct, when providing assistance without fee: persons certified in basic cardiopulmonary resuscitation (CPR) who comply with generally recognized standards when providing emergency CPR (745 ILCS 49/10 (West 2004)); persons who have successfully completed a course in basic emergency care of a person in cardiac arrest that included training in the operation and use of an automatic external defibrillator (AED) in accordance with American Heart Association standards when rendering emergency medical care involving the use of an AED (745 ILCS 49/12 (West 2004)); and persons certified in first aid by the American Red Cross or the American Heart Association when rendering assistance (Public Act 94-825, effective July 1, 2006, to be codified at 745 ILCS 49/67).

⁵The Good Samaritan Act does not define the phrase "without fee." There are no reported cases in Illinois construing the phrase "without fee" in the context of disaster response. Illinois appellate courts, however, historically have determined that emergency care provided by a physician in hospital or clinic settings was provided without fee when a patient did not pay for the specific services provided by that physician. See *Estate of Heanue v. Edgcomb*, 355 Ill. App. 3d 645 (2005) (although physician benefitted financially from the medical group doing business with plaintiff patient, the physician was entitled to immunity because the financial relationship did not constitute charging a fee for services); *Rivera v. Arana*, 322 Ill. App. 3d 641 (2001) (the fact that the physician was never paid for his services was controlling); *Villamil v. Benages*, 257 Ill. App. 3d 81 (1993), *appeal denied*, 155 Ill. 2d 577 (1994) (although physician sent a letter to the plaintiff patient requesting her public aid number so that he could bill her, the fact that he never sent a bill was controlling); *Johnson v. Marvink*, 176 Ill. App. 3d 907 (1988), *appeal denied*, 125 Ill. 2d 566 (1989) (hospital bill sent to plaintiff was for supplies and drugs used during the emergency and not for the physician defendant's services). The United States District Court for the Northern District of Illinois recently determined, however, that a fee exists when either a doctor is paid for his services or the patient pays a bill for those services. *Henslee v. Provena Hospitals*, 373 F. Supp. 2d 802 (N.D. Ill. 2005). The court in *Henslee* held that a physician who was paid for his services on a *per diem* basis was not immune under the Good Samaritan Act because he received a fee in rendering emergency care to the plaintiff even if plaintiff was never billed for his services. *Henslee*, 373 F. Supp. 2d at 814.

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not be liable for civil damages unless their acts or omissions constitute willful and wanton misconduct. In the event medical personnel receive a fee for the provision of emergency care, a loss of immunity under the Good Samaritan Act may result.

While the provisions of the Good Samaritan Act will apply to protect licensed medical professionals and certain other individuals who provide emergency care in various situations without fee, as previously noted, the Tort Immunity Act may provide greater protection to persons organized and supervised by units of local government to provide planning and policy services, as that Act's provisions more broadly immunize discretionary conduct. A determination of whether a volunteer qualifies for immunity under this Act will depend on the specific facts of each case.

Illinois Emergency Management Agency Act

The Illinois Emergency Management Agency Act (the IEMA Act) (20 ILCS 3305/1 *et seq.* (West 2004)) includes two immunity provisions. Section 15 of the IEMA Act (20 ILCS 3305/15 (West 2004)) immunizes the State, any political subdivisions of the State, as well as their agents, employees, or representatives engaged in any emergency management response or recovery activities while complying with or attempting to comply with the provisions of the IEMA Act.⁶ This provision will apply to those volunteers who are agents or representatives of the State or any political subdivision of the State.

Subsection 21(a) of the IEMA Act (20 ILCS 3305/21(a) (West 2004)) additionally immunizes against negligent property owners who voluntarily and without compensation allow their property to be used for sheltering persons during an actual or impending disaster or during

*Section 15 of the IEMA Act provides that:

*Neither the State, any political subdivision of the State, nor, except in cases of gross negligence or willful misconduct, * * * the agents, employees, or representatives of any of them, engaged in any emergency management response or recovery activities, while complying with or attempting to comply with this Act or any rule or regulations promulgated pursuant to this Act is liable for the death of or any injury to persons, or damage to property, as a result of such activity. This Section does not, however, apply to political subdivisions and principal executive officers required to maintain emergency services and disaster agencies that are not in compliance with Section 10 of this Act, notwithstanding provisions of any other laws. (Emphasis added.)*

Because of the placement of the phrase "except in cases of gross negligence or willful misconduct," it appears that the State and political subdivisions are fully immunized, while their agents, employees, or representatives are immunized only in the absence of gross negligence or willful misconduct.

an exercise.⁷ Subsection 21(c) (20 ILCS 3305/21(c) (West 2004)) immunizes any private persons, firms, corporations, and their agents or employees, except for willful misconduct, for rendering assistance or advice at the request of the State or any political subdivision under the IEMA Act during an actual or impending disaster.⁸ Because the immunity provisions contained in the IEMA Act do not immunize individuals for gross negligence or willful misconduct, it is possible that the Tort Immunity Act may provide greater protection with respect to, for example, the exercise of policy making or discretionary functions. A determination of whether a volunteer qualifies for immunity under this Act will depend on the specific facts of each case.

Emergency Management Assistance Compact Act

The Emergency Management Assistance Compact Act (the EMAC Act) (45 ILCS 151/1 *et seq.* (West 2004)) governs mutual assistance between states that have adopted the EMAC Act in managing emergencies or disasters. Article VI of the EMAC Act (45 ILCS 151/5 (art. VI) (West 2004)) concerns liability, and provides:

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another

⁷Subsection 21(a) of the IEMA Act provides:

(a) Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of sheltering persons during an actual or impending disaster, or a exercise together with his or her successors in interest, if any, shall not be civilly liable for negligently causing the death of, or injury to, any person on or about such real estate or premises under such license, privilege or other permission, or for negligently causing loss of, or damage to, the property of such person.

⁸Subsection 21(c) of the IEMA Act provides:

(c) Any private person, firm or corporation, and any employee or agent of such person, firm or corporation, who renders assistance or advice at the request of the State, or any political subdivision of the State under this Act during an actual or impending disaster, shall not be civilly liable for causing the death of, or injury to, any person or damage to any property except in the event of willful misconduct.

The immunities provided in this subsection (c) shall not apply to any private person, firm or corporation, or to any employee or agent of such person, firm or corporation whose act or omission caused in whole or in part such actual or impending disaster and who would otherwise be liable therefor.

state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

The EMAC Act does not define the terms "officers" and "employees." It does provide for the formulation of interstate mutual aid plans and procedures by designees of the governors of the party states. 45 ILCS 151/5 (arts. II, III) (West 2004).⁹ Therefore, the Committee on Volunteers and Donations may wish to review any existing mutual aid plans which have been developed by IEMA and neighboring states to determine whether volunteers are included and to make recommendations for amendments as necessary. However, the limitation on liability provided in the EMAC Act will apply only with respect to personnel of a party state rendering aid in another state, and not to individuals who unilaterally offer assistance in an emergency.

Oil and Hazardous Materials Spills

Volunteers who may be called on to assist at the scene of oil or chemical spills or releases should be aware of the Illinois Oil Spill Responders Liability Act (740 ILCS 113/1 *et seq.* (West 2004)) and the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. §9601 *et seq.* (West 2005)). The Illinois statute applies with respect to oil spills or releases of material not designated as hazardous substances under Federal law, while the Federal law applies to those materials which are hazardous substances. Both laws provide limitations on liability for negligence for persons responding to a spill who render care, assistance, or advice consistent with the National Contingency Plan, as otherwise directed by the Federal on-scene coordinator, or by the State official with responsibility for oil spill response. Neither law immunizes conduct causing a spill or grossly negligent, reckless, willful, wanton, or intentional misconduct. The Illinois law also does not apply with respect to personal injury or wrongful death. 740 ILCS 113/10 (West 2004). Although the Federal law does not specifically state that it applies to volunteers, it applies to persons working within the scope of their authority for the State or a unit of local government (42 U.S.C.A. §§9607, 9619 (West 2005)). A determination of whether a volunteer qualifies for immunity under either of these laws will depend on the specific facts of each case.

⁹States may also enter into supplementary agreements which may include, but are not limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies. 45 ILCS 151/5 (art. VII) (West 2004).

Indemnification

You have also asked about the applicability to volunteers of certain indemnity statutes, such as the State Employee Indemnification Act (5 ILCS 350/0.01 *et seq.* (West 2004)) and the Line of Duty Compensation Act (820 ILCS 315/1 *et seq.* (West 2004)). Indemnity will be available to volunteers who fall within the statutory provisions in some limited instances.

State Employee Indemnification Act

The State Employee Indemnification Act provides for the defense and indemnification of State¹⁰ employees¹¹ named as defendants in civil suits arising from acts or omissions within the scope of their employment, unless an act or omission was intentional, willful, or wanton misconduct. For a volunteer to fall within the purview of the State Employee Indemnification Act, the volunteer must have a written agreement with a State agency concerning the volunteer activity in which he or she is engaged. Volunteers working under the auspices of units of local government will not be covered by this Act. Volunteers who assist in emergency management and planning activities, however, may be covered if their participation in such activities is reduced to writing in an agreement with a State agency. A determination of whether a volunteer qualifies for indemnification under this Act will depend on the specific facts of each case.

Line of Duty Compensation Act

The Line of Duty Compensation Act provides death benefits and burial benefits for persons serving in covered positions who are killed in the line of duty. Volunteers are generally not included in the covered positions specifically set out in section 2 of this Act (820

¹⁰"State" is defined to include all agencies and instrumentalities of the State, but to specifically exclude units of local government covered by the Local Governmental and Governmental Employees Tort Immunity Act. 5 ILCS 350/1(a) (West 2004).

¹¹"Employee" is defined in the State Employee Indemnification Act to apply to only select volunteers:

[I]ndividuals or organizations who perform volunteer services for the State where such volunteer relationship is reduced to writing, * * * individuals or not for profit organizations who, either as volunteers, where such volunteer relationship is reduced to writing, or pursuant to contract, furnish professional advice or consultation to any agency or instrumentality of the State.] 5 ILCS 350/1(b) (West 2004).

ILCS 315/2 (West 2005 Supp.)).¹² You have asked, however, whether members of a State or volunteer response team, when acting as individuals or affiliated with a group authorized under the Illinois Emergency Operations Plan or a local emergency operations plan, would be covered as "civil defense workers" and receive benefits pursuant to the Line of Duty Compensation Act.

Subsection 2(g) (820 ILCS 315/2(g) (West 2005 Supp.)) defines "civil defense worker," to mean:

any person employed by the State or a local governmental entity as, or otherwise serving as, a member of a civil defense work force, including volunteer civil defense work forces engaged in serving the public interest during periods of disaster, whether natural or man-made. (Emphasis added.)

This provision was intended to extend the Act's coverage to those who volunteer services in times of disaster. Remarks of Sen. Johns, March 20, 1975, Senate Debate on Senate Bill No. 58, at 26.¹³ A determination of whether a volunteer qualifies for indemnification under this Act will depend on the specific facts of each case.

Tort Immunity Act

In addition to granting immunity to qualifying "employees," the Tort Immunity Act also authorizes the indemnification of employees. Section 2-302 of the Tort Immunity Act (745 ILCS 10/2-302 (West 2004)) provides that if any claim or action is instituted against an "employee" (which, as discussed previously, may include a volunteer in qualifying circumstances) of a local public entity based on an injury allegedly arising out of an act or

¹²Only those volunteer firemen carried on the rolls of a regularly constituted fire department are included within the definition of fireman. "Paramedic" is defined to include only those who are members of an organized body under the jurisdiction of a unit of local government; whether they volunteer in that capacity or are compensated is not a determinative factor. "State employee" is narrowly defined as those eligible for the State Employees Retirement System, excluding not only volunteers, but also elected and many appointed State officers. "Chaplains" are included only when specifically designated as such by fire and police agencies, a status not likely to be held by many emergency volunteers. A "civil air patrol member" includes volunteer members of an organization commonly known as the Civil Air Patrol.

¹³The only reported case under the Act providing for compensation of a civil defense worker involved a member of the Tolona Civil Defense Corps, who was called on to participate in a training exercise conducted during a heavy snowstorm. While responding to a call from the supervisor of the exercise to aid a motorist who was stuck in a snowbank, the corps member suffered a heart attack and died. The Illinois Court of Claims authorized an award under the Act to the corps member's widow. *In re Application of Woodworth*, 34 Ill. Ct. Cl. 298 (1981).

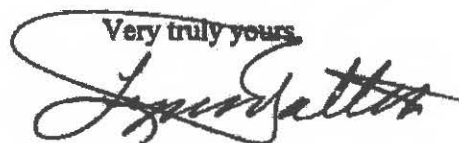
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omission occurring within the scope of his or her employment, the entity may elect, but is not required, to indemnify the employee. Section 2-301 of the Tort Immunity Act (745 ILCS 10/2-301 (West 2004)) specifically provides that nothing in Part 3 of the Tort Immunity Act (745 ILCS 10/2-301 *et seq.* (West 2004)) relieves a local public entity of its duty to indemnify or insure its employees as provided in other enumerated statutes. *See, e.g.*, 65 ILCS 5/1-4-5, 1-4-6 (West 2004) (indemnification for injuries caused by police officer or while assisting police officer). Thus, whether a duty to indemnify extends to volunteers will depend on the statutory terms and the specific facts of each case.

CONCLUSION

Volunteers organized by and acting within the scope of the authority of a State agency or a unit of local government may potentially qualify for the protections from liability afforded by a number of Illinois laws and the Federal Volunteer Protection Act. The extent of the immunity or indemnification provided to a volunteer will depend, however, on the particular circumstances specific to each volunteer situation and the resulting applicability of particular Illinois statutes. This will require a case-by-case analysis based on the facts unique to each volunteer, the situation, and the surrounding circumstances.

This is not an official opinion of the Attorney General. If we may be of further assistance, please advise.

Very truly yours,


LYNN E. PATTON
Senior Assistant Attorney General
Chief, Opinions Bureau

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MEMORANDUM OF UNDERSTANDING

Between the **International Fund for Animal Welfare, Inc.** (hereinafter referred to as "IFAW")

And

Illinois Department of Agriculture (hereinafter referred to as "IDOA")

Title of Project:	Disaster Assistance Program
Start Date:	August 1, 2012
End Date:	July 31, 2015

BACKGROUND

The International Fund for Animal Welfare (IFAW), a U.S. nonprofit organization, is part of a worldwide group of nonprofit organizations that collectively comprise the International Fund for Animal Welfare (hereinafter referred to as "IFAW"). IFAW works to improve the welfare of wild and domestic animals throughout the world by reducing commercial exploitation of animals, protecting wildlife habitats, and assisting animals in distress. We seek to motivate the public to prevent cruelty to animals and to promote animal welfare and conservation policies that advance the well being of animals and people. As one of the largest international animal welfare organizations in the world, IFAW has offices in 15 countries/regions; programs in 30 countries, and a global staff of more than 200 experienced campaigners, legal and political experts, and internationally acclaimed scientists. IFAW pursues a variety of local, national, and global campaigns around the world. In each region where we work, IFAW's activities are formed based on local customs and culture and tailored to the particular economic and political conditions of that area. All of IFAW's efforts are rooted in the belief that a world in which animal life can survive and thrive is fundamental to human well being.

During times of disaster the State of Illinois' ("State") Emergency Management Agency assigns responsibility for animal and/or agriculture disaster response activities to the Illinois Department of Agriculture (IDOA), as outlined in the State's Emergency Management Plan.

OBJECTIVE

The Purpose of this program is to identify and coordinate disaster assistance and animal rescue efforts between IFAW and IDOA in preparing for, responding to, and recovering from a major incident – such as a natural or man-made disaster of significant proportion.

The benefits to this collaboration would include additional resources being available to IDOA following an incident. These resources may include small and large animal strike teams,

“overhead” management teams, and transport support. In addition, this collaboration may lead to additional training opportunities between the two agencies to enhance response effectiveness.

PROJECT GOALS

Ultimately, the primary goal of this collaboration is to maximize the welfare of animals and their owners and careers before, during, and after a major incident, and to minimize the loss of life and animal suffering that might occur following such an incident through: mitigation activities; ongoing planning and exercises; and an effective and safe response. IFAW agrees to be responsible for taking necessary and appropriate action(s) to achieve the primary goal.

AGREEMENT

- This Memorandum Of Understanding outlines an Agreement made between the International Fund for Animal Welfare, Inc. (IFAW) and IDOA for work to be undertaken beginning 1 August 2012 through 31 July 2015. This Agreement will be reviewed and renewed by both agencies within 30 days of expiration. This agreement, if agreed to in writing by both parties, shall not exceed 10 years.
- The Agreement may be severed by either party with just cause in writing with 30 days notice; and
- Alterations and/or additions, if required, will be made to the Agreement upon mutual consideration and agreement by both parties in written form. This Agreement is signed in two identical copies each having equal legal force. Each party shall keep an original copy of the Agreement.

PROPOSED RESPONSE LOGISTICS

- IFAW will provide to IDOA a contact list and up-to-date contact phone numbers to ensure readiness. This contact list will be structured “three-deep” and IFAW will strive toward ensuring that resources will be available 24 hours/day, 7 days/week, 365 days/year;
- Upon receiving a request to assist, IFAW will deploy resources as needed and when available to IDOA. Those resources will be comprised of IFAW staff, partners, and volunteers and will be organized in teams with a designated Team Leader (TL). The TL will be responsible for ensuring that IFAW resources are used effectively and safely. The TL will report to the Operations Manager of IDOA. Management of the incident will rest completely with the Operations Manager and he/she may use IFAW resources to assist in the management of the incident or to provide overhead management of the response. The Operations Manager will make a determination, after consulting with IFAW’s Team Leader, as to the best way to utilize IFAW resources. The TL will have ultimate responsibility for the safety and well-being of his/her team;
- The Operations Manager for IDOA will assume Command. He/she will be responsible for assigning general and command staff roles to IFAW as needed. He/she may delegate

or transfer his/her authority to IFAW staff as needed and when appropriate. The Incident Command System (ICS) and the National Incident Management System (NIMS) will provide the structure and framework for managing the response;

- If additional resources are needed beyond what IFAW can provide, IFAW, in conjunction with Command, will coordinate the contact, activation, and deployment of the National Animal Rescue and Sheltering Coalition (NARSC).
- IFAW training staff will provide training for IDOA and their partners in ICS and NIMS if needed. IFAW will also provide technical animal rescue (water and rope) upon request and as training staff are available; and
- The incident response requests that IFAW receives from Illinois will be forwarded to the Operations Manager of IDOA.

CONFIDENTIALITY OF INFORMATION

IFAW and IDOA agree to keep, and to ensure that its employees, subcontractors, and volunteers keep, confidential all materials and information that are provided to its employees, subcontractors, and volunteers by IFAW or IDOA in connection with their performance under the Disaster Assistance Program and that are not available to the general public, including without limitation, financial information, and information and materials about IFAW's and its affiliates' operations, campaigns, strategic and tactical plans.

IFAW and IDOA shall not and shall ensure that its employees, subcontractors, and volunteers do not, use, disclose, or publish any Information pertaining to the Disaster Assistance Program without proper written approval of IFAW and IDOA either during or subsequent to the Term of the program except that IFAW and IDOA employees, subcontractors, and volunteers may use the information during the Term to the extent (and only to the extent) necessary to perform the Goals and Objectives of the program. All Information shall at all times be and remain the exclusive property of IFAW. IFAW or IDOA shall be responsible for any breach of these provisions by its employees, subcontractors, or volunteers.

IDOA is subject to the requirements of the Freedom of Information Act 5 ILCS 140 et. seg. and will provide information when required to do so in accordance with those provisions.

ASSUMPTION OF RISK

By signing this agreement, IFAW acknowledges that the nature of the Services involves a high degree of risk of injury to person and property (including death) and on behalf of itself and its employees, subcontractors, and volunteers, voluntarily accepts and assumes such risk. These risks include, but are not limited to: strenuous physical activity; travel to, within and from rustic and/or remote areas under rugged conditions, by plane, helicopter, truck, boat and other modes of transportation; exposure to human and animal diseases; lack of adequate or immediately available medical care; animal and insect bites or scratches; risks associated with construction, loading and unloading; risk of electric shock; exposure to oil and hazardous materials; exposure to inclement weather and other natural elements; and exposure to, and lack of protection from,

criminal activity. IFAW acknowledges and agrees that it is solely responsible for determining the ability, fitness and suitability of their employees, subcontractors, or volunteers, to provide the Services and represents to Illinois that all such employees, subcontractors, and volunteers, are in good health, and are aware of no physical problem or condition that would impair their ability to perform the Services.

Neither party is responsible for the actions of the other. No partnership or agency relationship is intended, or will be erected, through the execution of this MOU between the signing parties.

Volunteers may be eligible for worker's compensation benefits subject to the requirements set for in the Illinois Emergency Management Agency Act 20 ILCS 3305 (k) and its accompanying regulations 29 Ill. Code 301 Subpart F. Eligibility for such benefits will be determined by IEMA.

OWNERSHIP OF INFORMATION AND OTHER ASSETS

- In the spirit of professional conduct, institutional collaboration, and national interests, both IFAW and IDOA shall include and acknowledge the other party in research studies, scientific or educational publications/signage, and/or presentations giving credit where it is due;
- IFAW will have the right from time to time to request, receive and use existing pictures and other information, or to photograph and request information on animals/communities benefiting from IFAW's support to the Disaster Assistance Program. Such pictures and information may be used in fundraising appeals to IFAW donors around the world, the proceeds of which will be utilized by IFAW without restriction. All such photos will become the property of IFAW and IDOA agrees to assign full copyrights to IFAW;
- Results arising from joint studies or operations between IFAW and IDOA shall be jointly owned and both parties shall retain access without inhibition; and
- Equipment purchased for the purpose of implementing projects will remain the property of IFAW, unless otherwise agreed.

ASSIGNMENT / SUBCONTRACTING

IFAW will not assign or subcontract their rights or obligations under this agreement to any third party without prior written consent from the other party. In the event that a subcontract with a third party to provide any of the Services is required, the responsible party subcontracting shall require each subcontractor to make representations and covenants similar to those set forth in this agreement, including without limitation provisions with respect to Confidential Information, Ownership of Materials, Assumption of Risk and Release of IFAW and Conflicts of Interest.

The laws of the State of Illinois govern this agreement. The state and federal courts located in the State of Illinois shall have jurisdiction over all disputes and matters whatsoever arising under, in connection with, or incident to, or related in any way to this agreement.

GENERAL

No trustee, Operations Manager, shareholder, member, officer, employee or agent of IFAW shall be personally or individually liable – and none of IFAW’s affiliates shall be in any way liable – for the observance or performance of IFAW’s covenants and obligations under this agreement.

This agreement shall constitute the entire agreement between IDOA and IFAW with respect to the Services and supersedes any and all prior understandings or agreements whether oral or written with respect to the Services.

If the above meets with IDOA’s approval, please sign and return two original copies of this agreement to IFAW Headquarters, Attn: Shannon Walajtys, 290 Summer St, Yarmouth Port, MA 02675, U.S.A., signifying IDOA’s acceptance of the terms and conditions.

SIGNED for and on behalf of the **INTERNATIONAL FUND FOR ANIMAL WELFARE, INC**

Signature: _____

Name: Azzedine Downs

Title: Executive Vice President

Date: _____

SIGNED for and on behalf of the **ILLINOIS DEPARTMENT OF AGRICULTURE**

Signature: _____

Name: Robert F. Flider

Title: Acting Director

Date: _____

Ready Home Plan and Prepare

Animals / Pets

Pets are often full-fledged family members, so any family emergency plan must include them to be truly complete.

Additions to Your Emergency Kit and Go Bag

- A recent photo of your pets in case they get lost
- Sturdy leashes and/or carriers
- Pet food, water, and bowls
- Cat litter and box
- Pet toys
- Contact information for veterinarian
- Medical information and records
- Any necessary medication
- Plastic bags for clean-up

If You Evacuate, Take Your Pets

The single most important thing you can do to protect your pets if you must evacuate is to take them with you. Even if you think you may be gone for only a few hours, take your animals. Once you leave your home, you have no way of knowing how long you'll be kept out of the area, and you may not be able to go back for your pets. Transport your pets in carriers or on leashes during an emergency to help them feel more secure.

Do Not Forget ID

Your pets should wear up-to-date identification at all times. It is a good idea to include on the tag the phone number of a friend or relative outside your immediate area.

Find a Safe Place Ahead of Time

Because evacuation shelters generally don't accept pets except for service animals, you must plan ahead to ensure that your family and pets have a safe place to stay. Don't wait until disaster strikes to do your research.

- Contact hotels and motels outside your immediate area to check policies on accepting pets.
- Check with friends or relatives outside your immediate area. Ask if they would be able to shelter you and your animals or just your animals. Make a list of boarding facilities and veterinary offices that might be able to shelter animals in emergencies; include 24-hour telephone numbers.
- Ask your local animal shelter if it provides foster care or shelter for pets in an emergency. This should be your last resort, as shelters have limited resources and are likely to be stretched to their limits during an emergency.

If You Don't Evacuate

If your family and pets must wait out a storm or other disaster at home, identify a safe area of your home where you can all stay together. Keep dogs on leashes and cats in carriers, and make sure they are wearing identification. Have any medications and a supply of pet food and water in watertight containers, along with your other emergency supplies.

As the Disaster Approaches

Don't wait until the last minute to get ready. Bring pets into the house and confine them so you can leave with them quickly if necessary. Make sure your disaster supplies are ready to go, including your pet disaster kit.

In Case You Are Not Home

An evacuation order may come or a disaster may strike while you're at work or out of the house. Make arrangements in advance for a trusted neighbor to take your pets and their disaster kits and meet you at a specified location.




When You Return Home

Whether you have taken shelter at home or evacuated, your home may be a very different place after a disaster. Don't allow your pets to roam loose. Familiar landmarks and smells might be gone, and your pet will probably be disoriented. Pets can easily get lost in such situations.

Be patient with your pets after a disaster. Try to get them back into their normal routines as soon as possible, and be ready for behavioral problems that may result from the stress of the situation. If behavioral problems persist, or if your pet seems to be having any health problems, talk to your veterinarian.

Attachment 4

For Additional Information

-  [Pets and Disasters-American Veterinary Medical Association](#)
-  [Prepare Your Home and Family: Pets – American Red Cross](#)
-  [Caring For Animals - Ready.Gov](#)



 **Emergency Preparedness Planning for Pets and Livestock brochure**

Preplanning can be vital in determining how you and/or your animals survive a disaster. This brochure details various measures animal owners can take to be prepared in case of an emergency.



 **Premises ID & Animal ID brochure**

This brochure explains the National Animal Identification System (NAIS), which is comprised of three components: Premises Identification, Animal Identification, and Animal Tracking.

Public Assistance Funding Process

Disaster occurs

Local government conducts damage assessment

Local damage assessment information provided to IEMA

IEMA determines need for FEMA/IEMA damage assessment

FEMA/IEMA conduct preliminary damage assessment with local officials

Governor may request Federal Disaster Declaration

Federal Disaster Declaration made by the President (a per capita amount of eligible costs is required)

Public assistance applicants' briefing

Project worksheets are developed, reviewed, approved, and obligated by FEMA

IEMA reimburses applicants for eligible expenses/eligible work completed

Project Closeout Inspection

Records Retention and Audit

Important Websites

Real-time disaster information and preparedness tips

www.ready.illinois.gov

The Illinois Emergency Management Agency's Official website

<http://state.il.us/iema>

Bureau of Disaster Assistance and Preparedness website

<http://www.iema.illinois.gov/iema/disaster/disaster.htm>

IEMA's 24-hour Emergency Telecommunications Center

(800) 782.7860



Printed by the Authority of the State of Illinois
IOC1 0019 - PO# 694 - 2,500 - 8/09



State of Illinois
Illinois Emergency Management Agency



Disaster Declaration Process



IEMA

Attachment 5

Local Response

All disasters begin with a local response. Local resources are used to respond to the disaster. The chief local elected official in a city or county may declare a local disaster in order to activate that jurisdiction's emergency operations plan. Citizens should report damages to their City/County Emergency Management Agency or City/County officials.

Local Government Requests Assistance

If a city's or a county's response capabilities are overwhelmed or depleted, local officials may request assistance from IEMA. Cities in need of State assistance should make their request through the County Emergency Management Agency. County EMAs should submit all requests for State assistance to IEMA.

State Disaster Declaration

The Governor may proclaim a state disaster, which allows state agency resources to assist local governments. For example, the Illinois Department of Transportation or the Illinois Department of Corrections may be requested to help with debris removal.

Preliminary Damage Assessments

Damage information (private property, business losses, and public infrastructure damages) must be first collected by local officials. Based upon the information collected by local officials, IEMA may request a Federal/State Preliminary Damage Assessment (PDA). During the visit, the PDA team tours, collects and analyzes the damage information. The damage assessment team members include IEMA, FEMA, SBA, and local officials. Local officials MUST be prepared to show all damages to the PDA team(s).

NOTE: The ability to gather damage information expeditiously may be hindered due to the nature and severity of the disaster. For example, flood damage cannot be accurately assessed until water levels recede enough to allow PDA teams access to impacted buildings and homes.

Requesting a Presidential Disaster Declaration

If the Governor asks the President for a Major Disaster declaration, the request is submitted through FEMA Region V in Chicago. FEMA reviews the Governor's request and makes a recommendation to the President. The President then makes the decision on the Governor's request.

If the Request is Denied

The Governor may appeal the denial. The appeal must be submitted within 30 days and provide additional NEW information to the original request for re-consideration.

President Approves Disaster Request

Depending on the State's request, the Federal disaster declaration may make assistance available to families, businesses, local governments, and/or certain private non-profit organizations located in declared counties that suffered eligible disaster related damages. The primary federal assistance programs are Individual Assistance, Public Assistance, Hazard Mitigation Assistance, and Small Business Administration disaster loans.

Individual Assistance

Helps individuals and households in declared counties begin the recovery process after a disaster. Individual Assistance programs include: Individuals & Households Program, Minimum Essential Repair, Disaster Unemployment, and other programs. Homeowners, renters, and businesses may apply to the SBA for low interest economic impact disasters loans. Individuals, families, and businesses have 60 days after the declaration is issued to register for assistance either by telephone or the internet.

Public Assistance

Helps reimburse local, county, and state governments, and certain private, non-profit organizations in declared counties for debris removal, emergency protective measures, and repair/replacement of damaged public infrastructure. Emergency Work includes debris removal and emergency protective measures. Permanent Work categories include roads and bridges, water control facilities, buildings and equipment, utilities, and parks/recreational facilities. Damages and costs incurred from a disaster are measured by a statewide and county per capita dollar threshold. These factors are considered by FEMA when determining the need for a Public Assistance major disaster declaration.

Public Assistance Disaster Briefings for Local Officials

IEMA conducts applicant briefings to explain to local officials the Public Assistance Program policies and procedures, how project worksheets are prepared and the reimbursement processes and procedures. Local officials have 30 days from the date of the Disaster Declaration to submit a request for Public Assistance to the Illinois Emergency Management Agency.

Hazard Mitigation Grant Program

After a Presidential Declaration the Hazard Mitigation Grant Program (HMGP) provides federal assistance to states, local units of government and certain private non-profit organizations for long-term mitigation measures and all-hazards mitigation planning.

Applicant organizations must have a FEMA-approved mitigation plan in place prior to the submission of project applications to FEMA, with the proposed project identified in the plan. Local government applicants must belong to the National Flood Insurance Program (NFIP).

4 Stay Informed Know about Types of Emergencies

Some of the things you can do to prepare for the unexpected, such as assembling an emergency supply kit for yourself, your family and your pets, are the same regardless of the type of emergency. However, it's important to stay informed about what might happen and know what types of emergencies are likely to affect your region as well as emergency plans that have been established by your state and local government. Remember, disasters can be natural or man-made! For more information about how to prepare, visit www.ready.illinois.gov, call 1-800-BE-READY or contact your local Illinois American Red Cross.

Be prepared to adapt this information to your personal circumstances and follow instructions received from authorities. With these simple preparations you can be ready for the unexpected. Take the time now to get yourself and your pet ready.

Preparing for your animals
makes sense.

GET READY NOW!



This project was supported by Cooperative Agreement Number 2006 V0858-IL-GT administered by the U.S. Department of Homeland Security, G & T, Office for Domestic Preparedness. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the United States Government.

State of Illinois
Pat Quinn,
Governor
Department of Agriculture
Thomas E. Jennings, Director
Illinois Terrorism Task Force



Illinois State Veterinary Medical Association
Illinois Veterinary Emergency Response

Emergency Preparedness Planning for Pets & Livestock

PREPARING ANIMALS FOR EMERGENCIES MAKES SENSE

Prepare Pet Emergency Supply Kit

Just as you do with your family's emergency supply kit, think first about the basics for survival, particularly food and water, and consider two kits. In one, put everything you and your pets will need to stay where you are. The other should be a lightweight, smaller version you can take with you if you and your pets have to get away. Plus, be sure to review your kits regularly to ensure that their contents, especially foods and medicines, are fresh.



FOOD & WATER: Keep at least three days of food in an airtight, waterproof container. Store at least three days of water specifically for your pets in addition to water you need for yourself and your family.

MEDICINES & VITAL RECORDS: Keep extra supplies of medicines your pet takes on a regular basis in a waterproof container. In addition, place copies of your pet's registration information, adoption papers, vaccination documents, medical records and emergency contact information (such as animal control, Humane Society, or ASPCA and emergency vet hospitals) in a clean plastic bag or waterproof container and also add them to your kit.

PET FIRST-AID KIT: Most kits should include: cotton bandage rolls, bandage tape and scissors; antibiotic ointment; flea and tick prevention; latex gloves, isopropyl alcohol and saline solution. Include a pet first-aid reference book.

GET READY NOW!

COLLAR WITH ID TAG, HARNESS OR LEASH: Your pet should wear a collar with its rabies tag and identification at all times. Include a backup leash, collar and ID tag in your pet's emergency supply kit.

TALK TO YOUR VETERINARIAN: Discuss the types of things that you should include in your pet's emergency first-aid kit. Get names of veterinarians or veterinary hospitals in other cities where you might need to seek temporary shelter. Keep one copy of these phone numbers with you and one in your pet's emergency supply kit. You should also consider talking with your veterinarian about permanent identification such as micro-chipping and enrolling in a recovery database. Keeping your emergency contact information current and listing with a reliable recovery database is essential to you being reunited with your pet.

CRATE OR OTHER PET CARRIER: If you need to evacuate in an emergency situation take your pets and animals with you provided that it is practical to do so. In many cases, your ability to do so will be aided by having a sturdy, safe, comfortable crate or carrier ready for transporting your pet. The carrier should be large enough for your pet to stand, turn around and lie down.

SANITATION: Include pet litter and litter box if appropriate, newspapers, paper towels, plastic trash bags and household chlorine bleach to provide for your pet's sanitation needs. You can use bleach as a disinfectant (dilute nine parts water to one part bleach), or in an emergency you can also use it to purify water by using 1/8 of a teaspoon or 16 drops of regular household liquid bleach per gallon of water. Do not use scented or color safe bleaches, or those with added cleaners.

Attachment 6

PICTURE: If you become separated from your pet during an emergency a picture of you and your pet together will help you document ownership and allow others to assist you in identifying your pet. Include detailed information about species, breed, age, sex, color and distinguishing characteristics.

FAMILIAR ITEMS: Put favorite toys, treats or bedding in your kit. Familiar items can help relieve pet stress.

2 Plan What you will do in an Emergency



Be prepared to assess the situation. Use your emergency supply kit you have on hand to take care of yourself and ensure your pet's safety during an emergency. Depending on your circumstances and the nature of the emergency, the first important decision is whether you stay put or get away. You should understand and plan for both possibilities. Use common sense and the information you are learning here to determine if there is immediate danger. In any emergency local authorities may or may not immediately be able to provide information on what is happening or what you should do. Therefore, watch TV, or listen to the radio for instructions. If you're specifically told to evacuate, shelter-in-place or seek medical treatment, do so immediately.

CREATE A PLAN TO GET AWAY: Plan how you will assemble your pets and anticipate where you will go. If you must evacuate, take your pets with you. If you go to a public shelter, keep in mind your animals may not be allowed inside. Secure appropriate lodging in advance depending on the number and types of animals in your care. Consider family or friends willing to take in you and your pets in an emergency. Other options may include: a hotel or motel that takes pets or a boarding facility, such as a kennel or veterinary hospital, that is near an evacuation facility or your family's meeting place. Find out before an emergency happens if any of these facilities in your area might be viable for you and your pets.

DEVELOP A BUDDY SYSTEM: Plan with neighbors, friends or relatives to make sure that someone is available to care for or evacuate your pets if you are unable to do so. Talk with your pet care buddy about your evacuation plans and show them where you keep your pet's emergency supply kit. Also designate specific locations; one in your immediate neighborhood and another further away where you will meet in an emergency. Obtain "PETS INSIDE" stickers and place them on your doors and windows. Include numbers and types of pets in your home to alert firefighters and rescue workers. Consider putting a phone number on the sticker for emergencies. And, if time permits, write "Evacuated with Pets" across the stickers should you flee with your pets.



Check with your veterinarian and Illinois Department of Agriculture for information about possible disease outbreaks.

Illinois Department of Agriculture
866.299.9256
www.agr.state.il.us

3 Special Considerations Horse & Livestock Owners

PRIOR TO AN EMERGENCY: Familiarize yourself with types of disasters that could occur in your area, including man-made situations such as chemical spills near highways. Develop a written plan of action for each. Include a list of resources (suppliers, trucks and trailers), evacuation sites, emergency phone numbers and people who can help during an emergency. Store a copy with important papers in a plastic bag or waterproof container. Review the plan regularly with everyone involved.

Survey your property for the best location for animal confinement in each type of disaster. Identify food and water sources that do not rely on electricity, which could be lost during an emergency.

Decide where to take animals if evacuation is necessary. Contact fairgrounds, other producers (especially those with empty barns and pastures), stockyards and auction markets about their policies and ability to take livestock temporarily in an emergency. Have several sites in mind in case your first choice is unavailable.

Familiarize yourself with several evacuation routes to your destination. Avoid routes likely to be traveled heavily by people unless instructed to follow official routes.

Photograph, identify (brands, ear-tags, nose prints, retinal scans, etc.) and inventory (by age, sex, weight, breed) your animals. Identify in a written list which animals (such as breeding stock) are of the highest priority or most valuable. Make sure others know your plans. Keep copies of important papers.

Keep vaccinations and boosters up-to-date. Record the dates, dosages and types of medications and health products the animals have received and record dosing instructions and dietary requirements. Keep this information with the emergency supply kit.

DURING AN EMERGENCY: Listen to the local radio/TV stations for emergency information.

If possible, evacuate your livestock, take all vaccination and medical records, the emergency supply kit and enough hay, feed and water for a minimum of 72 hours. Call ahead to your destination to make sure the site is still available.

Don't forget basic bio-security measures if you evacuate, especially if you know your herd is under quarantine or has a communicable disease.

If you must evacuate without your animals, leave them in an appropriate pre-selected area. Leave enough hay, food and water for 72 hours. Do NOT rely on automatic watering systems; power may be lost.

AFTER AN EMERGENCY: Check fences - be sure they are intact. Check pastures and fences for sharp objects that could injure livestock.

Beware of downed power lines.

Beware of raccoons, skunks and other wild animals that may have entered the area and could pose a danger to your animals.

If animals are lost, contact veterinarians, humane societies, stables, surrounding farms and other facilities. Listen to the local radio for groups that may be accepting lost animals.

ANIMAL CONTROL CENTER ANIMAL DISASTER & EVACUATION PLAN

This plan is designed to address companion animals, and more specifically dogs and cats, in the event of a disaster. Provisions for other pets and animals will be made wherever possible. In the event of a disaster, the following post disaster procedures shall be followed:

If the Animal Control Center is deemed suitable to continue to house animals no further action will be taken. Regular procedure and protocols will apply.

If the Animal Control Center is not deemed suitable to continue to house animals then the following relocation procedures will be followed:

TRANSFER OF CARE OF ANIMALS

Memoranda of Agreements between Sangamon County Department of Public Health Animal Control Center and other surrounding county animal control agencies, animal shelters, veterinarian clinics, and private boarding kennels will be implemented to transfer the care of animals currently residing in the Animal Control Center (ACC). These MOA's will include the housing of stray animals, and displaced owned animals that are acquired by ACC after a disaster. The criterion of the facility to which an animal is transferred is as follows:

Newly acquired animals, displaced animals- These are animals which are new to the ACC or have been in the facility 7 days or less. These animals will be transferred to the surrounding county agencies only. The following counties are adjacent to Sangamon: Christian, Montgomery, Macoupin, Morgan, Cass, Menard, Logan, and Macon. Peoria County is not an adjacent county; however, a working relationship has been established in the past, so this county will be included as well.

ACC Owned animals- These animals may be transferred to any licensed animal shelter with adequate space to receive them for temporary housing or permanent transfer of possession.

Memoranda of Agreements for these facilities are included as attachments.

ALTERNANT HOUSING OF ANIMALS

In the event that all efforts of transferring animals have become exhausted and it becomes necessary to establish an alternate housing facility, the following protocols will be used.

Criteria for a Designated Alternate Housing (DAH)

1. Water
2. Electricity
3. Waste disposal/garbage service

Designated Alternate Housing (DAH)

- i. Illinois State Fairgrounds
- ii. Sangamon County Fairgrounds
- iii. Animal control agencies of surrounding counties
- iv. Vet clinics
- v. Local animal shelters
- vi. Boarding facilities

Memoranda of Agreements for these facilities are included as attachments.

- The Director of Operations will oversee the set up and operation of the DAH.
- The Director of Operations will notify the Department of Professional Regulation that the agency has moved to a temporary location.
- Animals under holding periods will be transported to and maintained at the DAH facility as space is available. If no space is available they may be transferred to another licensed animal control agency.
- Stray animals will be brought to the DAH.
- Triage of injured animals will be directed by the Administrator.
- Animals with a known owner will be maintained for **twice** the required holding period.
- Animals with no known owner will be maintained for **twice** the required holding period as space allows.
- Animals that are too severely injured or diseased may be subject to euthanasia as recommended by the Administrator. Exigent circumstances exist when the Administrator or any other licensed veterinarian cannot be secured without undue delay and, in the opinion of an animal control officer or animal control staff, an animal is so severely injured, diseased, or suffering that it is unfit for any useful purpose and to delay humane euthanasia would continue to cause the animal extreme suffering.
- An animal control officer or animal control employee certified and licensed to do so may humanely euthanize severely injured, diseased, or suffering animals in exigent circumstances regardless of designated holding periods.
- Euthanasia will be performed in accordance with the Humane Euthanasia in Animal Shelters Act in an area of the DAH designated solely for euthanasia.
- Animals owned by displaced residents may be housed at the DAH or other licensed animal shelters capable and willing to provide such housing. These animals will be registered with serial numbers affixed to collars or microchip numbers and matching serial numbers or microchip numbers will be documented. Documentation will be provided to the owner and may be required to prove ownership at the time of pick-up of

the animal.

- Adoption of animals will be suspended until it is determined that the adoption process will not interfere with operations.
- Hours for reclaiming animals will be established by the Director of Operations.
- All kennel staff will be assigned to the DAH.
- Clerical staff will be assigned to the DAH, as needed.
- Animal Control Officers will be assigned to the DAH.

DAH Supply list

Animal Care, Restraint, & Handling	Equipment	Tools
Alcohol or alcohol wipes Animal Thermometer Animal Toys Band-Aids Bedding Bowls Cat rescue poles Catch poles Collars Containers with lids Cotton balls Disposable id collars Disposable id wrist bands Disposable table covers Dog runs Evac Sacs Food & Water Gauze Halters Identification tags Kennels & carriers Leashes & leads Medical supplies Muzzles Nail clippers Plastic Carcass disposal bags Portable fencing Ropes (varied sizes) Spray bottles for cleaning & disinfecting Water barrels for large animals Ziploc baggies (different sizes)	2-way radios Caution signs & tape Chairs Extension cords (small & large) Lockable cabinet for controlled substance storage Power strips Radios (am/fm & weather band) Refrigerators Scales (for large & small animals) Tables TVs & DVD/VCR Wi-Fi capabilities	Bolt cutters Car jacks Chains Crowbars Dollies Duct tape Flashlights Hammer & nails Knives Levels Manual tee-post drivers Other Portable generators Screwdrivers & screws Shovels Sledgehammers & mallets Tee-posts Wire cutters Wrenches

Personnel Equipment	Cleaning Materials	Office Supplies
Air purifying respirators bags Bedding Biosecurity Suits (Hooded-two piece chemical splash suits) Biosecurity waste Cots Coveralls Disposable boots Disposable plates & cups Eye protection (safety glasses & chemical splash goggles) Face masks First aid kits Food & drinks Gowns Hand sanitizer ID badges Plastic gloves Rain suits Rubber boots Tents Water dispensers	Bleach Brooms & dust pans Buckets Cleaning & disinfecting solutions Disposable mops Hoses Large rolls of plastic sheeting Paper towels and tissues Rags Rubber mats Scrub brushes Trash bags Waste receptacles	8 ½ x 11 paper Camera Clipboards Computer networking devices Documentation & forms Highlighters Laptops Lined paper Lockable cabinets for important records Pens and Pencils Permanent markers Printers Stapler staples Tape (scotch & duct) Toner & ink cartridges

ACC receives weekly shipments of animal food. This shipment will be re-directed to the DAH. If all food supplies are lost during an incident, food will be purchased locally until the next shipment arrives.

BASE OF OPERATIONS

If the Animal Control Center is deemed suitable to continue to operate at normal or near normal levels no further action will be taken. Regular procedure and protocols will apply.

If the Animal Control Center is not deemed suitable to continue to operate at normal or near normal levels then operations will be moved to the designated alternate location of operations.

Designated Alternate Base of Operations Locations

- Sangamon County Department of Public Health
- Illinois State Fairgrounds

Memoranda of Agreements for these facilities are included as attachments.

Staff and equipment necessary for day to day operations and the additional responsibilities resulting from a disaster may be provided by other county animal control agencies in Illinois, as deemed necessary, under the memorandum of agreement.

Animal control officers will continue to respond to calls with priority established as such:

- Bite incidents
- Injured animals
- Stray dogs
- DOA animals
- Inhumane care
- Other calls will be considered low priority and will be investigated as time permits

The Clerical Support Supervisor will maintain two sources of supplies and forms required for all aspects of day to day operation.

TRANSPORTATION

The Sangamon County Department of Public Health and ACC have some pick-up trucks that can be used for the transportation of animals. If all animals need to be moved in a short time period, then Sangamon County Highway Department would be asked to assist in moving the animals to a new location using some of their tandem dump trucks, and/or pick-up trucks, and drivers.

DEMOBILIZATION

The Director of Operations will deem when the DAH is no longer necessary for operations and it will be demobilized. The Director of Operations will oversee the demobilization of the DAH.

SECTION XX

ANIMAL SHELTERING

DRAFT

Statement Of Purpose

It is often necessary to provide assistance to domestic pets, livestock, and/or exotic animals, which become stranded, isolated or are in some way displaced from their homes as a result of some man made or natural disaster. This annex refers to a County wide need, where multiple areas have been affected and all local animal care agencies have been over-run with domestic pets, and/or large quantities of livestock need to be housed. The director of Sangamon County Department of Public Health will deem when these criteria are met to open a large animal shelter facility.

The director of Sangamon County Department of Public Health will ensure shelter of these animals during and after the disaster as needed. Trained animal shelter personnel, who are familiar with animal management, will be on duty to maintain the shelter and handle any problems or needs that may arise.

Definition of a Shelter

A shelter is a temporary housing facility to be utilized only through the course of an emergency. The need for shelters depends upon the severity of an emergency. Some shelters will only be needed for a few hours, while others may be needed for longer periods (maybe up to a few weeks) or until normal living conditions are restored. If necessary, pet owners will be advised about other agencies that can assist them in locating temporary housing for pets after the shelter is no longer needed to house a large group.

An animal shelter can be any facility large enough to house animals who are temporarily displaced, is close to the disaster area or main routes and is unaffected by the emergency conditions. Permission to use a building as an emergency shelter must be obtained from the building owner or the individual who is in charge of the buildings.

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Opening a Shelter

In the event that it becomes necessary to open a temporary animal shelter in Sangamon County, the following procedures shall be followed:

- A. The Sangamon County Department of Public Health (SCDPH) will make the decision to open an animal shelter.
- B. If large numbers of livestock are affected, they will be transported to the Sangamon County Fairgrounds.
- C. If exotic pets are involved in a disaster are, then the Henson Robinson Zoo will be contacted for direction and possible caretaking as needed.
- D. SCDPH will notify the following individuals, agencies, and organizations of the shelter opening (as applicable):
 1. Mayor or Village President
 2. County Board Chairman
 3. Local OEM Coordinator
 4. Sangamon County Animal Control
 5. Local Law Enforcement Agencies
 6. Local Fire Departments
 7. Rescue Squad
 8. American Red Cross
 9. IL Dept. of Agriculture of Animal Health & Welfare
 10. IL State Veterinarian
- E. The following are the responsibilities of the above individuals, agencies and organizations at the shelter site:
 1. Mayor or Village President
 - a. May authorize expenditures for food, medical supplies if the situation necessitates.
 2. County Board Chairman
 - a. May authorize expenditures for food, medical supplies if the situation necessitates.
 3. Local OEM Coordinator
 - a. Shall serve as a liaison with IEMA.

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4. Sangamon County Animal Control(SCAC)
 - a. Coordinate transport of animals to the shelter.
 - b. Coordinate animal distribution between other county and local animal shelters.
 - c. Animal control for the prevention of the spread of diseases to humans.
 - d. Prepare quarantine areas to isolate and prevent the spread of disease.
 - e. Maintain a log of animals and a list of names and contact information of owners.

5. Local Law Enforcement Agencies
 - a. Limit access of persons in the shelter area.
 - b. Maintain law and order in the shelter.
 - c. Report stray or injured animals to SCAC.

6. Fire Departments
 - a. Advise on fire safety considerations
 - b. Report stray or injured animals to SCAC

7. Rescue Squad
 - a. Report stray or injured animal to SCAC

8. American Red Cross (SOP for Red Cross sheltering)
 - a. Assist as needed

9. IL Department of Agriculture
 - a. Will provide animal welfare expertise
 - b. Will be consulted for significant mortality
 - c. Will provide guidance as requested

10. IL State Veterinarian
 - a. Will be consulted by Incident Commander

Shelter Selection and Staffing

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When the need for a temporary animal shelter facility has been discovered, SCAC will work together with local officials to determine the best possible shelter to utilize according to specific needs, such as locations, number of and type of animals involved, type of facilities available, etc.

Command Staff

1. Determine the need to open the shelter
2. Direct staff and make assignments
3. Work with Local Emergency Operating Center during the event
4. Maintain communications with the shelter

Registration Staff

1. Prepare for shelter operations. Setting up tables, chairs, desks, phones, etc.
2. Ensure that proper forms are available to staff.
3. Ensure all animals are registered in the shelter.
4. Maintain log of all animals (and owners if known) in the shelter.
5. Assist with closing the shelter

Logistics Staff

1. Supervise the logistics activities.
2. Receive and record incoming supplies and equipment.
3. Maintaining an inventory of supplies and equipment.
4. Requisition supplies.
5. Work with security to guard supplies.
6. Acquire supplies, as needed, through volunteer organizations (Red Cross, Salvation Army, churches) or surplus and by requisitioning from grocery stores, pharmacies, wholesale food outlets, office suppliers, hardware stores, state agencies, etc.
7. Return unused and borrowed supplies and equipment.
8. Assist with closing the shelter.

Communications Staff

1. Supervise communications activities.
2. Supervise telephone and radio installation, if applicable
3. Keep a record of all telephone and radio traffic.
4. Have personnel for runner service.
5. Assist with closing of the shelter.

Animal Control Officer

DRAFT

1. Investigates all bites of persons of Sangamon County by dogs, cats, or other warm-blooded mammals. Obtains information from the bite victim which includes name, address, phone number, age of the bite victim, place where bitten, location that the bite incident occurred, and how the bite incident occurred. Obtains information from the owner of the bite animal which includes name, address, phone number, date of birth, species, breed, sex, color, size, and age of animal, name of animal, date of rabies vaccination, veterinarian who vaccinated the animal, tag registration number, and how and where the bite incident occurred. Provides the bite animal owner with written instructions as to the parameters of bite animal confinement.
2. Investigates all complaints of dogs straying in Sangamon County. Verifies current rabies vaccination and registration of all dogs and cats in Sangamon County. Enforces the Sangamon County ordinances. Files a written report indicating actions taken, animals picked up (species, breed, sex, size, color, and any identification on the animal), and where the animals were picked up.
3. Responsible for disposal of animal carcasses and thoroughly disinfects truck and containers following disposal.
4. Assist with containment, and transportation of livestock, and exotic pets as needed.
5. Informs the veterinarian of any animals picked up by the officer and brought into the shelter that require veterinary care.

Kennel Attendant

1. Provides general care for all animals brought to the shelter, including the daily cleaning of all cages and kennel runs using an approved disinfectant/detergent as specified by the Director of Veterinary Health; the maintaining of the cages and kennel runs in a clean, presentable condition throughout the day, feeding all animals at the times prescribed by the Director of Veterinary Health with approved feeds; moving of animals to cages or kennel runs assigned by the Director of Veterinary Health, and the appropriate disposal of animals that are euthanized during the course of the work day.
2. Assists owners looking for lost pets by insuring that viewing of all animals is accomplished.
3. Restrains animals for vaccinations, euthanasia, or medical treatment by the veterinarian when required in such a manner as to preclude the restrainer and the veterinarian from being injured, but also done in such a manner that the animal is restrained in a humane manner.
4. Performs or assists in the procedure of euthanasia as necessary.
5. Medicates animals as directed by the veterinarian.
7. Performs other duties as required or assigned.

Veterinarian

DRAFT

1. The Veterinarian in place at the shelter will provide a medical exam to all animals upon entrance to the shelter.
2. Inoculations will be administered to prevent spread of disease among animals.
3. Parasitic and flea treatments will be provided as needed.
4. Authorizes transfers animals to off-site animal hospitals

Animal Behaviorist

1. Behavior evaluations will be provided at intake of the animal as long as a behaviorist is available.

DRAFT

Closing the Shelter

A. The Shelter Manager responsibilities include:

1. Compile a list of all borrowed equipment.
2. Compile a list of lost or damaged equipment for submittal to the Public Health office.
3. Prepare a list of outstanding bills to be submitted to the Public Health Office.
4. Compile a list of all volunteers if any, and the number of hours worked to be submitted to the Public Health Office..
5. Secure all animal and owner records, and registration and provide a copy to the Public Health Office.
6. Advise the owner the shelter is closing, returning the keys to the appropriate person and submitting all records, receipts, bills, etc. to the Public Health Office.

B. The Logistics Staff is responsible for:

1. Return all borrowed equipment and supplies and all unused supplies.
2. Secure receipts on all equipment and supplies.
3. Give all receipts to the Shelter Manager.

E. Communications Staff

The Communications Staff is responsible for seeing that telephones and radios are removed and returned to their owners and for forwarding all records to the Public Health Office. Such records include lists of telephone and radio equipment and parts, logs of telephone and radio traffic, as well as logs of personnel and the hours they worked.

Appendices

DRAFT

1. Checklist for Shelter Managers
2. Daily Shelter Record and Report
3. Contact Numbers
4. Shelter Cage Card

APPENDIX 1

CHECKLIST FOR SHELTER MANAGER

DRAFT

The Shelter Manager is responsible for the total operation of the facility. He will ensure that the following tasks are performed by authorized personnel. The order in which these tasks will be performed will depend on actual circumstances at the time.

1. Establish and maintain contact with LEOC's.
2. Alert basic staff and open the building for use.
3. Arrange the building for the disaster relief operation.
4. Inventory supplies and equipment.
5. Prepare rooms for receiving animals and for other purposes.
6. Arrange for identification of the shelter staff.
7. Order supplies and equipment for the shelter from EOC.
8. Keep in constant touch with the Director of Public Health, giving progress reports and daily counts of animals housed.
9. Establish and enforce safety and fire regulations in the shelter.
10. Arrange for the maintenance of records for all borrowed and purchased equipment.
11. Arrange for adequate police and guard protection.
12. Deal with the media, but only in regard to the operation of your shelter.

APPENDIX 2

DAILY SHELTER RECORD AND REPORT

Shelter _____

Location _____

Report Number _____

Date _____

Number of Animals Sheltered:

At Start of Day _____ At End of Day _____

Number of Animals Fed: _____

Number of Animals Requiring Medical Treatment: _____

Number of Animals Requiring Euthanasia: _____

Comments: _____

SHELTER MANAGER

Contact Numbers

Local Fire and Police, call Dispatch at 753-6666

County Board Chairman	753-6650
Local OEM Coordinator – David Butt	747-5150
Sangamon County Animal Control	535-3065
American Red Cross	787-7602
IL Dept. of Agriculture of Animal Health & Welfare	782-4944
IL State Veterinarian	782-4944
Henson Robinson Zoo	585-1821
Sangamon County Public Health	535-3100
Springfield City EOC (if activated)	

EMERGENCY ANIMAL SHELTER CAGE CARD

DRAFT

Date Entered Shelter _____

Time Entered Shelter _____

TYPE	DOG	CAT	LIVESTOCK LIST:	EXOTIC LIST:
BREED				
COLOR				
SEX				
APPROX AGE				

Location Animal

Found _____

Animal Injured **Y N**

Treatment Provided _____

Identifiers Present? Rabies tag # _____ Micro Chip # _____

Collar Color _____

Animal History, If Known _____

Owner Information if Known:

Name _____

Phone _____

Address _____

Intake Staff Signature _____ Date _____

KENNEL# _____ **CAGE#** _____ **STALL#** _____

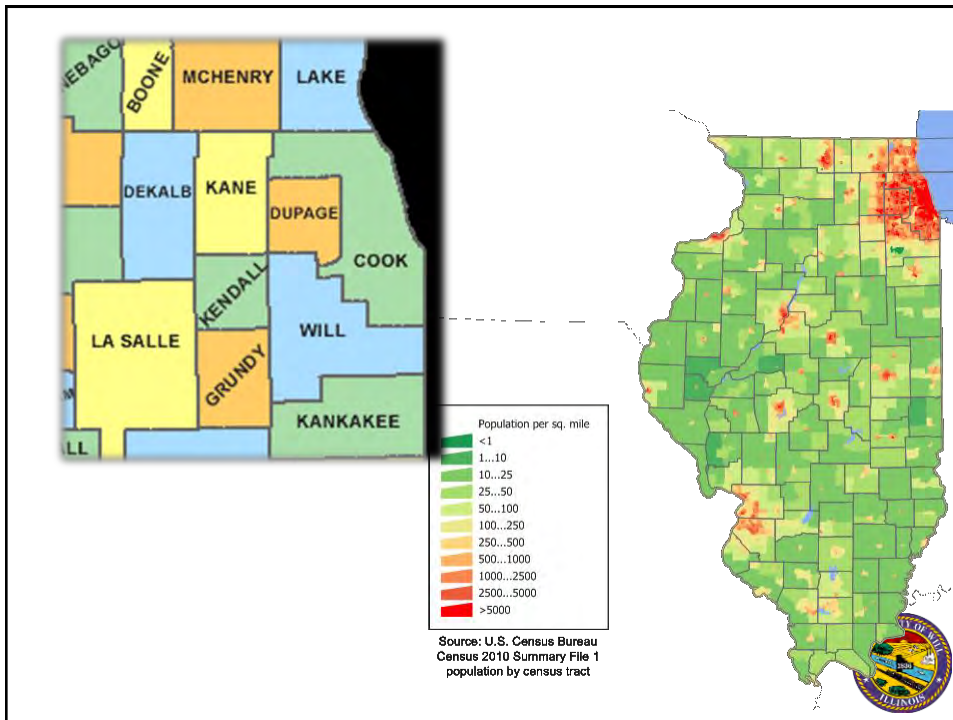
March 3, 2017

Will County Animals in Disasters



Emergency Management in Will County





Critical Infrastructure

- Dresden Nuclear Generating Station
- Braidwood Nuclear Generating Station
- Dresden Island Lock and Dam
- I-55 Bridge at the Des Plaines River
- ExxonMobil Refinery
- NRG – Joliet Power Station
- Brandon Road Lock and Dam
- I-80 Bridge at the Des Plaines River
- AT&T Joliet Central Office
- Lockport Lock and Dam
- Lockport Power House
- NRG – Romeoville Power Station
- US Army Corps of Engineers Aquatic Nuisance Species Dispersal Barrier
- Citgo Refinery



Top Threats

- Tornado
- Winter / Ice Storm
- Infrastructure Failure
- Terrorist Attack
- Flood
- Severe Thunderstorm
- Enemy Attack
- Hazardous Materials Release – Fixed Site
- Nuclear Power Plant Accident

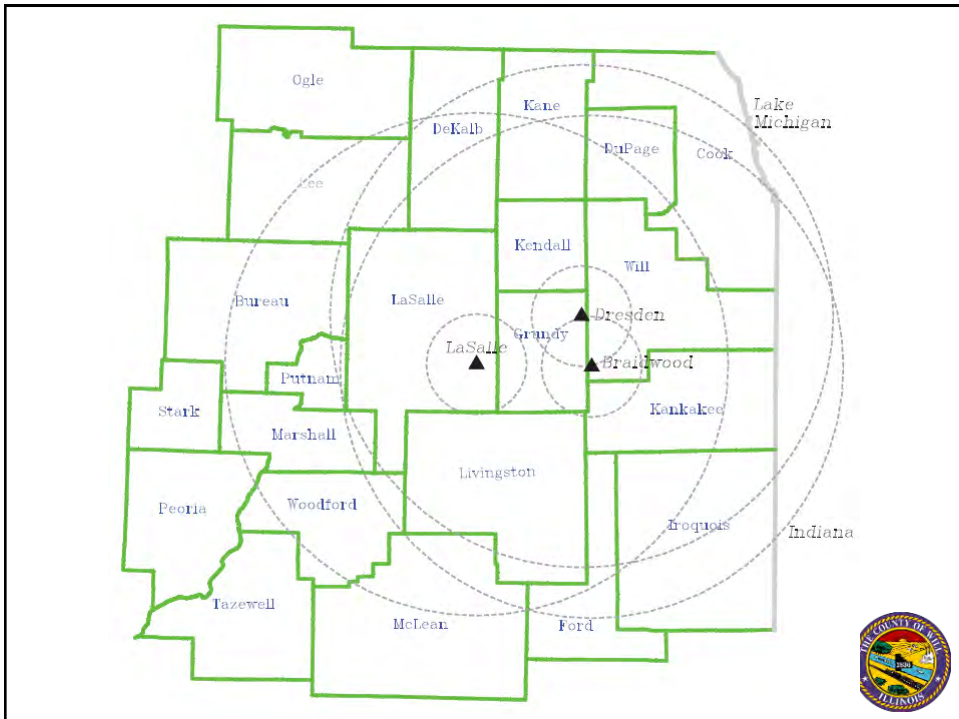


Hazardous Materials

- 456 facilities with hazardous materials
 - 346 have extremely hazardous substances
 - 205 exceed the threshold for emergency planning purposes

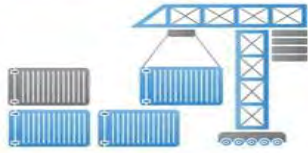


Nuclear Power Plants



CenterPoint Intermodal

WILL COUNTY IS THE LARGEST INLAND PORT IN NORTH AMERICA



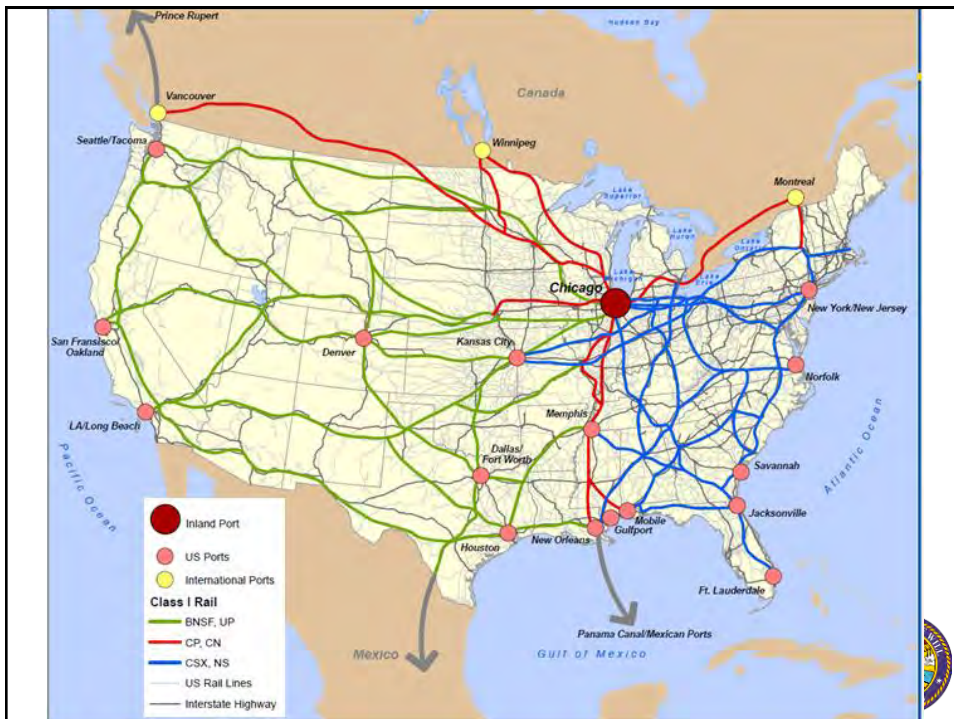
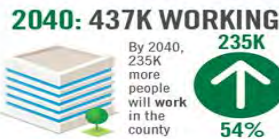
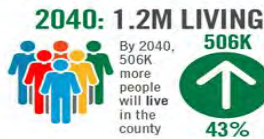
OVER **3 Million** CONTAINERS
FLOW THROUGH THE PORT ANNUALLY =
\$65 Billion WORTH OF PRODUCTS



100M SQUARE FEET OF NEW INDUSTRIAL SPACE
IN THE LAST **15** years

WILL COUNTY CONTINUES TO GROW

Source: CMAP, October 2014.

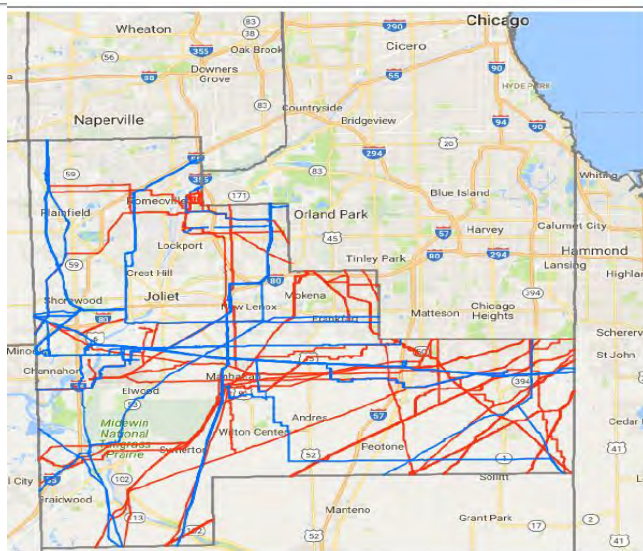


Rail Lines

- BNSF Railway
- CN Railway
- UP Railway
- CSX Railway
- Norfolk Southern
- Amtrak
- Metra



Pipelines



- Gas Transmission Pipelines
- Hazardous Liquid Pipelines
- County Boundaries



Pipelines depicted on this map represent gas transmission and hazardous liquid lines only. Gas gathering and gas distribution systems are not represented.

This map should never be used as a substitute for contacting a one-call center prior to excavation activities. Please call 811 before any digging occurs.

Questions regarding this map or its contents can be directed to nipsa@dot.gov.

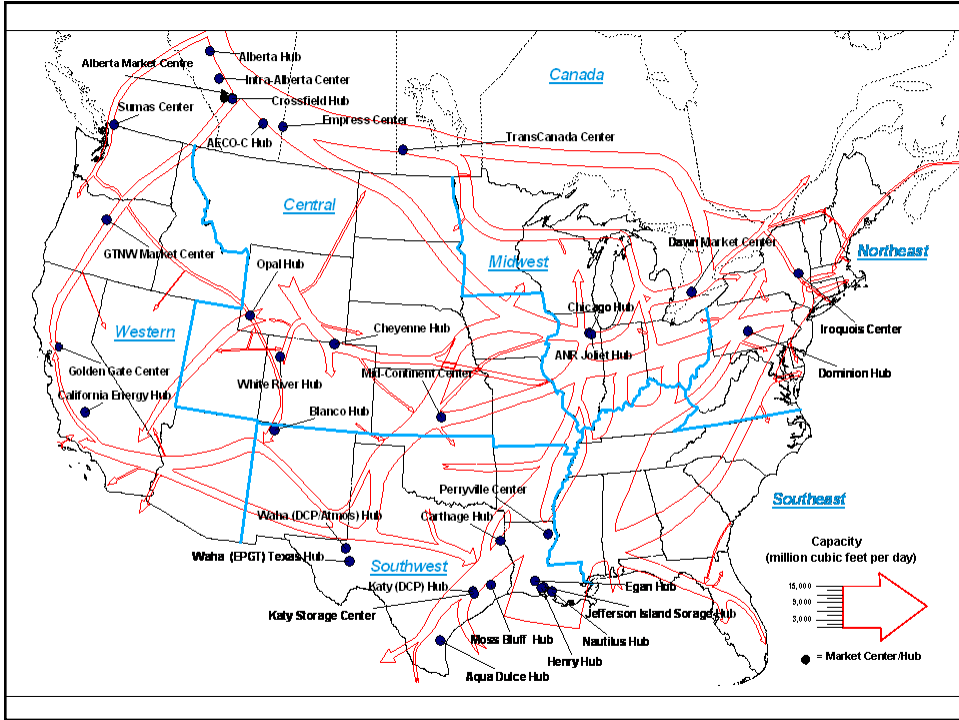
Projection: Geographic

Datum: NAD83

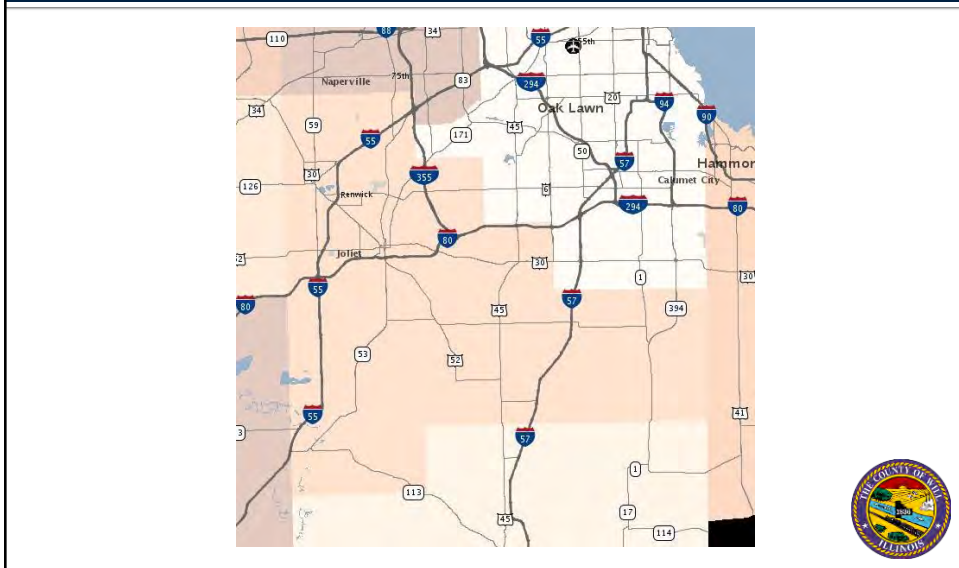
Map produced by the Public Viewer application at www.nipsa.plmnsa.dot.gov

Date Printed: Feb 10, 2017





Interstates



Planning | Training | Exercising

Because of these hazards and threats we focus heavily on our planning, training and exercising

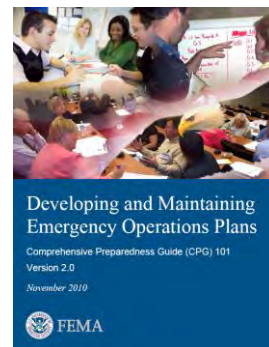


Emergency Operations Plans

Provide a description of roles and responsibilities, tasks, integration and actions required of a jurisdiction or its departments and agencies during emergencies.



Figure 1.2: Relationship Between Strategic, Operational, and Tactical Planning



Animal Control Annex

- We work with our partners to develop these plans collaboratively
 - Will County Animal Control
 - Local Animal Control Agencies
 - Health Department
- Regional Catastrophic Planning Committee
 - Animal Services Workgroup
 - Encompasses the metro-counties, Cook and Chicago



Public Education

- Encourage pet owners to develop plans and supplies
- Use local Veterinarians to distribute information



Pet Evacuation and Transportation Standards Act 2006 (PETS)

- No laws were in place that required the evacuation of animals, rescued or sheltered
- Developed after Hurricane Katrina (2005)
- People were unwilling to leave their pets behind



New Challenges

- Co-Location of Human and Animal Shelters presented challenges
- Began to work with some of the larger facilities that can accommodate animals. We were successful in developing MOU's with them



Joliet Junior College - Weitendorf Agricultural Education Center



Francis 4-H Field



Will County Fair Grounds



Other locations

- Joliet Municipal Airport
- Lewis University Airport



2016 AKC Reunite



AKC Trailer Contents

- Wrist bands for owners and collars for pets
- Registration forms and administrative tools
- Camera w/ SD card
- Micro Chips (50) | Micro Chip Scanner
- Stainless steel bowls (100)
- 44 large crates
- 21 medium crates
- Cleaning supplies
- Generator



What's Next?

- Working with regional partners to develop
 - Standardized training for volunteers to manage a pet shelter
 - Licensure standards for Animal Response Team
 - Vet
 - Vet Tech
 - Animal Shelter
 - General volunteer



Allison Anderson
Planning & Exercise Officer
Will County Emergency Management Agency
815-723-1411
aanderson@willcountyillinois.com

Thank you!





WILL COUNTY
EMERGENCY MANAGEMENT AGENCY

302 North Chicago Street
Joliet, Illinois 60432

Harold R. Damron, CEM
Director

February 10, 2011

Kay Shultz
Francis 4-H Field
521 E Francis Road
New Lenox, IL 60451

Dear Ms. Shultz:

To follow up from our conversation last fall, the Will County Emergency Management Agency, in conjunction with the Will County Animal Control is in the process of developing a list of available facilities that may be needed as pet shelters in the event of an emergency. This effort is being conducted under the provisions cited in the "Pets Evacuation and Transportation Standards Act of 2006".

Emergency Pet Shelters may be needed following the aftermath of tornadoes, floods, chemical spills, and other emergencies that force our citizens and their pets from their homes. During these times when your facility needs to be utilized as a shelter, your main point of contact will be with the Will County Animal Control Office.

Enclosed are two copies of our "Emergency Pet Shelter Agreement", please complete and sign, returning both original copies. We will sign both and return an originally signed agreement for your records. We are also asking you to complete a "Facility Survey" and ask you to complete and return along with a copy of your site floor plan.

We would appreciate completed agreements and surveys back by March 21, 2011. Should you have any questions or need additional information, please do not hesitate to contact Brenda Lutz, Will County Emergency Management Agency at 815-740-8353.

Thank you in advance for your assistance in this matter. We are looking forward to a partnership with your facility.

Sincerely,

Harold R. Damron, Director
Will County Emergency Management Agency

L. P. Shild, DVM
Will County Animal Control Office



WILL COUNTY
EMERGENCY MANAGEMENT AGENCY

302 North Chicago Street
Joliet, Illinois 60432

Harold R. Damron, CEM
Director

February 10, 2011

Ron Meyer, President
Will County Fair Grounds
710 West Street
Peotone, IL 60468

Dear Mr. Meyer:

To follow up from our conversation last fall, the Will County Emergency Management Agency, in conjunction with the Will County Animal Control is in the process of developing a list of available facilities that may be needed as pet shelters in the event of an emergency. This effort is being conducted under the provisions cited in the "Pets Evacuation and Transportation Standards Act of 2006".

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Harold R. Damron, Director
Will County Emergency Management Agency

L. P. Schild, DVM
Will County Animal Control Office



WILL COUNTY EMERGENCY MANAGEMENT AGENCY

302 North Chicago Street
Joliet, Illinois 60432

Harold R. Damron, CEM
Director

February 10, 2011

Mary Cwikla, Coordinator
Joliet Junior College Weitendorf Agricultural Education Center
17840 Laraway Road
Joliet, IL 60433

Dear Ms. Cwikla:

To follow up from our conversation last fall, the Will County Emergency Management Agency, in conjunction with the Will County Animal Control is in the process of developing a list of available facilities that may be needed as pet shelters in the event of an emergency. This effort is being conducted under the provisions cited in the "Pets Evacuation and Transportation Standards Act of 2006".

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Thank you in advance for your assistance in this matter. We are looking forward to a partnership with your facility.

Sincerely,

Harold R. Damron, Director
Will County Emergency Management Agency

L. P. Shild, DVM
Will County Animal Control Office



WILL COUNTY EMERGENCY MANAGEMENT AGENCY

302 North Chicago Street
Joliet, Illinois 60432

Harold R. Damron, CEM
Director

February 10, 2011

Sara Gimbel, Director
Joliet Township Animal Control
2807 McDonough Street
Joliet, IL 60435

Dear Ms. Gimbel:

To follow up from our conversation last fall, the Will County Emergency Management Agency, in conjunction with the Will County Animal Control is in the process of developing a list of available facilities that may be needed as pet shelters in the event of an emergency. This effort is being conducted under the provisions cited in the "Pets Evacuation and Transportation Standards Act of 2006".

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Sincerely,

Harold R. Damron, Director
Will County Emergency Management Agency

L. P. Shild, DVM
Will County Animal Control Office

One Hundred Ninth Congress
of the
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday,
the third day of January, two thousand and six*

An Act

To amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to ensure that State and local emergency preparedness operational plans address the needs of individuals with household pets and service animals following a major disaster or emergency.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Pets Evacuation and Transportation Standards Act of 2006”.

SEC. 2. STANDARDS FOR STATE AND LOCAL EMERGENCY PREPAREDNESS OPERATIONAL PLANS.

Section 613 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196b) is amended—

- (1) by redesignating subsection (g) as subsection (h); and
- (2) by inserting after subsection (f) the following:

“(g) STANDARDS FOR STATE AND LOCAL EMERGENCY PREPAREDNESS OPERATIONAL PLANS.—In approving standards for State and local emergency preparedness operational plans pursuant to subsection (b)(3), the Director shall ensure that such plans take into account the needs of individuals with household pets and service animals prior to, during, and following a major disaster or emergency.”.

SEC. 3. EMERGENCY PREPAREDNESS MEASURES OF THE DIRECTOR.

Section 611 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196) is amended—

- (1) in subsection (e)—
 - (A) in paragraph (2), by striking “and” at the end;
 - (B) in paragraph (3), by striking the period and inserting “; and”; and
 - (C) by adding at the end the following:

“(4) plans that take into account the needs of individuals with pets and service animals prior to, during, and following a major disaster or emergency.”; and

- (2) in subsection (j)—
 - (A) by redesignating paragraphs (2) through (8) as paragraphs (3) through (9), respectively; and
 - (B) by inserting after paragraph (1) the following:

“(2) The Director may make financial contributions, on the basis of programs or projects approved by the Director, to the States and local authorities for animal emergency

H. R. 3858—2

preparedness purposes, including the procurement, construction, leasing, or renovating of emergency shelter facilities and materials that will accommodate people with pets and service animals.”.

SEC. 4. PROVIDING ESSENTIAL ASSISTANCE TO INDIVIDUALS WITH HOUSEHOLD PETS AND SERVICE ANIMALS FOLLOWING A DISASTER.

Section 403(a)(3) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170b(a)(3)) is amended—

- (1) in subparagraph (H), by striking “and” at the end;
- (2) in subparagraph (I), by striking the period and inserting “; and”; and
- (3) by adding at the end the following:
 - “(J) provision of rescue, care, shelter, and essential needs—
 - “(i) to individuals with household pets and service animals; and
 - “(ii) to such pets and animals.”.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

ANIMALS

(510 ILCS 50/1) Illinois Diseased Animals Act.

(510 ILCS 50/1) (from Ch. 8, par. 168)

Sec. 1. For the purposes of this Act:

"Department" means the Department of Agriculture of the State of Illinois.

"Director" means the Director of the Illinois Department of Agriculture, or his duly appointed representative.

"Contagious or infectious disease" means a specific disease designated by the Department as contagious or infectious under rules pertaining to this Act.

"Contaminated" or "contamination" means for an animal to come into contact with a chemical or radiological substance at a level which may be considered to be harmful to humans or other animals if they come into contact with the contaminated animal or consume parts of the contaminated animal.

"Reportable disease" means a specific disease designated by the Department as reportable under rules pertaining to this Act.

"Animals" means domestic animals, poultry, and wild animals in captivity.

"Exposed to" means for an animal to come in contact with another animal or an environment that is capable of transmitting a contagious, infectious, or reportable disease. An animal will no longer be considered as "exposed to" when it is beyond the standard incubation time for the disease and the animal has been tested negative for the specific disease or there is no evidence that the animal is contagious, except for animals exposed to Johne's disease. Animals originating from a herd where Johne's disease has been diagnosed will be considered no longer "exposed to" with a negative test. The negative test must have been conducted within 30 days prior to the sale or movement.

"Swap meet" means an organized event where animals including, but not limited to, dogs, cats, birds, fish, reptiles, or other animals customarily obtained as pets, are sold, traded, or exchange hands.

(Source: P.A. 95-179, eff. 8-14-07; 95-554, eff. 8-30-07.)

(510 ILCS 50/2) (from Ch. 8, par. 169)

Sec. 2. It is the duty of the Department to investigate all cases or alleged cases coming to its knowledge of contamination or contagious and infectious diseases among animals within the State and to provide for the suppression, prevention, and extirpation of contamination or infectious and contagious diseases of such animals.

The Department may make and adopt reasonable rules and regulations for the administration and enforcement of the provisions of this Act. No rule or regulation made, adopted or issued by the Department pursuant to the provisions of this Act shall be effective unless such rule or regulation has been submitted to the Advisory Board of Livestock Commissioners for approval. All rules of the Department, and all amendments or revocations of existing rules, shall be recorded in an appropriate book or books, shall be adequately indexed, shall

be kept in the office of the Department, and shall constitute a public record. Such rules shall be printed in pamphlet form and furnished, upon request, to the public free of cost.
(Source: P.A. 95-179, eff. 8-14-07; 95-554, eff. 8-30-07.)

(510 ILCS 50/3) (from Ch. 8, par. 170)

Sec. 3. Upon its becoming known to the Department that any animals are infected, or suspected of being infected, with any contagious or infectious disease, or contaminated with any chemical or radiological substance, the Department shall have the authority to quarantine and to cause proper examination thereof to be made. If such disease is found to be of a dangerously contagious or dangerously infectious nature, or the contamination level is such that may be harmful to humans or other animals, the Department shall order such diseased or contaminated animals and such as have been exposed to such disease or contamination, and the premises in or on which they are, or have recently occupied, to be quarantined. The Department shall also have the authority to issue area-wide quarantines on animals and premises in order to control the spread of the dangerously contagious or infectious disease and to reduce the spread of contamination. The Department may, in connection with any such quarantine, order that no animal which has been or is so diseased, contaminated, or exposed to such disease or contamination, may be removed from the premises so quarantined and that no animal susceptible to such disease or contamination may be brought therein or thereon, except under such rules as the Department may prescribe.
(Source: P.A. 95-179, eff. 8-14-07; 95-554, eff. 8-30-07.)

(510 ILCS 50/4) (from Ch. 8, par. 171)

Sec. 4. The Department may order the slaughter of any or all of such diseased, contaminated, or exposed animals.
The Department may disinfect, and, if they cannot be properly disinfected, may destroy, all barns, stables, outbuildings, premises and personal property contaminated or infected with any such contaminant or contagious or infectious disease as in its judgment is necessary to prevent the spread of any such contaminant or disease; and may order the disinfection of all cars, boats or other vehicles used in transporting animals affected with any such contaminant or disease, or that have been exposed to the contaminant, contagion, or infection thereof, and the disinfection of all yards, pens and chutes that may have been used in handling such contaminated, diseased, or exposed animals.
(Source: P.A. 95-179, eff. 8-14-07; 95-554, eff. 8-30-07.)

(510 ILCS 50/5) (from Ch. 8, par. 172)

Sec. 5. When the Department determines that any animal is affected with, or has been exposed to, any contagious or infectious disease, it may agree with the owner upon the value of the animal or of any property that it may be found necessary to destroy, and in case such an agreement cannot be made, the animals or property shall be appraised by three

competent and disinterested appraisers, one to be selected by the Department, one by the claimant, and one by the two appraisers thus selected. The appraisers shall subscribe to an oath in writing to fairly value such animals or property in accordance with the requirements of this Act, which oath, together with the valuation fixed by the appraisers, shall be filed with the Department and preserved by it.

Upon the appraisal being made, the owner or the Department shall immediately destroy the animals in a humane manner, dispose of the carcasses thereof, and disinfect, change or destroy the premises occupied by the animals, in accordance with rules prescribed by the Department governing such destruction and disinfection, and upon his failure so to do or to cooperate with the Department, the Department shall cause such animals or property to be destroyed and disposed of, and thereupon the owner shall forfeit all right to receive any compensation for the destruction of the animals or property.

(Source: P.A. 91-457, eff. 1-1-00.)

(510 ILCS 50/6) (from Ch. 8, par. 173)

Sec. 6. Whenever quarantine is established in accordance with the provisions of this Act, notice shall be given by delivery in person or by mailing by registered or certified mail, postage prepaid, to the owner or occupant of any premises so quarantined. Such notice shall be written or printed, or partly written and partly printed, with an explanation of the contents thereof. Such quarantine shall be sufficiently proved in any court by the production of a true copy of such notice of quarantine together with an affidavit, sworn to by the officer or employee of the Department who delivered or mailed such notice, containing a statement that the original thereof was delivered or mailed in the manner herein prescribed.

Every quarantine so established shall remain in effect until removed by order of the Department. Any person aggrieved by any quarantine may appeal to the Department which shall thereupon sustain, modify or annul the quarantine as it may deem proper. Quarantines will be removed when epidemiological evidence indicates that the disease or contamination threat to humans or other animals no longer exists.

(Source: P.A. 95-179, eff. 8-14-07; 95-554, eff. 8-30-07.)

(510 ILCS 50/7a) (from Ch. 8, par. 174a)

Sec. 7a. All final administrative decisions of the Department hereunder shall be subject to judicial review pursuant to the provisions of the Administrative Review Law, and all amendments and modifications thereof, and the rules adopted pursuant thereto. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure.

(Source: P.A. 82-783.)

(510 ILCS 50/9) (from Ch. 8, par. 176)

Sec. 9. The Department may promulgate and adopt reasonable

rules and regulations to prevent the spread of any contamination or contagious or infectious disease within this State. If the condition so warrants, the Director may request the Governor to issue a proclamation quarantining an affected municipality or geographical district whereby all animals of the kind diseased or contaminated would not be permitted to be moved from one premises to another within the municipality or geographical district, or over any public highway, or any unfenced lot or piece of ground, or from being brought into, or taken from the infected or contaminated municipality or geographical district, except by a special permit, signed by the Director. Any such proclamation shall, from the time of its publication, bind all persons. Within one week after the publication of any such proclamation, every person who owns, or who is in charge of animals of the kind diseased or contaminated within the municipality or geographical district, shall report to the Department the number and description of such animals, their location, and the name and address of the owner or person in charge, and during the continuance of the quarantine to report to the Department all cases of sickness, deaths or births among such animals.

(Source: P.A. 95-179, eff. 8-14-07; 95-554, eff. 8-30-07.)

(510 ILCS 50/10) (from Ch. 8, par. 177)

Sec. 10. The Department may promulgate and adopt reasonable rules and regulations to prevent the entry into Illinois of any animals which may be contaminated or infected with, or which may have been exposed to, any contaminant or contagious or infectious disease. If the condition so warrants, the Director may request the Governor to issue a proclamation whereby any animals contaminated or diseased or those exposed to disease and any carcasses or portions of carcasses, feed, seed, bedding, equipment or other material capable of conveying contamination or infection will be prohibited from entering Illinois.

(Source: P.A. 95-179, eff. 8-14-07; 95-554, eff. 8-30-07.)

(510 ILCS 50/11) (from Ch. 8, par. 178)

Sec. 11. All claims against the State arising from the slaughter of animals as herein provided for, shall be made to the Department under such rules, not inconsistent with this Act, as the Department may prescribe.

The Department shall, after inspection, hearing and inquiry by appraisers, in each case determine the amount which shall be paid on account of the animals so slaughtered, which amount shall be the fair market value in health thereof and not less than the net market value for meat consumption, provided that where the appraisals exceed the net market value for meat consumption in health thereof the payments shall not be in excess of the following amounts:

(a) bovine species, for beef, dairy and breeding purposes \$300 for any registered animal and \$150 for any unregistered animal, but not to exceed an average value of \$250 per head for all such registered animals in any herd and not to exceed an average value of \$125 per head for such nonregistered

animals in any herd;

(b) equine species, \$500 for any one animal;

(c) swine, \$50 per head for grade swine and \$100 for any registered purebred animal or any breeding animal upon which a certificate of registration has been issued by an approved inbred livestock registry association;

(d) sheep, not to exceed \$25 for any unregistered sheep, and not to exceed \$75 for any registered sheep.

No value other than the market utility value of any such animal shall be allowed or fixed, however, unless a certificate of registration issued by the registry association, of the breed of such animal, recognized by the United States Government, is furnished to the appraisers. The appraisers shall report under oath the value of the animals, together with a statement of the evidence or facts upon which the appraisal is based, and the Department shall certify the appraisal. The Comptroller shall, upon presentation of the appraisal to him, draw his warrant upon the State Treasurer for the amount fixed by such appraisers in favor of the owner of the animals; provided, that where Federal authority authorizes the payment of part of the value of such animals the State shall only pay the balance of such appraisal fixed as aforesaid.

(Source: P.A. 92-85, eff. 7-12-01.)

(510 ILCS 50/12) (from Ch. 8, par. 179)

Sec. 12. The Director and any employee of the Department, in the performance of his duties under this act, has power to call on sheriffs and their deputies, and police officers, mayors of cities, city and town marshals and policemen, to assist him in carrying out its provisions; and it is the duty of all such officers to assist in carrying out the provisions of this act when ordered so to do. The Director and any employees of the Department shall have, while engaged in carrying out the provisions of this act, the same powers and protection as other peace officers. It is unlawful for any such officer to fail or refuse to enforce the lawful orders and quarantine of the Department.

(Source: Laws 1965, p. 288.)

(510 ILCS 50/13) (from Ch. 8, par. 180)

Sec. 13. The Department shall cooperate with any commissioner or other officer appointed by the United States authorities, in connection with carrying out any provision of any United States Statute providing for the suppression and prevention of contamination or contagious and infectious diseases among animals, in suppression and preventing the spread of contamination or contagious and infectious diseases among animals in this State.

The inspectors of the Animal Health Division of the United States Department of Agriculture and the Illinois Department of Agriculture have the right of inspection, quarantine and condemnation of animals affected with any contamination or contagious or infectious disease, or suspected to be so affected, or that have been exposed to any such contamination

or disease, and for these purposes are authorized to enter upon any ground or premises. Such inspectors may call on sheriffs and peace officers to assist them in the discharge of their duties in carrying out the provisions of any such statute, referred to in the preceding paragraph, and the sheriffs and peace officers shall assist such inspectors when so requested. Such inspectors shall have the same powers and protection as peace officers while engaged in the discharge of their duties.

(Source: P.A. 95-179, eff. 8-14-07; 95-554, eff. 8-30-07.)

(510 ILCS 50/14) (from Ch. 8, par. 181)

Sec. 14. The annual report of the Department to the Governor shall include an itemized statement of all moneys expended by it under this Act, including a statement of all damages recommended by it to be paid for animals slaughtered, and the amounts paid therefor.

(Source: Laws 1943, vol. 1, p. 24.)

(510 ILCS 50/15) (from Ch. 8, par. 182)

Sec. 15. Bulls, cows, heifers and other livestock accepted by individuals, trucks and other transportation companies for delivery into the State of Illinois, if unloaded en route for feed or water, shall be confined in pens under lock and key by the transportation company or individual accepting such shipment for delivery.

(Source: Laws 1943, vol. 1, p. 24.)

(510 ILCS 50/16) (from Ch. 8, par. 183)

Sec. 16. The obligations assumed by the transportation company at the original point of shipment shall extend to all connecting lines. No additions to the original consignments or substitutions en route shall be permitted by any transportation company.

(Source: Laws 1943, vol. 1, p. 24.)

(510 ILCS 50/17) (from Ch. 8, par. 184)

Sec. 17. When any cattle, swine, sheep or other domestic animals herein specified are consigned for delivery within the confines of the State of Illinois, they shall not be diverted en route or delivered to the owner or consignee at any other point within the State of Illinois, except that named in the original billing.

(Source: P.A. 91-457, eff. 1-1-00.)

(510 ILCS 50/18) (from Ch. 8, par. 185)

Sec. 18. All railroad, truck, steamboat and other transportation companies that shall receive and ship cattle from any territory scheduled on account of Texas or splenic fever, shall immediately after such cattle are unloaded, and before the cars are used for any other purpose, cleanse and disinfect such cars, or quarters in which such cattle are

shipped, in accordance with the rules and regulations that may hereafter be prescribed by the Department.

All such companies unloading any diseased animals in any yards along the line of their roads or routes of travel, shall unload them in pens set apart especially for diseased animals, and shall allow no other animals to enter into or be placed in such pens.

All stockyard companies or other receiving yards in the State of Illinois, receiving any such diseased animals, shall set apart certain portions of their yards for them, and shall conspicuously mark such yards and provide separate chutes, alleys and scales for such animals, and where the way-bills or bills of lading of the railroads delivering them show that they are the kind of animals hereinabove in this Section described, they shall be placed in that portion of the yards set apart for such animals, and in no case shall they be unloaded by any railroad, truck, steamboat or transportation company, in yards or pens other than those set apart from the exclusive receiving and yarding of such animals.

(Source: Laws 1943, vol. 1, p. 24.)

(510 ILCS 50/19) (from Ch. 8, par. 186)

Sec. 19. Any railroad, truck, transportation or stockyard company violating any of the provisions of Section 18, or any of the rules of the Department referred to therein, shall be guilty of a business offense and shall be fined in any sum not exceeding one thousand dollars (\$1,000) for each offense.

(Source: P.A. 90-385, eff. 8-15-97.)

(510 ILCS 50/20) (from Ch. 8, par. 187)

Sec. 20. Any person who knowingly transports, receives or conveys into this State any animals, carcasses or portions of carcasses, feed, seed, bedding, equipment, or other material capable of conveying contamination or infection as defined and prohibited in a proclamation issued by the Governor under the provisions of Section 10 of this Act is guilty of a business offense, and upon conviction thereof shall be fined not less than \$1,000 nor more than \$10,000, for each offense, and shall be liable for all damages or loss that may be sustained by any person by reason of such importation of such prohibited animals, or prohibited materials, which penalty may be recovered in the circuit court in any county in this State into or through which such animals or materials are brought.

(Source: P.A. 95-179, eff. 8-14-07; 95-554, eff. 8-30-07.)

(510 ILCS 50/21) (from Ch. 8, par. 188)

Sec. 21. Any person who, knowing that any contamination or contagious or infectious disease exists among his animals, conceals such fact, or knowing of the existence of such disease, sells any animal or animals so contaminated or diseased, or any exposed animal, or knowing the same, removes any such contaminated, diseased, or exposed animal from his premises to the premises of another, or along any public highway, or knowing of the existence of such contamination,

disease, or exposure thereto, transports, drives, leads or ships any animal so contaminated, diseased, or exposed, by any motor vehicle, car or steamboat, to any place in or out of this State; and any person who brings any such contaminated or diseased, or knowingly, brings any such contaminated or exposed animals into this State from another state; and any person who knowingly buys, receives, sells, conveys, or engages in the traffic of such contaminated, diseased, or exposed stock, and any person who violates any quarantine regulation established under the provisions of this or any other Act, for each, either, any or all acts above mentioned in this Section, is guilty of a petty offense and shall forfeit all right to any compensation for any animal or property destroyed under the provisions of this Act.

(Source: P.A. 95-179, eff. 8-14-07; 95-554, eff. 8-30-07.)

(510 ILCS 50/22) (from Ch. 8, par. 189)

Sec. 22. Any veterinarian having information of the existence of any contamination or reportable disease among animals in this State, who fails to promptly report such knowledge to the Department, shall be guilty of a business offense and shall be fined in any sum not exceeding \$1,000 for each offense.

(Source: P.A. 95-179, eff. 8-14-07; 95-554, eff. 8-30-07.)

(510 ILCS 50/23) (from Ch. 8, par. 190)

Sec. 23.

Any person violating any provision of this Act or any rule issued by the Department under the provisions of this Act, other than the provisions and rules for the violation of which other penalties are prescribed in this Act, is guilty of a business offense and shall be fined not less than \$50 nor more than \$1,000.

(Source: P. A. 77-2679.)

(510 ILCS 50/24) (from Ch. 8, par. 191)

Sec. 24. Any owner or person having charge of any animal and having knowledge of, or reasonable grounds to suspect the existence among them of any contamination or contagious or infectious disease and who does not use reasonable means to prevent the spread of such contamination or disease or violates any quarantine; or who conveys upon or along any public highway or other public grounds or any private lands, any contaminated or diseased animal, or animal known to have died of, or been slaughtered on account of, any contamination or contagious or infectious disease, except in the case of transportation for medical treatment or diagnosis, shall be liable in damages to the person or persons who may have suffered loss on account thereof.

(Source: P.A. 95-179, eff. 8-14-07; 95-554, eff. 8-30-07.)

(510 ILCS 50/24.1)

Sec. 24.1. Swap meets. Any organizer of a swap meet held

within the State must provide the Department with information regarding the swap meet at least 30 days prior to the date on which the swap meet will be held. For each swap meet that he or she organizes, an organizer must maintain records for at least one year after the date on which the swap meet is held. The records must include information on each kind of animal present at the swap meet and information on any transfer of animals that takes place during the swap meet.

(Source: P.A. 93-980, eff. 8-20-04.)

(510 ILCS 50/25) (from Ch. 8, par. 191a)

Sec. 25. This Act shall be known and may be cited as the "Illinois Diseased Animals Act".

(Source: P.A. 81-196.)

TAB 7

Identifying and Resolving Ethical Issues Arising in Animal Law

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This segment includes all materials received by the course book publication deadline.
Please contact the speaker for any other materials used at the program.

Ethics in the Animal Law Arena

ANIMAL LAW SCENARIOS

Dan's Demise

- ▶ Dandy (Dan) F. Youdo was on his way to meet with his client, Rock N. Hardplace, who wanted to revise his will. Mr. Hardplace wanted to be certain that all of his money went to his beloved, furry companion "Fido" and that any extra be given to his favorite rescue, "Puff-n-fluff." Attorney Youdo had written a similar will/trust provision for Mr. Hardplace's prior (and equally beloved) furry companion "Rocky" many years ago.
- ▶ Just as Attorney Youdo turned the front wheels of his car into Mr. Harplace's retirement community, a car traveling south on Harm's Way spun out of control, barreled into Attorney Youdo's car, and killed Attorney Youdo instantly.

Dan's Demise

- ▶ Attorney Youdo's file flew everywhere. Mr. Hardplace – witnessing the whole thing – went into immediate, cardiac arrest. Mr. Hardplace was taken to the hospital and given a guarded prognosis.
- ▶ Although the paramedics searched for a contact at Attorney Youdo's office, he was a solo practitioner with no interns, no receptionist, and no answering service.

Dan's Demise

- ▶ What obligations does Attorney Youdo have to Mr. Hardplace?
- ▶ What obligations does Attorney Youdo have to his other clients?
- ▶ What should Attorney Youdo have done to prevent this mess?
- ▶ What should a Succession Plan look like?

Succession Plan Guide

- ▶ http://www.abajournal.com/magazine/article/terminally_ill_lawyers_friend_faces_closing

WHAT YOU NEED:

Maintain these documents in a binder and/or encrypted electronic folder as PDF or word-processing files in a secure location and confidentially protected manner:

- A copy of the financial institution's form(s) for IOLTA access by the assisting attorney.
- A power of attorney authorizing the assisting attorney to run the business as needed, including as IOLTA signatory.
- A list of passwords for computer systems, and bank and other accounts.
- An up-to-date chart of all files for transitioning and closure.
- Instructions for loved ones and the personal representative of the estate about the designated assisting attorney responsibilities.
- Contact information for the designated assisting attorney.
- An updated list of law practice contacts (employees, clients, vendors, suppliers, memberships).
- A draft of a letter for the assisting attorney to provide notification to clients about the deceased lawyer.
- A draft of a letter from the assisting attorney to clients authorizing release of client files to a new attorney.
- The state bar's client file retention rules.
- If state law allows attorneys to sell their practices, include instructions to the personal representative and will provisions corresponding to the duties concerning the closing and/or selling of the practice.

ETHICS TO CONSIDER

ABA Standing Committee on Ethics and Professional Responsibility Formal Opinion 92-369 (Dec. 7, 1992), Disposition of Deceased Sole Practitioners' Client Files and Property, provides:

"To fulfill the obligation to protect client files and property, a lawyer should prepare a future plan providing for the maintenance and protection of those client interests in the event of the lawyer's death. Such a plan should, at a minimum, include the designation of another lawyer who would have the authority to review client files and make determinations as to which files need immediate attention, and who would notify the clients of their lawyer's death."

Fanny's Friend

- ▶ Lucky for Attorney Youdo, he had just created a succession plan one month earlier, which was implemented and all of his clients – including Mr. Hardplace – were handled by Franchesca (Fanny) L. Tastic, who was an attorney herself and long time friend of Attorney Youdo.
- ▶ Unfortunately for Attorney Tastic, she had never created a will/trust for animals before and her only prior work in animal law was as a pro-bono attorney for "Puff-n-fluff." Given that Mr. Hardplace was now critical, but adamant that his estate provide for "Fido," Attorney Tastic figured she could wing it this once and create the will/trust Mr. Hardplace needed.
- ▶ Complicating matters, Mr. Hardplace told Attorney Tastic that he wanted to also protect his three other dogs, which are currently living on Mars.

Fanny's Friend

- ▶ What are Attorney Tastic's obligations to Mr. Hardplace?
- ▶ What are Attorney Tastic's obligations to "Puff-n-fluff"?
- ▶ What are Attorney Tastic's obligations to Attorney Youdo (or his estate)?
- ▶ What should Attorney Tastic do?
- ▶ Is Attorney Tastic required to have malpractice insurance to take on these clients?

Fanny's Fiasco

- ▶ After some soul searching, Attorney Tastic realized she couldn't work on Mr. Harplace's file and wasn't comfortable handling Attorney Youdo's other animal cases. She contacted Attorney Youdo's former clients and recommended they engage Attorney Dale Mation as Attorney Youdo was no longer available.
- ▶ Attorney Tastic continued to work for "Puff-n-fluff," which had just plunged headfirst into a dispute with a potential adopter, Madeline K. Hissy when "Puff-n-fluff" denied Ms. Hissy's cat adoption. "Puff-n-fluff" learned from third parties that Ms. Hissy already had 20+ kitties in her studio apartment. When confronted, Ms. Hissy demanded to know who revealed her kitty numbers but "Puff-n-fluff" refused to say. "Puff-n-fluff" also went on-line to social media sites condemning Ms. Hissy and any other rescue that had adopted animals to her in the past.

Fanny's Fiasco

- ▶ Not surprisingly, "Puff-n-fluff" received a complaint for Defamation and False Light from Ms. Hissy for the on-line statements.
- ▶ "Puff-n-fluff" and its counsel, Attorney Tastic, received numerous calls and texts from the third party disclosers that they didn't want to be named in the dispute.
- ▶ In particular, the veterinarian who described Ms. Hissy to "Puff-n-fluff" as a crazed cat lady with a "stink" that could "peel paint off the walls" expressed concern that he might lose Ms. Hissy as a client (after all, she does spend over \$10,000.00 each year on her cats – all of which, despite Ms. Hissy's own appearance – are healthy).
- ▶ Now worried, "Puff-n-fluff" deletes all of the social media comments and information received from third parties about Ms. Hissy.
- ▶ In all of the commotion, Attorney Tastic forgot to inform "Puff-n-fluff" NOT to delete or destroy any documents.

Fanny's Fiasco

- ▶ What are Attorney Tastic's duties to "Puff-n-Fluff"?
- ▶ What are Attorney Tastic's duties to Ms. Hissy?
- ▶ What are Attorney Tastic's duties to third party disclosers?
- ▶ What are Attorney Tastic's duties to the cats in Ms. Hissy's studio (and would it be different if the cats were reportedly in terrible condition)?

Dale's Dilemma

- ▶ Shortly after the social media attacks on Ms. Hissy (and before the information had been taken down by "Puff-n-fluff," Attorney Dale Mation met with Ms. Hissy (a former client of Attorney Youdo) to discuss the numerous rescue groups who now wanted to take back the cats they had adopted to Ms. Hissy.
- ▶ Ms. Hissy is devastated, but knows that these groups do not have the money to fight her (Ms. Hissy – despite her outward appearance and choice to live in a small studio – is quite wealthy). Ms. Hissy tells Attorney Mation that she did lie on the adoption forms by underreporting the number of cats in her home, but has taken VERY good care of them all (which appears to be true).

Dale's Dilemma

- ▶ Ms. Hissy wants Attorney Mation to fight the efforts of these groups and will pay him handsomely to do so. Attorney Mation is aware that Ms. Hissy violated (and is in violation) of the agreements with the adoption shelters and that Ms. Hissy has little (or no) defense to the breach.
- ▶ Can Attorney Mation take on the task?
- ▶ What duty does Attorney Mation owe to Ms. Hissy?
- ▶ What duty does Attorney Mation owe to the Adoption Shelters?
- ▶ What duty does Attorney Mation owe to the cats (& would this change if Attorney Mation learned that Ms. Hissy was in fact using the cats to cover the smells generated by her meth lab)?

Fanny & Dale's Communications

- ▶ Attorney Tastic, still representing "Puff-n-fluff" in the lawsuit launched by Ms. Hissy, who is represented by Attorney Mation, wants to settle the matter for her client.
- ▶ Ms. Hissy has told Attorney Mation that there is NO WAY she will settle with "Puff-n-fluff" and DOES NOT want to hear ANY talk of settlement. She only wants to destroy "Puff-n-fluff" for what they have done to her reputation on-line.
- ▶ Attorney Tastic conveys an offer of \$5000.00 to Attorney Mation for his client Ms. Hissy. Attorney Mation expresses hesitation and states that he does not believe his client is interested. Attorney Fantastic tells him, "Look. Your client is a smelly little beast and a liar. You know this! Let's settle it today for \$15,000.00! That is the max my client has. If you don't take it, the rescue dissolves and you get nothing!"

Fanny & Dale's Communications

- ▶ What were Attorney Tastic's duties to "Puff-n-fluff" to explain the expenses of a lawsuit (assume she is no longer willing to work for free)?
- ▶ What are Attorney Mation's duties to convey the offer to Ms. Hissy?
- ▶ Is Attorney Mation under any duty to tell Ms. Hissy what else was said by Attorney Tastic?
- ▶ Did Attorney Tastic say anything that breached her ethical duties to "Puff-n-fluff"?
- ▶ What if the proposed settlement involves a clause that BOTH the parties AND the attorneys cannot disparage one another?

Fanny's Fluster

- ▶ Attorney Tastic has told "Puff-n-fluff" that Ms. Hissy has no interest in settling and is now facing the anger of the "Puff-n-fluff" board who claims Attorney Tastic did a bad job advising the rescue.
- ▶ Attorney Tastic is angered by the board and hands in her resignation. Attorney Tastic considers telling "Puff-n-fluff" about the recent article on Cyber Security – especially due to all of the background information "Puff-n-fluff" has gathered on past adopters – but doesn't. Attorney Tastic has copies of the "Puff-n-fluff" records on her office computer, but plans on deleting them asap.
- ▶ Attorney Tastic arrives at her office only to find herself locked out of her computer. Her computer has been hacked and a ransom has been placed on all of her files.

Fanny's Fluster

- ▶ What duty does Attorney Tastic owe to "Puff-n-fluff" to preserve the files?
- ▶ What duty does Attorney Tastic owe to "Puff-n-fluff" to inform them of cyber security practices?
- ▶ What duty does Attorney Tastic owe to her other clients concerning the data hack?

Thank You!



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ILLINOIS BAR JOURNAL

The Magazine of Illinois Lawyers

[January 2011](#) ÉVolume 99 ÉNumber 1 ÉPage 46



New Ethics Rules

Succession Planning and the Duty of Diligence

By
John Cesario

Succession planning will make things easier for those who have to wind up your practice if you die or become disabled. More than that, though, it's probably part of your ethical duty of diligence.

Rule 1.3 is short and direct: "A lawyer shall act with reasonable diligence and promptness in representing a client." But the Committee Comments provide additional guidance and insight. Comment 5 to Rule 1.3 addresses the unique challenges to a sole practitioner and the related duty to have a plan in place to cover sudden death or incapacity. It reads as follows:

To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that

designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. See Illinois Supreme Court Rule 776, Appointment of Receiver in Certain Cases.

While no one likes to dwell on it, fate is capricious, and it is foreseeable that a sole practitioner could suffer a mishap or misfortune. It is also foreseeable that clients could suffer great harm if no forethought is given to how to advise them. They must be told to consult with another attorney for any ongoing matters and otherwise advised how to minimize harm to their interests. While comment 5 is addressed to sole practitioners, all lawyers would do well to review their plans for dealing with a partner's or associate's death or incapacity.

Such planning is in keeping with the highest calling of our profession to promote and protect the welfare of our clients. It also reflects our natural desire to help grieving family and friends, who would otherwise have to close a law practice with no written directions. This article offers a partial checklist of things to do.

Checklist of topics for a sole practitioner to discuss with a designated successor

A solo should enter into an agreement with another lawyer or law firm to perform the functions described in Comment 5. It is probably best to agree with another sole practitioner to help each other if either dies or becomes incapacitated.

Client list. Instruct family members or support staff in writing how to generate a list of client names and addresses. Also, he or she should be able to generate a list of open matters and closed matters.

In this regard, Supreme Court Rule 769, *Maintenance of Records*, is useful. It has two parts. The first requires attorneys to maintain records that contain the name and last known address of each client and say whether the representation is ongoing or concluded. That allows the attorney to review all matters subject to the duty of care and diligence. Attorneys should keep the telephone numbers of all clients in pending matters so someone can quickly inform them they need to speak to another lawyer promptly.

The second part of Rule 769 provides that an attorney maintain all practice-related financial records for not less than seven years, including but not limited to bank statements, time and billing records, checks, check stubs, journals, ledgers, audits, financial statements, tax returns, and tax reports.

Computer records. Leave written instructions, including passwords, that describe how to access a calendar or computer program listing all pending matters and due dates on all cases. Time-sensitive ongoing proceedings are highest priority, and any plan should therefore identify the name, title, and case number of any pending litigation matters, along with the client's name, address, and telephone number. This would allow someone

to inform clients of the bad news and invite them to retrieve the file and to speak to another attorney.

Trust accounts. Prepare careful instructions about any client trust or escrow account, identifying the financial institution where it is located along with its title and the account number. He or she should also describe where client trust account records are located.¹

Voice mail. Explain in writing how to retrieve messages from and change the greeting on the voice mail system. This notifies callers and refers them to a contact person.

Closed files. Describe where closed files are stored and how they are organized. Instructions should identify any file that may contain an original will, deed, or trust agreement that may have to be returned to the former client.

Informing clients. Consider referring to the contingency plan in any attorney-client agreement with new clients. The statement could be as simple as including language to the effect that your office has made arrangements for attorney John Smith to review files and notify clients and take other action in case of your illness or death.

Time devoted to planning for death or incapacity will give sole practitioners and their loved ones peace of mind. Such a plan could lower the cost of administering the deceased attorney's estate and make efforts to sell his or her law practice pursuant to the provisions of Rule 1.17 more feasible.

John R. Cesario is senior counsel for the Illinois Attorney Registration and Disciplinary Commission.

1. The Attorney Registration and Disciplinary Commissions' *Client Trust Account Handbook*, which describes the basics of maintaining and reconciling a client trust account, is online at www.iardc.org/toc_main.html.

TAB 8

Prof. Randall S. Abate is Associate Dean for Academic Affairs and Professor of Law at Florida Agricultural and Mechanical University College of Law in Orlando, Florida. He teaches courses in domestic and international environmental law, constitutional law, and animal law. Professor Abate has 22 years of full-time law teaching experience at six U.S. law schools. He has taught international and comparative law courses on environmental and animal law topics in Argentina, Canada, Cayman Islands, China, India, Kenya, Kyrgyzstan, Spain, Ukraine, and the United Kingdom. In 2016, Professor Abate delivered invited lectures on climate justice and animal law topics at several of the top law schools in the world including Harvard, Cambridge, Oxford, Yale, the University of Pennsylvania, the University of Melbourne, and the University of Sydney. Professor Abate has published and presented widely on environmental and animal law topics, with a recent emphasis on climate change law and justice and comparative animal personhood. He is the editor of *CLIMATE JUSTICE: CASE STUDIES IN GLOBAL AND REGIONAL GOVERNANCE CHALLENGES* (ELI Press 2016), *WHAT CAN ANIMAL LAW LEARN FROM ENVIRONMENTAL LAW?* (ELI Press 2015), *CLIMATE CHANGE IMPACTS ON OCEAN AND COASTAL LAW: U.S. AND INTERNATIONAL PERSPECTIVES* (Oxford University Press 2015) and co-editor of *CLIMATE CHANGE AND INDIGENOUS PEOPLES: THE SEARCH FOR LEGAL REMEDIES* (Edward Elgar 2013). Early in his career, Professor Abate handled environmental law matters at two law firms in Manhattan. He holds a B.A. from the University of Rochester and a J.D. and M.S.E.L. (Environmental Law and Policy) from Vermont Law School.

Allison Anderson graduated Northern Illinois University in 2008 where she double majored in Psychology and Sociology. After graduation she began her career in Emergency Management in the Village of Oak Lawn. Since then she has been part of the development of Emergency Operations Centers, mass vaccination clinics during H1N1, and currently serves as the lead for the Campus Preparedness Task Force and the K-12 Advisory Task Force. Allison joined Will County Management Agency in December of 2014 as the Planning and Exercise Officer where she works with local municipalities in enhancing and testing their Emergency Operations Plans as well as maintaining the Will County Emergency Operations Plan. Allison is currently working to enhance the Animal Services Annex of the Will County EOP as well as work with the Regional Catastrophic Planning Team (RCPT) of the Greater Chicago Area to develop standardized training for animal shelters in a disaster.

Jennifer Bagby has been an Assistant State's Attorney with the Cook County State's Attorney's Office since November 2000. She earned her J.D. at Indiana University School of Law in Indianapolis, Indiana in May 2000, and a B.S. in Education from the University of Kansas in 1993. Ms. Bagby is currently a Deputy Supervisor of the Felony Review Unit and has served in this position since January 2016.

Stephen Hedinger graduated from Southern Illinois University School of Law in 1988 and he is currently a shareholder at Sorling Northrup in Springfield. He is past chair of the Illinois State Bar Association's Animal Law Section Council. His animal law practice has included such matters as the rights of ownership and possession of domestic pets, issues of humane care of animals, property damage claims for injured livestock and pets, the rights and responsibilities of humane investigators in investigating allegations or evidence of animal abuse, and civil rights actions against police for harming and killing dogs. His primary areas of practice also include environmental law, construction law and matters involving consumer protection statutes.

Hon. William E. Holdridge was elected to the Illinois Appellate Court, Third District in 1994. He has served several terms as the Presiding Judge of the Court. He also serves as the Presiding Justice of the Workers' Compensation Commission Division of the Illinois Appellate Court.

Justice Holdridge has served as Director of the Administrative Office of the Illinois court system and as a Trustee of the Illinois Judicial Retirement System of Illinois.

Prior to his election to the Appellate Court, he was an elected full circuit judge in the six counties of the 9th Judicial Circuit, presiding over criminal and civil trials.

David H. Hopkins earned his A.B. at Duke University in 1966 and his J.D. at Columbia University in 1969. He is admitted to practice in Illinois and before the U.S. Tax Court. Mr. Hopkins has been a Partner at Schiller, DuCanto & Fleck LLP since 1983.

Mr. Hopkins has been selected by his peers for inclusion in *Best Lawyers of America* (2009-16), *Illinois Leading Lawyers* (2003-16), and *Illinois Super Lawyers* (2005-16). He is recipient of the 1992 ISBA Board of Governors' Award for his work on the Illinois Domestic Violence Act. Mr. Hopkins has been an author or presenter of numerous papers in the family law area.

Mr. Hopkins is a member of the Illinois State Bar Association and American Academy of Matrimonial Lawyers. He is the past Chairman for the ABA Domestic Relations Tax Simplification Task Force (1980-86), as well as the past Vice-Chairman (1980-82) and Chairman (1982-84) for the ABA Section of Taxation – Domestic Relations Tax Problems Committee. He also served as the Chairman for the CBA Domestic Relations Subcommittee (1993-96), CBA Board of Managers (1992-94), a member of the CBA Committee on Courts for the 21st Century (1997-98), Chairman of the CBA Matrimonial Law Committee (1988-89), and a member of the Chicago Bar Foundation Board (1998-2003).

Ken E. Hudson earned his Bachelor of Arts in Religious Studies from Indiana University in 2007 and his Juris Doctor from Loyola University School of Law in 2014. He currently serves as an Assistant State's Attorney in McHenry.

David Jackson has been a Chicago Tribune investigative reporter since 1991, except for a year at The Washington Post, where he shared the 1999 Pulitzer Prize for public service for articles about citizens shot by police. At the Tribune, he was a Pulitzer finalist 4 times: for exposing violence in residential treatment facilities for youth; for interviewing dangerous fugitives who live in foreign countries; for the series "How Troubled Kids Became Big Business"; and for a probe of the Nation of Islam.

Scott W. Kummer is a partner at the law firm of Boyd & Kummer, LLC. Scott is originally from West Allis, WI. Scott received his B.A. in Philosophy from UW-Milwaukee and his law degree from Depaul Univesity. Scott was previously an associate at the law firm of Dahl & Bonadies, LLC, where he worked in virtually every area of commercial litigation and business law, representing large commercial clients as well as banking institutions. In doing so, Scott both defended and prosecuted claims on behalf of lenders arising out of fraud, consumer fraud, check kiting schemes and mechanics' liens.

Since 2005, Scott has worked with Juliet Boyd in a wide variety of cases ranging from civil, commercial, real estate, civil rights, personal injury and criminal litigation, from simple contract preparation/review to complex business mergers and acquisitions. Scott has conducted trials and arbitrations with and without juries. Scott has represented Plaintiffs and Defendants in a wide variety of matters.

Scott Has a wide variety of commercial and real estate clients who generally consist of small to mid-sized businesses looking for experienced and professional representation and advice without spending excessive fees on the large law firms. Scott's clients appreciate his direct, personal approach to seeing them through a case from beginning to end and guiding them through the process.

Scott represents also represents small businesses in their day-to-day operations. Scott reviews and prepares contracts, assists with incorporation/organization and prosecutes/defends small businesses in all of their litigation matters including the collection of judgments.

Scott also represents plaintiffs in personal injury and civil rights matters. From 2005 to the present Scott has obtained hundreds of thousands of dollars in recoveries for clients who have suffered personal injuries and/or had their civil rights violated. Scott takes pride in seeking resolutions for his clients that provide them with not only just compensation but also a sense of justice.

Scott has represented criminal defendants and tried criminal cases.

Scott is a member of the Illinois State Bar Association and is a Member of the Animal Law Section. Scott also is a volunteer for the Lawyer's Assistance Program. Scott also volunteers for the Illinois Doberman Rescue.

Jane E. McBride is a member of the ISBA Animal Law Section Council – serving as CLE chair. She is the 2017-2018 Chair Elect of the ABA’s Animal Law Committee. Ms. McBride’s career practice area is environmental law. She has written articles and provided presentations on a wide array of topics in both environmental and animal law for local, state and regional bar publications and programs. She is licensed in Illinois and Wisconsin.

Serving as a humane investigator since 1999, certified in the State of Illinois, she has been involved in the prosecution of a variety of cruelty matters. She is founder and president of Illinois Humane, a Springfield-based animal welfare organization. Illinois Humane is a licensed animal shelter that focuses its efforts upon advocacy, cruelty and neglect investigations, recovery of animals from local animal control facilities, and community outreach. Illinois Humane is among Illinois shelters that provide for the recovery, care and re-homing of pit bulls. Illinois Humane has also responded in crisis, particularly natural disasters, and, again, focuses much of these efforts on the recovery and care of pit bulls. Ms. McBride has been active in numerous state animal welfare legislative efforts, as well as work with local governmental units crafting local ordinances and spearheading private/public animal welfare initiatives.

Anna Morrison-Ricordati practices civil litigation, business law, and animal law in Chicago, Illinois. Handling all aspects of dispute resolution, Anna has represented individual and business clients in mediations, arbitrations, jury and bench trials, equitable remedies, and appeals. She is a past Chair of the Illinois State Bar Association's Animal Law Section Council (2010-2011), past Chair of the Chicago Bar Association's Animal Law Committee (2012-2013), past Chair of the DuPage County Bar Association's Animal Law Section (2013-2014), past President of the North Suburban Bar Association (2014-2015), and has served as a CLE speaker on emerging legal topics for many organizations, including The Chicago Bar Association, Illinois State Bar Association and Louisiana State Bar Association. Anna has also guest lectured at The John Marshall Law School in animal law and civil practice courses.

Angela E. Peters earned her B.A. in Philosophy at the University of Illinois Chicago in 1973 and her J.D. at IIT-Chicago Kent College of Law in 1985. She is the principal attorney of Buffalo Grove Law Offices where her practice concentrates in international and domestic divorce/family law, criminal, civil and criminal litigation, real estate law, general practice, mediation, and pet litigation and mediation. Ms. Peters is a member of the Illinois State Bar Association, North Suburban Bar Association, Northwest Suburban Bar Association, Buffalo Grove Chamber of Commerce, and the Animal Legal Defense Fund.

Amber Porter earned her Bachelor of Arts in Journalism from Columbia College Chicago in 2010 and her Juris Doctor from the University of Illinois College of Law in 2014. She currently serves as an Assistant State's Attorney with the McHenry County State's Attorney's Office. Prior to this, she worked for two years as an Assistant Attorney General in Springfield, Illinois.

Richard M. Seligman is an attorney with broad insurance industry experience. His Practice includes representing traditional and non-traditional insurance underwriters, captive and surplus lines insurers, risk pooling trusts, producers, managing general agents, trade associations, affinity groups and banks. Mr. Seligman's Practice also includes representation of third party administrators, adjusters, accountants and actuaries. Mr. Seligman has represented clients in connection with financing and capital accumulation, formation and acquisition of insurance companies, marketing, risk management, regulatory compliance and general corporate transactions. Clients include specialty insurance corporations, health care providers such as hospitals, nursing homes, physicians, podiatrists and chiropractors, captive insurance companies and alternative risk program sponsors. Mr. Seligman is one of the founders and a director of AaRoooo!! Basset Hound Rescue and serves as its legal counsel.

Mr. Seligman started his professional career with Marsh & McLennan where he was an accounts person and eventually Assistant Counsel. He has also served as Chief Counsel of the State of Illinois Department of Insurance and practiced law with several large law firms. He is a member of the Illinois and Wisconsin bars. Mr. Seligman holds a BS in Economics and an MS in Risk Management and Insurance from the University of Wisconsin-Madison and a JD law degree from DePaul University.

Rory P. Quinn is a Cook County Assistant State's Attorney. Currently he is assigned to the Third Municipal District located in Rolling Meadows. Previously, Mr. Quinn was assigned to the 1st Municipal District City-Wide Misdemeanors. There he was able to work closely with the Chicago Police Department's Animal Crimes Team based out of Homan Square. Mr. Quinn's work with the Animal Crime's team led to the successful prosecution of several animal cruelty cases.

He earned his J.D., *cum laude*, in 2015 from Chicago-Kent, and his B.S., in 2010 from Western Illinois University. He is admitted to the bar in Illinois.

Ledy VanKavage is the Senior Legislative Attorney for Best Friends Animal Society located in Kanab, Utah and the current chair of the ISBA's animal law section. Before coming to Best Friends, Ledy was the Senior Director of Legislation and Legal Training for the ASPCA. She has spearheaded the passage of over 35 humane state bills during her lobbying tenure and is also a past Chair of the American Bar Association's Animal Law Committee. Ledy is the recipient of the ABA's Excellence in Animal Law award for 2014. She is a co-author of the USDOJ publication, "The Problem of Dog Related Incidents and Encounters" and is an instructor for the Illinois Law Enforcement Training and Standards Board. She has been interviewed on MSNBC, NPR, the Chicago Tribune, Time Magazine and the New York Times.

Lisa M. Velez is a partner at Cassidy Schade LLP. She concentrates her practice in the areas of medical malpractice, pharmacy liability and professional liability. She represents hospitals, physicians, and health care providers, involving various medical specialties. She holds a JD from the UCLA School of Law and BA in Applied Psychology from the University of Illinois at Chicago. Ms. Velez is a board member and volunteer at Save-A-Pet Adoption Center. She is a Humane Investigator licensed by the Illinois Department of Agriculture. As a humane investigator, Ms. Velez responds to complaints of animal cruelty, neglect and/or abuse to determine whether there has been a violation of the Humane Care for Animals Act. Ms. Velez is a member of various organizations, including the CBA's Alliance for Women, CHRMS, CLM, the ISBA's Animal Law Council and co-chair of the CBA's Animal Law Committee.

Debra A. Vey Voda-Hamilton has 30 years of experience as a litigator. Her focus for the past 6 years is as a mediator/collaborative professional working with people who are in conflict over an animal. Debra is the principal at Hamilton Law and Mediation, PLLC (HLM), the first solo alternative dispute resolution practice dedicated to resolving conflicts involving animals.

During her litigation career, Ms. Vey Voda-Hamilton was an Assistant District Attorney in Westchester County, an Assistant Inspector General for the NYS-MTA Inspector General and in private practice. She has extensive experience in animal, criminal, and contract law handling cases, including animal abuse, shelter conflicts, contract disputes, civil disagreements, and family disputes about an animal. Throughout her solo litigation career, she brought or defended actions involving disagreements involving animals.

Ms. Vey Voda-Hamilton now exclusively mediates disputes over animals and speaks nationally and internationally about different ways of addressing these conflicts. In 2011, she co-chaired a first of its kind program, *It Doesn't Have to Be Dog Eat Dog – Introducing Mediation to the Animal Law Practitioner*, at St. John's University Law School. She now presents programs on how to resolve conflicts over animals in divorce, in planning for the care of animals and when addressing conflicts arising over an animal, thus resolving the issues more peacefully. She speaks at State Bar Association committee annual meetings, National Veterinary conferences, and Pet Service/Entrepreneur Conferences.

Debra is an advisory committee member of the ABA TIPS Dispute Resolution Committee, Women in Dispute Resolution, Women Rainmakers, Women Advocates and the Animal Law Committee and Equine subcommittee. She is also a member of the American Veterinary Medical Law Association and a frequent contributor to bar association newsletters, pet owner and service provider magazines and veterinary publications. Debra is the go-to person for information regarding the use of mediation in disagreements involving animals for the NY Times, Wall Street Journal, Bloomberg, Reuters, Huffington Post, and U.S. News and World Report.

Debra sits on the Board of Directors at The Center for Understanding in Law, Fur-Bridge, Grey Muzzle, The Irish Setter Club of American, and Eastern Irish Setter Association.

HLM uses alternative dispute resolution to help resolve divorce disagreements over the family pet, neighbor arguments over a barking dog, vet and pet service providers and their clients' misunderstandings. We also assist animal rights, rescues, and welfare advocates to be heard more clearly and productively by providing all interested parties with a venue in which to discuss the focus on the best interests of all, avoiding costly and time-consuming litigation.

Debra is the author of the Amazon best-selling book, *Nipped in the Bud, Not in the Butt: How to Use Mediation to Resolve Conflicts over Animals* and co-author of *Onward and Upward: A Guide for Getting Through New York Divorce & Family Law Issues*.

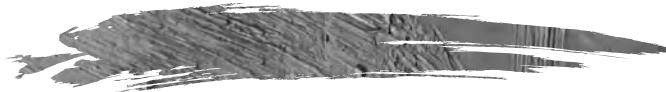
Debra has monthly newsletters and is starting instructional podcasts and webinars on how to live and work peacefully with pets. For more information, go to www.hamiltonlawandmediation.com

Jonathan Wier is a Litigation Counsel with the Illinois Attorney Registration and Disciplinary Commission (“ARDC”). He is responsible for investigating charges of attorney misconduct and prosecuting disciplinary cases. Jonathan graduated from the University of Pennsylvania, Wharton School of Finance with a bachelors’ degree in economics and then received his JD from the University of Wisconsin School of Law. Prior to joining the ARDC in 2015, Jonathan worked for two Chicago law firms where he was a commercial litigator with extensive experience in utility regulation. He also served as assistant general counsel to the Speaker of the Illinois House of Representatives.



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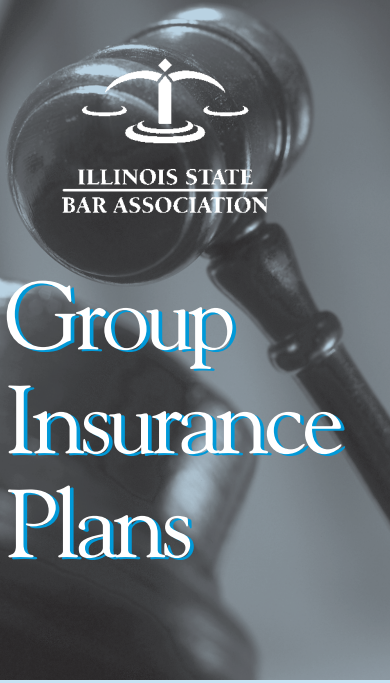
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