

### Intertwined: Animal Law and All Its Relatives

#### Introduction

“He who’s not busy being born is busy dying.”<sup>1</sup> By any standards, animal protection lawyers are constantly busy creating and reforming social norms and mores around animals. Put another way, animal law is constantly being reborn in meaningful ways that impact many levels of society and alter our legal relationship with animals. This is being done by incorporating and integrating theories, principles, protocols, and ideas from a rainbow of other areas. Animal law operates at many levels and across multiple disciplines—to address all of these intersections would take a full-length book, and by the time it was done, there would be more to add. For purposes of this piece, we will focus on some of the most important connections and collaborations—in other words, “legal mashups”—that have helped animal lawyers change the world for their putative (nonhuman) clients.

#### Round Peg, Square Hole

As anyone examining the development of animal law over the past 35 years will learn, an animal law education looks something like a bar review course of the key subjects learned by law students.<sup>2</sup> As the field has developed, it has become increasingly clear that combining animal law with traditional legal principles is like putting the round peg of animals into the square hole of the law. However, courts and legislatures, and especially animals’ legal advocates, have been making this happen by interpreting existing laws to accommodate animal interests, while creating new versions of laws that focus on animal protection.

For example, it is unlikely that animal lawyers 30 years ago would foresee constitutional rulings incorporating animal-related concerns. But now there are multiple holdings, including from the U.S. Supreme Court, carefully juggling and weighing animal interests and societal policies with respect to animals. There is a significant body of “animal constitutional law” involving the dormant Commerce Clause.<sup>3</sup> Challenging cases have addressed the potential conflicts between animal cruelty and First Amendment rights regarding religion.<sup>4</sup> And there has been a

[Read more on page 33](#)

#### Bruce A. Wagman

*Riley Safer Holmes & Cancila*

*Bruce Wagman is a lawyer with Riley Safer Holmes & Cancila with an almost exclusive practice in animal law (litigation, legislative drafting, education, and counseling), representing both individuals and animal protection organizations. He teaches animal law at three Bay Area law schools, is coeditor of the Animal Law casebook, soon to be in its sixth edition, and the 2017 book Wildlife Law and Ethics, and coauthor of A Global Worldview of Animal Law, published in 2011.*



*Intertwined... Continued from page 16*

series of cases involving animals, and lawyers' efforts to represent them, that have modeled and redefined federal standing law under Article III of the Constitution.<sup>5</sup>

### Animal Doctors, Animal Lawyers

The Summer 2024 edition of this Newsletter included a discussion of the powerful collaboration between veterinarians and animal lawyers, which is one of the most valuable and common consolidations of science and law, of professionals and knowledge, impacting the development of animal law. That connection cannot be underestimated, which is why it received a full article's attention.<sup>6</sup>

However, while the previous article focused mainly on the crisis in access to veterinary care, there are several other areas where animal lawyers and progressive veterinarians work together to change the law and treatment of animals. For example, veterinary forensics often provide the most compelling evidence in animal cruelty cases, with experts identifying signs of abuse. As a unique example of integrating veterinary expertise with legal support, the San Francisco SPCA (SF SPCA) combines cutting-edge veterinary care, best practices in sheltering and adoption, and innovative policy work formulated in consideration of the needs of veterinarians in both shelters and private practice.<sup>7</sup> In the policy realm, the SF SPCA has driven legislation expanding veterinary telemedicine in California, and enabling trained veterinary nurses (Registered Veterinary Technicians) to provide basic wellness care to hundreds of thousands of animals. And true to its mission, the SF SPCA deploys veterinary staff to underserved communities in California's Central Valley for free vaccine clinics and spay-neuter surgeries.

Veterinary experts on population management and shelter medicine have partnered with animal lawyers to design legally compliant, lifesaving programs for free-roaming outdoor cats, improving the life quality of both free-roaming and shelter animals. Veterinarians are also often brought in as experts in cases challenging the confinement, treatment, and importation of wild species in a wide range of situations. And one of the biggest problems faced by companion animal professionals is the need for more spay-neuter sterilization, prompting veterinarians and lawyers to coordinate on a variety of legal and policy efforts to expand the opportunity for those services.

### Managing the Environment and the Animals in it

A large body of animal law work involves the management and protection of large populations of animals, and of specific species. These decisions and cases involve, for example, the Endangered Species Act,<sup>8</sup> the Wild Free-



Roaming Horses and Burros Act,<sup>9</sup> the Marine Mammal Protection Act,<sup>10</sup> the Migratory Bird Treaty Act,<sup>11</sup> the Magnuson-Stevens Fishery Conservation and Management Act,<sup>12</sup> and parallel state laws. This work relies on a foundation of scientific research, guiding both government decisions and the advocates who challenge them with data-driven arguments.

A number of scientific disciplines focus on the oversight and management of natural systems, including animals and the way they interact with their environments. The challenging issues that come up in this area are quite varied. They may include consultation and research by scientists who specialize in population dynamics, conservation biology, animal behavior, extinction, climate change, and the interrelationships between plant and animal species in any given habitat.

These scientists' work is the basis for arguments by lawyers on both sides of the courtroom (and in agency and legislative sessions) in a number of highly active areas of animal law. Without this interdisciplinary approach, there would be no case for anyone to make.

Experts consider research on particular species or geographic areas, as well as the broader impacts on the environment or other species, at state, federal, and international levels. Often the primary issue is the potential for survival of a species or group of animals. The work of science is to analyze factors that include: (1) the number of animals present; (2) their predicted rate of growth/reproduction; (3) existential dangers (e.g., predators, food and water limitations); (4) mitigation of these threats to prevent permanent damage; and (5) the health and future of the animals' habitat. All of these factors may need to be considered and weighed against competing interests such as profit and protection of other property. This will depend on the language of the relevant statute(s), case law, agency decisions, and, sometimes, allowable considerations for private interests.

### How Cruel Can We Get?

As animal law has expanded, it has considered the science of animals' internal lives, as well as the degree to which animals' sentience should be considered under the law. While there is little doubt among a majority of people that animals can feel physical pain, there is still debate about the degree to which they can experience mental suffering or have any higher mental processes.

Growing interest in these areas has led to greater focus on animal biology, including physiology, mental capacity, and sentience; the human-animal bond; and the societal impact of our treatment of the animals with whom we interact most. This



covers a broad range of species, including our companion animals, as well as those raised for products such as meat, milk, eggs, feathers, and fur.

For example, in cases that focus on animal treatment or the interpretation of terms like "humane", courts will often consider input from experts. In *National Pork Producers Council v. Ross*,<sup>13</sup> both sides had support from *amici curiae* opining on the impacts of gestation crates on pregnant sows. One brief defending California's Proposition 12, which ensures pork sold in California is not sourced from pigs kept in gestation crates, was signed by over 370 animal welfare scientists and veterinarians, who explained the negative impacts of gestation crates on pigs.<sup>14</sup> Several briefs in the *Ross* case came from nonparty animal welfare groups, setting out the science of animal behavior, sentience, and the experience of being confined in a gestation crate.<sup>15</sup> Others came from experts intimately familiar with the housing and slaughter processes for pigs destined for American tables.<sup>16</sup> In *New Jersey Soc'y for the Prevention of Cruelty to Animals v. N.J. Dep't of Agric.*,<sup>17</sup> the court considered the opinions of animal welfare experts as well as industry experts in determining whether the word "humane" was properly applied to particular traditional farm animal practices. And in *Humane Soc'y of Rochester & Monroe Co. for Prevention of Cruelty to Animals, Inc. v. Lyng*,<sup>18</sup> the court considered extensive testimony from both sides to determine whether the government was justified in requiring certain cows to be branded on the face with a hot iron. The court's conclusion is a telling one, showing how animal lawyers have compelled courts to look at issues that might have never before been considered:

It is evident to me, as it should have been to the Department of Agriculture, that [hot-iron face branding] constitutes cruelty to animals. If the [government] had been as concerned with cruelty to animals as they now claim to be, [this regulation] would never have been adopted. The testimony before me clearly establishes that freeze-branding is a viable alternative to hot-iron branding since it causes less pain to cows and accomplishes all of the objectives outlined by defendants. Had defendants truly been concerned with preventing unnecessary cruelty to animals, they would have at least allowed farmers the option of either method.<sup>19</sup>

### Conclusion

"You'd better start swimming or you'll sink like a stone."<sup>20</sup> The work of animal law is intertwined with so many different disciplines, demonstrating that animal lawyers are swimming and surfing, kiteboarding and hang gliding, but always moving forward—and never sinking. They are expanding protections for animals, defending against those who would take those protections away, and advancing the field no matter what opposition may next come in the murky waters on the horizon. ➤





## Endnotes

- 1 BOB DYLAN, *THE TIMES THEY ARE A-CHANGIN'* (Columbia Records, 1964).
- 2 Out of the nine chapters in the *Animal Law* casebook, six of them are specifically titled with traditional law school curriculum courses ("Property", "Criminal Law", "Torts", "Constitutional Law", "Contracts", and "Wills and Trusts"), and another covers federal laws that are primarily related to animal protection or management. BRUCE WAGMAN ET AL., *ANIMAL LAW: CASES AND MATERIALS* (Carolina Academic Press, 2000).
- 3 See, e.g., *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023); *N.Y. Pet Welfare Assoc. v. City of N.Y.*, 850 F.3d 79 (2nd Cir. 2017); *Cavel Int'l, Inc. v. Madigan*, 500 F.3d 551 (7th Cir. 2007).
- 4 See, e.g., *Jones v. Butz*, 374 F. Supp. 1284 (S.D.N.Y. 1974); *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993).
- 5 See, e.g., *Lujan v. Defs. of Wildlife*, 504 U.S. 555 (1992); *Am. Soc'y for the Prevention of Cruelty to Animals v. Feld Entertainment*, 659 F.3d 13 (D.C. Cir. 2011); *Humane Soc'y of the U.S. v. U.S. Postal Service*, 609 F. Supp. 2d 85 (D.D.C. 2009); *Animal Legal Def. Fund v. Glickman*, 154 F.3d 426 (D.C. Cir. 1998).
- 6 Bruce Wagman, *Veterinarians and Animal Lawyers—The Perfect Pairing*, *ANIMAL LAW COMM. NEWS* (TIPS Animal Law Comm.), Summer 2024 at 15 *et seq.*
- 7 The SF SPCA's Shelter Policy and Legal Service (Shelter PALS) program provides free legal services to shelter professionals, including its veterinarians. It also promotes and introduces legislation aimed at assisting all veterinary professionals, as well as the members of the public they serve. *Shelter PALS: Improving Animal Protection Statewide*, SFSPCA, <https://www.sfsPCA.org/about/advocacy/> (last visited Feb. 19, 2025).
- 8 16 U.S.C. § 1531 *et seq.*
- 9 16 U.S.C. §§ 1331–1340.
- 10 16 U.S.C. §§ 1361–1407.
- 11 16 U.S.C. §§ 715–715s.
- 12 16 U.S.C. 1801 § *et seq.*
- 13 598 U.S. 356 (2023).
- 14 Brief of Donald Bloom, Elena Contreras, Gwendolen Reyes-Ills, James Reynolds, and 374 Additional Animal-Welfare Scientists and Veterinarians as *Amici Curiae* in Support of Respondents, *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023) (No. 21-468).
- 15 *E.g.*, Brief for *Amici Curiae* Animal Protection Organizations and Law Professors in Support of Respondents and Respondents-Intervenors, *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023) (No. 21-468).
- 16 Brief of *Amicus Curiae* Dr. Leon Barringer in Support of Respondents, *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023) (No. 21-468); Brief of Worker Safety Advocs. as *Amici Curiae* Supporting Respondents, *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023) (No. 21-468); Brief of Jim Keen, DVM and Thomas Pool, MPH DVM as *Amici Curiae* in Support of Respondents, *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023) (No. 21-468); Brief of *Amicus Curiae* Perdue Premium Meat Company, Inc., D/B/A Niman Ranch in Support of Respondents, *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023) (No. 21-468); Brief for the Ne. Organic Dairy Producers All. as *Amicus Curiae* in Support of Respondents, *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023) (No. 21-468); Brief of *Amici Curiae* Small and Indep. Farming Bus., State Farmers Unions, and Farm Advoc. Orgs. in Support of Respondents, *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023) (No. 21-468); Brief of Butcherbox as *Amicus Curiae* Supporting Respondents; *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023) (No. 21-468).
- 17 955 A.2d 886 (N.J. 2008).
- 18 633 F. Supp. 480 (W.D.N.Y. 1986).
- 19 *Id.* at 487.
- 20 BOB DYLAN, *THE TIMES THEY ARE A-CHANGIN'* (Columbia Records, 1964).