

# THE MARYLAND ANIMAL LAW ADVOCATE

Opinions, News and Commentary from The Animal Law Section

Gary C. Norman, *Chair*  
Jan Berlage, *Vice-Chair*  
Kathy Anne Mancusi, *Editor*



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## *U.S. v. Stevens*

~The Supreme Court Rejects Anti-Animal Cruelty Law in Favor of Free Speech,  
But All is Not Lost Yet~

*By Patricia V. Tipon*

In 1999, Congress enacted 18 U.S.C. § 48, criminalizing the commercial creation, sale or possession of certain depictions of animal cruelty. The law was overwhelmingly passed by the House and unanimously passed by the Senate. The intent of the statute was to ban the sale of “crush videos,” which depict the torture and killing of animals. The law virtually shut down the crush video industry and the underlying animal cruelty

it sought to end. Robert J. Stevens, the defendant in this case, sought to overturn his conviction of selling dog fighting videos and challenged the statute as facially invalid.

On April 20, 2010, the Supreme Court held that § 48 is substantially overbroad, and therefore invalid under the First Amendment. Writing for the 8 to 1 majority, Chief Justice Roberts rejected the Government’s contention that a given category of speech should be subject to a “balancing of the value of the speech against its societal costs.” The First Amendment should not extend to only certain categories of speech that survive “an ad hoc balancing,” Justice Roberts wrote. The Chief Justice conceded that in past First Amendment challenges the Court has described historically unprotected categories of speech, such as child pornography or obscenity, as having “such slight social value.” As such, any benefit derived from the speech is “clearly outweighed by the social interest in order and morality.” However, Justice Roberts admonished that these descriptions do not set forth a balancing test.

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### Missive of the Chair

*By Gary C. Norman, Esq.*

This is to wish all of you a healthy and happy spring. In this missive, I shall provide thanks. I shall also describe a couple of projects of the Section.

As my term as Chair will conclude in June, 2010, I write to thank you for the chance to serve the Section. Additionally, thank you for the pleasure to collaborate with talented individuals, such as Cheryl Leahy, Associate Chair of the Mid -Atlantic Animal Law Symposium 2010, who is the General Counsel to Compassion over Killing, and Joshua L. Friedman, Deputy Chair of the symposium. Furthermore, thanks to former Section Council member Barbara Graham, who has been a good source of advice this year, and when requested, has helped the Section. She will provide a break-out session on Friday, June 11, solo day, at the MSBA’s Annual Meeting in Ocean City. Finally, my special thanks to the Chair Elect, Jan Berlage.

#### **New Section Award**

As many MSBA Sections bestow awards, it seems ap-

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## Missive of the Chair. . .

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ropos at this point in the history of the Section for the creation of an award recognizing leadership in law and policy concerning the mission of the Section. Named after Roberta L. Cepko, Esq., an attorney, civil rights activist for the rights of people with disabilities and lover and supporter of animals, the award will recognize, on a rolling basis, demonstrated leadership in animal law respecting education, litigation, legislation, and scholarship. For more information, the announcement of the award is at the webpage of the Section.

### The Symposium

The first-ever Mid-Atlantic Animal Law Symposium, instituted by the Section, was held on April 9, 2010, at the University of Baltimore School of Law. I am pleased to report that approximately ninety (90) attendees were present.

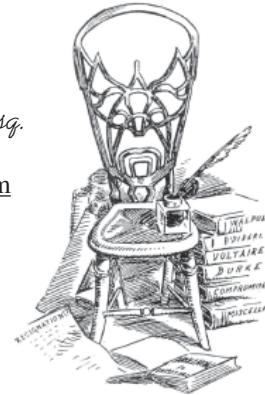
I wish to take this time to thank the numerous sponsors and partners of the symposium. Please see the symposium website, [www.animalsymposium.com](http://www.animalsymposium.com), for a listing of those generous sponsors and partners. Downloads of the presentations are also available at this website. Additionally, the symposium would not have been possible but for the support of the student leaders from local area law schools, including, the University of Baltimore School of Law. The Maryland Bar Foundation, in recognition of the achievement and value the symposium provided to the legal community, has

awarded a grant to the steering committee to cover some of the costs of the symposium.

In conclusion, thanks for the chance to serve you as Chair. As I stated on the day of the symposium, leaders in the field on animal law and welfare inspire me to be a better leader. On a personal note, my guide dog Langer, with whom I have been a partner for nine years, will retire at the time of the Annual Meeting. Consequently, I will be at guide dog school during this time acquiring a new partner. On June 10, a wonderful panel discussion will be moderated by Kate Masterson, Esq., who has graciously agreed to serve as our program director for this year. I look forward to future service to the Section with a new assistance dog partner.

Sincerely,

*Gary C. Norman, Esq.*  
Chair  
[GLNorman15@hotmail.com](mailto:GLNorman15@hotmail.com)



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## U.S. v. Stevens. . .

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The Government sought to carve out an exception similar to that in *New York v. Ferber*, 458 U.S. 747 (1982). The Chief Justice dismissed the Government's argument by attempting to distinguish the elements in *Ferber* from the case at bar. In *Ferber* the state of New York had a compelling interest in protecting children from abuse, the value of using children in child pornography was de minimis, and the market for child pornography was "intrinsically related" to the underlying abuse, which is illegal in the United States. Further, he wrote, unlike in *Ferber*, depictions of animal cruelty are not rooted in history as unprotected speech.

Straining to find overbreadth, the Court reasoned that the text of the law does not state that the depicted conduct be cruel. Thus, the depiction of wounding or killing an animal, even for no reason, may or may not be cruel. Additionally, the depicted conduct need only be illegal in the state in which the creation, sale or possession takes place thus extending conduct that may be illegal in one jurisdiction to another jurisdiction where the conduct is legal. The Court

illustrated this with the case of hunting, which is banned in the District of Columbia. A prosecutor, the Court theorized, could bring charges for the sale of a hunting video in D.C. even though the depicted conduct of hunting is legal in another state.

The Government argued that the exceptions clause would exclude videos of hunting, but the Court rejected that argument because it "requires an unrealistically broad reading of the exceptions clause." The exceptions clause exempts, among others, depictions that have artistic, scientific, journalistic, historical or educational value. Because, the Court reasoned, hunting does not fall into any of these categories the statute is too broad. Further, the Court is not willing to uphold an unconstitutional statute merely because the Government says that it would only prosecute cases of extreme cruelty. Since the statute could theoretically be applied outside of its purpose to ban videos depicting animal

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## *U.S. v. Stevens...*

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cruelty, § 48 is substantially overbroad.

Justice Samuel Alito, in his lone dissent, challenged the majority's application and analysis of the overbreadth doctrine. Justice Alito wrote that consideration of a statute's overbreadth must be measured by its "application to real-world conduct, not fanciful hypotheticals." He wrote that invalidating a statute for overbreadth should be a last resort. The majority should have, as has been done in previous First Amendment cases, determined whether the statute was valid as applied to the defendant in this case. Thus, the Court should have remanded the case to the Court of Appeals and instructed the court below to decide whether the videos in Stevens' case were constitutionally protected. Moreover, the overbreadth doctrine allows a party to whom the law is constitutionally applied to challenge the statute on the ground that it is unconstitutional when applied to others. That was not the case here because the Third Circuit Court of Appeals never decided whether § 48 is constitutional as applied to Stevens, but rather held that the statute was facially invalid.

Section 48 was not enacted to suppress speech, but to prevent acts of animal cruelty, Justice Alito further espoused. He criticized the majority's reasoning with regard to the statute's application to depictions of hunting as "seriously flawed." In *Ferber*, it was held that federal courts should construe a statute to avoid constitutional problems and should ascertain the intent of the drafters. Justice Alito noted that it is widely thought that hunting has scientific and historical value. Indeed, the Congressional record stated that depictions of ordinary hunting and fishing do not fall within the scope of § 48. Depictions of the slaughter of food animals or tail docking of dairy cows also would not, as the majority suggested, fall within the ambit of prosecution under § 48 because such depictions would qualify under the exceptions. In sum, none of the majority's examples of **possible** application demonstrates that the statute suffers from **substantial** overbreadth. Thus, invalidating the statute *in toto* is inappropriate.

Justice Alito elucidated that the statute has several constitutionally permissible applications. He noted that Congress enacted § 48 because banning crush videos was the only way to prosecute the underlying criminal conduct. The First Amendment does not protect violent criminal conduct even for expressive purposes. The reasoning in *Ferber*, Justice Alito explained, is germane to the proceedings here. The production of child pornography and not its content was the target of the statute banning child pornography. Further, the underlying crime could not have been effectively combated

without targeting the sale of child pornography. Finally, the value (if any) of child pornography was outweighed by the "evil to be restricted." These characteristics apply to crush videos. Carefully acknowledging that preventing child sexual abuse is far more important than preventing animal cruelty, Justice Alito nonetheless wrote that the Government has a compelling interest in preventing the torture depicted in crush videos and animal fighting videos and enforcing the nation's criminal laws. More than half the states, including Maryland, supported the law. Justice Alito described with examples in his dissent the enormous cruelty suffered by these animals and rationalized that animal cruelty, like child pornography, is illegal in every state. Because the harm caused by the underlying criminal conduct outweighs "any trifling value" of the depictions and because the statute is valid as applied to two "real-world categories of expression," he would reject Stevens' claim that the statute is facially invalid.

In response to the Supreme Court's ruling Rep. Elton Gallegly, who drafted the original bill in 1999, introduced legislation on April 21, 2010, that is more narrowly focused to prevent video depictions of cruelty to animals, while addressing the constitutional concerns of the Supreme Court. The bill specifically addresses animal crush videos to include the depiction of "actual conduct in which a living animal is tortured, maimed, or mutilated that violates any criminal prohibition on intentional cruelty . . ." The legislation also expressly excludes videos related to hunting.

Nota bene: On June 2, 2010, the ABA TIPS Animal Law Committee will host a live audio webinar to discuss the Stevens decision.

*Patricia V. Tipon is an Associate Counsel with the Baltimore Department of Housing and Community Development. She volunteers with a non-profit group to rescue homeless beagles.*



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# 2010 Legislative Wrap-Up

By Kathleen "Kate" J. Masterton

The Legislative Committee of the Animal Law Section reviews proposed bills that are animal-related and tries to form a consensus on whether the bill is good law, whether it is needed, whether it is duplicative, and otherwise warrants that the Section take action. The Committee can vote to support, to not support, or to take no position. This year the Committee considered roughly a dozen bills.

Two bills drew the unanimous vote of the Legislative Committee that the Section support the bill, and the Committee therefore recommended that the Section Council send a letter of support as to each. HB 1033 was a bill authorizing the County Commissioners for Frederick County to enact specified laws, ordinances, rules, or regulations to allow a restaurant to allow dogs in outdoor dining areas of restaurants; requiring the legislation to contain a specified prohibition; and requiring the legislation to contain provisions to ensure specified rights relating to the use of service animals are not impeded. While the full House passed the bill, no analogous bill passed the Senate so it did not become law.

**SB 21/HB 265** was a bill increasing the penalties for specified violations concerning the abuse or neglect of animals; and authorizing a court, as a condition of sentencing, to prohibit a defendant convicted of violating specified animal abuse or neglect laws from owning, possessing, or residing with an animal for the life of the defendant or for a specified period of time; etc. It never got beyond a first reading in the House Judiciary Committee.

The Committee voted to not support the following bills, and none advanced to be passed by both House and Senate:

**SB 192/HB 15**-- Requiring the owner of a specified dangerous dog to provide to the unit of the county or municipal corporation that made the determination that the dog is dangerous to provide proof that the dog has been spayed or neutered within 30 days of receiving notice of the determination by the unit; and providing penalties for a violation of the Act. The bill received unfavorable reports in both the House Judiciary and the Senate Judicial Proceedings committees.

**SB 1057**--Prohibiting a person from leaving a dog outside and unattended by use of a specified restraint during a specified time period or during a snow emergency declared by the Maryland State Police; and establishing penalties for a violation of the Act. Some voted not to support this bill

because they deemed its provisions inadequate, while others thought the language was poorly worded, or that the bill was duplicative of a statute that already included such behavior as prohibited.

**HB 1314**--Requiring the owner of a dangerous dog to obtain a dangerous dog registration certificate from a local animal control unit within 10 days of a dog committing an act which renders it a dangerous dog; requiring the owner to pay a registration fee set by the animal control unit; requiring a registration certificate to include specified information; requiring a local animal control unit to issue a dangerous dog registration certificate if the dog's owner provides specified satisfactory evidence; etc.

The Committee voted to take no position on the following bills:

**SB 798/HB 521**--Authorizing the owner or lessee of real property in Anne Arundel County to use a trap to capture rabies vector species on the curtilage of the real property without a license or permit; requiring the owner or lessee to provide specified notice to Anne Arundel County Animal Control related to specified trapping activity; requiring Anne Arundel County Animal Control, on receiving notice, to take custody of the trapped rabies vector species; etc. Senate: Unfavorable, Education Health and Environmental Affairs Committee; House: Withdrawn, Environmental Matters Committee.

**HB 1333**-- Increasing the compensatory damages that may be awarded to an owner of a pet for tortious death of, or injury to, the pet. Judiciary Committee: Unfavorable. The committee was divided as to the benefit of recognizing the growing importance of animal/human relationships by affording greater damages for torts to a pet and the likelihood that such a bill would negatively impact the affordability of veterinary care by driving up the cost of veterinary malpractice insurance.

**SB 729/HB 729**-- Authorizing the County Commissioners of Cecil County, by ordinance, to provide for specified regulation of specified domestic animals and hybrids of domestic and wild animals. Passed the Senate.

In addition, a lively debate was had over trapping laws af-

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## 2010 Legislative Wrap-Up . . .

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fecting private property, whether the Committee should become involved in local laws, and the extent, if at all, to which the Committee should in any formal way work with other organizations regarding legislation. These matters remain to be resolved in the future.

Also of interest are the following bills, none of which was the subject of Committee debate, but all of which have become law:

**SB 62** --Requiring that all funds collected by the Maryland Horse Industry Board be paid into the Maryland Horse Industry Fund; establishing a fee for a license; and altering specified fees relating to licensure renewal and inspection of horse riding stables. EFFECTIVE: July 1, 2010

**SB 81** -- Providing that in lieu of or in addition to suspension of the license, a maximum monetary penalty of \$5,000 may be imposed by the State Board of Veterinary Medical Examiners for a first offense; and providing that in addition to suspension or revocation of the license, the board may impose a maximum penalty of not more than \$10,000 for a second or subsequent offense. EFFECTIVE: October 1, 2010

**SB 82** --Prohibiting a person from adulterating or misbranding a commercial feed, or from distributing, removing, or disposing of commercial feed in violation of a specified stop sale order, or from detaching, altering, defacing, or destroying a specified label; and altering definitions. EFFECTIVE: October 1, 2010

**SB 89** --Authorizing the Secretary of Agriculture to establish a farm quarantine and to issue appropriate orders necessary to control or restrict the use of specified farmland, crops, livestock, poultry, or farm products; requiring the Secretary to consult with the Governor, the Secretary of Health and Mental Hygiene, and the Secretary of the Environment before establishing a quarantine; requiring the Secretary to give specified notice of a quarantine and to provide procedures to alter or remove a quarantine; etc. EFFECTIVE: October 1, 2010

**SB 95** --Authorizing the Maryland Agricultural Land Preservation Foundation to establish a Farmland Preservation Partnership Program to preserve productive agricultural and forested lands; authorizing the Foundation to form partnerships to purchase easements on specified qualifying properties; requiring the Foundation's partners to cover specified costs associated with the purchase of easements; requiring properties that qualify for the Partnership Program to meet specified criteria developed by the Foundation; etc. EFFECTIVE: October 1, 2010

**HB 135**--Continuing the State Board of Chiropractic and Massage Therapy Examiners in accordance with the provisions of the Maryland Program Evaluation Act by extending to July 1, 2022, the termination provisions relating to the statutory and regulatory authority of the Board; requiring that an evaluation of the Board and the statutes and regulations that related to the Board be performed on or before July 1, 2021; requiring the Board to submit specified reports on or before specified dates; altering a specified reference; etc. EFFECTIVE: July 1, 2010. This bill arose after the Board tried to exercise its regulatory authority to prevent persons from practicing massage therapy on horses.

**HB 246**—Authorizing a person in Allegany County or Garrett County to hunt for deer on private property with a bow and arrow during open season on the last three Sundays in October and the second Sunday in November.

The Legislative Committee is open each session to anyone who wishes to participate in the identification and study of pertinent bills.

*Special thanks to Kathleen J. P. Tabor, Esquire, for research that contributed to this article.*

*Ms. Masterton is a former horse trainer who currently operates the Law Office of Kathleen J. Masterton, P.C. in Towson, Maryland, where she practices in the areas of estates and trusts, equine law, and business law. She may be reached at [kmasterton@verizon.net](mailto:kmasterton@verizon.net).*

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# Special Weapons and Tactic (SWAT) Killing Good Dogs

*By Stacey Evans, Esq.*

Imagine you and your family are relaxing at home on a Friday night – until several SWAT officers suddenly enter your home – unannounced with guns drawn and red lights flashing everywhere. As they come through your door, your loving ten year old lab/Rottweiler mix and two year old German shepherd start barking. A SWAT officer taps his flashlight on your door, causing your ten year old dog to run. Then you and your family stand in shock as you see SWAT officers lower their shields and shoot your senior dog, giving you no chance to let them know your dog is friendly or to call your dog.

You and your family are handcuffed – as your dog lies bleeding on the floor with no medical attention – while SWAT officers search through your home. You plead with them to call Animal Control to transport your dog to a hospital, but they refuse to do so and continue to search.

One and a half hours later, they finally call Animal Control to transport your dog. When your dog finally arrives at the hospital – his gunshot injuries are so extensive – he is euthanized.

Kevin and Lisa Henderson say this happened to them in their Columbia, Maryland home on January 18, 2008.<sup>1</sup> Though they are law abiding citizens with no criminal record, they were charged with various drug related offenses four days after the raid.<sup>2</sup> Later, they were cleared of all drug related offenses they were charged with.<sup>3</sup>

Fast forward several months to July 29, 2008. That is when Mayor Chye Calvo of Berwyn Heights, Maryland, headed home from a walk with his two black Labrador retrievers, seven year old Payton and four year old Chase.<sup>4</sup> Mayor Calvo spotted a package addressed to his wife on his front doorstep upon returning home.<sup>5</sup> He did not know that drug ring members were randomly putting packages of marijuana on doorsteps addressed to people they did not know.<sup>6</sup>

Mayor Calvo innocently brought the package inside his home and set it unopened on a table.<sup>7</sup> His mother-in-law was home cooking.<sup>8</sup> He went upstairs to change his clothes.<sup>9</sup> As he was changing his clothes, SWAT officers stormed through his door without knocking.<sup>10</sup>

They immediately shot Payton several times.<sup>11</sup> Then they repeatedly shot Chase as he ran away from them.<sup>12</sup> Mayor Calvo and his mother-in-law sat handcuffed near Payton and Chases' bleeding bodies for four hours, while SWAT officers interrogated them and searched his home.<sup>13</sup> Both Payton and Chase died as a result of the gunshot wounds from the SWAT officers.<sup>14</sup>

Like the Hendersons, the Calvos were cleared of violating any law.<sup>15</sup> Like the Hendersons, the Calvos violently lost canine family members in a SWAT raid.<sup>16</sup>

As a result of his experience, Calvo examined police use of SWAT teams.<sup>17</sup> When he found no oversight of SWAT team deployment, he pushed for Senate Bill 447 (SB 447), a bill requiring Maryland government to monitor SWAT deployments in Maryland.<sup>18</sup> His efforts materialized when SB 447 became first the statewide law in the United States to oversee SWAT team use.<sup>19</sup> Now police departments must monitor their SWAT team use, report such use to the governor's office every six months; the governor's office must then summarize the SWAT team reports and forward the summaries to the Maryland General Assembly annually.<sup>20</sup>

In addition to supporting SB 447, Mayor Calvo on June 22, 2009,<sup>21</sup> filed suit in Prince Georges County Circuit Court against the SWAT officers who killed his two beloved dogs.

The following month, on July 27, 2009, the Lisa and Mike Henderson filed suit against the SWAT officers and the SWAT's employer, Howard County Government, in US District Court for the District of Maryland.<sup>22</sup> In their complaint, they allege the SWAT officers committed assault, battery, and malicious prosecution when they killed Grunt, their ten year old lab/Rottweiler mix, damaged their home, physically injured them, and caused them mental anguish during the raid.<sup>23</sup> They also argue that SWAT officers violated 42 U.S.C. § 1983, the Equal Protection Clause, and Articles 23 and 26 of the Maryland Declaration of Rights.<sup>24</sup> They demand compensatory and punitive damages of \$5,000,000, pre- and post-judgment interest, the cost of litigation, other relief as may be just, and a jury trial.<sup>25</sup>

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# An Invitation to Ponder – Law Review Review/Preview

## An Introduction to Cap and Trade for Animal Welfare

By Alan S. Nemeth

Interest in the advancement of animal welfare has grown in the United States in recent years. This growth can be seen by the passage of stronger animal welfare laws, including the banning of gestation and veal crates in Maine in 2009, the passage of Proposition 2 in California in 2008 which banned battery cages and gestation and veal crates, and the passage of stricter puppy mill laws in Virginia, Pennsylvania, and Louisiana in 2008.

Although these are important steps, could further improvements be accomplished on a wider scale if animal welfare advocates took a page from the handbook of activists who have been even more successful of late? Specifically, the environmental advocacy community has inspired the United States and the world to combat not only pollution, but also global warming by forcing the reduction of greenhouse gases.

On June 26, 2009, the U.S. House of Representatives passed the American Clean Energy and Security Act of 2009, H.R. 2454, which includes a straightforward concept and tool intended to reduce pollution, that of cap and trade. Thinking outside of the proverbial box, could a market-based approach such as cap and trade be successfully used to improve animal welfare throughout the United States and across the various industries that use animals?

This article will explore that very question by focusing on the U.S. Environmental Protection Agency's publication, *Tools of the Trade: A Guide to Designing and Operating a Cap and Trade Program for Pollution Control (Tools of the Trade)*. The stated purpose of *Tools of the Trade* is to serve "as a reference for policy-makers and regulators considering cap and trade as a policy tool to control pollution. It is intended to be sufficiently generic to apply to various pollutants and environmental concerns; however, it emphasizes cap and trade to control emissions produced from stationary source combustion." This article will make use of the generic nature of this publication to explore whether the concern for animal welfare can legitimately be substituted for the concern for the environment. Specifically, can the argu-

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## Protecting Animals Used in Circuses: A Survey of State Anti-Cruelty Statutes

By Alan S. Nemeth

[*Authors Note: Article is written with members of the University of Baltimore School of Law's Student Animal Legal Defense Fund.*]

Traditionally, federal laws, such as the Animal Welfare Act and the Endangered Species Act, have been cited to protect animals used by circuses. Prosecution of circuses to date has been primarily focused on administrative violations, whereby circuses have failed to abide by minimal standards of care and have perpetuated poor treatment of the animals. However, the enforcement of these standards has been often lax and/or ineffective. Additionally, suits have been filed by animal welfare groups for the enforcement of the provisions of the AWA and the ESA, but these cases have proven to be costly, time-consuming, and often ineffective.

*Protecting Animals Used in Circuses: A Survey of State Anti-Cruelty Statutes* takes a look at applying state (also DC and the U.S territories) anti-cruelty laws, already on the books, for the protection of animals used by circuses. Common language within the state anti-cruelty statutes can be a strong tool with which to combat circus-based cruelty. For example, at least thirty-three U.S. jurisdictions have some version of "justifiable" or "necessary" in their anti-cruelty statutes. Two states, Maryland and Idaho, reference "normal" in their exceptions from their anti-cruelty codes. Ultimately, like much in the law, the application of the anti-cruelty codes comes down to defining terms. Since the terms "justifiable," "necessary," and "normal" are almost universally undefined within the anti-cruelty statutes, we, in the legal field, are left to first define them, then to apply them. What is justifiable? What is necessary? What is normal? Is it necessary and/or justifiable to force animals to perform in circuses and suffer the mistreatment involved in training, transportation, and the performance itself? Is it normal for an elephant or a lion to wear a costume and perform tricks? The article discusses these concepts in detail.

In addition to the discussion of the idea of using state anti-cruelty statutes to protect animals used by circuses, the article provides a jurisdiction-by-jurisdiction summary of

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## SWAT. . .

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It will be interesting to see the outcome of these two cases regarding legal violations and damages for SWAT police killing dogs Grunt, Payton, and Chase.

*Stacey Evans, is an Attorney and Legislative Counsel with the Federal Maritime Commission in Washington, D.C. She also volunteers as a dog walker and trainer at the Maryland SPCA in Baltimore.*

Nothing in this article reflects the views or position of the Federal Maritime Commission.

### Footnotes:

<sup>1</sup> *Henderson and Henderson v. Howard County of Maryland, Officer Pete, Det. Clate Jackson and Officer Joshua Lapier*, No. 1:09-cv-01957-MJG, US District Court for the District of Maryland (2009).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> April Witt, *Deadly Force*, February 1, 2009 at [www.washingtonpost.com/wp-dyn/content/article/2009/01/23/AR2009012302935.html](http://www.washingtonpost.com/wp-dyn/content/article/2009/01/23/AR2009012302935.html)

<sup>5-14</sup> *Id.*

<sup>15</sup> Jordan Attebury, *Berwyn Heights mayor files lawsuit against Prince George's sheriff, county*, June 22, 2009 at [www.gazette.net/stories/06222009/prinnew174807\\_32558.shtml](http://www.gazette.net/stories/06222009/prinnew174807_32558.shtml)

<sup>16-19</sup> *Id.*

<sup>20</sup> S.B. 447, 1009 Leg. 426th Sess. (Md. 2009).

<sup>21</sup> *Id.*

<sup>22</sup> *Henderson and Henderson v. Howard County of Maryland, Officer Pete, Det. Clate Jackson and Officer Joshua Lapier*, No. 1:09-cv-01957-MJG, US District Court for the District of Maryland (2009).

<sup>23-25</sup> *Id.*

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## Anti-Cruelty Statutes. . .

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the pertinent anti-cruelty provisions, cites to the applicable statutes, and offers a brief commentary on each jurisdiction's statutes and how they can be applied to protect the animals used by circuses. Exceptions contained in each statute are also cited and considered.

The strategy discussed in the article is the use of state anti-cruelty statutes to prosecute circuses for the total experience of

the animals – not simply the overt cruelty that is normally associated with the application of those statutes. It is designed to consider state anti-cruelty laws and their use in non-obvious ways by considering the overall suffering, torment, pain, and distress of an animal's life in the circus. And, it does so by applying the plain language of each statute. The end result will hopefully be that, while animal welfare

## Cap and Trade. . .

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ment be made that cap and trade, when properly implemented, could serve to improve the lives of animals?

At its most basic level, cap and trade works to affect change because it is a market-based system in a capitalist society. Where appealing to morality, instituting regulations, or taxing behavior may not be effective, providing the opportunity to increase revenue can be very compelling to companies. After all, creating revenue is the ultimate purpose of business. Cap and trade offers businesses a unique opportunity to use the market to develop a compliance process that is most beneficial to their bottom lines.

It has taken many years for the industries that use animals to develop the processes and infrastructure currently in use that provide the substandard levels of animal welfare. It will take time to breakdown those processes and infrastructure and institute new ones. A cap and trade program for animal welfare would set into motion a measurable and appreciable process to improve animal welfare over time.

Printed with permission of the Louis D. Brandeis School of Law, University of Louisville. Excerpted from *Journal of Animal & Environmental Law*, Vol.1, No.1, Fall, 2009. For the full article see: [www.jael-online.org/wp-content/uploads/2009/11/JAEL-Issue-1-Final-2.pdf](http://www.jael-online.org/wp-content/uploads/2009/11/JAEL-Issue-1-Final-2.pdf).

*Alan S. Nemeth is an Adjunct Professor of Animal Law at both the University of Baltimore School of Law and the Washington College of Law/American University. Nemeth earned his J.D. from the Washington College of Law/American University in 1989 and his M.B.A. from the University of Baltimore in 1999. Nemeth was the founder and first chair of the Maryland State Bar Association's Section on Animal Law and currently serves as a member of its Section Council.*

organizations file suit in federal court and spar with administrative agencies on a national scale, states and localities can join the fight in their own courts to stop the abuse of animals used by circuses through the enforcement of their own anti-cruelty laws. The article is designed to spur creative lawyering and humane en-

forcement in the states for the protection of animals used by circuses.

*Protecting Animals Used in Circuses: A Survey of State Anti-Cruelty Statutes*, will be published in the forthcoming 4<sup>th</sup> Volume of the University of Pennsylvania School of Law's *Journal of Animal Law and Ethics*.