

Vermont Law & Graduate School
Undercover Investigations of Animal Operations
Summer 2023

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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 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 & 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/accommodationsLinks to an external site.>

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.

All readings are available in their respective modules on Canvas as well as any hyperlinks.

This syllabus is subject to change.

Thursday 1:00 to 1:15

Class Introductions

Thursday 1:15 to 2:45

Introduction to Undercover Investigations

Read:

- Animal Charity Evaluators: Undercover Investigations: <https://animalcharityevaluators.org/advocacy-interventions/archived-interventions/undercover-investigations/#full-review> [Links to an external site.](#)
- Why Undercover Investigations? My top 5 reasons: <https://animaloutlook.org/why-undercover-investigations-my-top-five-reasons/> [Links to an external site.](#)
- Don't Believe Everything You See, Animal Agriculture Alliance: <https://animalagalliance.org/dont-believe-everything-you-see-the-truth-about-undercover-videos/> [Links to an external site.](#)
- U.S. Animal Death Stats: <https://www.animalclock.org/> [Links to an external site.](#)

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 2:45 – 3:00

Break

Thursday 3:00 to 3:30

Where Do Undercover Investigations Occur?

Read:

- HSUS Investigation Uncovers Veal Calf Abuse, Closes Plant (2009): <https://blog.humanesociety.org/2009/10/veal-investigation.html>Links to an external site.
- Undercover Investigation Exposes the Horrors of Animal Testing: <https://blog.humanesociety.org/2022/04/undercover-investigation-exposes-the-horrors-of-animal-testing-and-more-than-80-dogs-who-need-our-help.html>Links to an external site.
- What is a CAFO?: <https://thehumaneleague.org/article/what-is-a-cafo>Links to an external site.

Browse:

- CAFOs in the US: <https://cafomaps.org/>Links to an external site.

Optional - Skim Examples of Undercover Investigations:

Note that some of this content can be upsetting

- PETA Investigations: <https://www.peta.org/investigations/>Links to an external site.
- Mercy For Animals Investigations: <https://mercyforanimals.org/investigations/>Links to an external site.
- Animal Outlook Investigations: <https://animaloutlook.org/investigations/>Links to an external site.
- Cruelty Free International (Animal Research) Investigations: <https://crueltyfreeinternational.org/investigations>Links to an external site.

Thursday 3:30 to 5:00

Recording Laws

Read:

- Desnick v. American Broadcasting Companies, 44 F.3d 1345 (1995).
- Sanders v. American Broadcasting Companies, 20 Cal. 4th., 907 (Cal. 1999)
- Reporter's Recording Guide: <https://www.rcfp.org/wp-content/uploads/imported/RECORDING.pdf>Links to an external site.. Read introduction, at a glance chart, and blue boxes. Skim detailed state information.

Optional Reading:

- 50-state survey with relevant statutes: <https://www.justia.com/50-state-surveys/recording-phone-calls-and-conversations/>Links to an external site.

Friday 8:00 to 9:45

Legal Risks Inherent to Conducting Undercover Investigations

Read:

- Crimes vs. Torts: <https://www.lawyers.com/legal-info/criminal/types-of-crimes/can-an-act-be-both-a-crime-and-a-tort.html>Links to an external site.
- Food Lion, Inc. v. Cap. Cities/ABC, Inc., 194 F.3d 505 (4th Cir. 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)
- Peta v. Bobby Berosini, Ltd., 115 Nev. 583 (1999).
- 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 9:45 to 10:00

Break

Friday 10:00 to 11:00

Preparing for an Investigation

Read:

- Understanding Employee vs. Contractor Designation, available at: <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>Links to an external site.
- Respondeat Superior, AMLOT § 4:3

- Model Rules of Professional Conduct, Rule 1.2, available at: https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_2_scope_of_representation_allocation_of_authority_between_client_lawyer/Links_to_an_external_site.
- 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 Erin Wing

Read:

- Why This Undercover Investigator Is Helping Others Expose Animal Abuse (Erin Wing, Sentient Media), available at: https://sentientmedia.org/why-this-undercover-investigator-is-helping-others-expose-animal-abuse/Links_to_an_external_site.

Explore:

- (NOTE: some graphic content) Aquaculture: A Sea of Suffering, available at: https://animaloutlook.org/investigations/aquaculture/Links_to_an_external_site.

Prepare:

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

Friday 12:00 to 1:00

Break

Friday 1:00 to 2:45

Animal Protection Laws

Read:

- ALDF: Laws That Protect Animals: <https://aldf.org/article/laws-that-protect-animals/Links to an external site.>
- 2022 State Animal Protection Laws Rankings: <https://aldf.org/project/us-state-rankings/Links to an external site.> (Read overview, pick a state of interest, and review state-specific compendium)
- Customary Cruelty in the Farm Industry: When Animal Abuse is Legal, available at: <https://aldf.org/article/customary-cruelty-in-the-farm-industry-when-animal-abuse-is-legal/Links to an external site.>
- Federal Laws and Agencies Involved with Animal Testing: <https://aldf.org/article/federal-laws-and-agencies-involved-with-animal-testing/Links to an external site.>

Prepare:

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

Friday 2:45 to 3:00

Break

Friday 3:00 to 5:00

Gathering Evidence, Preparing for Litigation, and Drafting Criminal Complaints

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, available at: <https://www.mprnews.org/story/2015/10/09/prosecutor-wont-charge-hog-farm-workersLinks to an external site.>
- Civil Remedy for Protection of Animals, N.C. Gen. Stat. sec. 19A.

- How Courts Work, available at: [https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/bringingcharge/Links to an external site.](https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/bringingcharge/Links_to_an_external_site)

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?

Saturday 8:00 to 12:00

Drafting an Investigations Memorandum

Saturday 12:00 to 1:00

Break

Saturday 1:00 to 2:00

Litigating Undercover Investigations with Will Lowrey

Read:

- Most animal cruelty is legal on the farm. A judge is questioning that, (Kenny Torella, Vox, Mar. 9, 2022): <https://www.vox.com/future-perfect/2022/3/9/22967328/animal-cruelty-laws-state-federal-exemptions-pennsylvania-martin-farms-dairy-calves-dehorning>Links to an external site.

Optional - Watch:

- (NOTE: some graphic content) Interview with Will Lowrey: [https://www.facebook.com/JaneVelezMitchell/videos/663176051537329/Links to an external site.](https://www.facebook.com/JaneVelezMitchell/videos/663176051537329/Links_to_an_external_site)

Prepare:

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

Saturday 2:00 to 3:00

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/Links to an external site.>

Read:

- 14 Times MFA's Undercover Investigations Changed the World for Animals (Note some graphic images): <https://mercyforanimals.org/blog/7-mfa-investigations-that-shook-us-to-our-core/Links to an external site.>
- Report on Chilliwack Cattle Sales sentencing: <http://fraservalleynewsnetwork.com/2017/10/04/chilliwack-cattle-sales-seventh-and-last-sentence-in-animal-cruelty-case/Links to an external site.>
- Mercy For Animals accusations leads B.C. to adopt national dairy cow guidelines: <https://www.cbc.ca/news/canada/british-columbia/mercy-for-animals-accusations-leads-b-c-to-adopt-national-dairy-cow-guidelines-1.3143973Links to an external site.>
- Former Suppliers of Beef to National School Lunch Program Settle Allegations of Improper Practices and Mistreating Cows: <https://www.justice.gov/opa/pr/former-suppliers-beef-national-school-lunch-program-settle-allegations-improper-practices-andLinks to an external site.>
- The Silver Spring Monkeys: The Case that Launched PETA: <https://www.peta.org/issues/animals-used-for-experimentation/silver-spring-monkeys/Links to an external site.>

Saturday 3:00 to 3:15

Break

Saturday 3:15 to 5:00

Open Rescue

Read:

- Rescuing animals from cruelty should be legal, Farhad Majoo: <https://www.sltrib.com/opinion/commentary/2023/02/18/farhad-manjoo-rescuing-farm/Links to an external site.>
- Activists Acquitted in Trial for Taking Piglets from Smithfield Foods, Marina Bolotnikova: <https://theintercept.com/2022/10/08/smithfield-animal-rights-piglets-trial/Links to an external site.>
- Utah v. Hsiung, Verdict.
- Can you break a window to save a dog in a hot car?: <https://aldf.org/article/can-you-break-a-window-to-save-a-dog-in-a-hot-car/Links to an external site.>

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?

Sunday 8:00 to 9:00

Industry/Corporate Response to Undercover Investigations

Watch:

- Taylor Radig, Tales from the Trenches: <https://www.youtube.com/watch?v=2Jd8iEQKwNgLinks to an external site.>



[external site.](#)

Read:

- 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-1.3460055Links to an external site.>
- Utah House Bill 114, Theft Defense Amendments (2023)

Sunday 9:00 to 10:00

Ag-Gag and the Constitution

Read:

- Ag-Gag Across America, by Center for Constitutional Rights & Defending Rights & Dissent: <https://ccrjustice.org/sites/default/files/attach/2017/09/Ag-GagAcrossAmerica.pdf>Links to an external site.
- Animal Legal Defense Fund v. Reynolds, 591 F.Supp.3d 397 (S.D. Iowa 2022).
- Federal Court finds 3rd Iowa 'Ag-Gag' Law Unconstitutional: <https://www.mtsu.edu/first-amendment/post/3438/federal-court-finds-3rd-iowa-ag-gag-law-unconstitutional>Links to an external site.
- 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.
- Ag-Gag (ALDF): <https://aldf.org/issue/ag-gag/>Links to an external site. (review map at bottom of webpage)

Sunday 10:00 to 10:15

Break

Sunday 10:30 to 12:00

Social Justice Discussion; Course Wrap-Up

Read:

- How the Animal Rights Movement Hurts Its Own Cause, available at: <https://www.currentaffairs.org/2021/04/how-the-animal-rights-movement-hurts-its-own-cause>Links to an external site.

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 Protection Laws
- Consideration of Evidentiary Concerns
- Adherence to Professional Conduct Rules
- Organization, Logic, Persuasiveness
- References and Citations (Bluebook is encouraged but not required)

IMPORTANT!

You don't need to include and analyze ALL of the possible relevant laws!

- Pick TWO criminal laws (the two most important) to analyze. Explain why you chose those. LIST other criminal laws the organization should explore before conducting an investigation.
- Pick TWO torts (the two most important) to analyze. Explain why you chose those. LIST other torts the organization should explore before conducting an investigation.

FINAL PAPER DUE by 5:00pm on Friday, June 16, 2023. Details on how to submit will be clarified in class.