Vermont Law School
Undercover Investigations of Animal Operations
Summer 2022

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Course Description

Welcome to Vermont Law School’s summer program and thank you for your interest in animal protection. This intensive 12-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.

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 1-credit course will require full engagement prior to and throughout the weekend. We will meet as a class on Friday from 1:00 to 5:00, and on Saturday from 8:00 to 12:00 and from 1:00 to 5:00. We will take short breaks throughout each day. Please complete all readings 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 are outlined later in the syllabus.

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 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 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, Jeannie Oliver.

**Accommodations for Disabilities**

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

https://www.vermontlaw.edu/community/students/academic-success/accommodations
**Topic Meetings**

Below is the schedule of topic meetings for our class. It is your responsibility to complete each reading prior to its assigned topic meeting and to participate fully during each class period.

This syllabus is subject to change.

1. **Friday 1:00 to 2:00**
   **Introduction to Undercover Investigations**

   **Read:**

2. **Friday 2:00 to 4:00**
   **Legal Risks Inherent to Conducting Undercover Investigations**

   **Read:**
   - *Food Lion, Inc. v. Cap. Cities/ABC, Inc.*, 194 F.3d 505 (4th Cir. 1999), available on Westlaw [here](https://www.westlaw.com). (please let me know if you are unable to access Westlaw)

   **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?
3. **Friday 4:00 to 5:00**  
   **Animal Cruelty Laws**

   **Read:**
   - ALDF: Laws That Protect Animals, available at: [https://aldf.org/article/laws-that-protect-animals/](https://aldf.org/article/laws-that-protect-animals/)
   - 2021 State Animal Protection Laws Rankings, available at: [https://aldf.org/project/us-state-rankings/](https://aldf.org/project/us-state-rankings/) - Read overview, pick a state of interest, and review/skim state-specific compendium to get an idea of state animal cruelty laws

4. **Saturday 8:00 to 10:00**  
   **Preparing for an Investigation**

   **Read:**

   **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?

5. **Saturday 10:00 to 11:00**  
   **From Undercover Investigator to Attorney with Guest Speaker Cody Carlson**

   *Choose to read or watch the following:*
Read:

Watch:
- (NOTE: some graphic content) What Cody Saw, available at: https://youtu.be/BFO34lmAoMQ

Prepare:
- Come to class prepared with at least 2 questions you would like to ask Cody.

6. Saturday 11:00 to 12:00
   Gathering Evidence, Preparing for Litigation, and Drafting Criminal Complaints

Read:
- Federal Rules of Evidence 801 - 803; 805, available on Westlaw here. 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!)

Consider:
- What should an attorney advise regarding the collection, storage, and use of evidence obtained during an undercover investigation?
- What should an attorney include in a criminal complaint based on findings uncovered through an investigation?
7. **Saturday 1:00 to 2:00**  
**Results: From Penalties to Policies and More**

**Review:**
- Penalties in ALDF Animal Protection Laws Compendiums, available through the following link: [https://aldf.org/project/us-state-rankings/](https://aldf.org/project/us-state-rankings/)

**Read:**
- The Silver Spring Monkeys: The Case that Launched PETA, available at: [https://www.peta.org/issues/animals-used-for-experimentation/silver-spring-monkeys/](https://www.peta.org/issues/animals-used-for-experimentation/silver-spring-monkeys/)

8. **Saturday 2:00 to 3:00**  
**Litigating Undercover Investigations with Will Lowrey**

**Choose to read or watch the following:**

**Read:**

**Watch:**
Prepare:
  ● Come to class prepared with at least 2 questions you would like to ask Will.

9. Saturday 3:00 to 4:00
   Industry/Corporate Response to Undercover Investigations

Read:
  ● HuffPost article on Taylor Radig, available at: https://www.huffpost.com/entry/taylor-radig-cattle-abuse_n_4333302
  ● Staff to wear body cameras after video shows abuse at chicken farm, available at: https://bc.ctvnews.ca/staff-to-wear-body-cameras-after-video-shows-abuse-at-chicken-farms-1.3460055

10. Saturday 4:00 to 5:00
   Social Justice Discussion; Course Wrap-Up

Read:

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

Use the following hypothetical facts to draft a legal memo:

You are the undercover investigations staff attorney for a U.S.-based farmed animal welfare nonprofit. The organization has stated that they would like to conduct an
employment-based investigation of a dairy farm in Tennessee. They want to know the primary legal risks the organization may face if they conduct this potential investigation and what they should advise the investigator prior to conducting the investigation. They also want to know what they should do with the footage/information they obtain from the investigator and what the potential benefits would be of conducting the investigation. Finally, they are curious as to whether or not you suggest that the organization conduct the investigation at all.

There is no minimum or maximum length; rather, memos will be graded based on the following:

- Identification of Relevant Legal Risks & Analysis
- Identification of Relevant Animal Cruelty Laws
- Consideration of Evidentiary Concerns
- Adherence to Professional Conduct Rules
- Organization, Logic, Persuasiveness
- References and Citations (Blue Book is encouraged but not required)

**FINAL PAPER DUE by 5:00pm on Friday, June 17, 2022. Submit through TWEN. Details on how to submit will be clarified in class.**