

Vermont Law & Graduate School
Animal Undercover Investigations
Summer 2024

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Course Description

Welcome to Vermont Law & Graduate School's summer program and thank you for your interest in animal protection. This intensive 24-hour course will introduce you to a cutting-edge tactic in animal advocacy and answer the following questions: What are undercover investigations? Why do animal advocacy organizations conduct them? You will explore a variety of legal considerations as they relate to conducting undercover investigations of animal operations, which include farms, lots, or facilities used to confine animals or where animals are treated as commodities. Specifically, you will examine the intersection of criminal law, tort, and ethical issues, as well as what does and does not constitute actionable animal cruelty. We will discuss evidentiary issues, taking action/pursuing litigation, and corporate liability. We will examine how undercover investigations have changed the legal landscape for animals as well as the methods by which the industry has pushed back at this animal advocacy tactic. Throughout the course, we will discuss the ways in which undercover investigations and resultant prosecutions implicate social justice issues, assessing whether the stated goal of deterrent effect outweighs the potential disparate impact on individual low-wage workers.

Please note that this class contains information and imagery that might be upsetting to some students. While I have tried to place a content warning before all assignments that include graphic content and I have attempted to make all graphic content optional, there remains a distinct possibility that you will come across uncomfortable imagery and information in this course.

Goals

By participating in this course, you will achieve competence in the following areas:

1. Understanding the purpose of conducting undercover investigations of animal operations;
2. Familiarity with the legal aspects a nonprofit or undercover investigator must consider prior to and while conducting an undercover investigation;
3. Exposure to key case law involving undercover investigations;
4. Awareness of animal cruelty laws, including their scope and limitations;
5. Considerations related to pursuing litigation;
6. Industry response patterns and techniques, including successes and failures;
7. Mindfulness of the intersection of undercover investigations and prosecutions with social justice concerns; and
8. Improving problem-solving capability through legal research, legal analysis, and the application of concepts discussed in this course.

Hours & Readings

This 2-credit course will require full engagement prior to and throughout the weekend. We will meet as a class on Thursday from 1:00 to 5:00, on Friday from 8:00 to 12:00 and from 1:00 to 5:00, on Saturday from 8:00 to 12:00 and from 1:00 to 5:00, and on Sunday from 8:00 to 12:00. We will take short breaks throughout each day. Please complete all readings/modules before each topic meeting. Given the intensity of our meeting schedule, completing readings prior to meeting may require you to engage with the course materials well in advance of the commencement of this course. There are no prerequisites except enthusiasm, curiosity, and a willingness to learn. Attendance for the entire session is mandatory and no exceptions will be granted.

Grading

For this course, you will be evaluated based on a final paper (80%) and class participation (20%). Class attendance is mandatory.

Your final paper is a legal memo in which you will assume the role of a staff attorney for a nonprofit advising the potential legal risks and benefits involved in conducting an undercover investigation. Details about the final paper will be provided at the last class.

You must show up for every class on time and well-prepared. My approach to teaching emphasizes participation and engagement. You will take an active role in each class. In every class, I will be asking for your views on controversial subjects. I am most interested in your response as it relates to law, policy, legal principles, and theory. Your preparation and participation will make the course more comprehensible and enjoyable. Successful participation is not necessarily measured by whether your answer is correct, but by whether your comments demonstrate that you have read and thought about the material and that you are making a good faith effort to advance the conversation.

Plagiarism

You are cautioned to comply with the requirements of the Honor Code by avoiding plagiarism and other misconduct as provided in the student handbook. Plagiarism is an Honor Code violation that will result in failing the course and a referral to the Vice Dean for Students for further action.

Discrimination/Misconduct

Our school is committed to fostering a safe, productive learning environment free from unlawful harassment, sexual harassment, discrimination, and retaliation. Unlawful harassment or discrimination on the basis of age, race, color, creed, ethnicity, national origin, place of birth, ancestry, religion, sex/gender, gender identity/expression, sexual orientation, marital status of students, service in the armed forces of the United States, HIV-positive status, genetic information, or against qualified individuals with disabilities on the basis of disability, as defined by applicable law, or other characteristics as defined and protected by applicable law ("protected characteristics") is prohibited and will not be tolerated. In compliance with Title IX of the Education Amendments of 1972 ("Title IX") and applicable state law, Vermont Law & Graduate School does not discriminate on the basis of sex in its education programs and activities or in employment, and it is required by Title IX to not discriminate on that basis. The Law & Graduate School will take all necessary steps to end conduct prohibited by this policy, to prevent its recurrence, and to address its effects.

If you wish to speak confidentially about an incident of misconduct, want more information about filing a report, or have questions about school policies and procedures, please contact our Title IX Coordinator.

Accommodations for Disabilities

If you have a disability and would like to request an accommodation, please review our Disability Policy at Vermont Law & Graduate School academic accommodations at:

<https://www.vermontlaw.edu/community/students/academic-success/accommodations>Links to an external site.

Modules

Below is the schedule for our class. It is your responsibility to complete each module's readings prior to its in-class discussion and to participate fully during each class period.

All readings are available in their respective modules on Canvas.

This syllabus is subject to change.

Thursday 1:00 to 1:15

Class Introductions

Thursday 1:15 to 2:00

Introduction to Undercover Investigations

Read:

- Animal Charity Evaluators: Undercover Investigations
- Why Undercover Investigations? My top 5 reasons
- Don't Believe Everything You See (Animal Agriculture Alliance)
- U.S. Animal Death Stats ("Animal Clock")

Consider:

- Are undercover investigations useful? Can you trust them?
- What are the arguments for and against undercover investigations?
- What is the purpose of investigations, and do they achieve that purpose?

Thursday 2:00 to 2:30

Where Do Undercover Investigations Occur?

Read:

Note: some of this content can be upsetting

- HSUS Investigation Uncovers Veal Calf Abuse, Closes Plant (2009)
- Undercover Investigation Reveals Animal Suffering in Toxicology Laboratory
- What is a CAFO?
- Aquaculture

Browse:

- CAFOs in the US

Optional - Skim Examples of Undercover Investigations:

Note that some of this content can be upsetting

- PETA Investigations
- Mercy For Animals Investigations
- Animal Outlook Investigations
- Cruelty Free International (Animal Research) Investigations

Thursday 2:30 – 2:45

Break

Thursday 2:45 to 3:00

Recording Laws

Read:

- Reporter's Recording Guide (Read introduction, at a glance chart, and blue boxes. Skim detailed state information.)

Optional Reading/Reference Material:

- 50-state survey with relevant statutes

Thursday 3:00 to 4:00

Undercover Investigations with Guest Speaker Pete Paxton

Pete has done undercover animal cruelty investigations since 2001, uncovering abuse at puppy mills, factory farms, slaughterhouses, commercial fishing boats, and pet stores. He has worked in the U.S., Canada, Mexico, Brazil, India, Colombia, and the Philippines. In many cases, Pete has worked undercover for weeks or months at facilities, enabling him to understand the plight of undocumented immigrants exploited in agriculture, and the factors amongst all commercial animal operations that lead to predictable criminal behavior.

Pete has done dozens of interviews, including being interviewed by Anderson Cooper on CNN and Dick Gordon on NPR. His work has been covered in the HBO documentaries *Dealing Dogs* and *Death on a Factory Farm*, and the Nat Geo documentary *Animal Undercover*. He is the author of *Rescue Dogs* and has been awarded a Coin of Excellence from the U.S. Attorney's Office of Arkansas for his role in an undercover investigation.

Pete is currently the Director of Investigations for Strategies for Ethical and Environmental Development, and works for the Companion Animal Protection Society, Grey2KUSA, and the Humane Society of the United States.

Note that some of this content can be upsetting.

Read:

- Why CAPS Fought for the Abused Vesterberg Animals

Listen:

- Undercover with Investigator "Pete Paxton"

Prepare:

- Come to class prepared with at least 2 questions you would like to ask Pete.

Thursday 4:00 to 5:00

Legal Risks Inherent to Conducting Undercover Investigations

- Crimes vs. Torts
- Food Lion, Inc. v. Cap. Cities/ABC, Inc., 194 F.3d 505 (4th Cir. 1999).
- Sanders v. American Broadcasting Companies, 20 Cal. 4th., 907 (Cal. 1999).
- Planned Parenthood Fed'n of Am., Inc. v. Ctr. for Med. Progress, D.C. No. 3:16-cv-00236-WHO (Oct. 21, 2022). Read only pages 1-8 (Background section)

Friday 8:00 to 9:30

Legal Risks Inherent to Conducting Undercover Investigations (Cont'd)

Read:

- Desnick v. American Broadcasting Companies, 44 F.3d 1345 (1995).
- Peta v. Bobby Berosini, Ltd., 1867 P.2d 1121 (1994).
- Ouderkirk v. People for Ethical Treatment of Animals, Inc., 2007 WL 1035093.
- Causation, Generally (AMLOT sec. 11:9) (overview only, not cumulative case supplement)

Consider:

- What do these cases say about how courts view undercover investigations?
- How can an attorney help a nonprofit organization mitigate risks when conducting an investigation?

Friday 9:30 to 10:15

Animal Protection Laws

Read:

- ALDF: Laws That Protect Animals
- 2023 State Animal Protection Laws Rankings (Read overview, pick a state of interest, and review state-specific compendium)
- Customary Cruelty in the Farm Industry: When Animal Abuse is Legal
- Federal Laws and Agencies Involved with Animal Testing

Prepare:

- Prepare to discuss/present information related to the animal protection laws in the state you selected.

Friday 10:15 to 10:30

Break

Friday 10:30 to 11:00

Preparing for an Investigation

Read:

- Understanding Employee vs. Contractor Designation
- Respondeat Superior, AMLOT § 4:3
- Model Rules of Professional Conduct, Rule 1.2
- Model Rules of Professional Conduct, Rule 8.4
- Ethical Issues Surrounding Undercover Investigations, ABA Animal Law Section (Natassia Tuhovak, 2022) – begins on p. 20

Consider:

- Should a nonprofit hire the investigator as an employee or an independent contractor? What impact does this designation have?
- Should the investigation be employment-based (i.e., the investigator is hired on as an employee of the farm/facility) or should the investigator gain access in some other way?
- As an attorney, how would you prepare an investigator? How would you advise a nonprofit regarding legal risks & best practices?

Friday 11:00 to 12:00

Undercover Investigations with Guest Speaker Will Lowrey

Will is the founder and Legal Counsel for Animal Partisan, a legal advocacy organization focused on challenging unlawful conduct in animal agriculture and research. Prior to his current role, Will served as Legal Counsel for Animal Outlook, a national nonprofit farmed animal protection organization, where he divided his time between civil litigation and undercover investigations. Will taught the first Animal Law courses at the University of Oklahoma College of Law and the University of St. Thomas School of Law and is scheduled to teach Animal Law at VLGS this summer. Will is a 2017 graduate of VLGS and prior to law school, worked a lengthy corporate career as a process engineer at a large financial corporation and helped run several nonprofits focused on a variety of animal issues in his free time. Will resides in rural Virginia where he writes animal-related fiction and helps care for several formerly farmed animals.

Note that some of this content can be upsetting.

Read:

- Most animal cruelty is legal on the farm. A judge is questioning that (Kenny Torella, Vox, Mar. 9, 2022).
- 11 turkey farm workers charged with animal cruelty caught on video (M. Rubinkam, Associated Press, Oct. 6, 2022).
- People for the Ethical Treatment of Animals v. PetSmart, 2022 N.Y. Slip. Op. 32040 (N.Y. Sup. Ct. 2022).
- San Jacinto Dairy Farm At Center of Animal Rights Lawsuit (City News Service, Oct. 9 2020).

Review:

- Sanders v. American Broadcasting Companies, 20 Cal. 4th., 907 (Cal. 1999). Case located in Legal Risks Module.

View:

- Discussion Photo.

Prepare:

- Come to class prepared with at least 2 questions you would like to ask Will.

Friday 12:00 to 1:00

Break

Friday 1:00 to 2:15

Undercover Investigations with Guest Speaker Vandhana Bala

Vandhana Bala is an attorney with almost twenty-five years' experience. For more than a decade, Vandhana has advised organizations on advocacy for a sustainable and ethical food supply. Vandhana began her legal career at Sidley, a global law firm, and later started her own practice where she handled a broad spectrum of commercial matters, companion animal issues, and criminal cases. As a social justice advocate, Vandhana served as General Counsel and Senior Vice President of Mercy for Animals, where she achieved several precedent-setting legal victories in the enforcement of criminal laws to protect farmed animals, including the first-ever felony conviction for cruelty to factory-farmed turkeys and charges of criminal animal abuse brought against multiple factory farm owners. She is also a co-founder and board member of the Good Food Institute. Currently, Vandhana serves as General Counsel & Chief of Staff for Global Food Partners and also consults with activists and organizations on administrative, legal, and strategic matters. Vandhana has lectured extensively at law schools and bar associations across the country and has been interviewed by dozens of media outlets on her work.

Prepare:

- Come to class prepared with at least 2 questions you would like to ask Vandhana.

Friday 2:15 to 5:00

Drafting an Investigations Memorandum: Workshop

Saturday 8:00 to 8:30

Investigations Memorandum Workshop Presentations

Saturday 8:30 to 10:00

Gathering Evidence and Preparing for Litigation

Read:

- Federal Rules of Evidence 801 - 803; 805. (Just read the rules, *not* all the commentary)

- Note that for most investigations you're in state court, so the Rules that apply are that specific state's Evidence Rules. The Federal Rules are provided here as an example and because most State Rules closely mirror the Federal Rules. Be mindful of the appropriate Rules to cite in practice (or in your final paper!)
- Prosecutor won't charge hog farm workers
- How Courts Work

Consider:

- What should an attorney advise regarding the collection, storage, and use of evidence obtained during an undercover investigation?

Saturday 10:00 to 10:15

Break

Saturday 10:15 to 11:00

Drafting Complaints

Read:

- Charging Considerations in Animal Abuse Cases
- Civil Remedy for Protection of Animals, N.C. Gen. Stat. sec. 19A.

Consider:

- What should an attorney include in a complaint based on findings uncovered through an investigation?

Saturday 11:00 to 12:00

Undercover Investigations with Guest Speaker Nicole Paquette

Nicole Paquette is Chief Programs and Policy Officer for the Humane Society of the United States. Nicole joined the HSUS in 2010 and oversees the organization's legislative work and programmatic work to advance protections for companion animals, farm animals, equine, wildlife and animals used in research and testing across the United States. In addition, she oversees the organization's outreach and training efforts and investigations.

She has worked in the animal protection field for over 25 years, with a diverse focus on advocacy, legislation, litigation, strategy, and organizational governance. Before joining the HSUS, she served as Senior Vice President and General Counsel for Born Free USA. She has lobbied at all levels of government and has assisted with passing animal legislation on a wide variety of issues including landmark legislation banning wild animals in travelling shows, prohibiting keeping of exotic animals as pets and at roadside zoos, strengthening animal fighting laws, and regulating puppy mills.

Nicole is a graduate of Vermont Law School and has a bachelor's degree in political science from San Francisco State University. She serves as the board chair and president of the Humane Society Wildlife Land Trust and as an Officer of Humane Society Legislative Fund and Humane Society International.

Prepare:

- Come to class prepared with at least 2 questions you would like to ask Nicole.

Saturday 12:00 to 1:00

Break

Saturday 1:00 to 1:30

Open Rescue

Read:

- Rescuing animals from cruelty should be legal, Farhad Majoo
- Activists Acquitted in Trial for Taking Piglets from Smithfield Foods, Marina Bolotnikova
- Utah v. Hsiung, Verdict.
- Can you break a window to save a dog in a hot car?

Consider:

- Should Right to Rescue laws apply to farmed animals? To animals used in research?
- What legal issues do you anticipate arising with this tactic/approach?

Saturday 1:30 to 2:30

Undercover Investigations with Guest Speaker Wayne Hsiung

Wayne Hsiung is an animal cruelty investigator, former law professor at Northwestern School of Law, and co-founder and Executive Director of The Simple Heart Initiative. He has led teams that have investigated and rescued animals from animal-abusing enterprises across the nation – challenging unconstitutional “ag-gag” laws in the process – and has organized successful campaigns to ban fur in San Francisco and California. He served as lead counsel (and, sometimes, defendant) in three “right to rescue” trials in which activists were prosecuted after being charged for giving aid to sick and dying animals in factory farms, garnering media attention from The New York Times. He is also a co-founder and former lead organizer of the grassroots animal rights network Direct Action Everywhere.

Wayne’s work has been covered by WIRED, ABC’s Nightline, and on The Ezra Klein Show.

He has published research (with Cass Sunstein) on climate change’s impact on animals in the University of Pennsylvania Law Review. Prior to his work as an animal advocate, Wayne practiced law at two national firms and studied law and economics at the University of Chicago, where he was an Olin Law and Economics Fellow, and the Massachusetts Institute of Technology, where he was awarded a National Science Foundation Graduate Fellowship. He is the proud parent of Oliver, who was rescued from the dog meat trade.

Read:

- Voluntary Prosecution and the Case of Animal Rescue (Marceau, Hsiung, Seitz, Harvard Law Review, 2024).

Prepare:

- Come to class prepared with at least 2 questions you would like to ask Wayne.

Saturday 2:30 to 2:45

Break

Saturday 2:45 to 3:45

Industry/Corporate Response to Undercover Investigations

Read:

- Staff to wear body cameras after video shows abuse at chicken farm
- Utah House Bill 114, Theft Defense Amendments (2023)
- 6 Things You Need to Know About the Ringling Brothers Settlement
- RICO and Animal Welfare Organizations

Saturday 3:45 to 4:15

Results: From Penalties to Policies and More

Review:

- Penalties in ALDF Animal Protection Laws Compendiums

Read:

- 14 Times MFA's Undercover Investigations Changed the World for Animals (*Note some graphic images*)
- Report on Chilliwack Cattle Sales sentencing
- Mercy For Animals accusations leads B.C. to adopt national dairy cow guidelines
- Former Suppliers of Beef to National School Lunch Program Settle Allegations of Improper Practices and Mistreating Cows
- The Silver Spring Monkeys: The Case that Launched PETA (*Note some graphic images*)

Consider:

- How was information gleaned from undercover investigations used in the Animal Law Amicus Brief in the Nat'l Pork Producers v. Ross case? Do you think it was effective? Necessary? (Brief included in Module).

Saturday 4:15 to 5:00

Ag-Gag and the Constitution

Read:

- Ag-Gag Across America, by Center for Constitutional Rights & Defending Rights & Dissent (Skim)
- Animal Legal Defense Fund v. Reynolds, 591 F.Supp.3d 397 (S.D. Iowa 2022).
- Federal Court finds 3rd Iowa 'Ag-Gag' Law Unconstitutional
- People for the Ethical Treatment of Animals, Inc. et al. v. North Carolina Farm Bureau Federation, Inc. and Attorney General Josh Stein, 4th Circuit Opinion No. 20-1776.
- US Supreme Court turns away appeal in PETA undercover recording case
- Ag-Gag (ALDF): Review map at bottom of webpage

Sunday 8:00 to 9:45

Victories and Threats: The Interrelated Nature of the Law

- National Pork Producers Council v. Ross, 598 U.S. 356 (2023).
- In new Supreme Court decision, abortion lurks just below the surface (Josh Gurstein, Politico, May 12, 2023).
- Ending Animal Trade Suppression (EATS) Act, 118th Congress (2023-24)

Sunday 9:45 to 10:00

Break

Sunday 10:00 to 11:00

Undercover Investigations with Guest Speaker Krista Hiddema

Dr. Krista Hiddema is a distinguished scholar and fervent advocate for animal rights. Holding a doctorate in social sciences, her work is deeply rooted in ecofeminism. Dr. Hiddema brings to her role a wealth of experience from conducting 12 undercover investigations into factory farms and slaughterhouses across Canada. These investigations have shed light on the profound animal suffering in these facilities and have sparked significant discussions about animal welfare, ethics, and legal reforms. Her commitment to animal rights is matched by her dedication to understanding and addressing the human element within these issues, advocating for the welfare of investigators, workers, and affected communities alike. A scholar of social change, Dr. Hiddema draws upon the work of Bill Moyer and his seminal book, "Doing Democracy" to inform her approach to activism. Dr. Hiddema's work not only challenges us to reconsider our relationship with animals but also invites us to reflect on the human cost of our food system.

Read:

- TBD

Prepare:

- Come to class prepared with at least 2 questions you would like to ask Krista.

Sunday 11:00 to 12:00

Social Justice Discussion: Course Wrap-Up

Read:

- How the Animal Rights Movement Hurts Its Own Cause
- Animal Agriculture Workers

Review:

- Milk With Dignity (skim website)
- Transformation Project (skim website)

Consider:

- Do you think the stated goal of deterrent effect and the potential for institutional/corporate change outweighs the potential disparate impact on individual low-wage workers? Why or why not?
- Do you think there is opportunity for collaboration, as the article suggests?
- Are undercover investigations and collaboration with workers mutually exclusive tactics?

Final Paper

To be assigned in class.