

COMMITTEE NEWS



Animal Law

Jane McBride Honored for Excellence in the Advancement of Animal Law

On behalf of the Animal Law Committee, I would like to congratulate Jane McBride on being this year's Excellence in the Advancement of Animal Law Award recipient. The Animal Law Committee's annual "Excellence in the Advancement of Animal Law Award" recognizes exceptional work by an Animal Law Committee member who, through dedication, leadership, heart, and passion, has advanced the humane treatment of animals through the law.

By: Alex Cerussi

Jane is founder, president and chief executive officer of Illinois Humane (an advocacy organization and Illinois licensed animal shelter focusing on cruelty and neglect investigations), Illinois State representative for Project Coyote, a former Chair of the Animal Law Committee, a dedicated animal advocate, and so much more. In a moment, Jim Gesualdi will officially introduce Jane and say more about the phenomenal and impactful work that Jane has done for animals and people alike.

[Read more on page 25](#)



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Chair Message

Happy Summer to all jurisdictions that celebrate! Our home had an influx in butterflies this week—it's made great fun for the kids looking up butterfly types and the dogs chasing them with the classic curious look when one lands on their nose. We had a tremendous Section Conference in New York City, a productive strategic planning session, and a handful of judicial victories as many legislatures adjourned.

First and foremost, congratulations to Jane McBride, winner of the 2023 Excellence in the Advancement of Animal Law Award. Jane was our very own 2018-2019 Animal Law Committee Chair and is the current President of Illinois Humane. She recently retired after two decades at the Illinois Attorney General's Office where she worked in the Environmental Bureau working on environmental and agricultural issues. My favorite part of being friends and colleagues with Jane is the fun and frank back-and-forth we've had over the years about animal shelter law. For such an experienced and brilliant attorney, Jane is never shy about asking questions on issues she's not encountered, and always answers my calls when I'm struggling to understand something, which is probably what makes her so distinguished. Congratulations Jane, and cheers to more conferences, calls, and laughs.

The TIPS Spring Conference also had a public service project where several committee members, TIPS members, and staff joined us at Animal Haven for a day of service. The project raised \$2,350.50 and we provided enrichment for the dogs and cats awaiting adoption.

While we were playing with kittens at Animal Haven, the United States Supreme Court issued their decision in the California Proposition 12 case, National Pork Producers Council & American Farm Bureau Federation v. Ross, et al., holding California's ban on the sale of pork in California from farms anywhere in the country that confine pregnant pigs in gestation crates is constitutional. Not only that, but SCOTUS also issued their decision on the dog toy parodying Jack Daniels whiskey, which the court found to constitute trademark infringement. Jack Daniel's wrote in its brief: "Jack Daniel's appreciates a good joke as much as anyone. But Jack Daniel's

likes its customers even more and doesn't want them to be confused or associating its fine whiskey with dog poop." There were some big wins for animals in states as well. In Illinois a bill was signed into law that prohibits homeowners and renters insurance providers from refusing or canceling coverage or increasing



Katie Barnett

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Katie Bray Barnett is the TIPS Animal Law Committee chair and is licensed to practice law in Kansas and Missouri. Barnett has been a member of the ABA TIPS ALC since she was a law student and is now in her 11th year as a member of the ALC. Her private practice consists entirely of animal law matters, representing animal shelters and animal control agencies, acting as special prosecutor for animal-related crimes, and civil actions for animal-related issues. She resides in Northeast Kansas with her husband, two children, and three dogs. Barnett can be reached at katie@barnettlawoffice.com





premiums based solely on the breed of dog owned by the policy holder. Florida finally expanded the statewide preemption prohibiting breed specific legislation to Miami-Dade. And Texas lawmakers passed a bill that trap neuter return of unowned community cats cannot be prosecuted as abandonment—which is awaiting the Governor’s signature.

It has been an honor to serve as your Chair. When I was invited to Chair the ALC several years ago, I was a solo practitioner and a brand-new mom with a house full of senior dogs. It is impossible to know what life will hand you when you eventually take over the role as Chair and for me, life looked significantly different when I finally stepped into this role. Today, my house is filled with the laughter and voices of curious kids, my phone pinging with communication from clients, and two new attorneys at my practice, and it is eerily quiet with only the patter of our new puppy, Ruth Bader Ginsburg. I’ve been lucky to have a team of vice chairs to support the important work the ALC is doing and a tremendous thank you to Alex Cerussi, your Chair Elect—but let’s be honest—your acting Chair for the year. Alex’s willingness to jump in and take on issues, projects, and travel that exceeded my capacity is humbling and I am forever grateful. Daina Bray and Joan Schaffner have also held the ALC together, shepherding me as I navigate the nuance of the TIPS programs and policies. Nothing will prepare you to be Chair, but it is an opportunity that I encourage everyone to work toward.

Finally, our subcommittees are the lifeforce of the Animal Law Committee and our subcommittee chairs are poised to continue to do great work. If you would like to join a subcommittee, please reach out to the subcommittee chair(s)! Alex Cerussi and Molly Armus (Policy & Alliances); Tom Mugavero (Companion Animals Subcommittee); Irina Anta and Michael Swistara (Agriculture); Raj Reddy (International); Rebecca Critser (Science & Technology); Kimberly Fullerton and Deepti Bansal Gage (Wildlife); and Margrit Parker and Elaine Fresch (Equine). ➤

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Headline Animal Law News

ANIMALS IN AGRICULTURE

Supreme Court Upholds California's Proposition 12

By: Leslie Shanley

On May 11th, the U.S. Supreme Court affirmed the Ninth Circuit's dismissal of a challenge to Proposition 12 (Prop 12) brought by the National Pork Producers Council (NPPC) and other animal agriculture industry trade groups. NPPC had argued that Prop 12, a measure overwhelmingly passed by California voters in 2018 to implement modest requirements for confined farmed animals relating to the sale of beef, pork, and egg products in that state, was unconstitutional. Specifically, NPPC argued that Prop 12 violated the dormant commerce clause (DCC), a provision read-into the Constitution which prohibits individual states from regulating extraterritorially and burdening interstate commerce. In affirming the Ninth Circuit's decision, the Supreme Court held that to violate the DCC a state law must do more than merely have an out-of-state effect. Rather, the challenged law must also violate the DCC's core anti-discrimination principle by seeking to benefit its own domestic commerce at the expense of other states' industries or, alternatively, that the relevant law fails the *Pike* balancing test (which weighs the burden on interstate commerce against putative local benefits). The majority opinion, written by Justice Gorsuch, held that in the absence of a discriminatory purpose, Prop 12 survived the *Pike* balancing test and did not violate the DCC. However, the justices were split on when *Pike* applied, whether the harms and benefits from Prop 12 were even comparable, and whether the scope of review should be limited to the DCC. [*National Pork Producers Council v. Ross*, 143 S. Ct. 1142 \(2023\)](#).

ANIMALS IN SCIENCE AND TECHNOLOGY

Long-Tailed Macaques Await their Fate at Charles River Labs

By: Jane McElligott

A thousand long-tailed macaques, caught up in a monkey trafficking scheme, are in limbo at Charles River Labs awaiting a decision by U.S. Fish & Wildlife Service (FWS) on their fate. An investigation by the U.S. Department of Justice (DOJ) last year uncovered the involvement of top Cambodian officials in falsely certifying macaques captured in the wild as captive-bred for research purposes. The fraudulent certification is part of an "international primate smuggling ring" in which government officials and primate suppliers in Cambodia are accused of "trafficking wild macaques through the legal trade of captive-bred monkeys." [*Cambodian*](#)



Officials Charged with Wildlife Trafficking, a “Wake-Up Call” for Global Monkey Trade, [GLOBE](#) (Nov. 21, 2022).

While the DOJ investigation is pending, the government has barred Charles River Labs from “selling or carrying out testing on the animals until their non-wild status is confirmed,” leaving the government with three options regarding the fate of the macaques: “Seize and remove them to a sanctuary, kill them, or allow re-export.” *Fate of 1,000 Trafficked Lab Monkeys at Center of US Investigation in Limbo*, [THE GUARDIAN](#) (Mar. 20, 2023). FWS began discussions with PETA and Born Free to place the monkeys in a sanctuary, but the government approved the transport of the monkeys back to Cambodia, which would likely result in the monkeys being funneled back into the smuggling research pipeline. Upon hearing word, PETA organized a protest that successfully thwarted the transport. PETA has pledged \$1 million to help defray the cost of the monkeys’ care if they are released to the Born Free USA sanctuary.

The soaring demand of long-tailed macaques by the biomedical research industry recently led to their status being “uplisted from ‘vulnerable’ to ‘endangered’ on the Red List of Threatened species, which cited ‘biological use’ as a key threat.” *Alleged Corruption in Cambodia Monkey Farms Taints Global Wildlife Trade*, [RAINFOREST JOURNALISM FUND](#) (Apr. 20, 2023). To return the macaques to Cambodia, facilitating their reentry into the illicit research pipeline, would place the macaque at further risk of extinction at a time when scientific and technological advances and the recent passage of the FDA Modernization Act 2.0 offer a far better route to developing new vaccines and pharmaceuticals.

INTERNATIONAL ISSUES

CDC Restricts Importing Dogs from Countries at High-Risk for Rabies

Since July 2021, [86 Fed. Reg. 32041 \(June 16, 2021\)](#), through at least July 31, 2023, [88 Fed. Reg. 5348 \(Jan. 27, 2023\)](#), the U.S. Centers for Disease Control and Prevention (CDC) has issued requirements for importing dogs from countries the CDC considers at high risk for rabies. [CDC, High-Risk Countries for Dog Rabies](#) (Apr. 10, 2023). More than 100 countries are on that list, including Cambodia, India, Moldova, Pakistan, Thailand, and Ukraine. For many, the requirements amount to a virtual ban, with shelters in the target countries reporting an inability to place dogs for

**By: Fiona Farrell and
Hira Jaleel**



adoption abroad. The CDC cites three main reasons for issuing these requirements: 1) protecting against the dangerous zoonotic disease of rabies; 2) the expense of tracking and mitigating the effects of even a single dog entering the U.S. with rabies, and 3) the increase of dogs entering the U.S. since the COVID-19 pandemic without rabies vaccinations or titer.

The CDC's requirements for commercial importing, i.e. importing more than two dogs per individual person, impose a time-consuming and expensive burden on the importer. These requirements include, but are not limited to: arrival at one of five ports of entry in the U.S. with CDC-approved animal holding facilities, revaccination for rabies by a USDA-accredited veterinarian upon arrival in U.S., titers from a CDC-approved laboratory (or quarantining at the CDC-approved facility until requirements are met), the CDC Rabies and Microchip Record Certificate, appointments in advance for veterinary examination of the dog, reservation of space at the CDC-approved facility, and arrangements in advance for Customs and Border Protection bonded transporter to transport the dog to the CDC-approved facility. As a result, shelters from countries that previously relied mainly on placing dogs for adoption in Canada and the United States are now reporting difficulties with transporting dogs abroad, even when a suitable adopter is found. Without being able to travel abroad, the dogs may spend their entire lives in shelters in their home countries.

WILDLIFE

Secretary Certifies that Mexico is Diminishing Effectiveness of CITES—May Impose Import Ban

In May 2023, the Secretary of Interior certified to the President that the government of Mexico has failed to stem the illegal harvest and commercial export of the totoaba fish and the related incidental take of the critically endangered vaquita porpoise by Mexican nationals, diminishing the effectiveness of the [Convention on International Trade in Endangered Species of Wild Fauna and Flora \(CITES\)](#). Deb Haaland, [Congressional Notification Letter Pelly Amendment](#) (Mar. 26, 2023). This decision and subsequent certification were made under the Pelly Amendment, which authorizes the Secretary to make a finding that nationals of a foreign country, directly or indirectly, are engaging in trade or taking which diminishes the effectiveness of any international program for endangered or threatened species. [22 U.S.C. § 1978](#). Upon making a finding, the Secretary has to certify such fact to the President. President Biden must now decide whether to take action against Mexico, which may include prohibiting the importation of all fish or wildlife products from Mexico. If the

By: Hira Jaleel



President decides not to impose a ban, he must explain the reasons for his decision to Congress.

Both the totoaba fish and the vaquita are listed in Appendix I of CITES, which prohibits trade in their specimens and parts for primarily commercial purposes. However, totoaba are illegally harvested for their swim bladders, which are then trafficked to fuel illegal markets in China. This illicit trade negatively impacts the vaquita, who become entangled and drown in illegal gillnets set for the totoaba. The current global population of the vaquita porpoise is estimated to be at 10 or fewer individuals. ➤



Totoaba

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Legislative And Regulatory Developments Affecting Animals

ANIMALS IN AGRICULTURE

EPA Will Create New Slaughterhouse Water Pollution Standards Following Lawsuit

By: Michael Swistara

Following a lawsuit brought by a coalition of animal protection and environmental advocacy organizations, on March 1, 2023, the U.S. Environmental Protection Agency (EPA) announced it will publish water pollution control standards for slaughterhouses. Slaughterhouses regularly discharge wastewater that can harm local wildlife; for example, slaughterhouses are one of the leading sources of nitrogen water pollution. Yet, many slaughterhouses still operate under water pollution guidelines from the 1970s. After the coalition's Clean Water Act suit, the agency is finally updating these regulations. EPA's new proposed standards must be submitted before the end of the year. [EPA to Publish Slaughterhouse Water Pollution Standards Following Lawsuit](#), ANIMAL LEGAL DEF. FUND (updated Mar. 1, 2023).

ANIMALS IN SCIENCE AND TECHNOLOGY

Bipartisan Bills Re-introduced to Advance Non-animal Research Methods and to Increase Adoption of Dogs, Cats, and Rabbits Used in Laboratories

By: Monica Engebretson

On Valentine's Day, Congressmembers Chris Pappas (D-NH) and Ken Calvert (R-CA) announced the introduction of the *new* HEARTS Act ([Humane and Existing Alternatives in Research and Testing Sciences Act](#)) (H.R. 1024).

The HEARTS Act would amend the Public Health Services Act to require the NIH to establish incentives for researchers to use non-animal methods and includes several other measures aimed at ensuring that investigators adequately search for and utilize available non-animal methods including requiring that all proposals are reviewed by at least one person with expertise in non-animal research methods. The bill also establishes a dedicated center within the NIH devoted to advancing new



alternative methods and reducing the use of animals in federally funded research. Lastly, it updates the definition of “animal” to include cephalopods.

The HEARTS Act has earned the following endorsement from Dr. Jane Goodall: *“There is a growing awareness that animal-based research and methodologies cannot reliably answer the vexing scientific questions that arise in seeking to understand human diseases and their treatments and cures. For the challenges that confront us, we need to focus on humane and human-relevant science. But the current framework provides little incentive and support for researchers to use and develop non-animal methods. The HEARTS Act will modernize the National Institutes of Health to ensure that humane and human-relevant methods are at the heart of its science investment.”* [Reps. Pappas & Calvert Introduce HEARTS Act to Prioritize Non-Animal Testing Methods in NIH Research](#), CRUELTY FREE INT’L (Feb. 14, 2023).

During World Week for Animals in Laboratories, the [Companion Animal Release from Experiments \(CARE\) Act of 2023 \(H.R. 2878\)](#), was reintroduced by Congressman Tony Cárdenas (D-CA) and Congressman Ken Calvert (R-41). [Cárdenas Introduces Bill to Encourage the Adoption of Animals Used in Research](#), Congressman Cárdenas Press Release (Apr. 26, 2023).

The CARE Act would require research facilities that receive funding from the National Institutes of Health to implement adoption policies for unwanted dogs, cats, and rabbits and make their policies available on their websites along with the number of dogs, cats, and rabbits used, the number adopted, and the number destroyed.

EQUINE LAW

Colorado Bill to Help Wild Horses

On Saturday May 20, 2023, Governor Jared Polis of Colorado signed [Senate Bill 275](#) into law, a measure to benefit and manage the wild horse and burro herds in Colorado. The Governor’s office says the Act makes certain that “Colorado’s iconic wild horse herds will have a humane and sustainable future in Colorado. This legislation sets a national example for how the state, ranchers, advocates, local communities, conservationists, and federal land managers can work together to achieve outcomes that benefit communities and the majestic wild horses.”

The act creates the Colorado Wild Horse Management Project. The state-funded, state-owned project will operate like a non-profit. The project’s working group is charged with finding long term solutions for wild horses removed from federal horse

By: Fiona Farrell



management areas or held in federal facilities such as creating a state wild horse preserve, using wild-horse sanctuaries, and boosting adoptions. A stewardship program will help manage range health and infrastructure, such as fencing and water sources. A wild horse fertility control program will seek to increase the use of fertility control.

The project would augment the efforts of the Federal Bureau of Land Management (BLM). Governor Polis called on the BLM to work with Colorado state agencies after the death of over 140 wild horses in a BLM holding facility in May 2022. Polis has repeatedly asked the BLM to stop its round-ups, which include the use of helicopters to drive the wild horses. Yet, the round-ups have continued.

Equine Legislative Developments in New York

The first half of the current biennial legislative session of the New York Legislature is drawing to a close with two bills of particular interest on the equine front concerning horse slaughter.

By: Fiona Farrell

[Assembly Bill 5109-A](#) / [Senate Bill 2163A](#) would ban slaughtering horses in New York. The current version would make it a strict liability misdemeanor with fines to slaughter a horse. Each horse slaughtered would create a separate violation. Importing, exporting, selling, or buying (or otherwise transferring) a horse or horseflesh with the intent of slaughter would be a misdemeanor with fines.

[Assembly Bill 6947](#) / [Senate Bill 6796](#) strengthens the state law banning the slaughter of thoroughbred and standardbred racehorses and racehorse breeding stock. Many of the livestock auctions where horses are sold for slaughter have not been complying with the new law. This bill seeks to improve compliance with two measures. First, requiring auctions and others who buy and sell thoroughbreds and standardbreds to conspicuously post signs saying it is illegal to sell or transfer the covered horses and what the penalties for violation of the law are. Second, requiring livestock auctions to have an agent of the NYS Department of Agriculture and Markets present where horses are sold. The agent is charged with reviewing all health certificates of all thoroughbreds and standardbreds sold.



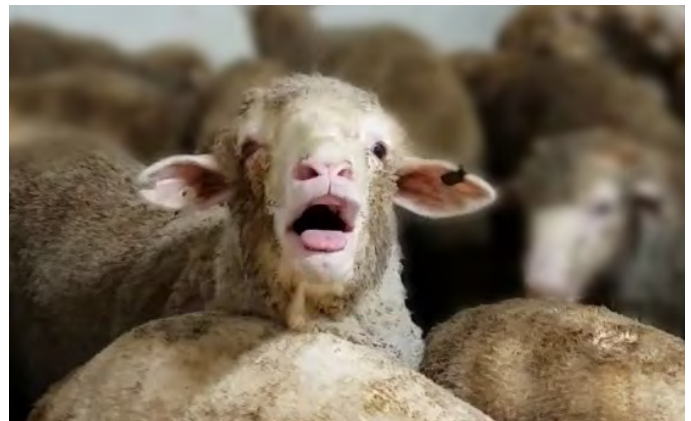
INTERNATIONAL ISSUES

Australia Live Sheep Exports Set to Continue Under New Leadership

By: Jessica C. Tselepy

When the Australian Labor Party (Labor) achieved majority government in the 2022 federal election, there was widespread hope that new action may result in better protections for non-human animals in Australia. Under the more conservative-leaning Coalition leadership of the preceding 15 years, protection efforts at the federal level had all but stagnated, if not regressed.

Under pressure from the nascent [Australian Alliance for Animals](#), whose 'Federal Election 2022' scorecard received much attention, Labor made an election promise to shut down the live sheep export industry. Kath Sullivan, et al., [Labor Confirms Plan to End Live Sheep Exports if Albanese Become PM](#), NEWS (May 5, 2022). However, once the election win was confirmed, new Prime Minister Anthony Albanese announced live sheep exports would not be phased out within his term. Calla Wahlquist, [Anthony Albanese Says Live Sheep Exports Won't Be Phased Out Before 2025](#), THE GUARDIAN (June 3, 2022).



Live Sheep Export

This all but seals the fate of those most affected by the decision: the sheep. Based on previous years, hundreds of thousands of sheep will likely be exported. [All Livestock Exports](#), DEPT. AGRICULTURE, FISHERIES AND FORESTRY (last visited June 15, 2023). Numerous exposés have revealed the inhumane conditions of live export voyages. [Live Export Ships Exposed](#), ANIMALS AUSTRALIA (last visited June 15, 2023). Even the Department of Agriculture, Fisheries, and Forestry (Department), which both promotes and oversees the industry, acknowledged welfare issues. For instance, a recent review noted behavioural and physiological responses to heat (including panting) on 60% of voyages and found the most frequently reported causes of mortality between 2019-2021 were inanition and gastro-enteric diseases. [Northern Hemisphere Summer Review](#), DEPT. AGRICULTURE, FISHERIES AND FORESTRY (last visited June 15, 2023).

While sheep continue to be exported in such conditions, there is some hope of exporter accountability. In 2017, Emanuel Exports was charged with non-human animal cruelty offences after 2,400 sheep died from heat stress on one of its vessels. Calla Wahlquist, [Live Exporter Charged With Animal Cruelty Over Deadly Awassi Shipment](#), THE GUARDIAN (July 31, 2019). While Emanuel Exports' export



license was ultimately reinstated in 2021, thereby solidifying industries' status quo of subpar animal welfare practices, the Western Australian Court of Appeal recently discharged a review order of Emanuel, who argued that the magistrate did not have jurisdiction to hear the matter. Jesinta Burton, [Live Exporter To Face Trial After Losing Sheep "Cruelty" Appeal Bid](#), WATODAY (Feb. 22, 2023). With the trial set for November 2023, two directors of the company will face 16 counts of animal cruelty. While an affirmative judgment would be a huge win, the fact that the case will be heard is an unprecedentedly promising step for Australian non-human animal protection.

WILDLIFE


SCOTUS Narrows the Scope of the Clean Water Act: New Test Will Determine Protection for Wetlands

By: Kimberly Fullerton

The U.S. Supreme Court recently established a new test to determine whether the [Clean Water Act](#), 86 Stat. 816, as amended, [33 U.S.C. 1251](#) et seq. (CWA), applies to a wetland. The heightened standard of the new test will dramatically narrow the scope of the CWA, which is the main federal law for regulation of water pollution. [Sackett v. EPA](#), 598 U.S. __ (May 25, 2023).

The protections of the CWA are limited to "the waters of the United States" (WOTUA). Defining the scope of WOTUA has sparked decades of agency action and litigation.

Prior to *Sackett*, two standards were used to determine whether a body of water qualified as WOTUA subject to the protections of the CWA and the CWA was applied if a waterway satisfied either test. The "relatively permanent test" required that waterbodies must be relatively permanent, standing, or continuously flowing. The "significant nexus test" required that waterbodies significantly affect the chemical, physical, or biological integrity of traditional navigable waters, the territorial seas, or interstate waters.

The court granted certiorari in *Sackett* to decide the proper test for determining whether wetlands are WOTUA. The court ultimately rejected the "significant nexus test" and implemented a more stringent test. Under the new test established in *Sackett*, the CWA applies to a wetland only if the wetland blends or flows into a neighboring water that is a channel for interstate commerce. Wetlands that are entirely separate from traditional bodies of water will not be protected by the CWA. 



ANIMAL LAW DOCKET

Practice Tips For Animal Law Cases

And Pigs Fly: How Animal Lawyers are Changing the World for All Species

Introduction

In animal law, “the times they are a-changin.”¹ On May 11, the United States Supreme Court in *National Pork Producers Council v. Ross (NPPC)*² ruled in favor of citizens, and states, that make the decision to limit the presence of products of animal cruelty on their grocery shelves and in their restaurants. The animals at issue in *NPPC* were pregnant pigs, but the opinion has direct implications for laws already on the books that impact the treatment of other animals, including egg-laying hens and veal calves, and sharks, and ducks and geese, and horses. Just as important, the case provides valuable guidance from the high court regarding other types of laws, unrelated to animal welfare, but addressing ethical and sociopolitical choices made by states and citizens. That alone is groundbreaking, but the broader effect of the case makes this a landmark moment in American animal law, with lawyers in the still-young field having navigated a course that has both developed new constitutional jurisprudence for the law books and empowered Americans who care about animals.

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.

Proposition 12 and NPPC

NPPC involved a challenge to a visionary state law, colloquially known as “Proposition 12”, that limits sales in California of certain egg, veal, and pork products that a majority of Californians (and Americans) believe are the result of methods involving unacceptable animal cruelty, and that endanger human health. With respect to pigs, the law prohibits sales of pork products that come from pigs who were either “confined in a cruel manner,” or where the pork products are “the meat of immediate offspring of a covered animal who was confined in a cruel manner.”³ The widespread practice of greatest concern, and that amounts to torture of these intelligent, social, and emotional animals, is the use of “gestation crates” for pregnant pigs (sows) in mass production facilities. Gestation crates are metal cages barely larger than a sow’s own body. Standard industry practice is to confine

[Read more on page 31](#)



The Existential and Ethical Imperative to Start Working Out In the Bugs

Introduction

Insects represent the most numerous and varied beings on the planet.¹ They are terrestrial, subterranean, aquatic, aerial—arboreal in nature even.² They are not just all *around* us but also *in* us, residing deep within our pores.³ Despite their incredible diversity, staggering numbers, and growing studies attesting to their ability to feel pain, cognitive capacities, and sentience,⁴ insects have long been overlooked compared to their otherwise more ‘charismatic’ vertebrate and even invertebrate counterparts. The lack of legal protections afforded them proves all the more concerning given that insects are exploited in many if not the same ways as other species—that is, for clothing, research, food, and otherwise—if they are not being targeted with insecticides or killed indiscriminately.⁵ Against this backdrop, this short article seeks to bring these often-unseen beings into sharper focus—both in light of their import to the environment and growing evidence as to their sentience—then touches upon the myriad threats they face before addressing the need to better safeguard their lives and secure their interests through the legal system.

Into the Insectiverse: Opening Our Eyes to the ‘Little Things That Run the World’

Whether at the species or individual level, there are more insects than we can hope to count. The planet is believed to host between 2 and 30 million distinct insect species, of which a mere 900,000 have been documented.⁶ Considering that 1.5 million animal species have been identified to date, insects represent roughly two-thirds of all animal life known to us.⁷ For comparative purposes, there are seven times as many documented species of beetles than vertebrates combined,⁸ with this statistic attesting to the unrivaled diversity even within insects as a taxonomic class. In terms of individuals, conservative estimates number insects at 10 quintillion, or 200 million for every human, with their collective biomass representing the largest among all terrestrial animal life on earth.⁹

Ironically, it is owing to their staggering numbers—not to mention diminutive size—that insects and their outsized impact on the ecosystem fail to garner notice. As conservationist E.O. Wilson observed in 1987, if we were to draw two clumps of dirt in many parts of the world, we would literally be holding the lives of thousands of creatures—some visible, many microscopic, others perhaps yet to be identified—in our cupped hands.¹⁰ Juxtaposing insects in particular with larger, more charismatic vertebrate animals, Wilson underscores that it is actually the former who prove the

[Read more on page 35](#)

Raj K. Reddy

Lewis & Clark Law School

Rajesh K. Reddy directs the Animal Law Program at the Center for Animal Law Studies at Lewis & Clark Law School, where he teaches International Animal Law, Animal Legal Philosophy, and an Emerging Topics in Animal Law course dedicated exclusively to Insect Law. Outside of Lewis & Clark, he sits on the boards of Minding Animals International and the International Coalition for Animal Protection, as well as co-chairs the ALC International Issues subcommittee.



A Dystopian Pakistani Snapshot: Discriminating Against All Dogs Equally

Dog Culling

Dog culling is the practice of killing stray dogs as a population management measure by either shooting the dogs or feeding them poisoned meat with nails.¹ On average, the city of Lahore culls over 20,000 dogs annually.² From January 1 to February 7, 2021, Lahore culled over 171 stray dogs.³ Police use the claim of dog bites and the safety of others⁴ to justify the killing. In fact, Pakistan discriminates against all dogs, with Muslim clerics citing Islam for the proposition that dogs are not pure. Islam indeed considers the spit of dogs impure,⁵ although purifying oneself as prescribed in Islam is an easy alternative. Muslim clerics also say that angels do not enter a home where dogs live. However, there are other opinions available.⁶

Islam also states that humans have a duty to care for all animals, including dogs.⁷ Under Islam, humans have several duties towards animals—especially dogs—including:

1. Islam does not consider it haraam⁸ to own a dog.
2. It is not haraam for a Muslim to touch a dog. However, if a dog's saliva touches a person or any part of one's clothing, one must wash the body part and the item of clothing touched by the dog's mouth or snout.
3. Muslims have a duty to provide adequate shelter, food, water, and, when needed, veterinary care for their animals under all circumstances.
4. It is cruel, and therefore haraam, to keep any animal in a cage so small that it cannot behave in its species-specific way.
5. It is haraam to participate in any blood "sport," like dog fighting and trophy hunting.⁹

Dog culling is, therefore, a violation of Islamic Law and, thus, unconstitutional under the Constitution of the Islamic Republic of Pakistan by Articles 2 and 227.¹⁰ Due to an overall lack of education in the country, Islam is not interpreted correctly. As a result, our furry and feathered friends suffer.

Islamabad Wildlife Management Case: Formation of a Dog Population Management Board in Islamabad Capital Territory

In 2020, in the landmark public interest petition case *Islamabad Wildlife Management Board v. Metropolitan Corporation Islamabad*, the Honorable Islamabad High Court

Read more on page 40

By: Altamush Saeed

Lewis & Clark Law School

Altamush Saeed is a Pakistan-based animal rights lawyer, activist, and philanthropist. He holds an Animal Law LLM from the Center for Animal Law Studies, Lewis and Clark Law School, an LLM from the University of Michigan Law School, and a BA-LLB from Lahore University of Management Science, Pakistan. He is currently pursuing an Environmental Law LLM at Lewis and Clark Law School. He is a Co-Founder/Director of Charity Doings Foundation (<https://charitydoings.org/>) and an Animal Welfare Ambassador to Comprehensive Disaster Response Service (<https://cdrsworld.org>), a 501c3 tax-exempt non-profit. He is a founding member of the 1st International Animal Law Working Group at The Union Internationale des Avocats (UIA) and a Junior Fellow at the Global Research Network Animals and Biodiversity Think Tank.



Military Veteran's Benefit Sought for Decorated U.S. War Horse

Introduction

Decorated U.S. war horse Staff Sergeant Reckless served in the Recoilless Rifle Platoon of the 2nd Battalion, 5th Marine Regiment, 1st Marine Division during the Korean conflict. Now a first-of-its-kind legal initiative seeks a military veterans' benefit for this nonhuman Marine Corps hero. Project Reckless requests burial at a national cemetery due to Sgt. Reckless's veteran status, evidenced by her rank promotions and the awards bestowed upon her by the United States Marine Corps (USMC). Thousands of animals have served in branches of the U.S. military, but Sgt. Reckless is unique. Unlike other military animals¹ her rank promotions and awards were official.² Sgt. Reckless's military achievements, including her two Purple Hearts,³ meet the enhanced eligibility requirements for burial at Arlington National Cemetery. Marine Corps veteran Dylan Clark recognized Sgt. Reckless's distinct legal position and is now leading the effort to have her buried in a national cemetery. If his efforts are successful, Sgt. Reckless will be the first, and likely the last, nonhuman to be buried at Arlington.

Reckless Revived

The unique legal circumstances surrounding Sgt. Reckless's military service were first recognized by Dylan Clark. He connected her duties and accomplishments to her official awards while studying veterans' law and animal law. However, Sgt. Reckless's accomplishments may have been lost to history if not for author Robin Hutton's research and diligence in recounting the story, leading to a display in the National Museum of the Marine Corps in Triangle, Virginia. Each training cycle, Marines attending Officer Training School in Quantico are given a tour of the museum. Clark, a former USMC tank commander of the 4th Marine Armor Division in Spokane, Washington attended training at Quantico and viewed Sgt. Reckless's museum exhibit in 2015. Later, while acquiring his J.D. at Lewis & Clark College in Portland, Oregon, Clark remembered Sgt. Reckless and made the connection between her accomplishments and the rights available to qualifying U.S. military veterans. Rank and awards in the military are granted based on duty and performance. Military veterans are entitled to benefits based on their military service history. Because Sgt. Reckless received

By: Jamie McLaughlin

Lewis & Clark Law School

Jamie McLaughlin is admitted to the Missouri bar. She focuses on animal and environmental law. Jamie received her J.D. with a public interest law certificate from DePaul University College of Law in Chicago, Illinois. She holds an LL.M. in animal law from Lewis & Clark Law School in Portland, Oregon and is currently working toward an environmental law LL.M. Jamie serves as Animal Law Commission Working Group Vice President of the Union Internationale des Avocats. She is a member of the ABA TIPS Animal Law Committee.



Sergeant Reckless at her promotion to Staff Sergeant (Credit: USMC photographer Rhoades)

[Read more on page 45](#)



Student Spotlight

Law School Classes That Help Animal Advocates

For many students, animal law, like other fields of law, is not something that they discover until they come to law school. I was lucky enough to know about my passion for animal advocacy during my law school application process and chose a university with animal law course offerings. However, you need not go to a law school with an established animal law curriculum to enjoy a legal education that could prepare you for a career in animal law. Throughout my first two years in law school, I have been pleasantly surprised by how many of my law school classes, with no direct tie to animal law, allowed me to engage with animal law issues. Here are some of the non-animal law classes that have helped me in my animal law externships and advocacy.

The first class is Constitutional Law. If you are a law student in the United States, you will certainly be required to take this class during your 1L year, whether you are interested in animal law or not. Many students expect to be exposed to substantive social justice and rights issues through a study of the constitutional amendments because it is the amendments that are responsible for securing rights for anyone who isn't a property-owning white man. However, the basic Constitutional Law principles can also be useful for other social justice work, such as animal legal advocacy. Just this year, the Commerce Clause (and its counterpart, the dormant Commerce Clause) proved to be extremely instrumental in upholding one of the strongest animal protection laws to date, Proposition 12 in California.¹ Because animals are often considered property and products in our society, animal legal issues often center around the basic principles discussed in a 1L Constitutional Law course, such as federalism and the role of the different branches of government in regulating commerce, morals, and ownership.

The second class that I've taken with surprising animal law implications is another required 1L class, Criminal Law. Especially in companion animal legal advocacy, criminal law is a major tool in animal advocates' toolkits. Cruelty to animals goes against many moral standards that we share as a society and, as we do with other moral deviations, animal cruelty is often punished by criminal prosecution. However, the criminal legal system is not just about society locking away bad guys. And a (good) criminal law course will expose law students to the nuances of setting moral standards and enforcing them through policing and criminal punishment. If animal advocates are going to use criminal law to improve the welfare of animals, even if just through lobbying for stronger animal cruelty laws, it is important to understand the context of the criminal legal system in which animal cruelty laws exist. This class also challenged me to think about what behaviors are criminally punished in our

Kailey McNeal

*The George Washington
University Law School*

Kailey McNeal (she/her) is a rising third-year law student at The George Washington University Law School. She is the Student Vice Chair for the Animal Law Committee and for the TIPS committee on Diversity, Equity, and Inclusion. She has worked in animal protection since she was 12 years old and is particularly passionate about the intersection between animal protection and racial justice.



legal system. While beating your dog can be a felony offense, large corporations slaughtering farmed animals en masse is an acceptable form of entrepreneurship.

The third class, tax law, is a great tool for animal advocacy, especially farmed animal advocacy. The entities responsible for the system of industrial animal agriculture against which many advocates direct their legal advocacy are largely driven by money, not a desire to harm or to help animals. Tax law can therefore be influential in shaping the behavior of those corporations. Taxes are, of course, not a silver bullet solution to change corporate behavior, but tax law can be useful to require corporations to grapple with whether they ought to change their behavior, pay additional taxes or penalties, or hire lawyers to avoid tax liability. In fact, I incorporated tax law into my animal law class, by writing a paper that proposed using tax credits to effectively regulate line speeds in slaughterhouses. Systems such as these are already used in the environmental law context, for example as a carbon tax or tax credits for electric vehicle purchases.

Which leads me to the final two classes, which shouldn't have surprised me but did, Administrative Law and Environmental Law. I pair these two classes together because they work together effectively to strengthen my understanding of animal law. Put simply, administrative law is the law of government agencies. Administrative law governs the way agencies function, how they are organized, and how they make decisions. Much of environmental law is rooted in the actions of government agencies because it is government agencies that implement and enforce environmental statutes through their regulations. Consequently, an environmental statute is practically only as effective as the agency regulation that implements it. The same is true for animal law. As I mentioned before, although some of animal law, and much of companion animal law, is rooted in criminal statutes with enforcement through the prosecution of individuals, systemic issues of animal welfare such as companion animal breeding, farmed animal treatment, animal trafficking, zoos, and animals used for research or cosmetics testing, is largely governed by agencies and their regulations. Students interested in animal law benefit from an understanding of the way agencies make decisions, as well as how environmental advocates already use administrative law to protect the environment.

This is certainly not an exhaustive discussion of which law school classes make for better animal lawyers. As I've been told by many practicing animal lawyers, being a good attorney is the foundation for being a good attorney *for animals*. And good attorneys have experience in a wide range of legal fields, so as to understand how the many sectors of the law can work together to advocate for clients, including animals. ➤

Endnotes

¹ See *The Supreme Court Upholds California's Prop 12 Declaring It Serves "Moral Interests"*, HARVARD ANIMAL LAW & POLICY PROGRAM (May 11, 2023), <https://animal.law.harvard.edu/news-article/prop12-serves-moral-interests/>.



THE ANIMAL LAW CONVERSATION

An Interview with Ingrid Seggerman

The Animal Law Conversation is a short column designed to engage and inspire lawyers working in, or aspiring to work in, the animal law field. The purpose of this column is to present practitioners' best practices for personal and career development, and to discuss trends in animal law and opportunities to get involved with the TIPS Animal Law Committee. For this issue, we interviewed Ingrid Seggerman, Senior Director of Federal Affairs at the American Society for the Prevention of Cruelty to Animals (ASPCA).



Ingrid Seggerman
ASPCA

What does your role as Senior Director of Federal Affairs entail? What is a typical day like for you?

As Senior Director of Federal Affairs, I'm responsible for driving forward federal legislative and regulatory proposals to improve the lives of companion animals, farm animals, and equines. My job requires me to closely follow federal legislative and regulatory updates so we can adjust our strategies for advancing our animal welfare proposals accordingly and respond to proposals from policymakers. That includes monitoring congressional activity – such as committee hearings and markups, votes, bill introductions, and other Hill events – as well as agency announcements and notices published in the Federal Register.

A typical day for me involves lots of meetings – some combination of meetings with Capitol Hill staff, agency officials, advocates from other organizations, and colleagues at the ASPCA. If I'm meeting with Hill staff or agency officials, then I'll be explaining the ASPCA's policy perspective and advocating for a certain action (co-sponsoring a bill, holding a hearing, sending a letter, updating agency guidance) to advance our position. My day also entails collaborating with colleagues to write policy documents, including legislative language, comments on regulatory proposals, and communications with policymakers and the public about our work.

What jobs and other experiences led you to your current position?

My first job after law school was a fellowship with the Humane Society of the United States' Animal Protection Litigation division. That experience showed me how litigation and policy advocacy can complement one another to challenge systems that are failing to protect animals. I also learned that I was more drawn to the policy work other colleagues were doing, so I transitioned to a job in Government Relations with Defenders of Wildlife. That's where I learned how to lobby members of congress and their staff, and where I deepened my knowledge about the Endangered Species

Ingrid Seggerman is the Senior Director of Federal Affairs for the ASPCA, where she works on Capitol Hill and with federal agencies to advance laws and regulations to protect animals. Prior to joining the ASPCA in 2018, Ingrid advocated for federal legislation to protect endangered species and migratory birds at Defenders of Wildlife. Before that, she held the Bob Barker animal litigation fellowship with the Humane Society of the United States. Ingrid received her JD from Georgetown University Law Center in 2013. She currently serves as adjunct faculty at The George Washington University Law School, where she co-teaches an animal law seminar. She lives in Washington, DC with her husband Jeremy and their two rescue dogs.

Interview By: **Michael Swistara**

Michael Swistara is a Litigation Fellow at the Animal Legal Defense Fund. He serves as Young Lawyer Representative for the TIPS Animal Law Committee, Co-Chair of the Animals in Agriculture Subcommittee, and Newsletter Vice Chair for the ABA International Animal Law Committee. Please email michael.swistara@gmail.com with questions or suggestions for future interviews.



Act, the National Environmental Policy Act, and other major federal statutes that protect wildlife. I came into my current position to return to my passion – advocating for animals and changing the systems that inflict the most harm on them.

What parts of your job are most satisfying? Most challenging?

The most satisfying achievement for someone in my field is when legislation you've been advocating for finally crosses the finish line and gets signed into law. While it's difficult to pass bills through congress, we've been able to achieve progress by advancing measures to help animals through the annual appropriations bills that fund the federal government. One example is the passage of bill language to fix aspects of the USDA's failed enforcement program under the Animal Welfare Act. It's also really rewarding to work with colleagues on policy proposals and share our vision with policymakers. The most challenging part of the job is being frustrated by political holdups that prevent policy work from moving forward and get in the way of making progress for animals.

How does the ASPCA work to advance animal protection through the legal system?

In addition to our legislative and regulatory advocacy work to secure better laws, regulations, and other government policies to protect animals, the ASPCA also uses the court system to uphold protections for animals. For example, in the past few years, our Legal Advocacy and Investigations team has filed a series of lawsuits in federal court concerning the USDA's failed programs and policies under the Animal Welfare Act (AWA), and its failure to respond to Freedom of Information Act requests for AWA records.

What advice do you have for aspiring young lawyers interested in animal law?

My advice is simple: start by identifying your skillset and area of interest (Do you enjoy writing and case law research? Then you may enjoy litigation. Do you prefer public speaking and making persuasive, fact-based arguments? Then policy advocacy may be for you), go develop that muscle (and be open to opportunities outside of animal law), then find a role where you can put your skills into practice to help animals. It also helps to become an expert in how policymakers operate, so gaining experience working for a member of congress or an agency can be beneficial. ➤



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The genius of California's _____ 12, and other laws like it, is that they limit sales within the state of these cruelly-produced, dangerous products, and provide a choice to out-of-state producers—continue your dangerous, cruel practices and do not sell in our state, or change those practices and continue to sell in our state.

Project _____ is a first-of-its-kind legal initiative seeking a military veterans' benefit for a nonhuman Marine Corps hero.

_____ represent the most numerous and varied beings on the planet.

Considering that 1.5 million animal species have been identified to date, insects represent roughly _____ of all animal life known to us.

Recent studies have illustrated that invertebrates like _____ and _____, which also lack a central nervous system, can and do feel pain.

_____ is the capacity to perceive and escape potentially harmful stimuli.



Whether a being is sentient implicates more than simply being able to experience and respond to pain, and insects have been observed demonstrating behaviors suggestive of _____ functions.

A study by researchers at The Ohio State University found that Americans' attitudes toward eight historically stigmatized species were significantly more positive in 2014 as compared to 1978. Of these eight species, _____ received the biggest jump—the proportion of people reporting positive attitudes toward this animal increased by 47%.

_____ -washing is the practice of providing misleading claims about the treatment of animals or the conditions in which they are born, raised, or killed.

_____ is virtually always fatal.

A recent study from HARBRI & Michelson Found Animals shares 14% of owner surrenders to shelters are _____ related.

Only about fifty-five percent of landlords allow pets, and approximately _____ - _____ percent of those landlords limit pets based on their breed and size.

Solution on page 48

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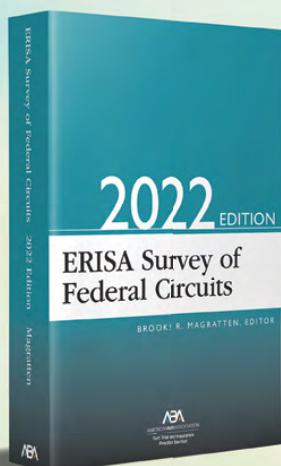
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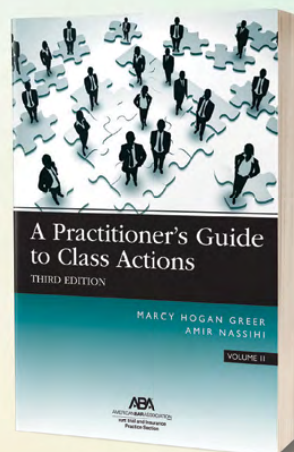
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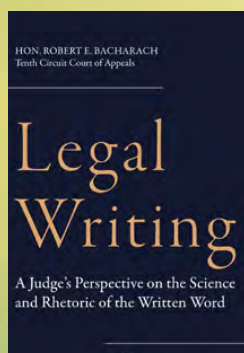
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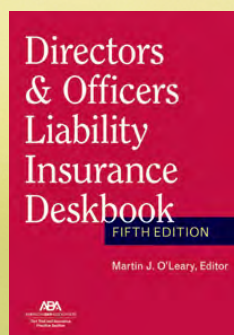
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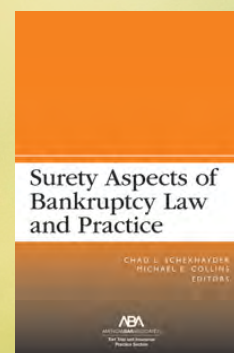
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Jane McBride... Continued from page 1

I'd also like to thank The Brooks Institute for Animal Rights Law and Policy for their generous sponsorship of the award reception. The Brooks Institute for Animal Rights Law and Policy is a US-based national independent think tank pursuing a paradigm shift in human responsibility towards, and value of, nonhuman animals by advancing animal law, animal policy, and related interdisciplinary studies. The Animal Law Committee is incredibly grateful for their continued support and generous sponsorship. And now, Jim will present the award.

Thank you very much, Alex, and thanks also to our chair, Katie Barnett, for the opportunity to present these remarks. It's a great honor to be here today celebrating Jane and her good work and good works.

By: James F. Gesualdi

When we think about this wonderful award that the committee gives and the criteria, we look at things like advancing the practice of animal law excellence and doing so in particular ways, such as organizing an important Animal Law Continuing Legal Education (CLE) program. Certainly Jane has advanced the practice through her professionalism and through projects like forming a truly landmark Animal Law CLE program for the National Judicial College. So she checks those boxes and would be a worthy recipient, just with that program and her professionalism alone.

Then when you think about excellence in promoting legislation that advances the interests of animals, for the last quarter of a century, Jane has done that in an extraordinary way! In her leadership roles in the Illinois Bar Association and its Animal Law efforts, and in founding and leading Illinois Humane, she has made a significant difference there and it has significantly helped protect and save animals. In fact, some of those laws are national models. Over the years, I've touched base with people across the spectrum on animal issues who have respectfully engaged and have great respect for Jane and how she worked with them and different stakeholders. So that is another one of the criteria that she clearly satisfies and exceeds.

The area where she has been most exceptional, however, is one that is almost invisible and yet her efforts went right to the heart of this TIPS section, the heart of the American Bar Association, and the heart of the profession. And that is her leadership and stewardship of this Animal Law Committee. We have been fortunate to have many fine chairs, some here like Joan, Daina, and Chris, who have served with distinction. Others who are on deck like Alex and Molly (Armus). And Jane not only continued the momentum of the Committee in terms of its substantive and forward-looking work on behalf of animals, but she also dedicated a lot of herself in investing in the people that make the Animal Law Committee so special. She



did that in terms of things like infrastructure through getting people more engaged in the subcommittees (which provide great opportunities to get involved and foster professional and leadership development). She did that through enhanced leadership succession planning that has set the Committee up for continued accomplishment and will for many years to come. And I was incredibly blessed to have Jane entrust me with mentoring some of our outstanding young people, including Alex, Lenore Montanaro (another outstanding former Committee Chair), Wildlife Subcommittee Chair Kimberly Fullerton and others. The wonderful thing about that is that just by showing up and letting these really bright, committed young leaders know that someone had their back, helped them move forward with the grace and the strength that they already had and have repeatedly demonstrated. And Jane frankly saw that before most of us did. So, again, it's almost invisible the leadership that she brought to this Committee (though the good results that have manifested through the Committee's work are real).

Beyond the Animal Law Committee and the Excellence in the Advancement of Animal Law criteria, it is also helpful to think in terms of the American Bar Association (ABA) itself. As Daina, Joan, Chris, Alex, Molly, Jane and others know well, the Committee has had to transcend concerns about the "germaneness" of Animal Law resolutions before the ABA House of Delegates. When you think about the work that Jane has done on the Committee, it has furthered ABA goals in dealing with the rule of law and advocating for the profession, professionalism, and ethics especially by helping more people, including the judiciary, become more familiar with Animal Law. Most importantly, Jane's leadership of the Committee provided a model for achieving one of the ABA's four key goals—serving the members. Jane has tirelessly served the members, truly and extraordinarily. She has helped others advance in their careers and work helping animals. The difference she has made for many young animal lawyers makes an even greater difference for the animals themselves and that is why we are all here.

So again, it's a great honor for me to be here today and to help us celebrate, honor, and recognize Jane for her distinguished leadership and her excellence in the advancement of animal law.

Before you are a leader, success is all about growing yourself. When you become a leader, success is all about growing others.

Jack Welch



Acceptance: 2023 Excellence in the Advancement of Animal Law

By: Jane McBride

“This is the first award acceptance presentation where I cried” was a comment made to me by a member of the ABA TIPS staff after my presentation at the award reception. And the bartender said to me, “Congratulations. I listened to your presentation. Thank you for what you do.”

Our stories about our work—and boy do we have the stories—bring home what it is we do, day in and day out. The stories bring tears, and they bring these personal gestures of thanks. “Thank you for what you do” are whispered messages—people stopping me in the halls, security guards pulling me aside after public meetings, public officials sending me private notes. Thank you for what you do.

Over 20 years of cruelty and neglect work, entailing investigations themselves and support of prosecutions, as well as securing the medical and behavioral recovery of the victims of these cases and critical intervention for local animal control intakes; nearly as many years putting heart and soul into CLE programming, and spending many, many, many hours on advocacy work including state legislation, has allowed me to contribute what I could to the advancement of animal law. After all, that is all we ask, is it not—how can we help? Fortunately, as lawyers, we are in a profession that can make a significant impact.

I accept this award with great gratitude. It is recognition from colleagues, colleagues who do amazing work every day.

We are in debt to the Bar associations for being the vehicles that bring us together, and that serve as a source of great support. That is, support in a big picture way, but also from our individual Bar colleagues—often they too, be they in whatever practice area, pull us aside and in muted tones say “thank you for what you do”.

All three of the Bar associations in which I have been active—the ABA, Illinois State Bar and Chicago Bar—value the practice of animal law. The Bar association is a locus for fellow practitioners to collaborate, support each other in their practice highs and lows, and be there for each other when the work gets a tad overwhelming. Bar association activity itself is, in all manner of formats, a platform for the advancement of the law—CLEs, the ABA TIPS Animal Law’s great newsletter, networking that promotes careers, and collaboration in the law. That is why any and all time dedicated to strengthening the foundation of our Bar Association animal law committees is so worthwhile and why I was honored to be able to contribute what I could while serving as chair of the ABA TIPS Animal Law Committee.



Much of my time as Chair was dedicated to Committee introspection. We were facing a leadership crisis and needed to get our younger attorneys in position to take on leadership roles quickly. We undertook some structural work, and I recruited mentor extraordinaire Jim Gesualdi (the 2019 Excellence Award recipient) to work with the individual young attorneys who were coming up through the Committee. As suspected, the young attorneys coming into leadership not only succeeded, but exceeded our greatest hopes for them. Just to see them take the reins so well and not only maintain the Committee's functions but strengthen its functioning, has been incredibly rewarding.

These very same young attorneys were instrumental in my nomination for the award. Lenore Montanaro, who pushed the envelope of model Committee chairmanship herself in 2020-2021, teaches animal law at Roger Williams University School of Law, Bristol, Rhode Island, and has a growing resume of scholarship and speaking engagements on the topic of animal-based research, its limitations, and the evolution toward the 3Rs (reduction, replacement, refinement). Rebecca Crister, equally dedicated to the topic of animal-based research, is currently a post doc fellow at John Hopkins working with leading researchers in this area of advocacy. Kim Fullerton has dedicated many of her pursuits to the intersection of animal law and wildlife conservation and given the Committee a window into some of the most highly respected international efforts that are part of her personal network. And Molly Armus, currently in the Committee's leadership succession, is a very successful state director for HSUS. My nomination was also supported by the very skilled and talented Fran Ortiz, who succeeded me as Committee chair and who I came to deeply appreciate for her legal talent and professional acumen. She is a valued friend.

The Committee's current chair, Katie Barnett, has shown us all how to establish and maintain a very successful animal law practice. She is now adding associates and continues to build. She has deepened her expertise in animal shelter law, which is so very crucial to the world of animal welfare. Alex Cerussi, who will be taking the reins as Chair this August has been an extremely dedicated Committee member, working within the leadership succession for many years now, stepping in, in many roles, to make it all work. Alex has had a steadfast advocacy role with Mercy for Animals. "Steadfast" isn't ever easy in advocacy. Alex and Molly Armus have worked as a dedicated pair, both taking on important tasks, often together. The building of this sort of common institutional knowledge of the workings of the Committee is important.

I thank all of my colleagues who I have met via the Committee, for the incredible experience of the impact of their work. I would like to highlight two, who are



also recipients of this recognition in past years, as examples of the continuing advancements these people are involved with. Bruce Wagman, on May 4, was waiting for a US Supreme Court decision in a case for which he served as lead counsel of record—the California Prop 12 case. [The decision came down within the next couple of days. Bruce had won yet another case.] And Ledy VanKavage, who at the moment of this reception, is monitoring a vote in the Illinois statehouse that was based on a model she and Fran Ortiz developed working with the National Association of Insurance Legislators. [The bill passed prohibiting homeowners insurance breed discrimination in Illinois.]

In closing, it is only appropriate to acknowledge those who inspire us the most. That is, the animals themselves. Their innocence and resilience.


I wish to acknowledge Ren, a dog who came to us with a severe fracture in a hind leg and the other three legs degloved. The injury was the result of a household repeatedly neglectfully creating situations where their dogs got into horrendous fights. We put together the case and referred it to the local State's Attorney. But the immediate need when Ren came to us was her life. The fractured hind leg had to be amputated. It was a miracle of medicine she came out of shock and survived. And it is a miracle of the work of one of Illinois Humane's foster homes that Ren today is dock diving, using the remaining hind leg to achieve ever increasing distances.

Another inspiration is Chunk the community cat who lived in the neighborhood with a terribly injured front left leg. Four households were feeding him. He survived in that condition for two years, sometimes looking worse for the wear than others. For those two years, all four households individually tried to trap him to get him care. He was not to be fooled by a trap. Finally, the four households joined forces, and lured him into a large crate.

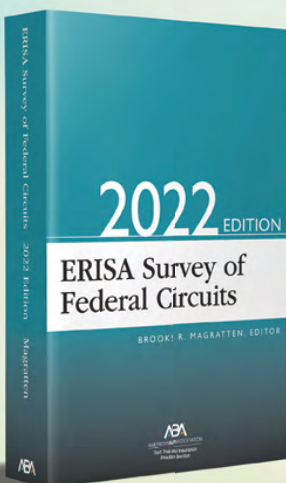
The same veterinarian who saw to Ren's recovery accepted the care of Chunk. Chunk had no skin left, literally, on the majority of that leg. All you could see is the muscle tissue. He is a community cat, that is, he is fractious. Every time the veterinarian needed to handle him, she had to work with a sedation box. The doctor opined the wound was caused by Chunk being hit by a car. There was a fracture, too old to treat at this point. One of the households agreed to keep Chunk as an inside cat, they had capacity to maintain a fractious kitty. All of his parameters showed perfect health, amazingly so, and Chunk had proven his resilience. So, rather than amputate, the decision was made to attempt wound management. The wound granulated but there just was not enough healthy skin to close the wound. Skin grafts would be required. The skin grafts held, and Chunk continues his road to recovery. His vet always says it is the animals who are the ones who pull through. I suggest to her, I view it as a team, she and the animals.



Looming in the background of these stories, someone had to create the legal framework to do this work, and that is where the lawyers come in. As lawyers, we are here to continually grow the framework in society to provide the proper treatment of animals—to grow the capacity of the animal welfare world as a safety net for animals in our communities, to advance animal protection laws, to dive deep into the confounding and often unnecessary utilization of animals in our cultures, to continually raise the questions and advance the law.

This award puts a spotlight on this work. I am deeply grateful for this moment in the spotlight. 

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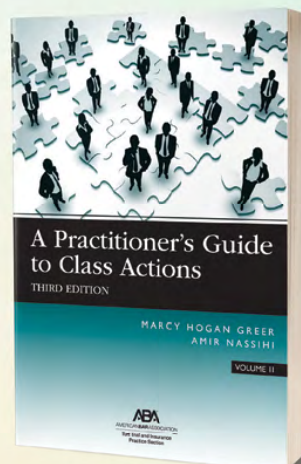
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And Pigs... Continued from page 14

the animals in such crates for the majority of their lives. Proposition 12 defines “confined in a cruel manner” to mean situations where the covered animals are prevented from “lying down, standing up, fully extending [her] limbs, or turning around freely.”⁴ The law also requires that products sold in California come from animals that have access to the modest amount of usable floor space set out in the statute.⁵

Imagine yourself as a pregnant pig before and after the enactment of Proposition 12: previously you could not move, and metal bars pressed against you on both sides and sat inches from your head and back feet. Now, because of this law, during your life you have the ability to move about, to scratch, and to experience the environment around you with a new perspective. No price can be placed upon that new version of life, and I think any of us—whether we eat animal products or not—can see the incredible value, for each and every pig (and every chicken and veal calf) who is impacted. The animals who will experience a new life number in the millions each year. In that way Proposition 12 marks a monumental shift, and the cumulative effect for animal welfare cannot be overstated. In essence, Proposition 12 embodies the call of animal law—to use the law with all of its promises and limits, and make life better for those species with whom we share the planet.



Gestation Crate

Proposition 12 touched not only on the cruelty inherent in current practices, but on the danger to human health caused by those same practices. In one amicus brief, nearly 400 veterinarians and animal welfare scientists signed on to an amicus brief that agreed with the obvious cruelty and potential for disease in such a situation.⁶ And a group of public health organizations filed a separate brief attesting to the frightening potential for food safety risks and human disease outbreak based on the conditions in such housing.⁷ In contrast, the pork industry said their practices were good for the pigs, and good for human health, and literally asked if anyone had asked the pig if she wanted to turn around.

The Supreme Court’s response to this debate, under the applicable legal standards, was that Proposition 12 does not run afoul of the federal Constitution’s “dormant Commerce Clause”. And as far as trailblazing cases go, it is notable that *NPFC* is the first Supreme Court opinion to rule in favor of a law written with the goals of protecting animals and limiting our collective complicity in mass animal cruelty, and a law that promotes the equally important goals of protecting food safety and preventing the



outbreak of disease. The prescient drafters of Proposition 12 recognized—before the pandemic—the real potential for human harm connected to practices where animals are raised in egregious conditions of intensive confinement. The entire history of Proposition 12, and prior similar laws, as well as the *NPPC* opinion itself, establish animal law as a field that considers the protection of all sentient beings, and establishes an important step forward for the world. Simply put, *NPPC* is one of the biggest animal law cases, ever.

The genius of Proposition 12, and other laws like it, is that they limit sales within the state of these cruelly-produced, dangerous products, and provide a choice to out-of-state producers—continue your dangerous, cruel practices and do not sell in our state, or change those practices and continue to sell in our state. And for those pigs whose products are sold in California and other states with similar laws and who are owned by out-of-state corporations, their world has just changed. Large industry corporations have responded in a positive way to this path. In fact, the Supreme Court cited industry amicus briefs hailing the “opportunities” Proposition 12 affords them and others while noting “that even some large vertically integrated processing firms have already begun to modify (or else have indicated their intention to modify) their operations to comply with Proposition 12.”⁸

Proposition 12—voted into law overwhelmingly by Californians—is a clear reflection of voters’ conviction that animals should be able to engage in the basic behaviors of turning around without hitting a cage or another animal, and stretching one’s limbs (or wings, for chickens). Moreover, complying with such standards doesn’t require any radical reconception of our use of animals, doesn’t demand rights for them, and doesn’t otherwise break the hard-set mold of our relationship with animals in our society. But to an animal who would otherwise never take more than a couple of steps forward and backward in a barren crate, Proposition 12 is everything. And it provides just a modicum of humane treatment for animals that sacrifice so much for us.

The Lawyers

They say “it takes a village”, and Proposition 12 really took much more than that—it took a national collection of individuals and organizations supporting a market shift in this area. But at its core, the trip from conception to execution and support of Proposition 12, through the courts and to the recent decision in D.C., was designed and directed, managed, and monitored, and ultimately won, by the Animal Protection Law division of The Humane Society of the United States (APL). Many other animal welfare organizations, and other departments of HSUS,



as well as thousands of individuals, all contributed significantly to the success in Washington, but the team of lawyers at APL have been a driving and integral force at every step of the way, for more than fifteen years, and deserve much of the credit for this victory.

From a big picture perspective, and as a model for all animal lawyers, APL's efforts in this area present a playbook for those who want to win big for animals. But do not try this at home and alone—this kind of work can only be done by dedicated teams of lawyers and others, at nonprofit groups or law firms interested in the work, with the experience and ability to consider these kinds of problems on multiple levels. The farm animal campaigns that APL has successfully supported demonstrate a winning solution for approaching global problems, and for challenging and changing our views with respect to the treatment of animals—those we love, and those we eat, in equal measure. The effort was determined, carefully planned, and scrutinized at every step of the way with the goal of moving the ball forward for animals and people. In fact, *NPPC* was only the latest in a series of cases—including those reviewing laws written by APL and defended by them in litigation—that addressed not only the suffering of pigs in gestation crates, but also of egg-laying hens⁹; of ducks and geese subjected to the force-feeding practices required to produce *foie gras*¹⁰; of sharks who had their fins brutally amputated before being thrown into the ocean to suffer and die¹¹; and of horses who had previously been subject to horrific suffering in American slaughterhouses.¹² With each case, APL notched a victory that improved the lives of animals, impacted the way Americans thought about their food, and moved the jurisprudential needle one step further forward for the animals.

The APL team could not have been at the center of this victory without fully understanding current public opinions about animals, and the state of the law reflecting those sentiments, the horrifying specifics of the underlying mistreatment of those animals, and what politically and legally feasible steps they could take to address that situation. The *NPPC* decision is a lesson in courage and execution to all animal lawyers wishing to make lasting change, and it is perhaps most momentous because the decision unequivocally proved the wisdom of the concerted, careful, and cautious step-by-step approach to addressing the issues of humans' relationship with the animals they eat. The fight is far from over (other challenges to Proposition 12 are currently pending), but at this juncture the "eyes on the prize" approach, and the excellent lawyering all the way through, demands recognition. This is how animal lawyers change the world. ➤



Endnotes

- 1 BOB DYLAN, *THE TIMES THEY ARE A-CHANGIN'* (Columbia Records 1964).
- 2 *National Pork Producers Council v. Ross*, 143 S. Ct. 1142, 2023 WL 3356528 [hereinafter *NPPC*].
- 3 California Health & Safety Code § 25993.1.
- 4 *Id.* § 25991(e)(1).
- 5 *Id.* § 25991(e)(2)-(5).
- 6 Brief Of [378] Animal-Welfare Scientists And Veterinarians as Amici Curiae, *NPPC*, 143 S. Ct. 1142 (Aug. 15, 2022).
- 7 Brief of American Public Health association, Infectious Diseases Society of America, Center for Food Safety, et al., *NPPC*, 143 S. Ct. 1142 (Aug. 15, 2022).
- 8 *NPPC*, 2023 WL 3356528 at *14 n.3 (also flagging public statements to the same effect from some of the nation's largest meat companies, including Hormel, Smithfield, Tyson and Cargill).
- 9 Five unsuccessful cases were brought challenging two laws that predated Proposition 12 but had overlapping behavioral requirements for in-state production, and similar sales prohibitions to Proposition 12, for egg-laying hens. See *JS West Milling Co., Inc. v. State*, No. 10-CECG-04225 (Cal. Super. Ct. Oct. 14, 2011); *Ass'n of Calif. Egg Farms v. State*, No. 12-CECG-03695-DSB (Cal. Super. Ct. Aug. 22, 2013); *Cramer v. Harris*, 591 F. App'x 634 (9th Cir. 2015); *Missouri ex rel. Koster v. Harris*, 847 F.3d 646 (9th Cir. 2017); *Missouri v. California*, 139 S. Ct. 859 (US 2019).
- 10 The challenges to the foie gras law included three Ninth Circuit opinions, and the most recent decision was the Supreme Court's denial of the final *certiorari* petition. *Association des Éleveurs de Canards et d'Oies du Québec v. Bonta*, 33 F.4th 1107 (2022), *cert. denied*, 2023 WL 3571483 (May 22, 2023).
- 11 *Chinatown Neighborhood Ass'n v. Brown*, 2013 WL 60919 (N.D. Cal. Jan. 2, 2013), *aff'd* 539 F. App'x 761, 762 (9th Cir. 2013).
- 12 *Cavel Int'l, Inc. v. Madigan*, 500 F.3d 551 (7th Cir. 2007) (upholding Illinois law prohibiting horse slaughter for human consumption); *Empacadora de Carnes De Fresnillo, S.A. De C.V. v. Curry*, 476 F.3d 326 (5th Cir. 2007) (same; Texas law).

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The Existential... Continued from page 15

principal engineers of our life-sustaining ecosystems.¹¹ For example, in the forests of Central and South America, leafcutter ants industriously harvest vegetation to feed the fungi that they, in turn, consume; in doing so, the millions of ants per colony return vital nutrients to the soil that help keep the ecosystem alive.¹² Though rarely seen, the massive influence of insects surrounds us: from aerating the soil to pollinating fruit and flowers, from breaking down organic matter to constituting the primary source of food for species along the trophic chain.¹³ Speaking to their little-seen yet out-sized impact, Wilson notes, “If human beings were not so impressed by size alone, they would consider an ant more wonderful than a rhinoceros.”¹⁴ Given their import, voices have increasingly begun to echo Wilson’s call to protect these “little things that run the world.”¹⁵



*Perilampid Parasitic Wasp
(Credit: US Geological Survey)*

Far from being a possibility, the world is already on the precipice of what some regard as the “Insect Crisis” and which others frame more direly as the “Insect Apocalypse.”¹⁶ Given the inherent difficulty in counting insects, their decline has been measured not in terms of individual beings but in biomass. In studies charting declines across Europe from 1989 to 2016, for example, the total loss has reached 75%, with this percentage jumping to 82% during times of peak activity.¹⁷ To be sure, the harms insects face stem from the use of targeted and non-targeted insecticides, urban expansion, habitat destruction, climate change,¹⁸ and numerous forms of pollution: air, water, and soil—not to mention noise and light.¹⁹ Given the principal roles insects play in propping up entire ecosystems, whether it is more accurate to call what they face a “crisis” or “apocalypse,” what is clear is that insects are not facing it alone. Indeed, our world does not simply happen to *overlap with* but rather *is* the insectiverse—and it is not the insects who need us in it, it is we who need the insects.

From Insectiverse to Individuals: Contemplating Insect Well-Being

While eco- and anthropo-centric rationales have animated calls to reverse the staggering decline in insect numbers, the push to advance their interests as individuals has lagged far behind. As with other invertebrates, science has had to interrogate its historically blinkered view that they lack the capacity to feel pain, among other markers of sentience, in order to justify extending welfare considerations to them.²⁰ Recent studies, however, have illustrated that invertebrates like cephalopods and crustaceans, which also lack a central nervous system, can and do feel pain.²¹ In response, jurisdictions like the U.K. have enshrined their sentient status into law, with legal protections ostensibly flowing from this affirmation.²² What these studies attest to, then, is that the ‘gift’ of sentience is not restricted to one or the other side



of the vertebrate-invertebrate divide. Despite the difficulty in studying insects due to their anatomy, diversity, and lack of sufficient data into their behavior,²³ evidence that they not only feel pain but also possess other markers of sentience has taken root and begun to grow.

Although the issue has not been definitively settled, studies strongly suggest that insects feel pain in many of the same ways that we as humans do, despite the difference in our circuitries. As noted earlier, the U.K. recently affirmed that crustaceans were capable of feeling pain.²⁴ Grounding this determination were studies determining that crabs and lobsters possessed 5 out of 8 foundational markers of sentience, which included elements such as analgesia preference and nociception, or the capacity to perceive and escape potentially harmful stimuli.²⁵ By comparison, cockroaches, termites, flies, and mosquitoes have satisfied 6 of these 8 elements—doing so with a high level of confidence.²⁶ One study looking specifically at nociception in fruit flies observed that they appeared to experience neuropathic pain, or pain from otherwise innocuous inputs after having suffered an injury to a particular part of their body.²⁷ This neuropathic response was not merely a local reflex, the study's authors argued, but attested to higher-order cognitive functioning thought to be unique to vertebrate animals.²⁸ Again, what the study suggests is that insects can feel pain not only in the classic sense but also in terms of chronic pain, an indicator of complex cognitive functioning.

Of course, whether a being is sentient implicates more than simply being able to experience and respond to pain, and insects have been observed demonstrating behaviors suggestive of metacognitive functions. For example, ants are able to recognize themselves in mirrors, with ants in one study using their forelegs to wipe a blue dot on their head when passing before their reflection.²⁹ Notably, animal advocates have argued that species that are able to 'pass' the MSR, or mirror self-recognition test, "often have some or all the elements of a theory of mind, understand symbols, use a sophisticated language or language-like communication system, and may deceive, pretend, imitate, or solve complex problems" and thus demonstrate a level of autonomy generally "sufficient for basic liberty rights."³⁰ Beyond the MSR test, studies indicate that some insects have the ability to count, solve puzzles, engage in intrinsic play, and learn new skills—despite having a drastically different brain structure from humans and other primates.³¹ Again, what these studies attest to is that a mere or even drastic difference in circuitry should not be cited as evidence of the absence of cognitive abilities,³² the capacity to feel pain, or other markers of sentience historically reserved for humans. Although the question is still being debated by the scientific community, the existing evidence of insect sentience should incline leaders, policymakers, and advocates to contemplate the well-being



of insects—especially given that they are commodified in many if not the same ways as other animal species.

To be sure, the breadth and depth of insect exploitation is staggering. To produce silk, the clothing industry bakes or boils alive between 400 billion and 1 trillion silkworms each year;³³ to produce carmine, a dye used for fabrics, between 4 and 21 trillion cochineal nymphs are crushed or starved to death.³⁴ Insects are also used for research and testing purposes, with fruit flies among the most preferred animal models due to their low cost of production and comparatively short lifespans.³⁵ Having also long been sold as live food for insectivorous pets, as well as killed to create food dye,³⁶ insects are increasingly being integrated into the human food chain—both as livestock feed for chickens, pigs, and, increasingly, fishes, and direct consumption.³⁷ As to the former, insects are now being touted as a more natural, protein-rich livestock feed, replacement for fishmeal, and sustainable food source, with proponents making the case that insects can be fed food waste, byproducts, and manure—although the scalability of such enterprises remains questionable to say the least.³⁸ With respect to the latter, the U.N. Food and Agricultural Organization, alongside industry, is actively promoting insect consumption,³⁹ whether in powdered or whole form, with culturally specific campaigns being designed to entice consumers to overcome their initial hesitation, even repulsion, to our historical entomophagy, or consumption of insects.⁴⁰ As with other industrial agriculture operations, however, the animals themselves, who are born into cramped, unsanitary conditions, go unseen. Across entomic farming operations, between 370 to 430 billion crickets and grasshoppers and 190 to 300 billion black soldier fly larvae are frozen to death or shredded alive annually.⁴¹ As difficult as these numbers may be to fathom, they are only expected to increase with consumer interest and demand.⁴² Absent welfare laws tailored to their interests, the systemic harms insects face is poised to go unchecked, as well as dramatically increase with time.

Incorporating Insects into the Animal Protection Movement

Although numerous eco- and anthro-centric arguments exist for conserving insect populations globally, protecting these historically out-of-sight, out-of-mind yet increasingly commodified beings for their own sake arguably represents the next and perhaps final frontier of the animal law movement. Furthermore, with one of the measures of human kindness being whether one would or wouldn't hurt a fly—long thought to constitute the most insignificant form of animal life—it is worth noting how the test has historically subverted itself given the skepticism that flies can even feel pain and thus be harmed. Yet the growing evidence to the contrary presents advocates with a unique opportunity to challenge the world to reassess its moral



underpinnings. And while it is unlikely that insects will realize the same visibility enjoyed by other species, it is no longer the case that they should be regarded as the fly in the proverbial ointment. Rather, it is the prospect of their conscientious inclusion in the movement that advocates might engender a more holistic, more robust animal rights paradigm. ➤

Endnotes

- 1 *Numbers of Insects (Species and Individuals)*, SMITHSONIAN, <https://www.si.edu/spotlight/buginfo/bugnos>.
- 2 Don P A Sands, *Important issues facing insect conservation in Australia: now and into the future*, 57 AUSTRAL ENTOMOLOGY 150, 150–172 (2018).
- 3 Parvaiz Anwar Rather & Iffat Hassan, *Human Demodex Mite: The Versatile Mite of Dermatological Importance*, 59.1 INDIAN J. DERMATOL. 60, 60–66 (2014). Notably, some scholars contemplate the term “insects” in an informal sense to include animals such as mites. ANNE SVERDRUP-THYGESON, EXTRAORDINARY INSECTS 36–37 (trans. Lucy Moffatt, 2019) (observing that many other invertebrates, such as spiders, mites, and springtails, among others, are often included, if informally, within the umbrella term of “insects”). That said, this article employs the term in its proper taxonomical sense unless specified otherwise.
- 4 See *infra* “From Insectiverse to Individuals: Contemplating Insect Well-Being.”
- 5 Damian Carrington, *A Car ‘Splatometer’ Study Finds Huge Insect Die-Off*, WIRED (Feb. 17, 2020), <https://www.wired.com/story/a-car-splatometer-study-finds-huge-insect-die-off>.
- 6 *Numbers of Insects*, *supra* note 1.
- 7 *Id.*
- 8 *Id.*
- 9 *Id.*
- 10 E.O. Wilson, *The Little Things That Run the World (The Importance and Conservation of Invertebrates)*, 1.4 CONSERVATION BIOLOGY, 344, 344–46 (1987).
- 11 *Id.* at 344.
- 12 *Id.*
- 13 Dave Goulson, *The insect apocalypse: ‘Our world will grind to a halt without them’*, THE GUARDIAN (Jul. 25, 2021), <https://www.theguardian.com/environment/2021/jul/25/the-insect-apocalypse-our-world-will-grind-to-a-halt-without-them>.
- 14 Wilson, *supra* note 10, at 345.
- 15 *Id.* at 344; see Goulson, *supra* note 13 (calling for improved protections for insects and their habitats).
- 16 OLIVER MILMAN, THE INSECT CRISIS: THE FALL OF THE TINY EMPIRES THAT RUN THE WORLD (2022); DAVE GOULSON, SILENT EARTH: AVERTING THE INSECT APOCALYPSE (2021).
- 17 See Goulson, *supra* note 13.
- 18 *Id.*
- 19 Bridget Katz, *Noise Pollution Impacts a Wide Range of Species, Study Finds*, SMITHSONIAN MAG. (Nov. 22, 2019), <https://www.smithsonianmag.com/smart-news/noise-pollution-impacts-wide-range-species-study-finds-180973635>; Jason Daley, *The Devastating Role of Light Pollution in the ‘Insect Apocalypse’*, SMITHSONIAN MAG. (Nov. 25, 2019), <https://www.smithsonianmag.com/smart-news/light-pollution-contributes-insect-apocalypse-180973642>.
- 20 Natalia Mesa, *Do Invertebrates Have Emotions?*, THE SCIENTIST (May 26, 2022), <https://www.the-scientist.com/news-opinion/do-invertebrates-have-emotions-70067> (“Decades ago, scientists and lawmakers had all but reached a consensus that invertebrates could not feel pain, let alone other emotions like joy or fear. Recently, however, evidence is mounting that invertebrates are more than just reflexive beings.”).
- 21 *Id.*
- 22 *Id.*
- 23 M. Barrett et al., *Welfare considerations for farming black soldier flies, Hermetia illucens (Diptera: Stratiomyidae): a model for the insects as food and feed industry*, 9.2 J. OF INSECTS AS FOOD AND FEED 119, 120 (2023).
- 24 Mesa, *supra* note 20.
- 25 Matilda Gibbons, et al. *Can insects feel pain? A review of the neural and behavioural evidence*, 63 ADVANCES IN INSECT PHYSIOLOGY, 155, 155–160 (2022).
- 26 Meghan Barrett, *Short Research Summary: Can insects feel pain? A review of the neural and behavioural evidence by Gibbons et al.* 2022, EFFECTIVE ALTRUISM (Nov. 22, 2022), <https://forum.effectivealtruism.org/posts/yPDXXxdek9cgCfLwj/short-research-summary-can-insects-feel-pain-a-review-of-the> (For the study, the 8 criteria used to evaluate the prospect of invertebrate sentience were: “1) nociception; 2) sensory integration; 3) integrated nociception; 4) analgesia; 5) motivational trade-offs; 6) flexible self-protection; 7) associative learning; and 8) analgesia preference.”).
- 27 Thang M. Khuong et al. *Nerve injury drives a heightened state of vigilance and neuropathic sensitization in Drosophila*, 5 SCI. ADV. 1, 1–2 (2019).
- 28 *Id.* at 3.
- 29 Marie-Claire Cammaerts & Roger Cammaerts, *ARE ANTS (HYMENOPTERA, FORMICIDAE) CAPABLE OF SELF RECOGNITION?*, 5 J. OF SCI. 521, 526–527 (2015).



- 30 Steven Wise, *Animal Rights, One Step at a Time*, ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS, 1, 33–34 (Cass R. Sunstein & Martha Nussbaum, eds., 2005).
- 31 Lars Chittka, *Bee cognition*, 27 CURRENT BIOLOGY R1037, R1052–R1053 (2017).
- 32 *Id.*; Hiruni Samadi Galpayage Dona, *Do bumble bees play?*, 194 ANIMAL BEHAVIOUR 239, 243 (2022).
- 33 Abraham Rowe, *The scale of direct human impact on invertebrate*, RETHINK PRIORITIES (Sept. 2, 2020), <https://rethinkpriorities.org/publications/the-scale-of-direct-human-impact-on-invertebrates>.
- 34 *Id.*
- 35 Barbara H. Jennings, *Drosophila – a versatile model in biology & medicine*, 14 MATERIALSTODAY, 190, 190 (2011).
- 36 Rowe, *supra* note 33.
- 37 Giovanni Sogari et al., *The Potential Role of Insects as Feed: A Multi-Perspective Review*, 9.4 ANIMALS (BASEL) 1, 1–2, 9 (2019).
- 38 *Id.* at 2.
- 39 Arnold van Huis et al., *EDIBLE INSECTS: FUTURE PROSPECTS FOR FOOD AND FEED SECURITY*, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS ix (2013).
- 40 See e.g., Tienieke Kröger et al., *Acceptance of Insect-Based Food Products in Western Societies: A Systematic Review*, FRONTIERS IN NUTRITION 8 (2021), at 1–2 (stating that the “present paper is designed to serve as an orientation for practitioners in the food industry and provides information useful for the design of marketing strategies and target group-oriented product development” and speaking to the authors’ desire to “improve the understanding of the acceptance of insects as food in Western societies.”)
- 41 *Crickets and Grasshoppers*, INVERTEBRATE WELFARE, <https://www.invertebratewelfare.org/animals/crickets-and-grasshoppers>; *Black Soldier Flies*, INVERTEBRATE WELFARE, <https://www.invertebratewelfare.org/animals/black-soldier-flies>.
- 42 Kröger et al., *supra* note 40, at 2.

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A Dystopian... Continued from page 16

declared that non-human animals are rights holders.¹¹ The case led to the liberation of Kaavan, “The world’s loneliest elephant,” from 30 years of prison at the Islamabad Zoo. Because Islam is a substantive part of the Pakistani Constitution,¹² the Islamabad Court heavily relied on the Quran as a source of Islam to declare Kaavan’s solitary confinement in the Islamabad Zoo as a violation of Islam. They ordered Kaavan released to an elephant wildlife sanctuary in Cambodia. The judgment, under Islamic Law, also led to a complete closure of the Islamabad Zoo, releasing animals to respective sanctuaries with appropriate habitats.¹³



Stray Dog (Credit: Ioan-Dan Plesa)

Another result of this case was the formation of a dog population management board as a special wing of the Islamabad Wildlife Management Board. While the Board is still developing its plan, in 2021 it issued an Islamabad-wide order banning stray dog shootings.¹⁴ Instead, the Board actively advocates for non-lethal dog population control measures such as the trap-neuter-vaccinate-return model.

Unfortunately, due to the Eighteenth Amendment, the Kaavan case is only binding on the Islamabad High Court as the case originated at this court.¹⁵ However, the judgment still holds persuasive value for other High Courts.¹⁶ This has fortunately led to improved companion animal law protections in other provinces.¹⁷

Punjab Dog Birth Control Policy 2022

In Lahore, the *Animal Birth Control Policy (Dogs) 2021* was drafted in May 2021 by the Government of the Punjab, Livestock & Dairy Development Department.¹⁸ It was notified as law in April 2022.¹⁹ This policy was created per the decision of the Honorable Lahore High Court in the case of *Hamza Khan v. Province of Punjab* in 2020.²⁰

The scope of this policy is to deal with stray and feral dogs, which pose serious human health, animal health, and welfare problems. The policy states that stray dogs are mercilessly culled in Punjab, and there is a need to mold human behavior to curb this inhumane practice, citing the World Organization of Animal Health principles of controlling dog populations without causing unnecessary or avoidable animal suffering.²¹ It also directs veterinary services to play a role in preventing the spread of zoonotic diseases.



The guiding principles of the policy are:

1. The promotion of responsible dog ownership to significantly reduce the number of stray dogs and the incidence of zoonotic diseases;
2. Reduction of the dog population, if required, by techniques involving chemicals or surgical procedures;
3. Reduction in incidences of dog bites and rabies;
4. The promotion of changes in human behavior towards stray dogs.²²

The policy's implementation mechanism includes forming a committee at every level in the province of Punjab.²³ The committee includes members of the Livestock Department, the local government, and a member of the Punjab Society for the Prevention of Cruelty to Animals (SPCA).²⁴ These high-powered committees plan and implement humane dog birth control policy methodologies. Planning will involve, but is not limited to, establishing a sufficient number of dog pounds, training catchers and veterinarians, finding suitable land for building dog shelters, conducting stray animal surveys, and creating public awareness.²⁵

Additionally, as this is merely a policy, rule-making by appropriate regulatory authorities must still take place to enforce the policy's legal intent. The policy provides the following regulatory roadmap for rule-making authorities:

A regulatory framework that helps the authorities to establish successful dog control programs shall include the following key elements:

- a) registration and identification of dogs and licensing of dog breeders;
- b) vaccination against rabies and other preventive measures against zoonotic disease, as appropriate;
- c) veterinary procedures (e.g., surgical procedures);
- d) control of dog movement (national and international);
- e) control of dangerous dogs;
- f) regulations on the breeding and sale of dogs;
- g) environmental controls (e.g., abattoirs, rubbish dumps, dead stock facilities);
- h) regulations for dog shelters;
- i) regulations for adoption procedures for dogs available in shelters;
- j) animal welfare obligations of owners and authorities.²⁶



In pursuance of this policy, on May 24, 2021, the Metropolitan Corporation Lahore Authority issued a notification for banning the unnecessary destruction/culling of stray dogs until it becomes dangerous to the general public.²⁷ This notification triggered the need to develop a dangerous dog policy, which has yet to be done.

Dog Fighting

Dog fighting is a menace currently on the rise in Pakistan. Similar to dog culling, dog fighting is also Un-Islamic.²⁸ However, no litigation attempts to ban dog fighting using Islam have been made. A notorious flyer was across the news in Punjab for a proposed dog fighting event in January 2023.²⁹ This dog fight was eventually stopped due to the involvement of the Punjab SPCA.³⁰ The SPCA filed an application on January 18, 2023 to the Inspector General of Police for Punjab to take notice of the January 25th dog fighting event. The SPCA application cited numerous dog fighting competitions across Punjab and strongly urged the police to stop this crime. The police stepped in, successfully stopped the dog fight, and saved the lives of countless dogs. Legally, dog fighting is inflicting an animal with unnecessary pain and suffering under Section 3 of the PCA Act of 1890; however, given that time was of the essence, an application from the SPCA was an effective in-time solution for the police to mediate and stop the crime.³¹

Street Dogs in Veterinary Research

In June 2022, several news articles went viral which alleged a veterinary institution in the vicinity of Islamabad was picking up stray dogs and experimenting on them as a part of their Doctor of Veterinary Medicine curriculum.³² In response to the allegations, a spokesperson for the university first admitted they were picking up unvaccinated stray dogs from the streets who did not have a rope around their necks to evidence human ownership. The university also stated that stray dogs are dangerous to human life. As the news of the stray dogs being tortured in veterinary institutions made international headlines, People for the Ethical Treatment of Animals (PETA) reached out to the Pakistani Prime Minister's Strategic Reforms Unit, implementing landmark reforms to ban tests and surgeries on live animals.

One exception to the Eighteenth Amendment rule regarding animal welfare is that the federal government has a dedicated Pakistan Veterinary Medical Council (PVMC),³³ and can make laws concerning veterinary research that will apply across



the country. In consultation with PETA, the Islamabad Federal Territory introduced landmark animal welfare in veterinary research reforms, which included:

1. A ban on all live animal testing;
2. Establishment of an Islamabad-wide animal cruelty hotline;
3. A ban on shooting and poisoning of animals;
4. Creation of policies on pet shop regulations and standards.³⁴

The ban on all live animal testing went into effect in 2022, ultimately stopping veterinary universities from committing such an atrocious crime.³⁵

Another notable development is the creation of Pakistan's first animal welfare curriculum, for students below fifth grade. This special curriculum, designed to educate children on animal rights, was announced by the Federal Education Minister on December 9, 2022, in honor of International Animal Rights Day.³⁶

Conclusion

While money can help buy a dog, only love will make him wag his tail. Traditionally Pakistan has considered dogs as valueless animals to be culled in the most inhumane manner. However, in the last three years, the picture has drastically changed, with love for dogs on the upswing nationwide. Earning a dog's love is one of life's greatest pleasures, and Pakistan must keep this growing movement for companion animal welfare alive for generations to come. A few solutions to achieve this goal include a) the development of more animal welfare courses for children at all school levels, b) a dangerous dog board policy for ending dog discrimination, c) introducing pet-friendly housing initiatives, d) drafting better animal welfare laws, and e) filing more public interest litigation. Other initiatives include the formation of SPCAs and the promulgation of animal welfare laws across all provinces. For the sake of our furry friends, the trajectory appears to be positive for now. ➤

Endnotes

- 1 A Mass Culling of Strays in Pakistan: 25,000 Dogs Expected to be Killed in the Next Few Weeks, OIPA International Writes to the Prime Minister, ORGANIZZAZIONE INTERNAZIONALE PROTEZIONE ANIMALI, (Mar. 30, 2021), <https://www.oipa.org/international/stray-dogs-pakistan-mass-culling/>; Rimal Farrukh, *Toddler Dies After Eating Poisoned Sweets Meant For Killing Stray Dogs*, VICE NEWS (Dec. 17, 2021, 5:11am), <https://www.vice.com/en/article/k7wzze/toddler-dies-poisoned-laddu-dog-culling-karachi-pakistan>.
- 2 A Mass Culling, *supra* note 1.
- 3 Nicole Cosgrove, *10 Pakistan Pet Ownership Statistics to Know: 2023 Update*, PETKEEN, <https://petkeen.com/pet-ownership-statistics-pakistan> (last updated June 1, 2023).
- 4 Marium Ihsan, *Dog culling: Is it really necessary*, DAILY TIMES (Nov. 25, 2019), <https://dailytimes.com.pk/506917/dog-culling-is-it-really-necessary/>.
- 5 *Keeping dogs, and the najaasah of their saliva*, ISLAM QUESTION & ANSWERS (Feb. 26, 2008), <https://islamqa.info/en/answers/20939/keeping-dogs-and-the-najaasah-of-their-saliva>.
- 6 Shaykh Abou El Fadl, *FATWA: On Hadith regarding Angels not entering homes with dogs and other misconceptions*, THE SEARCH FOR BEAUTY: ON BEAUTY AND REASON IN ISLAM (June 5, 2017), <https://www.searchforbeauty.org/2017/06/05/fatwa-on-hadith-regarding-angels-not-entering-homes-with-dogs-and-other-misconceptions/>.



- 7 "And there is no creature on [or within] the earth or bird that flies with its wings except [that they are] communities like you. We have not neglected in the Register a thing. Then unto their Lord they will be gathered." THE NOBLE QUR'AN, 6:38.
- 8 Islam employs terms such as Haraam, meaning impermissible, and Halal, meaning permissible. *The Concept of Halal & Haraam in Islam According to Quran & Hadith*, QURAN READING, <http://www.quranreading.com/blog/the-concept-of-halal-haram-in-islam-according-to-quran-hadith/> (last visited May 31, 2023).
- 9 Ayoub M. Banderker, *Animal Abuse and Welfare in Islam*, ANIMALS IN ISLAM: DOGS IN ISLAM, <https://www.animalsinislam.com/islam-animal-rights/dogs/> (last visited June 7, 2023).
- 10 PAKISTAN CONST. art. 2, art. 227, https://na.gov.pk/uploads/documents/640b00c9009d8_878.pdf.
- 11 Islamabad Wildlife Mgmt. Bd. v. Metro. Corp. Islamabad, (2021) PLD (Islamabad) 6 (Pak.), <https://www.nonhumanrights.org/wp-content/uploads/Islamabad-High-Court-decision-in-Kaavan-case.pdf>.
- 12 PAKISTAN CONST. art. 2, art. 31.
- 13 This judgment raises the question of Kaavan's case being used as a legal precedent in Islamic countries for advocating protections for non-human animals where Shariah law is practiced.
- 14 Sana Jamal, *Stray dog shooting banned in Islamabad*, GULF NEWS (Jan. 26, 2021), <https://gulfnews.com/world/asia/pakistan/stray-dog-shooting-banned-in-islamabad-1.76751551>.
- 15 PAKISTAN CONST. art. 70(4).
- 16 Hira Jaleel, *After the Kaavan Decision: A New Wave of Animal Law Litigation in Pakistan*, AMERICAN BAR ASSOCIATION, INTERNATIONAL LAW NEWS (Mar. 6, 2023), https://www.americanbar.org/groups/international_law/publications/international_law_news/2023/winter/after-kavaan-new-wave-of-animal-law-legislation-in-pakistan/?login.
- 17 See Zawar Hussain v. Province of Punjab, (2022) PLD (Lahore) 445 (Pak.); Mr. Faizullah Khan Niazi v. Express Entertainment, F. No. 14(02)/RO-LHR/106/36309, (Pakistan Regulatory Media Authority), 29 April 2021; Sanita Gulzar v. Province of Punjab, Writ Petition No. 30173 of 2021, Lahore High Court, (Pak.).
- 18 Animal welfare falls under the respective agricultural government bodies of respective provinces.
- 19 *Animal Birth Control (Dogs) Policy 2021*, <https://livestock.punjab.gov.pk/system/files/Animal%20Birth%20Control%20Policy%20Notified%2018-04-2022.pdf> [hereinafter *Policy*].
- 20 Hamza Khan v. Province of Punjab, ICA No. 277/2017(Lahore)(Pak.).
- 21 Terrestrial Animal Health Code, Ch. 7.7, Dog Population Management (2022), WORLD ORGANISATION FOR ANIMAL HEALTH, https://www.woah.org/en/what-we-do/standards/codes-and-manuals/terrestrial-code-online-access/?id=169&L=1&htmlfile=chapitre_aw_stray_dog.htm.
- 22 *Policy*, *supra* note 19, § 2.
- 23 *Id.* § 4.
- 24 *Pakistan Prevention of Cruelty to Animals Act 1890*. This Act envisions formation of Provincial Societies for Prevention of Cruelty to Animals. Currently, only Punjab has an active SPCA, which was very recently revived in 2019.
- 25 *Policy*, *supra* note 19, § 4.
- 26 *Id.* § 10 (Absence of any specific regulations shall not hinder the implementation of this policy.).
- 27 No.SO.MC-Dev (LG) 9-68/2018(P) Gov. of The Punjab Local Govt. & Community Development Department (Mar. 03, 2021).
- 28 Banderker, *supra* note 9.
- 29 No. SPCA-Pb/ 2023/002, Society for Prevention of Cruelty to Animals (SPCA), Punjab (Jan. 18, 2023).
- 30 *Id.*
- 31 *Id.*
- 32 Sonya Rehman, *Rawalpindi university torturing stray animals to teach students, say activists*, GEO NEWS (June 08, 2022), <https://www.geo.tv/latest/421272-rawalpindi-university-torturing-stray-animals-to-teach-students-say-activists>. The University in question was the Barani Agriculture University situated in Rawalpindi, Punjab.
- 33 PAKISTAN VETERINARY MEDICAL COUNCIL, <https://www.pvmc.gov.pk>.
- 34 Sana Jamal, *Pakistan join hands with PETA to ban tests, surgeries on live animals*, GULF NEWS (July 25, 2022), <https://gulfnews.com/world/asia/pakistan/pakistan-join-hands-with-peta-to-ban-tests-surgeries-on-live-animals-1.89505402>.
- 35 PETA is the first international animal welfare organization apart from the World Organization for Animal Health to work directly in Pakistan. To further improve animal welfare in Pakistan, we need many more interventions.
- 36 *Federal Education Minister Rana Tanveer Hussain Launched Animal Rights Project Under the Initiative of the Prime Minister Strategic Reforms Unit of Federal Education and Professional Training*, MINISTRY OF FEDERAL EDUCATION AND PROFESSIONAL TRAINING (Dec. 9, 2022), <http://www.mofept.gov.pk/NewsDetail/Y2ZIMzUzMjYi00MDVklTjZjAtZWNmYjNiN2I2NGY3>.



Military... Continued from page 17

official military rank promotions and awards, Clark believed that this entitled her to burial within a national cemetery. Clark wrote his thesis on this topic, leading to Project Reckless, a legal initiative to support Sgt. Reckless's burial right.

Reckless's History and Her Importance as an American Hero

Sgt. Reckless entered the Marine Corps on October 26, 1952 when she was purchased by Lt. Eric Pedersen from Sinseol-dong racetrack in Seoul, South Korea.⁴ She was trained as a pack horse to assist the Marines with stringing communication wire and to transport supplies for the troops. She learned to "hit the deck" by lying down or kneeling when under fire, to run to her bunker when she heard the command "incoming!", and to step over barbed wire.⁵ However, her most important duty was to serve as a Marine Corps ammunition carrier for the Recoilless Rifle Platoon. Recoilless rifle shells are 75 mm rounds used for multiple purposes, including long range fire up to 7,000 yards with armor penetration up to 4 inches.⁶ Recoilless rounds weigh 24 pounds, and a Marine could carry two to three rounds at a time.⁷ Sgt. Reckless learned to carry these rifle shells to the guns during battle, typically carrying six to eight at a time.

A key battle to hold the Main Line of Resistance separating North Korea and South Korea was the Battle of the Nevada Cities from March 26-30, 1953. This battle involved three critically located hills named Reno, Carson, and Vegas, after Nevada gambling towns. If these outposts were overtaken, it would weaken the position of the United Nations to negotiate a truce, and create potential for North Korea to overtake Seoul, South Korea's capital. The precarious nature of the location inspired the Nevada city names of the hills because the Marines believed that it was a gamble as to whether they could hold the positions against the enemy. This was put to the test when 3,500 enemy troops attacked the outposts at Reno, Carson, and Vegas, each occupied by only forty to fifty U.S. Marines. The battle raged for five days and is considered to be one of the fiercest confrontations in Marine Corps history. Outpost Vegas was taken by the enemy. On March 27, 1953, Sgt. Reckless played a critical role in helping her Marines take it back.

Technical Sergeant Joe Latham, who had served as drill instructor to Sgt. Reckless, prepared her for the battle. Enemy shelling had Reckless on edge. She was led to Outpost Vegas and strapped with eight rounds of ammunition weighing 87 kg per load. The recoilless rifles were located at the top of the hill which was accessible by traversing a 45-degree incline. Sgt. Reckless made a running start at the hill, charging up the steep slope to deliver rifle shells to her Marines. Recoilless rifles are easily targeted by the enemy, and after firing about five shots, the rifles must be relocated. Throughout the battle, Sgt. Reckless made 95% of her trips alone without another Marine to guide her, each time finding the relocated guns. She



made her solo trips to deliver ammunition while under heavy fire, with an estimated 500 rounds per minute raining down on Outpost Vegas.

Sgt. Reckless was wounded twice by shrapnel while delivering shells to her Marines. Each time, she was treated and bandaged, yet she returned to her duty. After the recoilless rounds were unloaded from her pack saddle, wounded Marines were often tied to Reckless, and she carried them down the hill to safety. During the battle, she made 51 trips up the hill to the gun sites, traveling an estimated thirty-five miles and carrying almost five tons of ammunition while under fire. For her service, Sgt. Reckless received official rank promotions from the United States Marine Corps, reaching Staff Sergeant, E-6. She also received official military awards including two Purple Hearts, the Marine Corps Good Conduct Medal, a Presidential Unit Citation with one Star, a Navy Unit Citation, the National Defense Service Medal, the United Nations Service Medal, the Korean Service Medal with three Stars, and the Republic of Korea Presidential Unit Citation.⁸

The National Cemetery Burial Benefit Claim for Sgt. Reckless

Project Reckless aims to provide Sgt. Reckless with the national cemetery burial benefit that she has earned through her military service. Veterans' benefit eligibility requires that the applicant prove that he or she is a veteran for purposes of the Veterans' Administration (VA).⁹ Under Title 38, veteran is defined as "a person¹⁰ who served in the active military, naval or air service, and who was discharged or released therefrom under conditions other than dishonorable."¹¹ Sgt. Reckless meets this requirement because she served in the Marine Corps, a branch of the Naval Services and was honorably discharged. In 1954 she was rotated from Korea to Camp Pendleton where she served until her discharge and retirement ceremony on November 10, 1960.¹² At her discharge, Marine Corps Commandant, General David M. Shoup ordered that Sgt. Reckless would receive permanent board and feed in lieu of the traditional USMC pension.¹³ Retiring from the USMC with a pension benefit indicates a discharge other than dishonorable because good standing at time of discharge is required in order to qualify for a military pension.¹⁴ Reckless's pension award indicates that she met the discharge criteria under the definition.

Additionally, legal analysis indicates that Sgt. Reckless has met the requirements for her rank promotions. The citation read at her promotion ceremony on April 10, 1954 noted that her promotion was

[f]or meritorious achievement in connection with operations against the enemy...in Korea from October 26, 1952 to July 27, 1953...[Reckless] performed the duties of ammunition carrier in a superb manner. Reckless' attention and devotion to duty make her well qualified for



promotion...Her absolute dependability while on missions under fire contributed materially to the success of many battles...¹⁵

The meritorious nature of her promotion was reiterated at her rotation ceremony on October 17, 1954.¹⁶ All of Sgt. Reckless's promotions were categorized as meritorious. Meritorious promotions require that a Marine must meet the 18-month time in service (TIS) requirement for sergeant¹⁷ eligibility, and the 4-year TIS for staff sergeant¹⁸ eligibility. Sgt. Reckless met her TIS requirements for both promotions. Furthermore, at her promotion to staff sergeant E-6 on August 31, 1959, her new stripes were pinned on by the Commandant of the Marine Corps himself, General Randolph McCall Pate.¹⁹ As the highest-ranking member of the USMC, the Commandant holds the ultimate authority to grant rank promotion.²⁰

Arlington is Where Sgt. Reckless Belongs

Sgt. Reckless is currently buried at Camp Pendleton, California, where her grave is inaccessible to the general public. Clark believes that burial at Arlington National Cemetery is the most appropriate place to honor Sgt. Reckless for three reasons: 1) her official Purple Heart awards qualify her for burial in this hallowed military cemetery which is the most visited military burial ground within the United States; 2) Reckless should be laid to rest near General Randolph McCall Pate former Commandant of the Marine Corps who officially promoted her, and Andrew Geer who facilitated Reckless's return to the United States and wrote the first book about her, both of whom are buried at Arlington, and; 3) her burial at Arlington will bring attention to veterans who served in the Korean conflict, which is often referred to as America's "forgotten war."

The campaign to bury Sgt. Reckless in a national cemetery has raised questions. Some are concerned about potential future requests for military animals to be buried in national cemeteries, which could reduce available gravesites allocated for human veterans. However, Reckless is the only animal who qualifies for the veterans' burial benefit. Many valiant animals have served in the U.S. military. While there are stories of military working dogs who have achieved military rank and honors, the ranks and honors bestowed upon these dogs were not made in an official capacity. Until a branch of the U.S. military gives official rank and awards to another animal, Sgt. Reckless will remain unique in her accomplishments.

The project is not seeking government funding for relocating Sgt. Reckless's remains from Camp Pendleton to Arlington National Cemetery, so taxpayers will not be burdened with associated expenses. Sgt. Reckless performed her duty under fire and against her instincts to serve and protect her Marines. She received official rank promotions and military awards which qualify her for veterans' benefits,

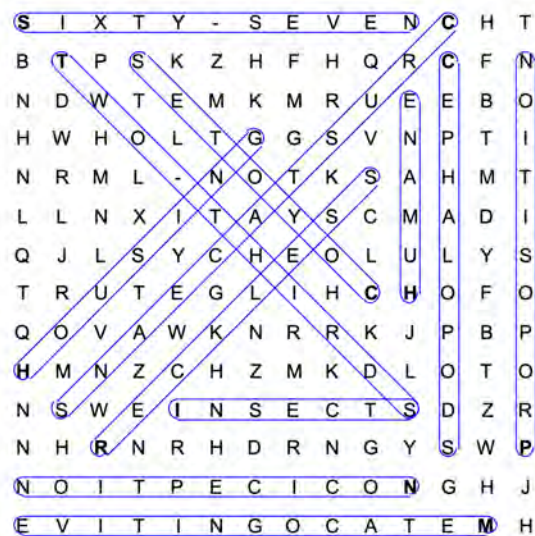


specifically burial in a national cemetery. This grassroots legal project seeks to honor her for her accomplishments, bury her near those who valued her, and bring attention to those who served with her in Korea. Mr. Clark has created a Change.org petition to garner support for the effort. To learn more, or to sign the petition, you can visit it [here](#).²¹ ➤

Endnotes

- 1 MARIA GOODAVAGE, *SOLDIER DOGS: THE UNTOLD STORY OF AMERICA'S CANINE HEROES* 27-28, 274-79 (2016).
- 2 ROBIN HUTTON, *SGT. RECKLESS: AMERICA'S WAR HORSE* 140, 143 (2014).
- 3 *Id.* at 143.
- 4 *Id.* at 27.
- 5 *Id.* at 37-40.
- 6 *Id.* at 25.
- 7 *Id.*
- 8 *Id.* at 143.
- 9 *Hill v. McDonald*, 28 Vet. App. 243, 249-50 (2016).
- 10 Legal efforts for this project are ongoing and thus the details of the arguments will not be presented here.
- 11 38 U.S.C. § 101(2); 38 C.F.R. § 3.1(d).
- 12 Hutton, *supra* note 2, at 228.
- 13 *Id.*
- 14 *Applying for Benefits and Your Character of Discharge*, U.S. DEPT. OF VETERANS AFFAIRS, https://www.benefits.va.gov/benefits/character_of_discharge.asp (last visited June 8, 2023).
- 15 Hutton, *supra* note 2, at 141.
- 16 *Id.* at 156.
- 17 U.S. MARINE CORPS, ORDER P1400.32D, MARINE CORPS PROMOTION MANUAL, VOL. 2, ENLISTED PROMOTIONS 1-11 (June 14, 2012) [hereinafter MCO P1400.32D].
- 18 *Id.*
- 19 Hutton, *supra* note 2, at 220.
- 20 MCO P1400.32D, *supra* note 16, at 1-8.
- 21 Give Decorated U.S. War Horse the Burial She Deserves, CHANGE.ORG, <https://www.change.org/p/give-decorated-u-s-war-horse-the-burial-she-deserves>.

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Calendar

August 2-8, 2023	ABA Annual Meeting Contact: Janet Hummons – 312/988-5656	Hyatt Regency Denver, CO
October 5-6, 2023	Fidelity & Surety Law Fall Conference Contact: Janet Hummons – 312/988-5656 Theresa Beckom – 312/988-5672	Revere Hotel Boston, MA
October 11-14, 2023	TIPS Fall Leadership Meeting Contact: Janet Hummons – 312/988-5656 Theresa Beckom – 312/988-5672	Grand Hyatt Baha Mar Nassau, The Bahamas
October 26-27, 2023	Aviation Litigation Conference Contact: Theresa Beckom – 312/988-5672 Cameron Witbeck – 312/988-5668	Ritz-Carlton Pentagon City Arlington, VA
January 24-26, 2024	Fidelity & Surety Law Midwinter Conference Contact: Janet Hummons – 312/988-5656 Theresa Beckom – 312/988-5672	The Roosevelt New Orleans New Orleans, LA
January 31-February 5, 2024	ABA Midyear Meeting Contact: Janet Hummons – 312/988-5656 Theresa Beckom – 312/988-5672	Omni/Marriott Louisville, KY
February 1, 2024	BLC Conference Contact: Theresa Beckom – 312/988-5672	TBD
February 22-24, 2024	Insurance Coverage Litigation Conference Contact: Janet Hummons – 312/988-5656 Theresa Beckom – 312/988-5672	Estancia La Jolla Hotel La Jolla, CA
March 2024	Cyber Security Conference Contact: Theresa Beckom – 312/988-5672	TBD
March 2024	Workers Compensation Conference Contact: Janet Hummons – 312/988-5656	TBD
April 10-12, 2024	Motor Vehicle Product Liability Conference Contact: Janet Hummons – 312/988-5656 Theresa Beckom – 312/988-5672	Omni Scottsdale Montelucia Scottsdale, AZ



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