

Farmed Animal Advocacy Clinical Seminar
Fall 2022

Tuesdays, 3:35 p.m. – 5:10 p.m.
Debevoise Workroom 304

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Course Description

The Farmed Animal Advocacy Clinical Seminar is the companion seminar for the Farmed Animal Advocacy Clinic (FAAC). Students in the FAAC work under the close supervision of clinical faculty to develop and execute legal strategies to further the interests of farmed animals. Students represent clients directly, including national and local organizations as well as individuals, in legal matters aimed at improving the treatment and status of farmed animals, including litigation, regulatory work, and legislation and policy. Students are given a leadership role and are involved in every aspect of their assigned matters, which are selected to maximize learning opportunities while also effecting the most change for farmed animals. Each week students are required to complete work on their assigned matters, meet with the supervising attorney, and attend and participate in this Seminar.

The goal of the Seminar is to teach you important issues and skills that you will need to be effective advocates for farmed animals and to support the work you will undertake in the Clinic. FAAC students will learn a wide range of legal advocacy skills that are central to animal law but also transferable beyond animal law, including navigating legal ethics issues that arise in the context of impact litigation, building and dealing with coalitions and clients with divergent interests, client outreach and communication, developing relationships with experts, and the relationship between legal and media strategies.

Overall, the Seminar is designed to help you develop your practical lawyering skills and build a foundation for ethical, reflective legal practice. It will introduce you to the overarching issues that non-human animal law advocates face in their work, including Article III standing, Administrative Procedure Act review, rulemaking petitions, open-government laws, and basic litigation, legislative, administrative, and organizing strategies. The Seminar will also teach students how to pursue advocacy under several substantive areas of the law, including the Endangered Species Act, the National Environmental Policy Act, the Animal Welfare Act, the Humane Slaughter Act, the Wild Horse and Burros Act, and state animal cruelty codes.

The Seminar will also be interactive and depend on your familiarity with the wide-range of materials we intend to cover. Thus, your class participation is critical to the success of the course. We hope and expect that you will come prepared and willing to advance the discussion with your instructors and peers.

Prereq: REQ7185 or REQ7186, Recommended Prerequisites: Admin Law, Animals and the Law

Learning Objectives

- Understand the substantive and procedural law
- Develop the ability to work respectfully, ethically, and productively with diverse clients and legal professionals.
- Gain the skills needed to recognize and resolve dilemmas in an ethical manner.
- Employ the principles and requirements of professional ethics.
- Demonstrate an understanding of cultural, gender, race, class, socioeconomic, or other barriers to effective advocacy.
- Demonstrate the ability to effectively and timely recognize and resolve dilemmas in a range of professional settings, including presentations, written correspondence, and via telephone or other technological means (email, text, IM, social media, video conference).
- Act consistently with justice, fairness, and ethics as demonstrated through the ability to identify the moral and ethical responsibilities of lawyers to clients, opposing counsel, the profession, and the community.

Materials:

The readings for the Seminar include statutes, regulations, cases, briefs, and articles, among other materials. You can access the materials electronically via the [Canvas](#) site designated for the Clinic Seminar.

Time Requirements:

Clinic Hours: *Minimum* of 42.5 hours per credit hour (per Standard 310)

Tracking Hours: Students must track time using the Clio case management system

Office Space: Workroom 304 (Deb. 3rd Floor)

Check-ins: 1 hour/week TBD

Professor's Office Hours: You will each have a weekly one-on-one scheduled check-in meeting with me to discuss your work for the clinic. I am also happy to meet with you by appointment

Learning Management Systems

Canvas is the primary learning management system for the seminar component of this course. Our course Canvas site is <https://vermontlaw.instructure.com/courses/1295>. The syllabus, course materials, and course surveys are available here.

Clio is the practice management system that we will use for your clinic projects and time tracking. You will receive information about accessing and using this system in the first week of the semester.

Disco is the e-discovery platform that we will use to store and sort data. You will receive information about accessing and using this system in the second week of the semester.

Teams will be used for class and check-in meetings when in-person attendance is excused. Because we will frequently be discussing privileged and confidential information, we will not record our meetings. The course Teams meeting link: [FAAC Teams Meeting Link](#)

Absences:

Attendance is mandatory, but if you must miss a class, please let your professor know in advance.

VLS Academic Regulations require students to attend all classes except where religious observance, serious illness, personal emergency, or a reason that is adequate in the judgment of the professor prevents attendance. Pursuant to VLS Academic Regulations, if you are absent from twenty percent of the regularly scheduled classes without adequate excuse, you will be automatically withdrawn from the course with a grade of F- Wd.

Grading:

You will formally set goals at the beginning of the semester, and will engage in formal self-reflection throughout the semester. You will receive feedback on your work on clinic matters throughout the semester, both in writing and orally in weekly meetings with the supervising attorney. You are expected to come prepared to the clinic seminar sessions and to actively participate in discussions. The supervising attorney

will provide a detailed evaluation of your overall performance at the middle and end of the semester.

Your Seminar grade will be based on the totality of your contributions to the Seminar, including your preparedness for, and the quality of, your contributions to Seminar discussions, and on the quality of your work product. The clinic is pass/fail. You must meet your clinic work hour requirements in order to pass.

Accommodations:

If you need an accommodation for an illness or disability, please contact the Vice Dean for Students Joe Brennan, jbrennan@vermontlaw.edu.

Writing Assignments:

Each student will be expected to write a brief 1–2-page memorandum proposing a project for the Clinic. The memo should discuss a farmed animal law issue and propose a legal or policy strategy to address the problem. It should touch on the challenges, opportunities, and likely outcome of adopting your proposed strategy. The memo will be due by EOD **on September 9, 2022** and should be submitted through Canvas.

Written assignments such as memorandums, briefs, declarations, interrogatories, reports, etc. may be assigned throughout the semester as part of your clinic work.

Class Schedule, Topics, and Assignments

Class 1: August 30, 2022

Introduction to the Class: Managing Information, Managing Expectations, and Self Care

Required Material:

- Read: [Vermont Rules of Professional Conduct](#) 1.0, 1.1, 1.2, 1.3, 1.4, 1.6, 1.7, 1.8, 1.16, 1.18 (notes and comments are optional)
- Read: Gorski, et al, “*Nobody’s paying me to cry*”: *the causes of activist burnout in United States animal rights activists*, *Social Movement Studies* (2019)
- Please watch the following training videos for Clio, the practice management system we will be using for the clinic:
 - [Matters Overview](#) (6 min)
 - [How to Search in Clio](#) (2 min)

- [How to Create Time and Expense Entries and Run a Timer](#) (5 min) – Note: Expense Entries are not applicable for our purposes.
- [Text snippets](#) (2 min) for shortcuts in time entry descriptions. See the second page for the preexisting text snippets that can be used in the description of time entries.
- [How to Upload and Download Documents](#) (2 min)
- [How to Install the Clio Launcher](#) (3 min)
- [How to Use the Clio Launcher](#) (2 min)
- [Outlook Add-in Setup](#) (3 min)

Suggested Material:

- Complete Clio Academy Bundle: [Clio Manage for Attorneys](#)
- Jessica Dolce, ABCs of Self-care Workbook
- The Resilient Lawyer: A Guide for Self-care, JLAP (2020)

Class 2: September 6, 2022

Resources, Research, Investigations, and Discovery

Guest lecturer: Christine Ryan, Associate Professor of Law/Law Librarian
Introduction to relevant resources (3:35 – 4:15)

Guest lecturer: David Smolin, DISCO Experience Consultant
Training on e-discovery (4:20-5:10)

Required Material:

- **Skim:** Legal Research: How to Find & Understand the Law, Nolo (18th ed.)
- Complete Search & Review basic training [Search & Review training](#) (1 hour)

**** CLINIC ETHICS CLASS: THURSDAY, SEPTEMBER 8, 3:45-5:00 PM**

MEMO Due: September 9 by EOD

Class 3: September 13, 2022

Standing: *Building a case and establishing standing to enforce existing laws*

Required Material:

- *Sierra Club v. Morton* - Oral Argument - November 17, 1971
https://apps.oyez.org/player/#/burger3/oral_argument_audio/16979 (1 hr. 9 min.)
- *Sierra Club v. Morton*, 405 U.S. 727 (1972) (and especially Justice Douglas' dissent)
- *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) (standing discussion)
- *New Eng. Anti-Vivisection Soc'y v. United States Fish & Wildlife Serv.*, 208 F. Supp. 3d 142 (D.D.C. 2016).
- *Declarations*

Suggested Material:

Standing for Individuals:

- *Animal Legal Defense Fund v. Glickman*, 154 F.3d 426 (D.C. Cir. 1998) (*en banc*)
- *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs.*, 528 U.S. 167 (2000) (standing discussion only)
- *American Society for the Prevention of Cruelty to Animals v. Ringling Bros. and Barnum & Bailey Circus*, 317 F.3d 334 (D.C. Cir. 2003)
- *ASPCA v. Feld Entertainment, Inc.*, 677 F.Supp.2d 55 (D.D.C. 2009)
- *Friends of Animals v. U.S. Fish and Wildlife Service* (9th Cir) - Oral Argument - Dec. 10, 2019, <https://www.courtlistener.com/audio/67418/friends-of-animals-v-us-fish-and-wildlife-service/> (32 min.)

Standing for Organizations:

- *Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333 (1977) (focus on representational standing test)
- *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982)
- *People for the Ethical Treatment of Animals v. U.S. Dep't of Agriculture*, 797 F.3d 1087 (D.C. Cir. 2015)
- Motion to Dismiss and Opposition, *New England Anti-Vivisection Society, et al. v. Goldentyer, et al.*, Civ. No. 8:20-cv-02004
- *HSUS v. United States Postal Service*, 609 F.Supp.2d 85 (D.D.C. 2009) (organizational/*Havens* standing)
- *HSUS v. Hodel*, 840 F.2d 45 (D.C. Cir. 1988)

Informational Injury:

- *Federal Election Comm'n v. Akins*, 524 U.S. 11 (1998) (standing discussion)
- *Friends of Animals v. Salazar*, 626 F. Supp.2d 102 (D.D.C. 2009)
- *Friends of Animals v. Dan Ashe* - Oral Argument - Sept. 24, 2015, <https://www.courtlistener.com/audio/13592/united-states-v-william-moorehead/> (43 min.) (informational standing)

Class 4: September 20, 2022

First Amendment and Free Speech: Activist Shield and Sword

Guest lecturer: Rod Smolla, President, Vermont Law and Graduate School

Required Material:

- Watch: Hot Topics: Intimidation & Bearing Witness: ‘Ag-Gag’ Laws Criminalizing Animal Interactions <https://youtu.be/k1xUtibpq-Q> (1 hour)
- Read: Amicus Brief, *PETA, et. al., v. North Carolina*, No. 20-1776 (4th Cir. 2020)
- Read: *Dorman v. Satti*, 678 F.Supp. 375 (D.Conn. 1988)
- Read: *State v. Miner*, 556 N.W.2d 578 (Minn.Ct.App. 1996)
- *Landry’s Inc. and Houston Aquarium, Inc. v. ALDF, et al.*, No. 19-0036 (Tex. 2021) (defamation)

Suggested Material:

- Review: Ag-Gag Survey
- Listen: Oral Argument: *Landry’s Inc. and Houston Aquarium, Inc. v. ALDF*

Class 5: September 27, 2022

Interviewing, Intake, and Client Communication

Guest lecturer: Danielle Diamond (4:10-5:10pm)

[Materials to be Provided]

Class 6: October 4, 2022

Administrative Law/ Administrative Procedure Act

Petitions for Rulemaking, Unlawfully Withheld/ Unreasonable Delay and Arbitrary and Capricious Standard of Review

Required Material:

- APA provisions, 5 U.S.C. §§ 553(e), 555(b), 706(1)-(2)
- *Walter O. Boswell Memorial Hosp. v. Heckler*, 749 F.2d 788 (D. C. Cir. 1984)
- *Telecommunications Res and Action Center v. Fed Comm. Comm'n Telecommunications Research & Action Center v. FCC*, 750 F.2d 70 (D.C. Cir. 1984) (1984) (standards that govern unreasonable delay claim)

- *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins.*, 463 U.S. 29 (1985) (just the seminal passage regarding the arbitrary and capricious standard of review at pp. 43-44)
- *West Virginia v. EPA*, Docket No. 20-1530 (Jun. 30, 2022)

Suggested Material:

- Memorandum Opinion, *American Wild Horse Preservation Campaign, et al. v. Salazar, et al.*, Civ. No. 11-02222 (BAH) (May 9 2012)
- *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55 (2004)
- *American Horse Protection Ass'n v. Lyng*, 812 F.2d 1 (D.C. Cir. 1987)

FALL RECESS – NO CLASS OCTOBER 11, 2022

Optional on October 11, 2022: Tune into SCOTUS Oral Argument in *NPPC v. Ross, et al.*, No 21-468: https://www.supremecourt.gov/oral_arguments/live.aspx

Class 7: October 18, 2022

Legislative Drafting and Defensibility

Local, state, and federal legislative processes for enacting animal protection laws – issues in legislative drafting, lobbying, citizen initiatives and referenda and grass roots activities

Guest lecturer: Rebecca Cary, The Humane Society of the United States

Required Material:

- *California Prop 2: A Watershed Moment for Animal Law* 15 ANIMAL L. 149 (2009)
- *Commonwealth v. Looper*, Civ. No. 00850, 2009 WL 1272625 (Ky.App. May 8, 2009)
- *Illinois Restaurant Assn. v. City of Chicago*, 492 F.Supp.2d 891 (N.D. Ill. 2007)
- Federal Meat Inspection Act preemption provision: 21 U.S.C.A. § 678
- Watch: oral argument in *Assoc Des Eleveurs De Canards, Et Al v. Kamala Harris*, No. 15-55192 (9th Cir. 2015)
https://www.youtube.com/watch?v=WJerm_vEbE0
- Listen: oral argument in *NPPC v Ross, et al.*, No 21-468 [link TBD]

Class 8: October 25, 2022

Laws and regulations concerning farm animals; including laws prohibiting particular forms of confinement, and providing for humane slaughter and transport

Required Material:

- *National Meat Association v. Harris* - Oral Argument - November 09, 2011, https://apps.oyez.org/player/#/roberts6/oral_argument_audio/22414 (1 hr.)
- *Animal Legal Defense Fund v. Kimberly Reynolds* - Oral Argument - Sept. 22, 2020, <https://www.courtlistener.com/audio/71781/animal-legal-defense-fund-v-kimberly-reynolds/> (35 min.)
- *NJSPCA v. NJDOA*, 196 N.J. 366 (N.J.Sup.Ct. 2008)

Suggested Material:

- *HSR & MCPCA v. Lyng*, 633 F.Supp. 480 (W.D.N.Y. 1986)
- *HSUS v. State BOE*, 152 Cal.App.4th 349 (Cal.App. 2007)
- *ALDF v. Provimi Veal*, 626 F.Supp. 278 (D.Mass. 1986)
- *PCRM v. Tyson*, 119 Cal.App.4th 120 (Cal.App. 2004)
- *Levine v. Connor*, 540 F.Supp.2d 1113 (N.D.Cal. 2008)
- *Cavel Int'l, Inc. v. Madigan*, 500 F.3d 551 (7th Cir. 2007)
- *Animal Legal Defense Fund v. Kelly* - Oral Argument - Jan. 19, 2021, <https://www.courtlistener.com/audio/74122/animal-legal-defense-fund-v-kelly/> (44 min.)
- *NJSPCA v. NJDOA*, 196 N.J. 366 (N.J.Sup.Ct. 2008)
- *HSR & MCPCA v. Lyng*, 633 F.Supp. 480 (W.D.N.Y. 1986)
- *HSUS v. State BOE*, 152 Cal.App.4th 349 (Cal.App. 2007)
- *ALDF v. Provimi Veal*, 626 F.Supp. 278 (D.Mass. 1986)
- *PCRM v. Tyson*, 119 Cal.App.4th 120 (Cal.App. 2004)
- *Levine v. Connor*, 540 F.Supp.2d 1113 (N.D.Cal. 2008)
- *Cavel Int'l, Inc. v. Madigan*, 500 F.3d 551 (7th Cir. 2007)

Class 9: November 1, 2022

Consumer and Investor Protection

Guest Speaker: Jay Shooster, Richman Law & Policy Group

Required Material:

- *ALDF v. Hormel Foods Corp.*, No. 19-CV-0397 (DC App. 2021)
- *HSUS v. Pilgrims Pride*, FTC Complaint (2018)
- *Animal Outlook v. Butterball, LLC*, No. 6930 (NAD 2021)
- *HSUS v. McDonalds*, SEC Complaint (2022)
- *HSUS v. Hormel*, SEC No Action Letter (2020)

Class 10: November 8, 2022

International Laws that Protect Farmed Animals

Guest Speaker: Carolina Mercei

[Materials to be Provided]

Class 11: November 15, 2022

Other Tools for Protecting Animals (Open Records Laws)

Required Material:

- Freedom of Information Act, 5 U.S.C. 552
- *U.S. Fish and Wildlife Service v. Sierra Club*, No. 19-547 (S. Ct. 2020),
- Amicus Brief on Behalf of Center for Biological Diversity and Defenders of Wildlife
- *Rise for Animals v. USDA*, (D. Md. 2020), Complaint
- *Hulsizer v. Labor Day Committee*, 734 A.2d 848 (Pa. 1999)

Class 12: November 22, 2022

Using Environmental Laws to Protect Farmed Animals

Required Material:

- *McKiver et al. v. Murphy-Brown, d/b/a Smithfield*, No. 19-10-19 (intro and Wilkinson concurrence)
- Excerpts from *Wasteland: The True Story of Farm Country on Trial* (e-book available at <https://julien.vermontlaw.edu/search~/?searchtype=t&searcharg=wastelands>)
- Council of Environmental Quality, *National Environmental Policy Act Implementing Regulations Revisions*, 87 FR 23453
- *CBD and FWW v. Swift Beef Co.*, No. 19-cv-01464 (D.Col. 2020)
- Petition To Rescind the Air Consent Agreement and Enforce Clean Air Laws Against Animal Feeding Operations

Suggested Material:

- *McKiver v. Murphy-Brown* (4th Cir.) - Oral Argument - January 31, 2020, <https://www.ca4.uscourts.gov/OAarchive/mp3/19-1019-20200131.mp3> (55 min.)
- Johns Hopkins Center for a Living Future, *Requiring Strengthening CAFO Regulations Under the Clean Air Act* (June 2020)

- OIG, *Eleven Years After Agreement EPA, Has Not Developed Reliable Emission Estimation Methods to Determine Whether Feeding Operations Clean Animal Comply With Air Act and Other Statutes* (Sept. 2017)
- EPA Sign-on Letter (July 19, 2022)
- Petition to List Industrial Dairy and Hog Operations as Source Categories Under Section 111(b)(1)(A) of the Clean Air Act (April 6, 2021)
- Petition To Revise the Clean Water Act Regulations for Concentrated Animal Feeding Operations
- *Humane Soc'y of United States v. Hanor Co. of Wisconsin, LLC*, 289 F. Supp. 3d 692 (E.D.N.C. 2018)
- *Rural Empowerment Ass'n for Cmty. Help v. U.S. Env't Prot. Agency*, No. CV 18-2260 (TJK), 2022 WL 444095, at *1 (D.D.C. Feb. 14, 2022)

Class 13: November 29, 2022

Animal Cruelty Against Farmed Animals

Guest Speaker: Will Lowery

Required Material:

- Wolfson, *Beyond the Law: Agribusiness and the Systemic Abuse of Animals Raised for Food or Food Production*, 2 ANIMAL L. 123-154 (1996).
- Justin Marceau, *Beyond Cages: Animal Law and Criminal Punishment*, Yale Law, Ethics and Animals Program Lecture Series (Sept. 23, 2019), available at <https://vimeo.com/363909189> (36 min.)
- *Hernandez-Gotay v. United States* - Oral Argument - <https://www.courtlistener.com/audio/73455/hernandez-gotay-v-united-states/> (36 min.)
- *In Re: Private Criminal Complaint Filed by Animal Outlook*, No. 374 MDA 2021 (Sup. Ct. Penn. 2021)

Suggested Material:

- *Hernandez-Gotay v. United States* (1st Cir. Jan. 14, 2021), cert. denied sub nom. *Ortiz-Diaz v. United States*, 2021 WL 4733320, 211 L. Ed. 2d 178, 142 S. Ct. 336 (2021)

Class 14: December 6, 2022

Hot Topic TBD

[Materials to be Provided]