



# ANIMAL LAW DOCKET

## Practice Tips For Animal Law Cases

## Animal Law – Social Justice in Action

### Introduction

The topic for this special edition of the Newsletter essentially defines animal law. The central purpose and core of the work done by lawyers around the world since the young field of animal law began has been motivated by, and built upon, the work of all the social justice movements that came before it. Indeed, the clarion call for greater protection of animals as themselves, for recognition of their sentience and their place in society, has made many identify animal law as a unique and fascinating new social justice movement. And the battle against the injustice meted out to nonhumans has really been the underlying theme of a large part of the impacts of animal law over the course of its development.

Probably many animal lawyers (and in this category I include those doing any amount of animal welfare work) came to the practice specifically because of the sense of a universal social wrong that has been engendered by the disparity in treatment that is commonly called “speciesism.” That term denotes a distinction made between species, based on the immutable characteristics of the species and on subjective (and often incorrect) beliefs about the species. But that is just the starting point and touchstone for the many ways in which advocating for changes in the treatment of animals is a major thoroughfare of social justice work, as discussed here.

### Speciesism—The Starting Point for Animal Law

To some, “speciesism” is an invidious discrimination solely based on the scientific/biological/genetic differences (both between humans and all other animals, and even between animal species themselves) and unscientific opinions about nonhumans. But to others, it is just a basic notion and recognition of the undeniable differences between species, which then leads to a more careful evaluation of the disparity of treatment of different species in our modern world.

Certainly, there are pointed debates in law, sociology, and philosophy about whether or not animals should be used by humans for food (and even then, what species should be eaten, and which should not), or research (with the same considerations),

*Read more on page 31*

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*Animal Law... Continued from page 16*

or entertainment, and those conversations may be rooted in speciesist concepts of the “worth” of nonhumans or the utility they may provide to our species.

But there is a more benign, even kind, form of speciesism at work in the world as well. For example, most companion animal owners engage in a healthy and humane form of speciesism by protecting their pets from the dangers of the outdoors, from the health complications of active reproductive organs, and from others who might otherwise harm those animals (whether intentionally or accidentally). Those pet owners are making a distinction based on species and capacity, by deciding to keep their animals confined (against their will) at times; and in deciding what medical procedures might be appropriate (even though their pets might rather not visit a veterinarian); and even, at some of the most unselfish of times, deciding that a humane death might be the best option for a sick or injured pet (when the pets do not have that capacity to carry out such a decision).

Likewise, when we act to protect, conserve, and try to prevent the extinction of wildlife species, we are acting with a benevolent speciesism, because we believe (surely correctly so) that they cannot do those things for themselves, and that we must step in to try to save them. At their core, these determinations all include speciesist decisions, where we believe we are a superior species, in terms of our ability to do what is best for these animals.

### **The Bigger Picture of Justice for Animals**

While speciesism is an important, often unspoken underpinning of how humans treat animals, the practice of animal law presents itself as a social justice movement in a much more direct fashion. That is, because social justice is focused on the disparity of distribution of wealth, opportunity, and privilege, there may be no better example of these stark differences than those between many humans and animals, with respect to all three of those hallmark characteristics of society. It cannot be disputed that animals have no wealth (because they cannot be property holders or obtain standing in the courts or at the voting booths, or have money in the bank), and no opportunity or privilege that is not granted to them by humans. So, animal protection embodies the most basic concept of social justice, and animal lawyers who are trying to at least mediate or moderate those disparities are true social justice warriors.

#### ***Chimpanzees***

A few examples from the recent history of animal law illustrate the point specifically. Consider our “closest relative” in terms of genetics and DNA, chimpanzees. (Chimpanzees and humans share over ninety percent of their basic genetic



makeup.) Despite that evolutionary proximity, humans have used chimpanzees for various purposes, including food (African “bushmeat” sometimes is the flesh of chimpanzees), entertainment (chimpanzees have been on display for us since the turn of the last century, in zoos, roadshows, public exhibitions, and the media), and biomedical research (as the subjects of studies of a variety of diseases and the psychological behaviors of primates). Animal advocates—lawyers, private citizens, and legislators—all were part of a concerted effort over the course of the last forty years to change the status of chimpanzees in our society, to improve their lives, and to protect them from the most controversial uses of their bodies. And as social justice campaigns go, that particular one was very successful. Over the course of about twenty years, the use of chimpanzees was slowly chipped away by various efforts until, in 2015, the species was listed as endangered on the federal endangered species list, providing the entire species with the maximum protection under U.S. law. While there are still disputes and legal battles ongoing to improve the lives of both captive and wild chimpanzees, the social justice reform—and victory—inherent in those campaigns cannot be denied.



*Image by Marcel Langthim  
from Pixabay*

### *Shelter Law*

Moving from a wildlife species most of us never come into close contact with to the variety of species that may be sleeping at your feet or living in your house as you read this, the rapid expansion of “shelter law”—focused on increased protections and care for those animals who move through our animal shelters—presents us with another example of great social justice progress in the law. Throughout the country, lawyers have been applying their skills to address the peculiar issues that arise as communities try to address the millions of animals who are abandoned, lost, living outdoors, or abused, and who local governments and private citizens work to assist, protect, and provide for. Animal shelters represent an excellent platform to focus on issues like access to veterinary care, the dilemmas raised by the millions of “community cats” who live outdoors around the country, and the best practices for the management of shelter animals, from intake and adoption to veterinary care and euthanasia. A unique approach at the San Francisco SPCA (one of the nation’s oldest animal shelters at 155 years in operation) has combined the purest social justice model—free legal aid to those who are unable to otherwise access the legal system—and the desire to serve the shelter and general animal community. The SF SPCA’s Shelter Policy and Legal Services (“Shelter PALS”) program provides free legal aid to animal shelters throughout California and plays an active role in



legislative and policy work on both the state and local levels. With that work, the SF SPCA is providing legal services that shelters and pet owners cannot afford and may not have even known they need, and benefiting the underserved, underrepresented, unhoused, and marginalized populations of both humans and animals. Social justice for dogs and cats, in action every day.

### *Animals Raised for Food*

One final example of animal lawyers working for change for animals is regularly in the headlines and media. Because for many who are focused on animal welfare, the first thought that comes to mind when “social justice” is mentioned is the legal work being done to improve the lives of animals raised, processed, and slaughtered in food production. Animal law’s attention to the circumstances attending the intensive confinement and mass production of animals is notable for multiple reasons. First, there is no argument that the number of land animals impacted by agricultural practices (estimated at nine to ten billion per year in America alone) dwarfs the number of animals in any other area.<sup>1</sup> Second, in terms of the signifiers of a social justice movement, there are no species given less opportunity and privilege than those that we use for food and fiber. While it is true that every state has prohibitions on *illegal* animal cruelty, most of the actual cruelty to animals—i.e., the infliction of pain or suffering—that occurs is done within the bounds of the law. Indeed, in most states, there are express or implied exemptions to those cruelty laws for standard agricultural practices that cause pain and suffering to the animals who are subjected to those practices. And so work done to mediate or reduce the amount of that pain and suffering, among species not protected by the most basic laws, fits solidly within a social justice paradigm.

A Nobel laureate once asked, “how many times can a man turn his head and pretend that he just doesn’t see?” For him, the answer was “blowing in the wind.”<sup>2</sup> For animal lawyers, the answer is happening now, in the courts and the legislatures and the marketplace. And there is no more important or auspicious American legal entity than the United States Supreme Court in terms of the declaration and determination of social policies. As a caveat, there may be no more influential body in terms of moving social justice concepts forward (or backwards). And that makes the recent victory for the state of California and animal welfare proponents and pigs in *National Pork Producers Council v. Ross*<sup>3</sup> an extremely notable moment for the social justice movement that is animal law. Spearheaded by the Humane Society of the United States’ Animal Protection Litigation program, which was joined by a coalition of like-minded animal welfare groups focused on farm animal issues, the California law known as Proposition 12<sup>4</sup> was upheld by the Supreme Court. Proposition 12’s focus was the protection of both animals and people, in a brave move for positive change. While there were many opinions on the Court regarding the case, perhaps the most important layperson’s takeaway from the case is this: when a state wants



to ban the products of animal cruelty from its borders, it can do that without violating constitutional restrictions. The case was a resounding victory not only for states and the animal welfare lawyers involved, but for the animals who might be able to be given better lives by virtue of such laws. *NPPC v. Ross* declared success in the main mission of social justice movements—

to move towards an alteration in the disparate treatment of groups historically given no opportunity or privilege. With animal lawyers being given the nod by the Supreme Court, the times they really are a-changin'. ➤

#### Endnotes

1 In terms of absolute numbers slaughtered, the number of fish killed dwarfs that of land animals, with estimates of over one trillion fish killed each year for food, with over a hundred billion of those in "fish farm" situations. See Kerri Tenniswood, *How Many Fishes Are Slaughtered Annually?*, FAUNALYTICS (Oct. 2, 2023), <https://faunalytics.org/number-of-farmed-fish-slaughtered-yearly/>.

2 Hanah Ellis-Petersen and Allison Flood, *Bob Dylan Wins Nobel Prize in Literature*, THE GUARDIAN (Oct. 13, 2016), <https://www.theguardian.com/books/2016/oct/13/bob-dylan-wins-2016-nobel-prize-in-literature>

3 596 U.S. 356 (2023).

4 CAL. HEALTH & SAFETY CODE ANN. § 25990 et seq.

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