

Animal Law: Welfare, Interests and Rights

Aspen Press (2008)

Professor David Favre, Michigan State University College of Law
As of August 15, 2009.

Teacher's Manual Update, v. 1.5

This file contains material made available after the completion of v. 1.0 of the Teacher's Manual on May 1, 2008.

(cumulative) – available at <http://www.animallaw.info/policy/teachers.htm>
New material since April of 2009 will have date in green: (May 2009)

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[Wildlife Services](#) – Killing seagulls in Seattle (August 2009)

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Part 2: Animals in our Legal System – State Public Law

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Section 1 – [Court strikes Pit Bull Ban](#) (March 2009)

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[General Intent Crime](#)

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Comparative law – [South Africa](#) definitions of cruelty (**July 2009**)

[Fed Case](#) - Restriction on Free Speech to distribute cruelty videos (**May 2009**)

[Multistate Dog Fighting Raid](#) (**July 2009**)

Chapter 7 - Anti-Cruelty Laws, Requirements of Care

[Duty to Provide Care](#) – A problem of owner provided care

Chapter 8 - Animals in Agriculture

[California 2008](#) Ballot Initiative on Agricultural Animals (Nov 2008)

* New Jersey Agriculture [Regulations Case](#) * (July 2008)

[Animal Slaughter](#) – News about inspections at national plants (May 2008)

[NY Times](#) - Editorial against confinement agriculture (May 30, 2008)

[KFC Agreement](#) – In Canada PETA and KFC have reached agreement (June 2008)

Undercover video of intentional cruelty against sows:

<http://www.cnn.com/2008/US/09/16/abused.pigs.ap/index.html>

<http://www.cnn.com/video/#/video/us/2008/09/17/vo.ia.peta.pig.abuse.peta?iref=videosearch>

[Ag Law Suit filed](#) in Washington state questions the extent of the cruelty exemption – “standard agricultural practices” (Feb. 2009)

[WTO and limitations](#) on imported products Canada v. EU and seals (**March '09**)

Part 3: Animals and Federal Law & Regulation

Chapter 9 - **Access to the Courts – Standing**

[HSUS](#) denied standing in New York *Foie gras* case (**June 2009**)

Chapter 10 - **The Animal Welfare Act**

[Shelter Disposition](#) of Animals in Michigan (returned, sold, killed) (**July 2009**)

Part 4: Animal Rights

Chapter 11 - **Animal Rights- Jurisprudence**

Chapter 12 - **Animal Rights - the Social Movement**

[Criminal acts](#) against corporations continue in Europe

Chapters available on the web as .pdf file (after Sept 30, 2008):

Web Chapter 1 - **Private Regulation of Ownership - Landlords & Condos**

Web Chapter 2 - **State Control of Wildlife**

[Constitutionally protected hunting](#) in Okla. (Nov. 2008)

Web Chapter 3 - **Animals in Science**

[Animal Testing](#) – Article from Science News about alternatives to live animal testing. (April 2008)

[Retirement](#) of Chimpanzees from research: HSUS press release (June 2008)

Replacement for [rats in the lab](#) (Boston Globe **March 30, 2009**)

Additional Cases:

- [New Jersey Society](#) for the Prevention of Cruelty to Animals, et al. v. New Jersey Department of Agriculture (2008)

- [HSUS](#) v. Brennan, as Commissioner of Agriculture and Markets. (June 2009)

Dog Meat

Seoul Hounds Meat Vendors For Cleaner Chow Dog Stew Is a Delicacy, But Causes Salmonella; \$10 for 'Healthy Soup'

By EVAN RAMSTAD Wall Street Journal on the web -
http://online.wsj.com/article/SB121055167388783853.html?mod=hps_us_inside_today
May 12, 2008

SEOUL, South Korea -- As the hot summer rolls around, many South Koreans will dine on a local dish that's often named "sweet meat" or "healthy soup."

The dish is dog -- and it supposedly gives an energizing boost without a filled-up feeling. Some say it enhances stamina and sexual prowess. But dog meat has recently been linked to a spate of salmonella and staph infections, drawing the attention of authorities -- and bringing a long-simmering cultural dispute to a boil.



Evan Ramstad

The dogs most often eaten in South Korea are of a breed simply known as 'yellow dog,' which looks similar to an indigenous hunting breed called Jindo.

Though dog meat is officially banned in Seoul, enforcement is lax. It is served by an unsupervised industry of small farmers, butchers and mom-and-pop restaurants. In Seoul alone, some 530 restaurants have dog on the menu, mostly spicy dog-meat stew laced with ginger and garlic for about \$10 a bowl, about twice as much as soups made with seafood or beef.

Federal Slaughter of Agricultural Animals

From Farm Animal Watch, May 2 2008.

Information obtained by the Associated Press (A.P.) through a Freedom of Information Act request revealed that two of the four slaughter plants recently cited for humane handling violations (see: <http://tinyurl.com/5ess5w>) are owned by two of the largest U.S. beef companies. A National Beef Packing Company plant in Kansas was cited for overcrowded holding pens, and a Cargill plant in California was cited for excessive use of electrical prods. Additionally, a Dakota Premium Foods' plant in Minnesota was cited for excessive bunching in the stunning area and Martin's Abattoir and Wholesale Meats, in N.C., was cited for insufficient stunning. The first three received non-compliance records and the last one had operations temporarily suspended. According to a U.S. Department of Agriculture (USDA) spokesperson the problems have since been remedied.

National Beef Co. president Tim Klein conceded there were 53 cattle in a pen designed for 49 but contended it was not harmful to them. An appeal by the company to have its noncompliance record rescinded was denied. Regarding the Cargill case, the A.P. reports: "FSIS officials said that in reviewing 36 animals, virtually every one balked at entering the restrainer, and to keep them moving, an electric prod had to be used on 10 to coax them along. Three still refused, even after prodding, and had to be stunned and rendered unconscious 'so that they could be pulled through the restrainer to be shackled, hung, and bled,'" the noncompliance record states." After the A.P.'s inquiry, the USDA granted an appeal by Cargill, rescinding the record and issuing instead a "letter of concern." Cargill spokesperson Mark Klein contended the balking was caused by the USDA audit. The USDA disputed that claim. Klein also said the electric prods had no batteries. Paul Shapiro with the Humane Society of the U.S. questioned that assertion, noting: "The point of using an electric prod instead of a stick is to shock the animals to force them to move under the threat of pain." Klein replied that unpowered prods can still be effective.

Of 6,200 federally inspected slaughter facilities, approximately 800 slaughter animals covered by the Humane Methods of Slaughter Act. In 2007, the USDA issued 66 suspensions to facilities in the latter category, 18% of which were considered egregious humane handling violations. In late April, the USDA posted a new scenario regarding "double stunning" (see: <http://tinyurl.com/5z8vc6>). It is the first one in three years not posted for the purpose of public comment: <http://www.aamp.com/news/FSISHIKE.asp>.

2 BEEF PROCESSORS ARE CITED FOR HUMANE VIOLATIONS

The Associated Press, Frederic J. Frommer, April 30, 2008

<http://ap.google.com/article/ALeqM5ib5V7z9A-ocCTOvoaRCq9OhbI9SAD90C5R400>

SCHOOL LUNCH SUPPLIERS COMPLYING AFTER HUMANE HANDLING AUDIT: USDA

Meatingplace, Tom Johnston, April 30, 2008

<http://www.cattlenetwork.com/Content.asp?ContentID=217749>

NATIONAL BEEF APPEALS ALLEGED HUMANE HANDLING VIOLATION

Meatingplace, Tom Johnston, May 1, 2008

Vet Malpractice settlement:

Animal Testing

Science News, "You, in a Dish"

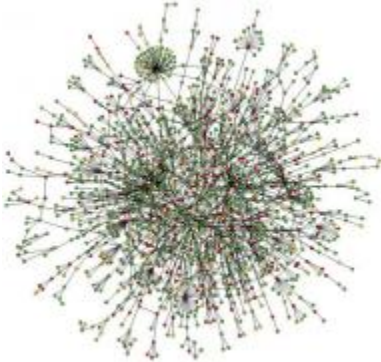
http://www.sciencenews.org/view/feature/id/9548/title/You%2C_in_a_Dish

By [Patrick Barry](#)

April 1st, 2008

-  Text Size

Cultured human cells could put lab animals out of work for chemical and drug testing



WEB OF LIFE. Networks showing the interactions among proteins help scientists understand how a drug affecting one protein will affect overall cell functioning. This protein network for brewer's yeast shows which proteins are critical for survival (red), which are important for growth but not critical to survival (orange), which can be removed without slowing growth or killing the cells (green), and which are of unknown importance (yellow).Hawoong Jeong/Korea Advanced Institute of Science and Technology

At 8 o'clock on a March morning last year, doctors at Northwick Park Hospital in London began injecting six healthy men with an experimental arthritis drug. It was the drug's first safety trial in humans, and it had passed all the necessary tests on mice and monkeys with no indication of danger.

Once inside each man's bloodstream, the drug bound strongly to the "seek and destroy" cells of the immune system, the T cells. As a result, these attack cells became hyperactive and began leaving the blood vessels and entering tissues—something T cells normally do only at the site of an infection. The T cells proceeded to attack and kill healthy cells of vital organs such as the heart, liver, kidneys, and lungs.

Within an hour, the men were vomiting and writhing in excruciating pain as their immune systems began attacking their bodies from the inside out. All six nearly died, and they still suffer from lingering health impairments.

Clearly, the animal tests had missed something.

As invaluable as mice have been for medical research, differences do exist between human and mouse biology. Sometimes, these differences generate misleading test results. In the case above, for example, the drug bound to a receptor molecule on the human T cells more tightly than it did to the mouse version of that receptor. The drug also activated a kind of T cell that the lab mice lacked.

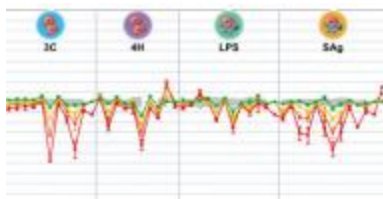
A better way to find out how a drug will affect human cells, some scientists say, is simply to test it on human cells. That's now becoming a practical option.

Over the past few years, scientists have developed sophisticated ways to screen drugs and other compounds on lab-grown cells from various human organs. Coupled with the burgeoning knowledge of cells' inner workings that comes from genomics, proteomics, and other "-omics," these screening techniques offer a way to test compounds on human biology long before they're tested on actual humans.

These screens could aid pharmaceutical development by identifying promising candidates and weeding out compounds earlier if they don't work in humans (even though they may work in mice). Many scientists think that in the wake of genomics, such screens are the next logical step.

"Everybody in the industry thinks this is the right way to go," says Aled M. Edwards of the Ontario Cancer Institute in Canada, who has no connections with companies offering such screening services. "I know that pharmaceutical companies are doing this."

And drug companies aren't the only ones. The Environmental Protection Agency and the National Institutes of Health are launching a joint program to test potentially toxic industrial chemicals on human cell cultures instead of on animals, the agencies announced in February during a meeting in Boston of the American Association for the Advancement of Science, as well as in the Feb. 15 *Science* ([SN: 2/23/08, p. 117](#)).



PILL PROFILE. The effects of a candidate drug on four human cell cultures are apparent in this graph, which shows the drug's characteristic "fingerprint." Each dot represents the concentration of a telltale protein in the cells, and each colored line signifies a certain dose. Dots that fall outside of the normal range (gray) show a change in concentration of that protein. This profiles compound UO126, which inhibits an enzyme involved in stress and inflammatory responses. BioSeek

Veterinary Malpractice

May 2008 Settlement:

From an e-mail I received: We just settled the vet malpractice case I wrote about a couple of days ago.

Chen v. Labavitch
Washington County, Oregon
Case No: C072892CV
Settlement Amount: \$6,500
Professional Malpractice Carrier: Zurich Insurance, Chicago, IL.
Negligent diagnosis
Negligent treatment

Dog was vomiting. Vet x-rayed dog and said he saw a blockage. He said surgery was required to save the dog's life. Had ultrasound in office, but did not offer -- US would have shown no blockage. During surgery, couldn't find blockage so vet did exploratory surgery. Took dog's cecum apart and couldn't get it back together. Inexplicably, vet placed at least three sutures in the colonic mesentery, cutting off blood flow to lower colon. The dog died from complications.

We agreed to an offer of compromise and will have a stipulated judgment on the record. The \$6,500 will not be broken down on the record, but Zurich gave us approximately \$2,500 for special value.

Thanks, Jami Pannell

Editorial – New York Times

The Worst Way of Farming

http://www.nytimes.com/2008/05/31/opinion/31sat4.html?_r=1&oref=slogin

Published: May 31, 2008

In the past month, two new reports have examined how farm animals are raised in this country. The report funded by the Pew Charitable Trusts calls the prevailing system “industrial farm animal production.” The report from the Union of Concerned Scientists prefers the term “confined animal feeding operations.”

No matter what you call it, it adds up to the same thing. Millions of animals are crowded together in inhumane conditions, causing significant environmental threats and unacceptable health risks for workers, their neighbors and all the rest of us.

The astonishing increase in the number and size of confined animal operations has been spawned largely by the very structure of American farm supports, which always has been skewed in a way that concentrates farming in fewer and fewer hands. As both of these reports make clear, the so-called efficiency of industrial animal production is an illusion, made possible by cheap grain, cheap water and prisonlike confinement systems.

In short, animal husbandry has been turned into animal abuse. Manure — traditionally a source of fertilizer — has been turned into toxic waste that fouls the air and adjacent water bodies. Crowding creates health problems, resulting in the chronic overuse of antibiotics.

And, because the modest profits in confinement operations require the lowest possible labor costs, including automated feeding, watering and manure-handling systems, these operations have helped empty and impoverish rural America.

The Pew report recommends new laws regulating pollution from industrial farms as rigorously as pollution from other industries, a phasing-out of confinement systems that restricts “natural movement and normal behavior,” a ban on antibiotics used only to promote animal growth and the application of antitrust laws to encourage more competition and less concentration.

These are all useful guideposts for the next Congress and a new administration.

Horse Slaughter

June 12, 2008 – With horse slaughter stopped in the US. The horses are being taken to Canada. See report, http://www.cbc.ca/national/blog/special_feature/no_country_for_horses/no_country_for_horses.html. There is now a movement in Canada to ban the slaughter of US horses in their country.

Chicken Meat

June 9, 2008 - “The mock-meat market remains small, but with the KFC deal it’s about to get a whole lot bigger,” declared Canada’s Globe and Mail newspaper. After five years and more than 12,000 protests at KFC restaurants and KFC executives’ homes, and seven months of negotiations, KFC Canada and People for the Ethical Treatment of Animals have reached an agreement. Prizm Income Fund, which owns 461 Canadian KFC restaurants, has agreed to:

- add a vegan ‘chicken’ item to the menu

- phase in purchases of all chickens from suppliers that use controlled-atmosphere killing (CAK). KFC Canada is the first major restaurant chain to make such a commitment.
- improve its animal welfare audit criteria to reduce the number of broken bones and other injuries suffered by birds.
- urge its suppliers to adopt better practices, including improved lighting, lower stocking density and ammonia levels, and a phase-out of growth-promoting drugs and breeding practices that cripple chickens.
- and form an animal welfare advisory panel to monitor the changes and recommend further advancements

Retirement of Chimpanzees

From:

http://www.hsus.org/press_and_publications/press_releases/hsus_applauds_retirement_of_research_chimps_061308.html

The HSUS Applauds Retirement of Seven Chimpanzees from Research

June 13, 2008

The Humane Society of the United States applauds the permanent retirement of the last seven chimpanzees remaining at Buckshire Corporation, a medical research laboratory in Perkasio, Pa. (Bucks County). Chimps Annie, Foxie, Jamie, Jody, Missy, Negra and Burrito (the lone male), ranging in age from 25 to 35 years, are scheduled to arrive today at Chimpanzee Sanctuary Northwest, a newly-built sanctuary in Cle Elum, Wash.

"The trend is clear as another lab gets out of the chimpanzee business and retires these seven animals to a sanctuary where they can live a more natural life in a safe and peaceful setting," says Kathleen Conlee, director of program management for animal research issues at The HSUS. "There are now approximately 575 chimpanzees formerly used in research living in 10 sanctuaries in North America, and it's time for the remaining 1,200 living in labs to join the others in sanctuary retirement."

Through its Chimps Deserve Better campaign, The HSUS advocates for passage of the Great Ape Protection Act (H.R. 5852) recently introduced in Congress. This bill — introduced by U.S. Representatives Ed Towns (D-N.Y.), Dave Reichert (R-Wash.), Jim Langevin (D-R.I.), and Roscoe Bartlett (R-Md.) — seeks to end the use of chimpanzees in invasive research and to retire the 600 government-owned chimps currently in labs to permanent and appropriate sanctuaries.

Timeline

June 10, 2008: Buckshire Corporation transferred its last seven chimps to Chimpanzee Sanctuary Northwest.

April 17, 2008: Great Ape Protection Act introduced in House of Representatives by Representatives Towns, Reichert, Langevin and Bartlett; an additional 14 co-sponsors to date.

October 2007: The HSUS launched its Chimps Deserve Better Campaign.

May 2007: The National Center for Research Resources of the National Institutes of Health permanently ended funding for breeding of government-owned chimpanzees for research.

February 2006: Ohio State University transferred its nine chimpanzees to a sanctuary.

April 2005: The federally funded national chimpanzee sanctuary system, run by Chimp Haven, took in its first chimpanzee residents, adding to the hundreds of chimpanzees already retired in privately funded chimpanzee sanctuaries in the U.S. and Canada, including Save the Chimps and Fauna Foundation.

2002: Closure of Coulston Foundation; 266 chimpanzees retired to a sanctuary.

December 2000: The CHIMP Act, a bill to create a federally funded national sanctuary system for the retirement of chimpanzees following their use in research, became public law. This law also conferred special moral status to chimpanzees by prohibiting killing them as a matter of convenience to laboratories.

1997: Closure of Holloman Air Force base chimpanzee facility; 111 chimpanzees transferred to the Coulston Foundation and 30 to a sanctuary.

1995: Closure of New York University's Laboratory for Experimental Medicine and Surgery in Primates; approximately 114 chimpanzees transferred to Coulston Foundation and 109 to sanctuaries.

Facts

- Of the estimated 1,200 chimpanzees currently held in nine U.S. laboratories, approximately half are government owned or supported.
- The government spends \$20 – 25 million per year on research and care of chimps in labs.
- The lifetime care of one chimpanzee costs \$300,000 to \$500,000.
- The U.S. is the only country in the world that continues the large-scale use of chimpanzees for invasive research and testing.

Wills & Trust

For a detailed consideration of estate planning for pets see: Rachel Hirschfeld, *Ensure Your Pet's Future: Estate Planning for Owners and Their Animal Companions*, 9 MARQ. ELDER'S ADVISOR 155 (2007). This article was published in the Elder's Advisor, Marquette University Law School, Vol. 9, No. 1 at 155, 2007. Available at: www.animallaw.info/articles/arhirschfeld2008

Who Has Title –Bailment Problem

From an e-mail I received Sept 10, 2008

Hello,

I am in a very difficult situation and am not quite sure how to handle it. I have 2 dogs, that I love more than anything else in the world. I got very very sick and so my mother volunteered to take them until I was well again. I was supposed to pick them up September 19th, before my mom goes away on vacation (I live in New York, she in Michigan) and I called her the other day to make arrangements. Unfortunately, she told me she turned them over to a rescue league, and one of them, Harry, has already been adopted. She made no mention of this to me, did not try to ask me to come for them sooner, or anything of the sort. On my last trip home, (about a month ago) we got into a huge fight, and have hardly spoken since. I never in a million years thought she would do this to me. When I spoke to the man from the rescue, he said that he would not help me get Harry back, even though he was just adopted on Friday. I have all of his papers in my name, and I never once gave my consent for my babies to be turned over. My heart is broken and all I want is to get BOTH of my dogs back. What is the best course of action to take? Please help me. I am devastated.

Discussion - unless there has been abandonment, the animal still belongs to the daughter, as the transfer created a bailment with an strict duty of redelivery. So the mother is liable, but of course that is not relevant to what the daughter wants – return of the dog. Also, the practicality of asserting ownership from out of state in the legal system is very difficult.

Initial advice: Well, that is a sad state of affairs... you are asking for legal advice but I cannot be your attorney. A few thoughts. You may well have a good argument, but I suspect your Mother would now testify that you had abandon the animals... But the law does not have an easy way to deal with this situation. You would have to file a law suit against a number of individuals, have an investigatory agent to find out just where the dogs are... and take months to work through the legal system. It would take several thousand dollars in attorney fees and cost. You need to find a non-legal way to deal with this.... sorry.

Follow up e-mail: The man at the rescue league reluctantly contacted the gentleman who had adopted Hercules and he agreed to give him back. I just have to pay 700\$ for boarding fees and such. Thank you so much for your response, I have not slept in days. You may absolutely use my email, I've edited it below. Thank you again.

Did the new owner have to give up the dog? Did he get good title or void title? An argument could be made that the placement was really a sale from a merchant dealing in the goods and therefore under the UCC was able to convey good title.

Duty to Provide Care – A Problem

E-mail received September 5, 2008:

hello My name is Charles Lynch I live in dublin, GA. My friend has a dog that rubbed her neck raw and started to bleed. It was not a bad cut. So we took care of it ourselves. It was healing fine. One day she got of the leash. Well Animal Control picked her up and brought her home. then wrote my friend a ticket. Not for the dog being off the leash but for not taking her to a vet for the cut. Is there a law that states that you have to take a dog when they are hurt or can you take care of them yourself. If it depends on the serverity of the injury then who makes that call. I have 15 dogs myself. Of corse i live in the country but the get in fights with coyotes and other dogs but we have always took care of them unless we knew that we could not then we took them to the vet. well i would like to know what the law is on this subject. please let me know as soon as you can

Thanks

Discussion, a very good set of issues. What is the law seeking and how is it implemented? Ga. Code has nothing directly on point, the closest language is “A person commits the offense of cruelty to animals when he or she causes death or unjustifiable physical pain or suffering to any animal by an act, an omission, or willful neglect.” Has this been violate by self care. I don’t think so. What about under your statute?

NJ Agricultural Regulations Case

2008 WL 2986471 (N.J.) – pdf - 78 pages available at
http://www.animallaw.info/cases/cas_pdf/causnj2008agcase.pdf

The following is the Syllabus prepared by the court’s clerk. While the initial PR from the Animal Rights/Welfare movement tried to put a positive spin on the opinion, it is clearly not a victory. All of the particular practices allowed by the agency regulations were allowed to stand because of agency discretion.

New Jersey Society for the Prevention of Cruelty to Animals, et al. v. New Jersey Department of Agriculture, et al. (A-27-07)

Argued March 10, 2008 -- Decided July 30, 2008

SYLLABUS

HOENS, J., writing for a unanimous Court.

This appeal presents the Court with a broad challenge to regulations promulgated by the New Jersey Department of Agriculture (“the Department”) setting standards governing the raising, keeping, and Marketing of domestic livestock.

In 1996, the Legislature enacted a new section of the existing statute regulating animal cruelty. Although that statute, since at least 1898, had essentially left animal welfare and the protection of animals to the New Jersey Society for the Prevention of Cruelty to Animals (“NJSPCA”) and its related county organizations, the Legislature decreed that the Department would be vested with certain authority relating to the care and welfare of domestic livestock, commonly referred to as farm animals, and directed that it establish “humane” standards. The statute required the Department to consult with the Rutgers-affiliated New Jersey Agricultural Experiment Station in developing and promulgating the regulations and established a presumption that compliance with those regulations would satisfy the other statutory standards defining animal cruelty. Although vesting the Department with this rulemaking function, the Legislature left the preexisting enforcement mechanisms, which have long relied on the NJSPCA, largely undisturbed.

The Court is now called upon to consider whether the Department, in promulgating the regulations relating to the care of domestic livestock: (1) failed in general to comply with the mandate of the Legislature that it create standards that are “humane,” either objectively or as tested against the definition that the Department itself adopted;(2) created an impermissibly broad and vague category of permitted practices by referring to “routine husbandry practices” as generally acceptable; (3) failed to create an adequate regulatory scheme by utilizing undefined or illdefined terms that cannot serve as objectively enforceable standards; and (4) embraced a variety of specific practices that are either objectively inhumane or supported by inadequate scientific evidence as to their usefulness, or that fail to meet any accepted definition of the term humane.

The Court is required, in part, to evaluate the very methodology utilized by the Department in its creation of the challenged regulations. The dispute has nothing to do with anyone’s love for animals, or with the way in which any of us treats our pets; rather, it requires a balancing of the interests of people and organizations who would zealously safeguard the well-being of all animals, including those born and bred for eventual slaughter, with the equally significant interests of those who make their living in animal husbandry and who contribute, through their effort, to our food supply.

Petitioners are a variety of entities, including the NJSPCA, and individuals which describe themselves collectively as “a wide coalition of animal protection organizations, consumers, farmers, and concerned citizens.” Petitioners, many of whom had participated in the public notice and comment process that led to the adoption of the regulations, raised this challenge to the final agency action adopting the regulations through an appeal in the Appellate Division.

As part of that appeal, petitioners asserted that the regulations violated the directive of the Legislature as set forth in the statute itself. First, petitioners argued that several subsections of the regulations include a broadly worded exemption for any practice that meets the definition of a “routine husbandry practice” and that the definition as adopted is both impermissibly vague and not grounded on any evidence in the record. Second, petitioners asserted that some of the subsections included vague or undefined terms and failed to create enforceable standards. Third, petitioners asserted that the regulations authorized a variety of specific practices that do not meet the Department’s definition of “humane” and are not in fact humane.

In defending the regulations before the Appellate Division, the Department argued that they were consistent with both the intent and the spirit of the statute and supported by ample scientific evidence. The Department defended its election of “routine husbandry practices” as an appropriate criterion for its safe harbor exemption, explained how the regulations established objectively enforceable standards, and argued that none of the specific practices that petitioners challenged is in fact inhumane.

The Appellate Division, in an unpublished opinion, rejected each of petitioners’ challenges and sustained all of the challenged regulations. Relying in large part on the presumption of reasonableness afforded to acts of administrative agencies and the deferential standard of review that courts employ when reviewing matters involving an agency’s scientific or technical expertise, the Appellate Division found no basis on which to invalidate any part of these regulations.

The Supreme Court granted petitioners' petition for certification. In addition, the Court granted leave to several entities and individuals to participate as amicus curiae.

HELD: The facial challenge to the regulations in their entirety is rejected. The Department of Agriculture, however, failed, in part, to carry out its mandate. The specific challenges to the reliance on "routine husbandry practices" as defined in the regulations, and to the reliance on "knowledgeable individual and in such a way as to minimize pain" are sustained. The specific challenges to the practices, with the exception of the practice of tail docking, are otherwise rejected.

1. The general parameters of the Court's review are not controversial. Appellate courts ordinarily accord deference to final agency actions, reversing those actions if they are "arbitrary, capricious or unreasonable or [if the action] is not supported by substantial credible evidence in the record as a whole." *Henry v. Rahway State Prison*, 81 N.J. 571, 579-80 (1980). An appellate court generally will not reverse an agency action, including its action in promulgating regulations, unless: (1) the regulations at issue "violate[] the enabling act's express or implied legislative policies;" or (2) "there is [not] substantial evidence in the record to support the findings on which the agency based its action; or (3) "in applying the legislative policies to the facts the agency clearly erred by reaching a conclusion that could not reasonably have been made upon a showing of the relevant factors." *In re Rulemaking*, N.J.A.C. 10:82-1.2 & 10:85-4.1, 117 N.J. 311, 325 (1989). (Pp. 24-26)

2. In its lengthy consideration of the questions about animal cruelty in the context of domestic livestock, the Department compiled a record that is both extensive and broad in scope. On its face, the record demonstrates that the Department took seriously its charge to consider all aspects of the questions about the welfare of domestic livestock. Nevertheless, merely compiling a thick record, only amassing evidence and simply responding to specific objections, will not suffice to sustain the agency's actions if the regulations themselves fall short either in general or in particular. (Pp. 26-33)

3. The Court's review of the record compels it to reject petitioners' broad attack on the regulations. Because these regulations are the expression of the agency's determinations in an area within its technical expertise, in order to invalidate them in their entirety, the Court would need to discern an inherent flaw in the very process by which they were drafted and adopted or in the record that supports them. The extensive record and careful response of the Department to the overwhelming number of comments does not permit the Court to so conclude. Even though there may be particular practices that the regulations specifically embrace and that might fall short of the established standard, the Court cannot say that this is true as to each and every aspect of the regulations, or as to all of the practices that they permit. Regardless of one's personal view of the overall regulatory scheme or of domestic livestock in general, the regulations as a whole are consistent with the meaning of the term "humane." (Pp. 33-40)

4. Petitioners assert that the definition of "routine husbandry practices" – "techniques commonly taught by veterinary schools, land grant colleges, and agricultural extension agents" – is so broad and all-encompassing that it amounts to an improper delegation of the agency's authority, contrary to its legislative mandate. Notwithstanding the Department's assertion that the definition accurately reflects its intent, and notwithstanding its insistence that its review was careful prior to its decision to effectively place into the hands of this wide-ranging and ill-defined group of presumed experts the power to determine what is humane, there is no evidence in the record that the Department undertook any review, organized or passing, of what these institutions actually teach. Nor is there any evidence that the Department considered whether the techniques taught in these institutions, whatever those techniques might be, rest in any way on a concern about what practices are humane or have any focus other than expedience or maximization of productivity. The Court's analysis of petitioners' objections to the several subsections of the regulations that create a safe harbor by reliance on "routine husbandry practices" compels it to conclude that these objections have merit. By adopting a definition of exceptional breadth, by failing to create an adequate record in support of this decision, and by implicitly permitting techniques that cannot meet the statutory mandate to base its regulations on a determination about what is humane, the Department has adopted regulations that are arbitrary and capricious. The Court therefore strikes as invalid the definition of "routine husbandry practices." (Pp. 41-49)

5. Petitioners also challenged individually a number of practices that are specifically permitted by the regulations, asserting that they are demonstrably inhumane and that the Department's authorization thereof is unsupported by sound science. First, as to the tail docking of cattle, although the Court recognizes the considerable expertise that the Department brought to bear in reaching its decision, it is difficult to find in this record any support for this particular practice, and none that meets the requisite standard of our review. Second, the record reflects that the castration, albeit without required anesthesia, of cattle, horses, and swine, the de-beaking of poultry, and the toe trimming of turkeys, also without required anesthesia, confer a benefit on the animals in light of their living conditions. The agency's determinations, in general, that these procedures should be permitted is neither arbitrary nor capricious. However, the limitation that the agency asserts is the lynchpin of ensuring that these procedures are performed in a humane manner – that each such practice is permitted only if it is “performed in a sanitary manner by a knowledgeable individual and in such a way as to minimize pain” – cannot pass muster. The regulations do not define the terms “sanitary manner,” “knowledgeable individual,” or “minimize pain,” nor is there any objective criteria against which to determine whether any particular individual performing the procedure measures up to these standards. Third, the agency's decision to permit crating and tethering techniques, although controversial, falls well within its area of expertise. Because those aspects of the regulations are supported by sufficient credible evidence in the record, and because they are neither arbitrary nor capricious, the Court finds no basis on which to interfere with them. Fourth, in light of the strict limits on permitted euthanasia methods, although there is evidence in the record that the transporting of sick and downed cattle to slaughter may cause the downed animal to “suffer greatly,” the Court cannot conclude that the Department's decision to permit farmers the option of choosing transport for slaughter in those situations is arbitrary or capricious. (Pp. 50-72)

6. Consideration of the issues in this appeal and a review of the record lead the Court to conclude that certain aspects of the regulations cannot be sustained. The Court does not intend, however, to suggest that the defects in the regulations are pervasive or that all of the many practices that the Department specifically considered and permitted cannot be performed in a humane manner. The Court's decision should not be understood to be a ban on the continuation of any specific practice, but merely a recognition that some of the standards that purport to define them so as to ensure that they are actually performed in a manner that meets the statute's command that all such practices be humane have fallen short. (Pp. 72-74)

The judgment of the Appellate Division is **AFFIRMED** in part and **REVERSED** in part and the matter is **REMANDED** to the Department of Agriculture for further proceedings consistent with this opinion.

CHIEF JUSTICE RABNER and JUSTICES LONG, LaVECCHIA, ALBIN, WALLACE, and RIVERA-SOTO join in JUSTICE HOENS'

Michigan Law Review Articles about Agricultural Animals

First Impressions: An on-line companion to the printed Law Review

<http://www.michiganlawreview.org/index-fi.htm>

Volume 106

An Online Symposium on
Agricultural Animals and Animal Law
[\[View PDF of entire symposium\]](#)

The New Jersey Supreme Court will consider this term whether

regulations promulgated pursuant to a law mandating humane treatment of farm animals go far enough. The regulations reportedly do not prohibit castrating male piglets without anesthesia, removing chicken beaks and turkey claws without painkillers, or confining veal calves and pregnant sows in cages small enough to restrict turning around. As this ongoing debate shows, the extent to which animal protection laws should apply to the agricultural industry remains in dispute. In addition to considering the merits of factory farming and animal protection, the symposium poses the larger question: *Should laws criminalizing animal abuse apply to animals raised for food?*

[A Case Study on Cruelty to Farm Animals: Lessons Learned From the Hallmark Meat Packing Case](#)[\[HTML\]](#) [\[PDF\]](#)

Nancy Perry & Peter Brandt, Humane Society of the United States

One morning in January 2008, images of horrific animal cruelty were blasted by Internet, television, and print media throughout the country. The story was all the more shocking in that the animals at issue were cows at a commercial slaughter plant—a place from which Americans usually avert their gaze. The images of dairy cows so ill or injured that they could not stand, being battered, shocked, and nearly drowned to force them into the kill box, struck a chord with the American public. Abusing downed animals is at odds with our venerable national public policy against torturing animals.

[Animal Cruelty Laws and Factory Farming](#)[\[HTML\]](#) [\[PDF\]](#)

Joseph Vining, University of Michigan Law School

“Should laws criminalizing animal abuse apply to animals raised for food?” The answer is yes, and yes especially because farm animals are generally now under the control of business corporations. State and federal criminal law have proved critical in modifying corporate policy and practice in other areas, a current example being worker safety. Criminal liability today would include criminal liability of the corporate entity itself, and would thus also introduce the most effective regulation of individual handling of farm animals—regulation by the corporation, which has methods and resources public agencies cannot match.


["It's the Right Thing to Do": Why the Animal Agriculture Industry Should Not Oppose Science-Based Regulations Protecting the Welfare of Animals Raised for Food](#)[\[HTML\]](#) [\[PDF\]](#)

Angela J. Geiman, Cargill Meat Solutions Corp.

Since the beginning of history, people have used farm animals to assist with their work and to provide a source of food. These agricultural pursuits were not questioned; rather, they were a widely-accepted way of life. In fact, many people still say that the very purpose of livestock on this Earth is to provide these resources for mankind. As for the proper way to treat our livestock, we commonly hear farmers and livestock producers make comments like, “If we take care of the animals, they will take care of us,” and, “We treat our animals well because that’s just good business.”


[An Argument for the Basic Legal Rights of Farmed Animals](#)[\[HTML\]](#) [\[PDF\]](#)

Steven M. Wise, Center for the Expansion of Fundamental Rights, Inc.

The most abused beings in the United States are those whom we raise and kill for food. The numbers of dead are staggering. Most are victims of the severe and almost entirely unregulated practices that Americans permit on their factory farms. According to the United States Department of Agriculture's National Agricultural Statistics Service, in 2007, a total of 10.4 billion land-based animals were killed by the American food industry. These included 9.4 billion broiler chickens, 450 million laying hens, 317 million turkeys, 121 million pigs, 39 million bovines, 28 million ducks, 10 million rabbits, and 4 million sheep and goats—fifty times the number killed in biomedical research, for sport, as pests, and for all other reasons combined, carrying a value of hundreds of billions of dollars a year. The degree to which animal enslavement is embedded in our society is difficult to calculate or fathom. 


[One Bad Day: Thoughts on the Difference Between Animal Rights and Animal Welfare](#)[\[HTML\]](#) [\[PDF\]](#)

Neil D. Hamilton, Drake Law School

The lawsuit pitting the New Jersey Society for the Prevention of Cruelty to Animals against the New Jersey Department of Agriculture brings into sharp focus the issue of animal rights versus animal welfare that has been dividing animal activists, farmers, and society for decades. On one side are proponents of animal rights—a set of rights articulated by humans but granted to animals to govern how we treat them. For many believers this includes the right not to be owned and certainly not to be eaten. On the other side are proponents of animal welfare—also a set of human derived standards governing how we care for animals under our control. Animal welfare concerns are reflected in laws prohibiting cruelty and criminalizing certain abusive behavior. 

[Animal Ethics and the Law](#)[\[HTML\]](#) [\[PDF\]](#)


Bernard Rollin, Colorado State University

Everyone reading this Article is doubtless aware of the woeful lack of legal protection for farm animals in the United States. Not only do the laws fail to assure even a minimally decent life for the majority of these animals, they do not provide protection against the most egregious treatment. As both a philosopher who has helped articulate new emerging societal ethics for animals, and as one who has successfully developed laws embodying that ethic—notably the 1985 federal laws protecting laboratory animals—I will stress the direction we need to move in the future to enfranchise farm animals. 

[The Environmental Effects of Cruelty to Agricultural Animals](#)[\[HTML\]](#) [\[PDF\]](#)

Kyle H. Landis-Marinello, University of Michigan Law School

Laws criminalizing animal abuse should apply to the agricultural industry. When we exempt the agricultural industry from these laws, factory farms increase production to unnaturally high levels. This increased production causes devastating environmental effects, such as climate change, water shortages, and the loss of topsoil. In light of these effects, the law needs to do much more

to regulate the agricultural industry, and the first step should be to criminalize cruelty to agricultural animals. This would force the industry to slow down production to more natural levels that are much less harmful to the environment. 

Ch.4, Section 3 –statutory cause of action – harm by dog

Oregon dog chasing livestock statute does not require any state of mind nor is the statute limited to land controlled by livestock owner. In [*Parker v. Parker*](#), ---P.3d---, 223 Or.App. 137 (2008), plaintiff and his 12 year-old quarter horse were visiting defendant at defendant's property when defendant's dog rushed at the horse causing it to run into a steel fence. The horse suffered severe head trauma, which necessitated its later euthanization. Plaintiff filed suit for damages asserting liability under common law negligence and O.R.S. 609.140(1) - the statute that allows an owner to recover double damages where livestock is injured by another person's dog. The appellate court agreed with plaintiff that O.R.S. 609.140(1) creates an statutory cause of action independent from negligence. Further, the court found that plaintiff fell within the class of persons the statute aims to protect because the legislature did not intend to limit the statute's application to property owned by the livestock's owner. Finally, the court stated that "we previously determined that 'chasing' requires no predatory intent, and that 'injuring' requires no contact between the dog and the livestock . . ."
<http://www.animallaw.info/cases/causor223orapp137.htm>

California 2008 Ballot Initiative on Agricultural Animals

This 2008 California initiative measure would add to the Health & Safety Code with a law entitled, "The Prevention of Farm Animal Cruelty Act." Specifically, the proposed law requires that calves raised for veal, egg-laying hens and pregnant pigs be confined only in ways that allow these animals to lie down, stand up, fully extend their limbs and turn around freely, for all or a majority of a day. Exceptions are made for transportation, rodeos, fairs, 4-H programs, lawful slaughter, research and veterinary purposes. The law provides misdemeanor penalties, including a fine not to exceed \$1,000 and/or imprisonment in jail for up to 180 days and would go into effect on January 1, 2015. It was approved in November 2008 by a margin of 63% to 37%. It should be noted that it is unclear would size cage is acceptable. This is a clear adoption of the language of the five freedoms. It does not prohibit single animal confinement and it seems to me that space to stand up and turnaround is still a prison cell. For chickens, say four in a cage. If they need the space to simultaneously spread their wings it might be helpful but if it is than only one chicken needs to spread their wings, that is still a very small cage. However, it might be the case that practical management issues make slightly larger confinement unpractical and therefore the system will have to change. Also note that there is no call for regulations to implement this law, it is unclear how it would be enforced.

Full text available at <http://www.animallaw.info/statutes/stusca2008prop2.htm>.

Constitutionally protected hunting in Okla.

Over the past ten years a number of states have changed their constitutions in order to enshrine the right of its citizens to hunt. It is not clear what the legal consequences follow from such acts. In 2008 the state of Oklahoma joined the list by adopting a ballot measure in the Nov. elections. The Oklahoma State Question No. 742 is a legislatively-referred constitutional amendment. It would give all people of the state the right to hunt, trap, fish and take game and fish, subject to reasonable regulation.

The official ballot summary reads:

This measure adds a new section to the State Constitution. It adds Section 36 to Article 2. It gives all people of this state the right to hunt, trap, fish and take game and fish. Such activities would be subject to reasonable regulation. It allows the Wildlife Conservation Commission to approve methods and procedures for hunting, trapping, fishing and taking of game and fish. It allows for taking game and fish by traditional means. It makes hunting, fishing, and trapping the preferred means to manage certain game and fish. The new law will not affect existing laws relating to property rights.

[Official Text of the Resolution from the Legislature](#) (pdf file - 306.24 KB)

General Intent Crime

One key legal point that needs more emphasis than is in the chapters is the question of whether or not violation of an intentional cruelty law requires the state to show general or specific intent in the defendants conduct.

Consider **-People v. Fennell** (2004) 677 N.W.2d 66, 260 Mich.App. 261, appeal denied 689 N.W.2d 229, 471 Mich. 927.

In this case we are asked to determine whether the animal torture statute, MCL 750.50b(2), is a specific or general intent crime. There is no case law in Michigan describing the degree of intent required under *263 this statute and therefore this is an issue of first impression. After reviewing the statute's language and the construction of previous animal cruelty statutes, we conclude that the portion of MCL 750.50b(2) relating to killing or torturing an animal is a general intent crime

Here, several witnesses testified that defendant intentionally threw fireworks at the hunt club stable in an attempt to scare the horses. The record further shows that as a result of his actions, nineteen horses were either tortured or killed in the ensuing fire.

Defendant presented no justifications or excuses for his actions. And as evidenced by his behavior after throwing the fireworks, defendant clearly knew his actions were wrong. Accordingly, we find that there was sufficient evidence to support defendant's conviction under MCL 750.50b(2)

Thus – he had the general intention of throwing the fireworks with the desire to disrupt the horses and the state did not have to show a specific intention to killing horses. The following jury instructions were upheld.

Again, the trial court instructed the jurors that to convict defendant they would have to find that defendant: (1) killed or tortured an animal or did anything that resulted in such an outcome; (2) knew that his actions were wrong at the time he committed this crime; (3) intended to cause physical or mental harm to an animal; and (4) had no just cause or excuse for his actions.

In 2008 the Michigan legislature sought to clarify this portion of the anti-cruelty law by adding the following language for a violation of the law: “(b) Commit a reckless act knowing or having reason to know that the act will cause an animal to be killed, tortured, mutilated, maimed, or disfigured.” HB 4552 (2008).

Language Constitutional

People v. Leach, Not Reported in N.W.2d, 2006 WL 2683727 (Mich.App.) Defendant's conviction arises from the killing of a rabbit during the execution of a civil court order at defendant's home on April 15, 2004. Because the court did not find the cruelty statute, MCL 750.50b, unconstitutionally vague and further found sufficient evidence in support of defendant's conviction, defendant's conviction was affirmed. The evidence showed that defendant killed the rabbit in a display of anger arising from the execution of a court order [crushed the rabbits head]; thus, the terms, “[m]alicious”, “willful”, and “without just cause” are sufficiently specific terms with commonly understood meanings such that enforcement of the statute will not be arbitrary or discriminatory.” Further, the exception under the statute for the lawful killing of livestock was inapplicable, as the jury could have reasonably found that defendant's actions were a willful and malicious killing undertaken without just cause and for purposes other than animal husbandry. Available at: <http://www.animallaw.info/cases/causmi2006wl2683727.htm>

Damages Valuation

An Illinois case in 2008 represents the dilemma. At trial court a judge had held that the value of a pet dog was \$200 in damages case. On appeal the court held that the value of the animal was at least the amount that the plaintiffs spent on veterinary bill to care for the dog after having been attacked by defendant’s dog, \$4,782.72.

Case at:

<http://www.state.il.us/court/Opinions/AppellateCourt/2008/4thDistrict/December/4070964.pdf> Also see: <http://www.sj-r.com/news/x2094350144/Dave-Bakke-Judges-rule-on->

[the-proper-value-of-a-dog-s-life](#) (The State Journal-Register – Springfield Il. Posted Jan 03, 2009 @ 11:42 PM)

Greek Philosophers

The importance of this material cannot be underestimated. These thinkers set the stage for Western thought. It is a pyramid of relationships and values. The subsequent Christian writers simply add a God to the top of the pyramid - chain of beings. Plants are for the benefits of animals, animals are for the benefit of humans, slaves are for the benefit of white male philosophers.

Darwin of course questioned the entire structure, but as the pyramid is beneficial to those at the top, and plays to their egos, it is hard to change. Indeed clearly the burden of change is on those who seek the challenge the concept of relative value.

With the letter from Decartes, a central question is raised, as many today hold to his view that animals do not have the capacity of thought, and therefore do not deserve moral consideration. A good class discussion can be had on the point of whether in their experience animals have the capacity to think... raising the deeper question of just what is that capacity, where does it exist within the brain. Most individuals who have had pets for long can give examples of thinking animals.

Veterinary Malpractice

Overview and history of Veterinary practice and the issue of malpractice, Mary Margaret McEachern Nunalee and G. Robert Weedon, *Modern Trends in Veterinary Malpractice: How our Evolving Attitudes Toward Non-Human Animal will Change Veterinary Medicine* 10 ANIMAL L. 125 (2004).

Dog Fighting:

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Cock Fighting

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Ag Law Suit filed

Cruelty laws apply to livestock, lawsuit says

Animal rights group seeks more specific oversight

By **LEVI PULKKINEN**
P-I REPORTER

In an attempt to expand animal cruelty criminal laws to cover the treatment of livestock, a Seattle-based animal rights group has filed a lawsuit arguing that existing laws give industry undue control over how animals are housed and slaughtered.

In the suit filed earlier this month by the Northwest Animal Rights Network, the activists aim, at a minimum, to limit the manner in which meat and dairy producers treat their livestock, said Adam Karp, a Bellingham attorney representing NARN.

Under state law, animal cruelty can be charged as a felony. But the law exempts livestock handlers from prosecution so long as their actions are in line with "customary animal husbandry practices."

That standard, Karp argued, gives the industry far too great a role in determining what is and isn't humane treatment. Karp alleged that many practices considered "customary" by meat, milk and egg producers are unduly and unnecessarily cruel.

"You look at a little chick having its beak burned off without anesthesia, and I don't think anyone would argue that that's not cruel," he said. "If we were to do it with a dog or cat, we'd have an uproar."

Meat and dairy production accounted for about one third of the Washington's agricultural output in 2007, according to the U.S. Department of Agriculture. That year, animals and their products contributed \$2 billion to the state economy, nearly half of which came from milk sales.

While she could not respond to specific allegations in the recent lawsuit as she'd not reviewed it, Washington State Farm Bureau spokeswoman Mollie Hammer defended the practices of Washington farmers.

"Washington farmers are very concerned about following safe slaughtering practices, because they eat the same food they produce for the rest of us," Hammer said.

State Attorney General's Office spokeswoman Kristin Alexander declined to comment on the suit, which names the state and King County as defendants. Alexander said the state received the case Feb. 17 and had not yet prepared a response.

If successful, the lawsuit filed by NARN in King County Superior Court would change the way many of those farms operate.

While the suit doesn't specify changes, Karp said it would, at the very least, require that the Legislature explicitly dictate what animal husbandry practices qualify as customary. That would mean increased public debate of the issue, which Karp said he welcomes.

NARN has recently drawn attention through weekly demonstrations at a Capitol Hill restaurant, Lark, which includes foie gras on its menu. Animal rights activists object to the duck liver dish, asserting that the forced feeding often used to fatten birds is cruel.

More broadly, Karp said, the efforts are aimed at pushing the public to expand the compassion most people show for pets to include all animals.

"People have to realize how much is being taken from those animals that produce those products," he said. "Do they not deserve the same treatment that we give the cat and dog that are sitting next to us on a couch?"

Karp said he'll likely ask for an immediate hearing after the state responds to the lawsuit. No date has yet been set.

Court strikes Down Pit Bull ban in Dale-Miami, Florida

Court Rules Miami-Dade County Pit Bull Ban Unenforceable

A court ruled Miami-Dade's 20 year ban on pit bulls was too vague in defining "pit bull" and unfairly let animal control officers basically guess whether a dog

is a pit bull.

FOR IMMEDIATE RELEASE

PRLog (Press Release) – Mar 19, 2009 – Miami-Dade County, Florida - Miami Coalition Against Breed Specific Legislation (MCABSL) and Animal Law Coalition applaud a court ruling that the Miami Dade County Pit Bull ban is too vague, and the county cannot enforce the finding by animal control that a dog is a pit bull that must be euthanized or removed from the county.

The ruling came in a case challenging the finding by Miami Dade County Animal Control that a family pet named Apollo was a “pit bull” that must be removed from the county or euthanized.

The county bans all dogs that “substantially conform” to American Kennel Club standards for American Staffordshire Terriers or Staffordshire Bull Terriers or United Kennel Club standards for American Pit Bull Terriers.

To determine if a dog substantially conforms to these standards, animal control uses a chart that lists 15 body parts such as “head”, “neck”, “lips”, “chest”, “eyes”, “tail”, “hind legs”, etc. The officer places a check mark to indicate whether each characteristic conforms or not to a pit bull. If 3 or more characteristics are checked “conform”, the dog is declared a pit bull.

Rima Bardawil, the attorney for Apollo, pointed out that there is no such chart authorized by the ordinance and it is not clear what standards animal control is using in making its determinations.

Also, Dahlia Canes, executive director of MCABSL, testified that animal control is “constantly” mis-identifying the breeds of dogs. She told the court about one dog that was declared by an animal control officer to be a pit bull mix and ordered euthanized. Canes arranged to have the dog re-evaluated and he was determined to be a mastiff mix. The dog was then adopted to a family in Miami-Dade County.

In this case the animal control officer photographed Apollo from several feet away and then using the photo, picked 3 body parts he said he thought conformed to pit bull standards, whatever those are.

As Canes pointed out later, “Many breeds of dogs and mixes have the same or similar traits. It is impossible to determine breed this way. Seriously, you are going to say a dog is a pit bull based on 3 traits like round eyes, broad shoulders and a muscular body?

Dogs are many times genetically a mix of many different breeds. The judge agreed. This proves breed shouldn’t be a factor in deciding whether a dog presents a danger.”

###

Miami Coalition Against Breed Specific Legislation was formed in 2008 to end Miami Dade County's pit bull ban. For more information and how you can help, visit www.mcabsl.wildapricot.org

Animal Law Coalition works to stop animal cruelty and suffering through legislation, administrative agency action, and litigation. ALC offers legal analysis of the difficult and controversial issues relating to animals. Visit www.animallawcoalition.com for more information.

<http://www.prlog.org/10201937-court-rules-miamidade-county-pit-bull-ban-unenforceable.html>

Police Power – Rational Relationship

City ordinance that limits the number of dogs kept at a residence inside city limits where it is rationally related to the legitimate governmental goal of reducing noise and odor problems not unconstitutional. [State v. Maynard, --- S.E.2d ---, 2009 WL 672682 \(N.C.App.\)](#). In this North Carolina case, defendant challenged her conviction for violating a city ordinance that limited the number of dogs greater than five months of age that can be kept on premises within the city limits to three. After conviction, defendant appealed the constitutionality of the ordinance, arguing that it was “arbitrary and without any justification” and “fails to stand upon a rational basis.” Defendant suggested that the number-based ordinance is inherently arbitrary and any ordinance should instead rely on weight or other characteristics. This Court disagreed and held that the town of Nashville enacted the ordinance for the purpose of reducing noise and odor problems. These objectives are clearly legitimate public purposes, and the limitation on the number of dogs is directly related to those objectives.

Dog Sperm as Property

Battle over frozen dog sperm gives judge pause

4/8/2009, 8:57 p.m. EDT

The Associated Press

(AP) — By L.L. Brasier

Detroit Free Press

(MCT)

PONTIAC, Mich. ? Family Court Judge Cheryl Matthews is accustomed to making tough decisions in custody matters, but she was temporarily stumped when a divorced couple showed up in her courtroom Wednesday morning with this question ? who gets the dog sperm?

"I asked, 'Am I Being Punk'd?'" Matthews said Wednesday afternoon. "I said, 'Is this a 'Candid Camera' thing?'"

Karen Scully, who lives in Florida, and her ex-husband, Anthony Scully, are feuding in Oakland County Circuit Court in Pontiac, Mich., over who legitimately owns semen belonging to Cyrus, Regg and Romeo, all American Kennel Club ? registered bullmastiffs ? lovable, slobbery behemoths like the canine star of the movie "Turner & Hooch." Such dogs can sell for as much as \$2,000 each.

The Scullys were hobby breeders in Oakland County until their divorce in 2002. When they split up, they also split up the six bullmastiffs they owned: He kept four of them and she took two with her to Florida. At issue is who gets to claim frozen sperm stored at a freezing center. Both still raise bullmastiffs.

Anthony Scully, through his attorney, said the semen is his, and his ex-wife, in moving to Florida, gave up claim. Karen Scully, who appeared in court via teleconference, claimed she has ownership, since the dogs that provided the semen once belonged to her.

"I never had to make an argument quite like this," Anthony Scully's attorney, Ryan Mae Steele, said. "I had a genealogy tree, listing who had puppies, who provided the semen. It was a lot to take in. "

Matthews, an admitted dog lover, ruled it was not a divorce matter and told the couple they would have to fight it out in civil court. The case has been assigned to Oakland County Circuit Judge Leo Bowman.

"My best wishes for Judge Bowman," Matthews said.

<http://www.mlive.com/newsflash/michigan/index.ssf?/base/national-0/123924175576780.xml&storylist=newsmichigan>

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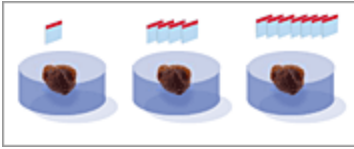
Rats Being Replaced in the Lab – Boston Globe

http://www.boston.com/business/healthcare/articles/2009/03/30/are_the_lab_rats_days_numbered/

By [Colin Nickerson](#)

Globe Correspondent / March 30, 2009

Bioengineers are striving to topple a scientific icon: the lowly lab mouse. And to replace bunnies, beagles, and other warm-blooded animals with insentient but biologically sophisticated substitutes.



Making complex tissues

View a graphic the shows the process of engineering cells.

At Brown University, the Massachusetts Institute of Technology, and other research centers, new efforts to build complex living "microtissues" from cultured cells represent some of the most promising progress toward reducing the need for laboratory creatures.

Numbers have been reduced in recent decades, but hundreds of thousands of mice, rats, chickens, and other creatures are still employed for medical experiments. More controversially, but also in greater numbers and with less oversight, millions of animals worldwide are sacrificed for testing of products whose only aim is to impart a sexier sheen on lips or more sparkle in toilet bowls.

(see article for full text)

Possible WTO Animal Welfare v. Trade Issue

Feedstuffs weekly newspaper: Issue Date: April 13, 2009 | Issue 15 | Volume 81,

<http://www.feedstuffs.com/ME2/dirmod.asp?sid=&nm=&type=Publishing&mod=Publications%3A%3AArticle&mid=AA01E1C62E954234AA0052ECD5818EF4&tier=4&id=CA7A8C14BC3946F4B2978804752B9F2D>

Landmark welfare case up to WTO?

By IAN ELLIOTT

IN what could be a landmark case, European Union and Canadian officials moved closer in recent weeks to a dispute before the World Trade Organization over whether a government can use animal welfare concerns to restrict imports from another country.

This dispute is over seal products. Some within the EU hold that Canada harvests seals in an inhumane manner. The EU executive has proposed -- and the European Parliament is

now debating -- whether those animal welfare concerns are sufficient grounds for the EU to restrict imports of Canadian seal products.

Canadian International Trade Minister Stockwell Day warned the EU April 3 that Canada will advance a complaint before WTO if the 27-nation bloc goes ahead with its proposed trade ban.

"Despite scientific evidence that supports humane harvesting techniques and testimony from Inuit communities as to the harmful effect of the proposed ban, the EU continues to push forward with a proposal that will damage the livelihood of coastal and northern Canadians and their families," Day said in a statement issued by his office.

"There is no justification for any ban on trade in seal products. If the European ban does not contain an acceptable derogation for humanely harvested seal products, Canada will defend its rights and interests under the relevant WTO agreements. We are confident that WTO will find that such a measure violates the obligations of the EU under WTO," Day added.

The European Commission proposed the draft import ban last July. It was approved by a committee of the European Parliament in March. The full Parliament is expected to vote on the proposal later this month or in May. The proposal now before Parliament contains an exemption for seal products traded by Canadian Inuit for cultural reasons.

EU officials explained their position last summer.

"European citizens find these (hunting) practices repugnant," Environment Commissioner Stavros Dimas told reporters in Brussels, Belgium, last July, when the EU executive agreed on the import ban.

"Seal products coming from countries that practice hunting methods that involve unnecessary pain and suffering must not be allowed to enter the EU," he continued.

Dimas said the EU will follow scientific advice on what constitutes cruelty.

If previous votes are any indication, the European Parliament is likely to easily agree to the import ban. Parliament faces voters in June. That leaves the final decision up to EU member governments, some of which have already restricted the trade in seal products.

If it goes to WTO, the seal case will be among the first where how a country makes a product is the basis another government uses to restrict trade in that product.

If the case does advance, WTO's dispute panels and appeal body could well set a precedent on animal welfare and trade. If those supporting restrictions on the seal products win their argument, any government could use that precedent in the future to restrict imports of other goods, like pork, beef, lamb, poultry meat or eggs.

Being a top exporter of agricultural products, that could well hurt the EU exports just as much as those from anywhere else.

Noneconomic Damages not extended in Vermont

Once again a state supreme court refused both to create a cause of action for negligent harm to a pet or to allow noneconomic damages. The court refers the issue to the legislature.

Supreme Court of Vermont (May 2009)

Goodby v. Vetpharm, Inc.

Vermont

--- A.2d ----, 2009 WL 1262406 (Vt.)

Summary: This Vermont case answered whether noneconomic damages are available when a companion animal dies due to negligent acts of veterinarians and a pharmaceutical company, and also whether a claim for negligent infliction of emotional distress (NIED) is allowed for the death of a pet. The Vermont Supreme Court answered both questions in the negative. Plaintiffs' cats died after taking hypertension pills produced by defendant pharmaceutical company Vetpharm, which contained a toxic level of the medication (20 times the labeled dose). After the cats were brought into defendant-veterinarians' office, plaintiff contends that defendant veterinarians negligently or wantonly failed to diagnose the toxicity in the cats, and improperly treated the cats as a result. While the plaintiffs and amici urged the court to adopt a special exception to recover noneconomic damages for the loss of their personal property (to wit, the cats), the court found that to be a role more suited to the state legislature. With regard to the NIED claim, the court held that plaintiffs were never in the "zone of danger" necessary to establish a claim. The emotional injuries alleged by plaintiffs were insufficient because they could not show that they faced a reasonable fear of physical injury due to the negligent administration of medication to their cats.

For the full case see: <http://www.animallaw.info/cases/causvt2009wl1262406.htm>

Free Speech to see depictions of animal dog fighting

This is the first animal cruelty case to go to the US Supreme Court in many years, I fear it is a weak fact pattern upon which to test the restrictions.

U.S. v. Stevens, 533 F.3d 218, 2008 WL 2779529 (C.A.3 (Pa.),2008)

Summary: **Note that certiorari was granted in 2009 by --- S.Ct. ----, 2009 WL 1034613 (U.S. Apr 20, 2009).** In this case, the Third Circuit held that 18 U.S.C. § 48, the federal law that criminalizes depictions of animal cruelty, is an unconstitutional infringement on free speech rights guaranteed by the First Amendment. The defendant in this case was convicted after investigators arranged to buy three dogfighting videos from defendant in sting operation. Because the statute addresses a content-based regulation on speech, the court considered whether the statute survived a strict scrutiny test. The majority was unwilling to extend the rationale of Ferber outside of child pornography without direction from the Supreme Court. The majority found that the conduct at issue in § 48 does not give rise to a sufficient compelling interest. Relying on the Supreme Court case concerning religious animal sacrifice (Church of the Lukumi Babalu Aye) together with the fact that the Court has not expanded the unprotected speech categories in a generation, the court felt that a lower federal court should not extend those categories of unprotected speech. The court also stated that a compelling interest must relate to the well-being of humans, not animals. Further, the court found that in order to serve the purported compelling government interest of preventing animal cruelty, the regulation of these depictions must somehow aid in the prevention of cruelty to animals. The court found that the desensitization of individuals to act of cruelty does not rise to the level of supporting this compelling interest. Thus, said the court, § 48 is not narrowly tailored using the least restrictive means. The dissent found that the speech at issue in this case "possesses the essential attributes of unprotected speech identified generally in Chaplinsky and of child pornography as discussed in Ferber." The Government has a compelling interest in eradicating animal cruelty; the depictions of animal cruelty are intrinsically related to the underlying animal cruelty. Moreover, the dissent found the market for videos of animal cruelty "incentivizes the commission of acts of animal cruelty, and such depictions are of de minimis value." The dissent was careful to point out that this statute does not broadly ban all depictions of criminal activity, but rather "merely one prohibiting depictions of a narrow subclass of depraved acts committed against an uniquely vulnerable and helpless class of victims."

18 U.S.C. § 48 states:

(a) Creation, sale, or possession.-Whoever knowingly creates, sells, or possesses a depiction of animal cruelty with the intention of placing that depiction in interstate or foreign commerce for commercial gain, shall be fined under this title or imprisoned not more than 5 years, or both.

(b) Exception.-Subsection (a) does not apply to any depiction that has serious religious, political, scientific, educational, journalistic, historical, or artistic value.

(c) Definitions.-In this section-

(1) the term "depiction of animal cruelty" means any visual or auditory depiction, including any photograph, motion-picture film, video recording, electronic image, or sound recording of conduct in which a living animal is intentionally maimed,

mutilated, tortured, wounded, or killed, if such conduct is illegal under Federal law or the law of the State in which the creation, sale, or possession takes place, regardless of whether the maiming, mutilation, torture, wounding, or killing took place in the State; and

(2) the term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

For full case see: <http://www.animallaw.info/cases/causfd2008w12779529.htm>

Administrative Standing

[The following represents the problems of standing faced by national groups who seek to pursue animal policy issues with agencies. One question that arises is if HSUS does not have standing, then who would have standing? Does agency discretion include the right to not address public policy issues? (Yes, unless directed otherwise by the legislature, unfortunately.)] HSUS v. Brennan

In the Matter of Humane Society of the United States, Inc. v. Brennan, as Commissioner of Agriculture and Markets. June 18, 2009, New York Supreme Court, App. Div. 3rd Jud. Dept., No. 506189.

Malone Jr., J.

Appeal from a judgment of the Supreme Court (Egan Jr., J.), entered March 20, 2008 in Albany County, which, among other things, in a combined proceeding pursuant to CPLR article 78 and action for a declaratory judgment, granted respondents' motion to dismiss the petition/complaint.

Pursuant to State Administrative Procedure Act § 204 (2), petitioners, various organizations and individuals generally opposed to the production of foie gras,¹ submitted a petition to respondent Department of Agriculture and Markets seeking a declaration that foie gras is an adulterated food product within the meaning of Agriculture and Markets Law § 200. After respondent Commissioner of Agriculture and Markets issued a statement declining to issue the requested declaration, petitioners commenced the instant combined proceeding pursuant to CPLR article 78 and declaratory action against the Department and the Commissioner (hereinafter collectively referred to as respondents), among others,² seeking to compel the Commissioner to issue the requested declaration or, in the alternative, a review of his determination not to issue such declaration.

¹ Foie gras is a food product derived from the intentionally enlarged livers of ducks and geese. The livers are typically enlarged by force-feeding the birds for approximately two weeks before their slaughter.

² Three producers of foie gras located in New York – H.V.F.G., LLC, Bella Poultry, Inc., and La Belle Farm, Inc. – were also named as respondents.

Petitioners also sought a judicial pronouncement that foie gras is an adulterated food product. Citing, among other things, petitioners' lack of standing to maintain the proceeding, Supreme Court granted respondents' motion to dismiss the petition/complaint and denied petitioners' cross motion to amend the petition/complaint. Petitioners appeal.

In order to establish standing, petitioners were required to demonstrate that the Commissioner's declination to issue a declaratory ruling caused them an injury-in-fact different from the general public and one that falls within the zone of interest protected by State Administrative Procedure Act § 204 (see *New York State Assn. of Nurse Anesthetists v Novello*, 2 NY3d 207, 211 [2004]; *Matter of Transactive Corp. v New York State Dept. of Social Servs.*, 92 NY2d 579, 587 [1998]). That statute provides that, when petitioned to issue a declaratory ruling, an agency must either issue the ruling or issue a statement declining to issue such ruling (see State Administrative Procedure Act § 204 [2] [a]; see also 1 NYCRR 368.1). There is no requirement that the agency issue a declaratory ruling when requested and a petitioner has no rights under the statute other than a timely response by the agency (see *Bonar v Shaffer*, 140 AD2d 153, 156 [1988]). Indeed, the Department's regulations specifically state that "[t]he issuance of a declaratory ruling shall be wholly within the discretion of the commissioner" (1 NYCRR 368.1 [c]). Here, even assuming petitioners' alleged injuries to be true – i.e., that force-feeding ducks causes the birds to become diseased animals, rendering their harvested livers adulterated food products within the meaning of Agriculture and Markets Law § 200 – because the Commissioner issued a timely response to their request, they did not suffer an injury within the zone of interests protected by State Administrative Procedure Act § 204. Nor are we persuaded that petitioners established either statutory (see State Finance Law § 123-b) or common-law taxpayer standing. As such, Supreme Court properly granted respondents' motion to dismiss the petition based on petitioners' lack of

standing.

In light of the above, it is unnecessary to address petitioners' remaining contentions.

Mercure, J.P., Spain, Kavanagh and McCarthy, JJ., concur.

ORDERED that the judgment is affirmed, without costs.

Multistate Dog Fighting Raid

http://www.nydailynews.com/news/us_world/2009/07/09/2009-07-09_350_dogs_siezed_in_5state_dogfighting_raid.html

350 dogs seized in dogfighting raids in 5 states

By CHERYL WITTENAUER (AP) – Jul 8, 2009

ST. LOUIS (AP) — As many as 350 dogs were seized and about 30 people arrested during raids in five states Wednesday that animal welfare groups are calling the largest simultaneous raid of dogfighting operations in the U.S.

U.S. attorneys in four of the states announced related indictments accusing 26 people of cruelties ranging from denying animals medical treatment to shooting dogs in the head when they didn't fight well, then throwing their carcasses into a river or burning them in a barrel.

Task forces of federal, state and local law enforcement agencies conducted the raids and made arrests in Missouri, Illinois, Iowa, Texas and Oklahoma following a more than year-long investigation prompted by information gathered by the Humane Society of Missouri. It wasn't clear whether or to what extent the operations were related.

Dogs Killed in China

This is only the most recent example of an ongoing issue in China. How would we in the U.S. respond to 12 deaths and 6,000 bites in one city??? This is a good point for discussion of different cultures weighing differently the value of a dog's life and different resources available to deal with animal issues (the existence of well funded non-profit organization for example).

<http://www.reuters.com/article/latestCrisis/idUSPEK35560>

China city kills 36,000 dogs after rabies deaths

Tue Jun 16, 2009 5:59am EDT

BEIJING, June 16 (Reuters) - A Chinese city has killed 36,000 stray and pet dogs in a bid to wipe out rabies, state media said on Tuesday, as the country considers a draft law recognising animal rights and making such a cull illegal.

Rabies has killed 12 people in Hanzhong, in the northern province of Shaanxi, where more than 6,000 people had been bitten or scratched since late May, the China Daily said.

"The monitoring data showed that the danger caused by the dogs which carried rabies virus has increased and epidemic prevention and control is urgent," Xing Tianhu, deputy mayor of the city, was quoted as saying.

Illegal Acts in South Africa

Although I cannot prove it, I suspect the first three words of illegal acts are based upon the New York 1867 law that was spread worldwide. But then note the words not found in US laws. Why might this be?

1962 Animal Protection Act of South Africa

2. OFFENCES IN RESPECT OF ANIMALS - (1) Any person who:
(a)overloads, overdrives, overrides, ill-treats, neglects, infuriates, tortures or maims

or cruelly beats, kicks, goads or terrifies any animal; or

For full act see:

http://www.animallaw.info/nonus/statutes/stat_pdf/AnimalsProtectionAct71-62.pdf

Shelter Disposition of Animals

Michigan Shelter Survey of 132 Shelters – 2008

Dogs –

96,420 admitted

17,199 returned to owner
32,365 adopted
497 Sold
39,097 Euthanized

Felines -

111,892 admitted
1,880 returned
30,967 adopted
230 sold
73,436 euthanized

Economy Hits Horses Hard

Horses fall on hard times

Economic woes and drought are adding to the numbers of abandoned and neglected horses.

By Jeremy Schwartz

Austin American-Statesman [front page]

July 29, 2009

FLORENCE — Sam I Am nuzzles his sun-bleached head into Carolee Frampton's shoulder, begging to be petted. With a laugh she obliges, stroking his neck and practically cradling the horse, who is unusually small for his age — most likely because he grew up undernourished.

"He doesn't know he's a horse," said Frampton, a volunteer foster caregiver for the Bluebonnet Equine Humane Society. "He wants to watch TV with you on the couch."

It's a far cry from when Sam I Am arrived on Frampton's ranch in March, when his backbone jutted through his mangy hide and Frampton could lay her fingers between his ribs. Sam was voluntarily surrendered by owners who could no longer afford to care for him, Frampton said.

"They got into a situation that they couldn't afford, and that's what's going on a lot now," she said.

Area horse rescue groups are reporting a growing number of neglected and abandoned horses in Central Texas, a troubling trend fed by the twin ravages of recession and drought.

"It's frightening," said Jennifer Williams, president of Bluebonnet. "If people have lost their jobs or are having trouble making ends meet, sometimes they are put in an impossible position."

Other horse rescue operations in Texas agree that the situation is becoming dire. "In the last year, we've been getting strays on a regular basis," said Melanie DeAeth, president of True Blue Animal Rescue in Brenham. "We're getting more and more calls from people who are losing their homes and going through foreclosure."

And with costs of caring for a horse ranging from \$200 to \$400 a month, the down economy is hurting efforts to find Texans willing to adopt rescued horses, advocates said. "It's getting harder and harder to find homes for backyard horses," Williams said.

At the same time, the glut of horses has hurt the market for all but the most expensive horses, meaning unloading unwanted animals at livestock auctions or through private sales is less of an option than in previous years.

Nationwide, the problem has also renewed debate over horse slaughterhouses. The nation's last facilities, including two in Texas, closed in 2007, removing what proponents say was an outlet for sick, crippled and unwanted horses.

Bluebonnet, which is headquartered in College Station but takes in horses throughout Central Texas, has reached capacity and no longer has room among its various volunteers to place additional horses. The rescue group has taken in 76 horses this year and is on pace to nearly double the 86 horses it rescued last year. True Blue has rescued 32 horses this year, already doubling its total of 16 for 2008.

Many of the horses that end up with rescue groups are the result of seizures by local sheriff's departments — including several this year in Central Texas — as well as voluntary surrenders by individuals who realize they've gotten in over their heads.

The issue has been reported all across the U.S., but it might be exacerbated locally because of the two-year drought gripping Central Texas, which has turned pastures throughout the region into barren wastelands. Unable to feed their horses on grass, many horse owners have been forced to buy hay, which increasingly must be brought into the area over long distances. In some cases, the cost of horse feed and hay has nearly doubled since the beginning of the drought, and horse advocates say they worry that the high prices will produce an even greater flood of abandoned horses.

"It's sickening," Darla Cherry, president of Meadow Haven Horse Rescue in Nixon, said of the increase in hay prices. "People are kind of holding out, but at some point, if it doesn't rain and the price of hay and feed doesn't come down, they are going to give up too."

According to Sgt. Janis Bading of the Travis County sheriff's department's livestock unit, investigators have been busier than normal — due in large part, she said, to owners having a tougher time paying for feed.

The results can be gruesome. In March, sheriff's deputies seized 11 horses from a ranch in northeastern Travis County, off of Texas 130 near Manor. The owner "wasn't feeding them; he was having financial problems," Bading said. "Luckily one of the neighbors called and told us. ... The horses were eating their own manure, wood, the bark off of trees."

Behind the misery is an ongoing debate over horse slaughterhouses. Federal court rulings resulted in the closure of the last slaughterhouses in the United States two years ago. Until then, some 100,000 horses a year were slaughtered in the U.S., to be shipped to European countries where horse meat is a delicacy. Some observers say the slaughterhouse closures have added to the population of abandoned horses, resulting in a push to bring back slaughterhouses in several states. The Montana legislature recently approved the construction of horse slaughterhouses, but no similar move has taken shape in Texas.

Jerry Finch, president of the Hitchcock-based Habitat for Horses, said his group, which is one of the larger horse rescue operations in the country, has not seen increased numbers of abandoned horses. He said he worries that pro-slaughterhouse forces are exaggerating the scope of the problem.

DeAeth, of True Blue, also said she doesn't believe slaughterhouses should be part of the solution. "The problem is indiscriminate breeders, backyard breeders," she said.

Cherry likewise urges horse owners not to breed: "What it all amounts to is responsibility."

In the meantime, rescue groups are desperately hoping to find more volunteers to temporarily foster or adopt rescued horses.

"Our resources are pretty well stretched to the limit," Williams said. "This could be the first time we've had to tell a sheriff's office we probably won't be able to take in a horse."

Anyone interested in adopting a rescued horse or being a temporary foster caregiver can contact Bluebonnet Equine Humane Society at info@bluebonnetequine.org.

How much does it cost to care for a horse?

At home: Including hay, feed and horseshoeing, at least \$200 a month. Does not include equipment, supplements, water or fencing.

At a commercial stable: For full boarding, which typically includes nighttime stalls, feed and hay, cleaning and daily turnout, monthly costs at area stables range from \$360 to \$850. For pasture boarding, in which horses are generally kept outside with other horses and provided feed and hay, costs range from \$250 to \$400 per month.

Human-Animal Genetics

The following federal bill, may or may not be passed, but suggest that science is pushing ethical issues into new territory.

7/29/09 US Fed. News (Pg. Unavail. Online)
2009 WLNR 14557695

US Federal News
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July 29, 2009

Sen. Brownback Introduces Human-Animal Hybrid Prohibition Act of 2009

WASHINGTON, July 29 -- Sen. Sam Brownback, R-Kansas, has introduced the Human-Animal Hybrid Prohibition Act of 2009 (S. 1435), legislation that would "amend title 18, United States Code, to prohibit human-animal hybrids."

The bill, introduced on July 9, has 20 co-sponsors. It was referred to the Judiciary Committee.

A copy of the full-text of the legislation follows:

Human-Animal Hybrid Prohibition Act of 2009

S. 1435

A BILL To amend title 18, United States Code, to prohibit human-animal hybrids.

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 'Human-Animal Hybrid Prohibition Act of 2009'. SEC. 2. FINDINGS.

Congress finds that-- (1) advances in research and technology have made possible the

creation of human-animal hybrids; (2) human-animal hybrids are grossly unethical because they blur the line between human and animal, male and female, parent and child, and one individual and another individual; (3) human dignity and the integrity of the human species are compromised by human-animal hybrids; (4) the uniqueness of individual human beings is manifested in a particular way through their brain and their reproductive organs/cells; and (5) with an increase in emerging zoonotic infection threatening the global public health, human-animal hybrids present a particularly optimal means of genetic transfers that could increase the efficiency or virulence of diseases threatening both humans and animals. SEC. 3. PROHIBITION ON HUMAN-ANIMAL HYBRIDS.

Part I of title 18, United States Code, is amended by inserting after chapter 51 the following: 'CHAPTER 52--HUMAN-ANIMAL HYBRIDS

'Sec. 1131. Definitions. 1132. Prohibition on human-animal hybrids. 'Sec. 1131. Definitions

'In this chapter the following definitions apply: '(1) HUMAN-ANIMAL HYBRID- The term 'human-animal hybrid' means-- '(A) a human embryo into which a non-human cell or cells (or the component parts thereof) have been introduced to render the embryo's membership in the species Homo sapiens uncertain; '(B) a hybrid human/animal embryo produced by fertilizing a human egg with non-human sperm; '(C) a hybrid human/animal embryo produced by fertilizing a non-human egg with human sperm; '(D) an embryo produced by introducing a non-human nucleus into a human egg; '(E) an embryo produced by introducing a human nucleus into a non-human egg; '(F) an embryo containing at least haploid sets of chromosomes from both a human and a non-human life form; '(G) a non-human life form engineered such that human gametes develop within the body of a non-human life form; or '(H) a non-human life form engineered such that it contains a human brain or a brain derived wholly or predominantly from human neural tissues. '(2) HUMAN EMBRYO- The term 'human embryo' means an organism of the species Homo sapiens during the earliest stages of development, from 1 cell up to 8 weeks. 'Sec. 1132. Prohibition on human-animal hybrids

'(a) In General- It shall be unlawful for any person to knowingly, in or otherwise affecting interstate commerce-- '(1) create or attempt to create a human-animal hybrid; '(2) transfer or attempt to transfer a human embryo into a non-human womb; '(3) transfer or attempt to transfer a non-human embryo into a human womb; or '(4) transport or receive for any purpose a human-animal hybrid. '(b) Penalties- '(1) IN GENERAL- Whoever violates subsection (a) shall be fined under this title, imprisoned not more than 10 years, or both. '(2) CIVIL PENALTY- Whoever violates subsection (a) and derives pecuniary gain from such violation shall be subject to a civil fine of the greater of \$1,000,000 and an amount equal to the amount of the gross gain multiplied by 2.'. SEC. 4. TECHNICAL AMENDMENT.

The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 51 the following: 1131'.

Attacks against corporations

This issue of how to stop animal testing continues:

<http://online.wsj.com/article/SB124940290097105057.html>

- Wall Street Journal AUGUST 5, 2009

Drug Giant Is Targeted by Attacks

By JEANNE WHALEN

A burst of attacks on Swiss drug giant [Novartis](#) AG, including the theft of the ashes of its chief executive's mother from a grave site, have raised concerns that aggressive animal-rights groups are stepping up their campaign against the drug industry.

Novartis officials said Tuesday they believe animal-rights groups are behind the attacks, which they said have included a fire this week at CEO Daniel Vasella's vacation home in the mountainous Tyrol region of Austria. The theft of Dr. Vasella's mother's ashes was discovered late last month at a cemetery in a small Swiss village, where Novartis said graffiti indicated the possible involvement of animal-rights activists.

Swiss police confirmed the attack on Dr. Vasella's mother's grave. They said they are still investigating the matter and don't have any suspects. Austrian police confirmed that Dr. Vasella's house caught fire Monday, and said arson couldn't be ruled out.

[edited version of article.]

Damages valuation for pets

Yet again a court refuses to change the rules of calculation of damages for harm to a pet.

Vet liability limited in pet loss, court says

Bob Egelko, Chronicle Staff Writer

Tuesday, August 4, 2009

A veterinarian whose malpractice causes the loss of a beloved dog doesn't have to pay damages to the owner for emotional distress or loss of companionship because the law considers pets to be property, says a state appeals court.

In a ruling Friday on a San Francisco attorney's suit against an Orange County veterinarian, the Fourth District Court of Appeal acknowledged that "the love and loyalty a dog provides creates a strong emotional bond between the owner and his or her dog."

But the court noted that a parent whose child is killed by medical negligence can't sue the doctor for emotional distress or loss of the child's companionship. By the same token, California law allows a pet owner, in some cases, to seek compensation for loss of the animal's "unique economic value" but not for its "sentimental or emotional value," the court said.

Attorney Gail McMahon, who accused a veterinarian of negligently causing the death of her pet show dog after surgery in 2004, said Monday she was surprised and disappointed by the ruling.

"Market value is no compensation to the owner of a pet," she said. "Just like the well-being of a child is tied up with the emotional well-being of a parent, you love your pet, and if the pet dies, you're going to be upset if not devastated."

George M. Wallace, lawyer for veterinarian Diane Craig, said he believes Craig acted competently and would be vindicated if the case ever went to trial. He said the decision was in accord with long-standing legal doctrines and with rulings in most other states.

"Animals have been viewed by the law for the longest time as simply a variety of personal property," Wallace said. "The emotional bond between the animal and the human with whom the animal lives is very real, but it's not something that has been recognized in California as grounds for damages."

[more of article on line.]

Killing of Seagulls

The following two articles should make an interesting discussion. A police man kills a sea gull and an investigation is undertaken to see if this is illegal. Then a second article explains how the federal government regularly kills these same bird under the federally paid for program of "wildlife services". Again a balance of interests. Compare with dog killing in China.

From Seattle

http://seattletimes.nwsourc.com/html/localnews/2009510595_webseagulls20m.html

State troopers investigated in seagull clubbing

Two state troopers being investigated for killing seagulls at a Seattle ferry dock with their police batons last week apparently were trying to rid a toll booth of a nest that was attracting aggressive birds, a state wildlife official said today.

By [Lewis Kamb](#)

Seattle Times staff reporter

Two state troopers being investigated for using their batons to kill seagulls last week at a Seattle ferry dock apparently were trying to rid a toll booth of a nest that was attracting aggressive birds, a state wildlife official said today.

"What has been alleged is that adult seagulls were divebombing and harassing ferry workers and individuals that were coming into the toll booth," said Bruce Bjork, chief of enforcement for the Washington Department of Fish and Wildlife.

"There happened to be nest on the toll booth that was attracting the adult birds," Bjork said. "I believe that the (killings) took place in the nest. What the troopers killed were juvenile birds."

State fish and wildlife officers are now investigating to determine if the troopers committed a crime. The incident occurred at the Colman Ferry Dock shortly after midnight Thursday.

Shortly after the incident, the troopers informed their supervisors that they'd killed the birds, State Patrol Capt. Jeff DeVere said today.

"The supervisor decided it raised a red flag," DeVere said. "These are a protected species and harming them is a misdemeanor. We had to look into why this occurred."

The troopers are alleged to have used their department-issued ASPs — police batons worn on their gunbelts — to strike and kill the young gulls, DeVere and Bjork both said. The only known witnesses to the incident were state ferry employees who were working at the dock at the time, Bjork said.

"There were some DOT workers there at the scene as well," Bjork said. "We don't know how many or who at this point, but that's part of what our investigators we'll be looking at."

State troopers began investigating the incident Thursday, informing the Washington Department of Fish and Wildlife late Friday, Bjork said. The investigation was officially turned over to the state game department Monday morning, he said.

State fish and wildlife officers, who are dually commissioned as state and federal law enforcement officers, plan to take statements from the troopers and any witnesses, then

pass along their findings to the King County Prosecutor's Office in about two to three weeks, Bjork said. The dead birds have not been taken into evidence, he said.

Seagulls are considered protected wildlife under Washington law.

According to the Revised Code of Washington, a person found guilty of an "unlawful taking," killing or harming of such protected bird species — including someone who "maliciously destroys the eggs or nests" — has committed a misdemeanor that can fetch a \$1,000 fine and 90 days in jail.

"There is a federal law that protects seagulls, as well," Bjork said. "We'll be contacting the U.S. Fish and Wildlife Service and discussing this with their investigators, as well."

State wildlife officers routinely investigate such cases, Bjork said.

"We have investigated these types of cases before, but not, obviously, with the same fact pattern as we have with this one," Bjork said.

The troopers — a 13-year and 10-year veteran, both assigned to the state patrol's Homeland Security Division, which handles terminal and ferry security — have since been put on paid administrative leave while the case is investigated, DeVere said.

Once the criminal case is completed, the State Patrol will also launch an internal investigation to determine if the troopers violated any administrative policies, DeVere said.

"If they had no legitimate reason to kill these seagulls, then obviously that's not condoned by the Patrol and we will take the appropriate action," DeVere said. "But we really need to find out what the facts are before we jump to conclusions."

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Second article

http://seattletimes.nwsourc.com/html/localnews/2009593739_seagulls04m.html

The war on seagulls continues at state ferry terminals

Gulls are a protected migratory bird, but the federal Department of Fish and Wildlife has given permission to remove up to 4,000 gulls that threaten public health and safety in Washington state this year.

By [Christine Clarridge](#)
Seattle Times staff reporter



ALAN BERNER / THE SEATTLE TIMES

Seagulls swarm for handouts at Ivar's restaurant near Colman Dock. The U.S. government began allowing the killing of problem birds more than a decade ago, after droppings sickened a ferry employee. An average 60 gulls are removed from terminals each year, a federal official said.

The seagull killers come in the dark of night, when ferries have idled and witnesses are few.

They come clad in dark uniforms, riding in federal trucks with government plates, armed with carbon-dioxide death chambers and air rifles.

They're U.S. government specialists with a license to kill. The mission: Rid the ferry terminals of Puget Sound of birds that can threaten public health and safety — and do it discreetly and quietly.

"We don't want to offend anyone," said Ken Gruver, assistant state director of the Department of Agriculture's (USDA) Washington and Alaska Wildlife Services Program.

Last month, after a pair of State Patrol troopers clubbed young gulls to death at the Colman Dock in Seattle, the public debate ran from outrage to consternation toward the pesky winged scavengers and the hazards they pose.

The troopers apparently were trying to eliminate a gull nest after an employee complained that an aggressive mother or father bird was divebombing people, a State Patrol spokesman said. Nonetheless, the troopers have been placed on administrative leave while the state Fish and Wildlife Department determines whether they broke the law.

Gulls, informally called seagulls, are a protected migratory bird. Killing them is a violation of federal law.

But it turns out killing gulls at Colman Dock and other ferry docks is nothing new.

That's where the USDA specialists come in.

For more than a decade, the agency has worked on contract with the state ferry system to rid terminals of problem birds.

It began after a ferry employee contracted psittacosis, a disease humans can get from bird droppings, Gruver said. Aggressive birds also can attack children, employees and commuters, he said.

So USDA specialists tour the ferry docks statewide every couple of weeks, looking for birds that will be targeted in the extermination raids that happen every couple of months.