



# **Intervention for Animals: Discussing the Law Around Emergency Relief & Rescue**

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# Today's Context

- Animal Emergency Relief & Rescue
  - In practice, not simply intervening for an animal in an emergency
    - I.e. not helping your own animal, or generic animal-at-large
  - So, must mean:
    - Responding to a non-human animal ('animal')...
    - ...in imminent danger ('emergency')...
    - ...by providing ameliorative intervention ('relief' / 'rescue')...
    - ...in a way that would otherwise be wrongful.
      - I.e. raising civil or criminal liability
- Disambiguation: Animal Harm vs Animal Maltreatment vs Animal Cruelty
- For Any Given Form of Emergency Relief & Rescue, Consider:
  - How is this legally structured?
    - E.g. is this a *right*? If so, what kind – and who does it attach to?
  - What impact on culture, law, and – of course – animals





# Key Considerations

- Disambiguating:
  - Animal Harm  
vs
  - Animal Maltreatment  
vs
  - Animal Cruelty
- For Any Given Form of Emergency Relief & Rescue:
  - How legally structured?
    - E.g. is this a *right*? If so, what kind – and who does it attach to?
  - What impact on culture, law, and – of course – animals
- Focus:
  - Less *how* animal is relieved & rescued
  - More *why* and *what* stance re: liability

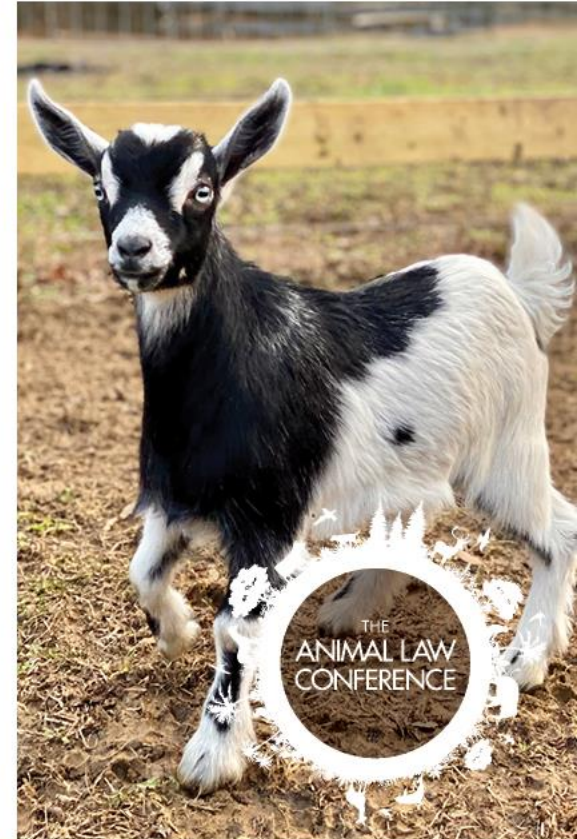


# Emergency Relief & Rescue: **Why?**

- 1) Categorical Imperative
- 2) Strengthen Animal Protection Enforcement / Law
- 3) Codify Statutory Relief & Rescue
- 4) Generate New Animal-Forward Case Law

Animal Experiences & Interests

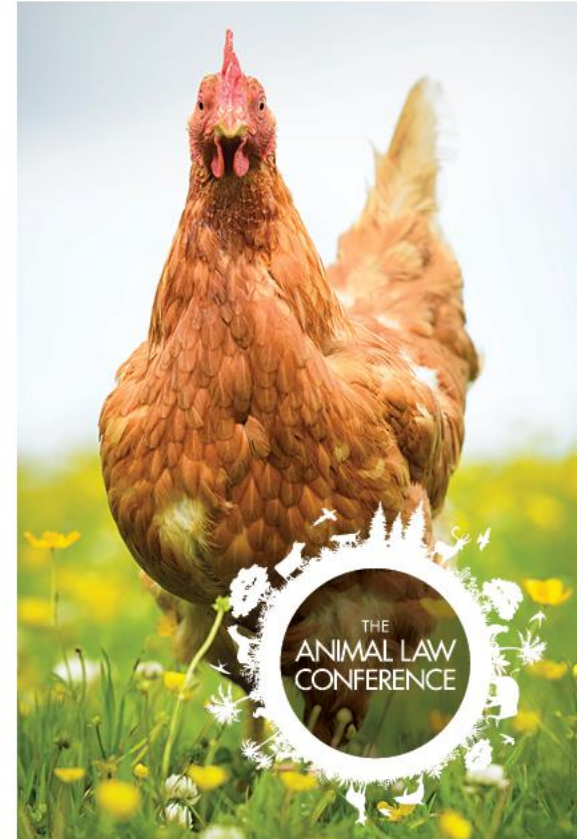
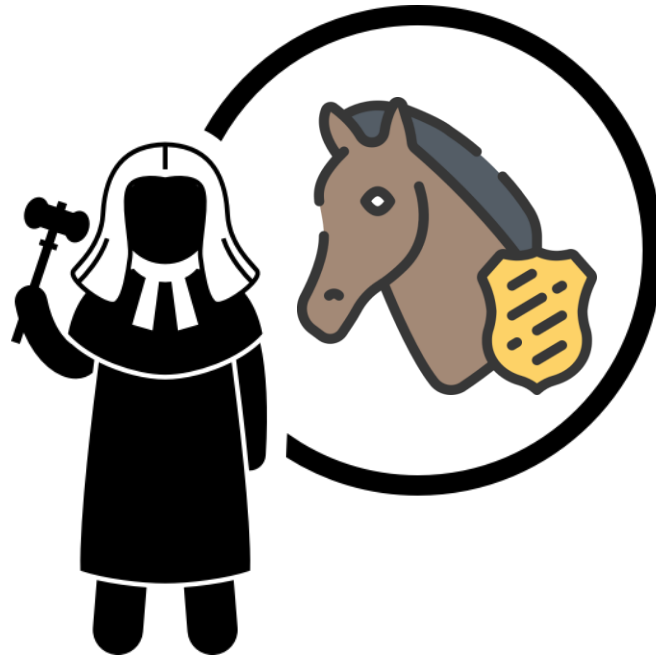
- But! What About Revealing Maltreatment?
  - This is more properly the area of ag-gag and speech freedoms



# Emergency Relief & Rescue:

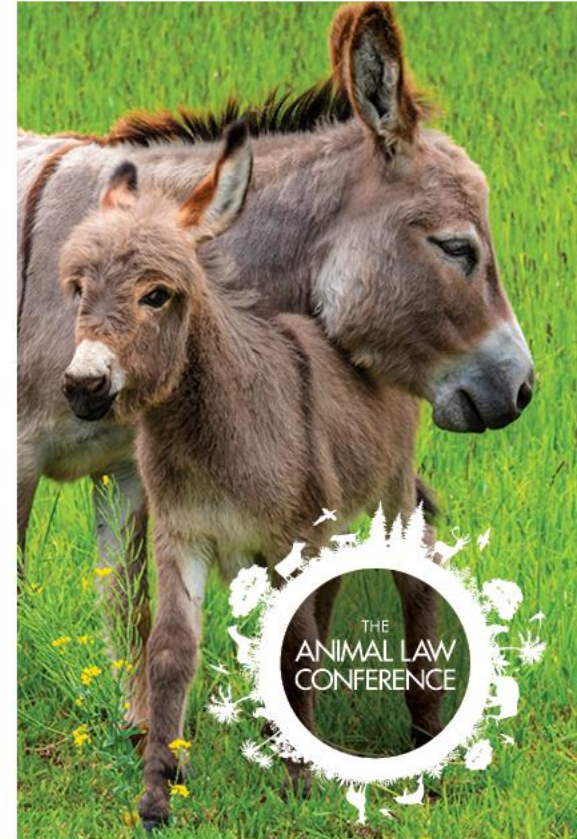
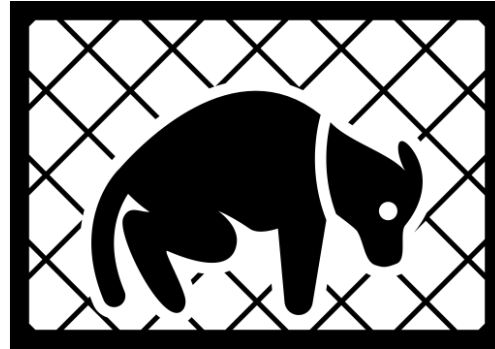
## Response to Liability

- Create Liability Shield
  - Define terms under which ER&R is not presumptively wrongful
- Defeat Liability
  - Presumption of wrongfulness → overcome by defense
- Embrace Liability
  - Accept outcomes?
  - Mitigate outcomes?



# Five Broad Categories of Emergency Relief & Rescue

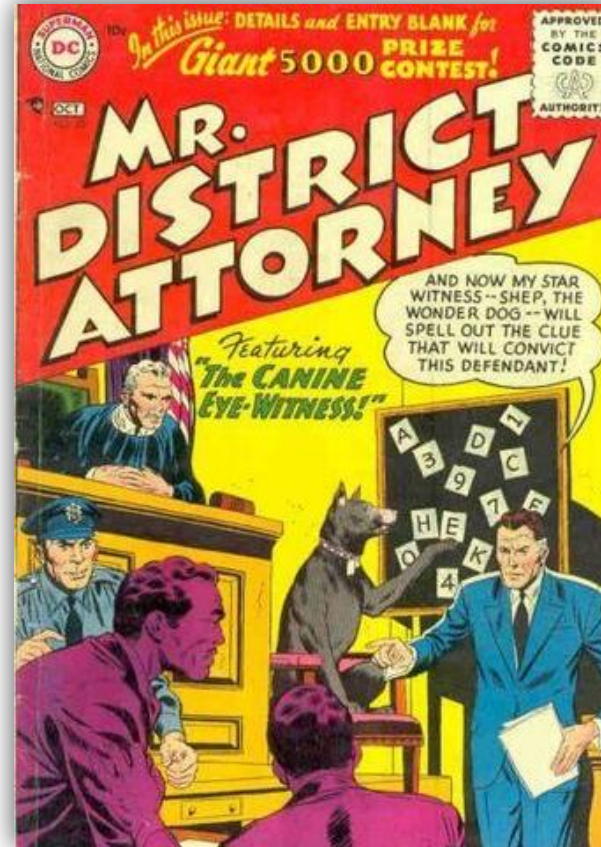
- 1) Discretion to Forgo
- 2) Search & Seizure Exceptions
- 3) Statutory
- 4) Affirmative Defenses & Case Law
- 5) Jury Nullification





# 'This Is Fine': ER&R Via Discretion

- Civilian Actor Engages in ER&R
  - Civil liability → does plaintiff sue?
  - Criminal liability → does state charge?
- Prosecutorial Discretion
  - ABA 3-4.4 → valid charging considerations include:
    - Harm caused
    - Impact of prosecution / non-prosecution on public welfare
    - Whether public's interest can be vindicated through via remedies
  - ABA 3-4.3: should only charge if you believe is in the interests of justice



# State ER&R: Warranted?

- State Actor Engages in ER&R
  - Is this constitutionally permitted?
    - Removing the animal → implicates search & seizure
- Search & Seizure
  - If warrant → not an ER&R issue
  - If no warrant → can state intervene re: animal emergency?  
Maybe  
See *State v. Fessenden* (Oregon Appellate 2013; Supreme 2014)
    - Appellate: yes, for imminent serious injury / death  
(unless inflicted lawfully)
    - Supreme: yes, for animal victims of crime
    - (Other jurisdictions vary)

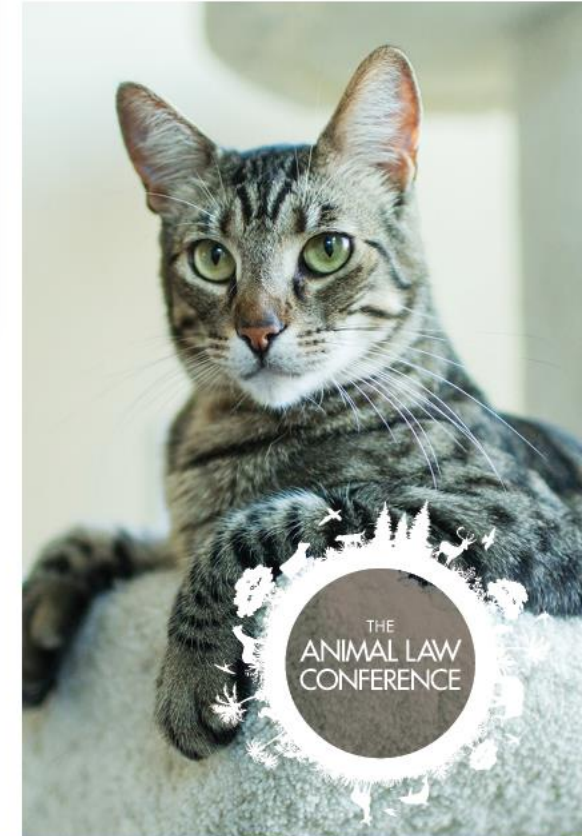
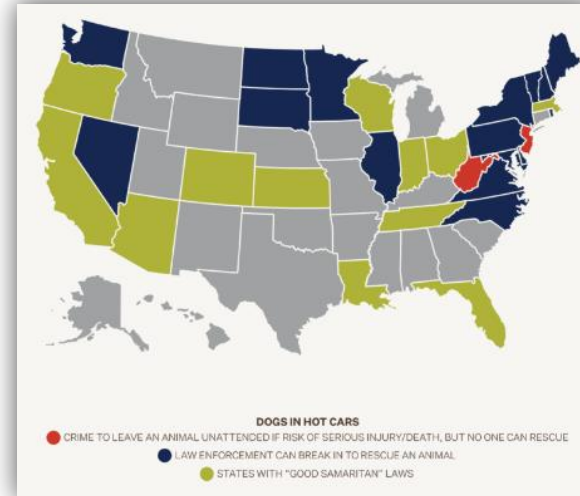




# Statutory ER&R:

## In Case of Emergency, Break Glass

- Typical Elements
  - If* Animal in vehicle;
  - Unattended and cannot exit on own;
  - Good faith, reasonable belief: animal in imminent danger;
  - Use least force necessary to remove animal;
  - Notify LEOs / First Responder as soon as practicable;
  - Remain nearby until animal turned over to State / Owner;
  - Then* → liability shield
- Note!
  - Which animals? (e.g. ORS § 30.813(4); CAL. PENAL § 597.7(f))
    - Can amend to expand / narrow
  - How informed is public? Law enforcement?
  - Says what about animals vis-à-vis law?
    - Implicitly connects ER&R to individual animal's right not to be subject to unlawful maltreatment at human hands



# “I Fought The Law, And...”:

## Affirmative Defenses & Case Law

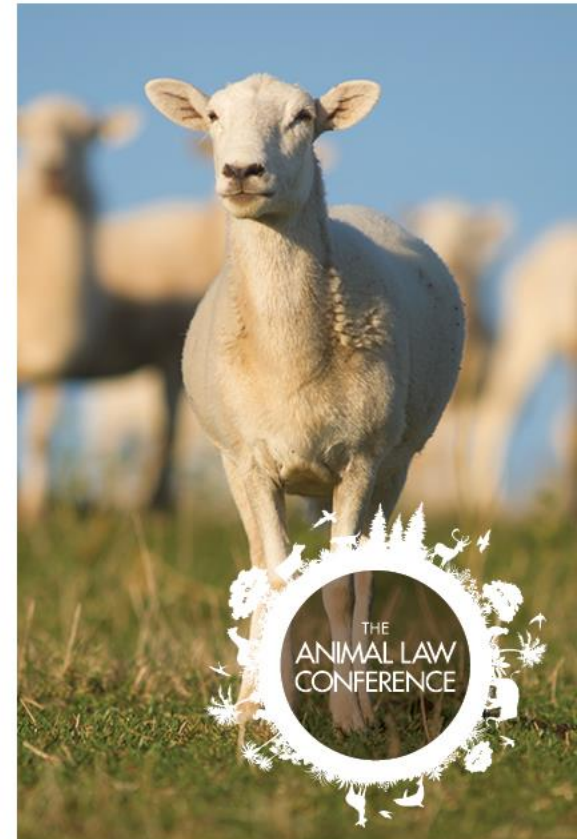
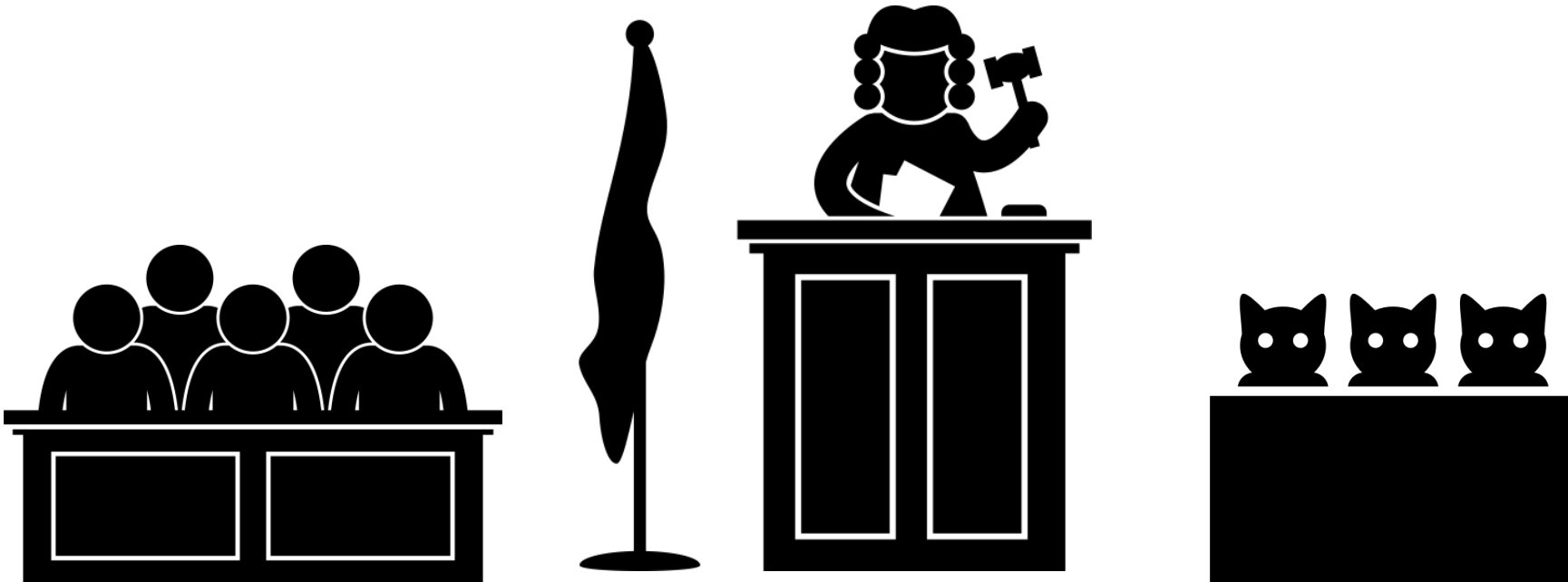
- Civilian Actor Engages in ER&R
  - Involving criminal conduct (e.g. trespass; larceny)
    - E.g. open rescue
  - Raises affirmative defense
- Justification Defense
  - Yes, elements of crime, but was best alternative ← ‘Lesser of Evils’
    - 1) Sincere belief re: imminent danger
    - 2) Harm done < harm prevented as a matter of law  
*See Wichita v. Tilson* (Kansas 1993); *Hill v. State* (Florida 1996)
    - 3) No less harmful alternative
- Complications
  - Allowed to raise defense?
    - Case law best created following prosecution + conviction
  - May not address all charges crimes (e.g. trespass vs larceny)
  - Does not make specific form of ER&R presumptively lawful



# Jury Nullification:

## Fate in The Hands of Peers:

- Civilian Actor Engages in ER&R
  - Involving criminal conduct (e.g. trespass; theft)
  - Seek to have jury decline to reach finding of guilt
    - Despite legal elements of crime being shown beyond reasonable doubt, and no affirmative defense





# Closing Thoughts: Importance of Clarity

- Goals

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Animal Experiences & Interests



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- But! What About Revealing Maltreatment?
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- Risks

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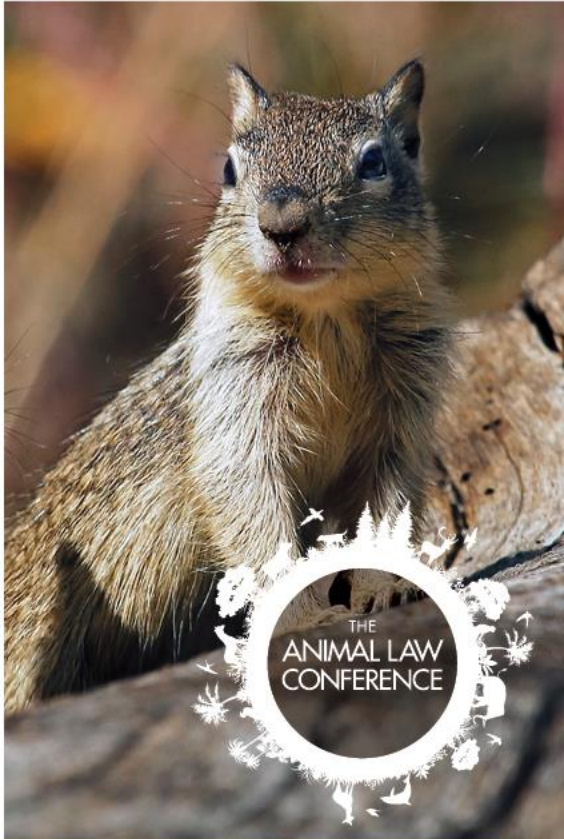
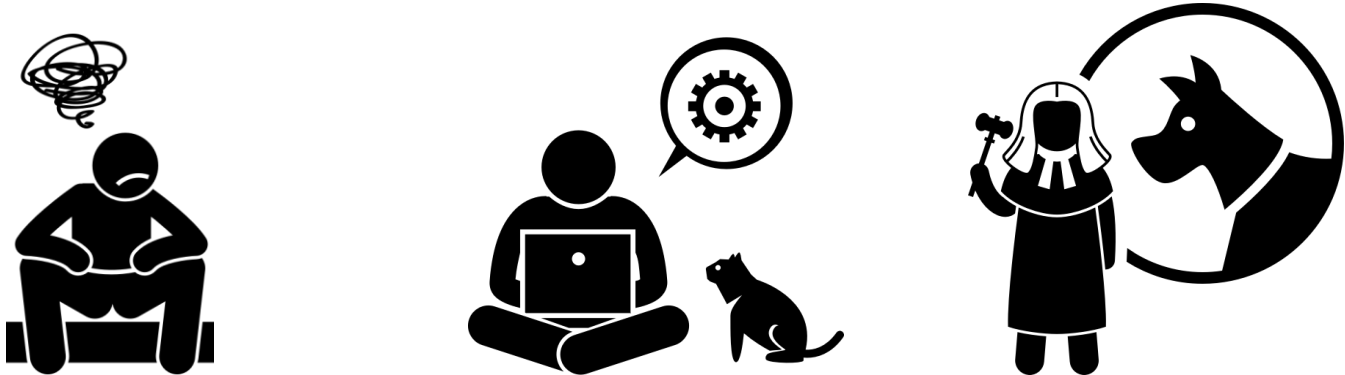


Animal Experiences & Interests



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- Outcomes





# Thank You!

...and now, Q&A...

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