

MSU's Animal Welfare Clinic Roars Onto the Scene

An Inside Look at the Innovative Contributions Clinicians Have Made to the Field of Animal Law in the Clinic's First Year

By Carney Anne Nasser

The Animal Welfare Clinic at Michigan State University College of Law has just completed its first year. At the time the clinic was established when I arrived at MSU in June 2017, only one other similar clinical program existed in the United States: the Center for Animal Law Studies at Lewis & Clark Law School in Portland, Oregon,¹ where my extraordinary colleague, Kathy Hessler, is director. Hessler and I are currently the only two full-time professors in the world who teach exclusively animal law.² As a practitioner with significant regulatory, legislative, and impact litigation experience in animal law over the course

of 15 years of practice, I have endeavored to create a collaborative clinical environment where law students can participate in game-changing legal work. I believe it is my responsibility to provide animal welfare clinicians with innovative and multidisciplinary professional experiences they will not find at most other law schools, and that will empower them regardless of the type of law they pursue after graduation.

I sought to create a clinical experience that would challenge students to devise and deploy multifaceted legal strategies to elevate the legal interests and treatment of *all* animals as opposed to serving human clients with cases that happen to concern or involve animals. Animal law is, in my professional but not-so-objective opinion, one of the most exciting and rapidly developing fields of law, meaning law students in the clinic have virtually limitless possibilities for cultivating and executing creative legal strategies. Therefore, our clinic does not serve individual clients who have animal-related cases; rather, it serves the interests of justice by devising and executing complex legal strategies with the objective of changing the entire legal landscape for animals—whether they are kept as companions, used for entertainment, experimented on in research labs, exploited in the exotic pet trade, or forced to perform in circuses.

MSU's animal welfare clinicians have engaged in a number of cutting-edge projects in our inaugural year. I'm humbled and proud that many attorneys are somewhat shocked when they learn about the caliber of work these second- and third-year students are producing. Following is just a sample of some of what these remarkable students have contributed to the field since August 2017.

Comments to the U.S. Department of Agriculture on license rubberstamping

Through statutory mandate of the federal Animal Welfare Act, the United States Department of Agriculture (USDA) regulates the use of animals by various commercial industries,



including roadside zoos, commercial dog breeders, circuses, and research facilities.³ The act is not a federal cruelty law (no such law exists), but it establishes minimum standards of housing, care, and transportation through interpretive regulations promulgated by the USDA.⁴ There are approximately 120 USDA inspectors for several thousand licensed facilities,⁵ and the Animal Welfare Act requires agency inspections to ascertain compliance.⁶ The act similarly requires compliance before annual license renewal, but the agency has a long-standing practice of yielding to licensee self-certification rather than verifying act compliance before renewal, resulting in the renewal of licenses for numerous facilities that are chronic Animal Welfare Act violators.⁷ MSU animal welfare clinicians worked with more than a half dozen of the most reputable exotic animal sanctuaries in the United States to prepare detailed comments and a robust administrative record to support proposed regulatory change that would mandate verified act compliance before license renewal,⁸ among other important improvements to assure fulfillment of the act's purpose. This critical regulatory change has been a long time coming and could affect millions of animals in regulated facilities by better ensuring that facilities that don't maintain minimum standards of care will not be able to renew their licenses.⁹

Model animal guardianship law

One of MSU's animal welfare clinicians, second-year law student Hussein Saad who has aspirations in the legislative/policy and political arenas, prepared a model bill that would empower judges to appoint law students or pro bono attorneys as animal guardians in cruelty cases on the court's own motion or at the request of either prosecutors or defense attorneys. The model law, introduced in 2018 as HB 6029 and sponsored by Rep. Abdullah Hammoud and 15 other representatives, is presented as a no-cost bill that doesn't expand the reach of any existing cruelty law or affect existing exemptions, but rather seeks to serve the interests of justice and provide courts with an additional voice in the courtroom and throughout the prosecution for additional factual input, animal placement, and even animal victim impact statements. A similar law has been passed in Connecticut concerning cruelty cases involving dogs and cats,¹⁰ but the scope of the model law drafted by the MSU Animal Welfare Clinic would help courts in all cruelty cases that reach prosecution, regardless of species.

Comments to the USDA on third-party certifications

The USDA, in furtherance of what appears to be an ongoing deregulation campaign that has been in place for at least as long as I have been an animal law practitioner, solicited public comment on an agency proposal to consider third-party certification as a positive factor when determining the frequency of inspections of Animal Welfare Act-regulated facilities.¹¹ The net impact could ostensibly be that some members

of certain commercial animal industries may not be subject to agency inspection for more than a year at a time if they are members of an industry trade group—a move many have criticized as tantamount to the “fox guarding the henhouse.” Two third-year law students, Heather Olson and Rose Rodriguez, prepared detailed written comments and an administrative record totaling more than 1,000 pages of supporting exhibits and evidence for submission to the USDA, and they traveled with me to Tampa, Florida, to deliver oral testimony to the USDA's deputy administrator of animal care and other agency representatives. The listening session was attended by numerous animal exhibitors and advocacy groups alike.¹²

On May 25, 2018, we received the good news that the USDA decided against using third-party certification as a positive factor when determining inspection frequency. We will no doubt need to continue to keep pressure on the agency to more effectively enforce the Animal Welfare Act, but a different decision would have been a significant step backward for the welfare of millions of animals in the United States.¹³

Animal rescue, sanctuary placement, and legal analysis

In November 2017, wildlife investigators in a southern state contacted me about a critically emaciated tiger cub that law enforcement officers had confiscated from an unpermitted location after finding the young cat chained to a concrete slab.

Because of relevant state law prohibiting private ownership of dangerous wild animals in that particular jurisdiction,

At a Glance

Through statutory mandate of the federal Animal Welfare Act, the USDA regulates the use of animals by various commercial industries, including roadside zoos, commercial dog breeders, circuses, and research facilities.

The Animal Welfare Act is not a federal cruelty law (no such law exists), but it establishes minimum standards of housing, care, and transportation through interpretive regulations promulgated by the USDA.

There are approximately 120 USDA inspectors for several thousand licensed facilities.

Most states have either prohibited or established a licensure program for the ownership of certain exotic animals.



The Animal Welfare Clinic helped rehome this tiger cub to a reputable sanctuary after law enforcement officers found her chained in a backyard at an unpermitted facility.

federal law prohibiting interstate trafficking, and the cruel conditions in which the cub was discovered,¹⁴ the clinic consulted with state and federal agents on the breadth of potential local, state, and federal criminal charges. It discovered 22 potential local, state, and federal criminal violations in connection with the apparent possession, transport, and treatment/neglect of the cub. The clinic arranged and coordinated placement for the young tiger at an award-winning, accredited sanctuary once she was healthy enough to travel. Since being rehomed to the Lions, Tigers & Bears sanctuary in Alpine, California, the cub—now named Nola—is thriving in her vast, naturalistic habitat.¹⁵ The clinic will continue to provide legal support and analysis to the extent necessary and helpful for investigators and prosecutors.

Submission of a proposed resolution to the U.S. Fish & Wildlife Service on tiger farming

The Convention on the International Trade in Endangered Species of Wild Fauna and Flora is an international treaty with more than 180 signatory nations, including the United States.¹⁶ Although the treaty is not self-executing, it is implemented in the U.S. through the statutory and regulatory framework of the federal Endangered Species Act.¹⁷ The aim of the treaty is to ensure that the international trade in wildlife “is legal and does not threaten the survival of species in the wild.”¹⁸ Every two to three years, the signatory nations meet for a Conference of the Parties to discuss implementation of the treaty and introduce resolutions and changes that further the intent

of the international agreement.¹⁹ Voting is strictly reserved for the parties, but nongovernmental agencies and others who demonstrate experience in the field may be approved for observer status, allowing them to present oral testimony for consideration by voting delegates.²⁰ The next conference will be in Sri Lanka in May 2019,²¹ and the Animal Welfare Clinic is preparing detailed comments and proposed resolutions on critical animal welfare matters that bring together species conservation and international wildlife trafficking and plans to present oral testimony at the treaty meeting.

Freedom of Information Act practice on the state and federal levels

Numerous groups—the American Bar Association,²² the American Veterinary Medical Association,²³ the Association of Zoos and Aquariums,²⁴ and the U.S. Department of Agriculture,²⁵ among others—condemn private ownership of various species of exotic animals. However, five states still allow unfettered ownership of dangerous animals as pets: Alabama, Nevada, North Carolina, South Carolina, and Wisconsin.²⁶ Most states have either prohibited or established a licensure program for the ownership of certain exotic animals from tigers to venomous snakes. Existing state laws are patchwork and lack any degree of uniformity or consistency. Because federal agencies like the U.S. Fish and Wildlife Service and USDA only oversee the use of particular species in certain commercial settings that affect interstate commerce, there is a dearth of information available on the state or federal level when it comes to dangerous animals kept as pets.

When investigating an animal welfare concern relating to exotic animals, the first step is always a specific and well-crafted Freedom of Information Act (FOIA) request to the relevant federal agencies and state open-records law requests to relevant agencies and law enforcement offices. MSU's animal welfare clinicians become proficient at FOIA practice, including appeals processes. Our clinicians have submitted dozens of records requests, yielding thousands of pages of critical animal welfare records and information; when agencies have denied access to public records, clinicians have vigorously appealed the refusal. Additionally, clinicians have used records obtained through FOIA to support complaints to federal agencies about violations of the Animal Welfare Act.

First responders' handbook for dangerous wild animal encounters

Law enforcement officers and first responders—such as the police officers who first discovered the tiger cub, Nola, while executing an unrelated warrant—receive no training and have no resources to prepare them or guide them through an encounter with an inherently dangerous pet. The MSU Animal Welfare Clinic is filling this void by literally writing the book on dangerous animal encounters for law enforcement officers, paramedics, humane officers, and other first responders in all 50 states.

Conclusion

I'm proud of the work the clinicians have accomplished in such a short time, and I'm grateful that MSU College of Law is providing a meaningful opportunity for students to gain unique practice experience. The opportunity to empower future lawyers is both rewarding and humbling. The most exciting part is that we are just getting started. ■

Carney Anne Nasser is director of the Animal Welfare Clinic at Michigan State University College of Law and executive director of the WildCat Conservation Legal Aid Society (wcclas.org). As a practitioner with more than a decade of experience with multiple animal advocacy nonprofit organizations, Nasser has largely focused on creative litigation, regulatory, and legislative strategies to protect and conserve big cats and other animals commonly exploited for entertainment and the exotic pet trade.

ENDNOTES

1. For information about the two clinics, see Michigan State University College of Law Animal Welfare Clinic <<https://www.law.msu.edu/clinics/index.html>> and Lewis & Clark Law School Center for Animal Law Studies <https://law.lclark.edu/centers/animal_law_studies/>. All websites cited in this article were accessed May 25, 2018.
2. Gormley, *Portland is Home to the World's First Animal Law Professor*, *Williamette Week* (January 30, 2018) <<http://www.wweek.com/culture/2018/01/30/portland-is-home-to-the-worlds-first-animal-law-professor-we-asked-her-about-the-biggest-legal-issues-with-pets/>>.

3. 7 USC 2131(l).
4. 7 USC 2143(a)(1) and 7 USC 2143(a)(2).
5. U.S. Dept of Agriculture, *About Animal Care* (March 20, 2018) <https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/usda-animal-care-overview/ct_about_animal_welfare>.
6. 7 USC 2146(a).
7. Winders, *Administrative License Renewal and Due Process—A Case Study*, *Florida State University Law Review* (forthcoming) (April 12, 2017) <<http://dx.doi.org/10.2139/ssrn.2952062>>.
8. Animal Welfare: Procedures for Applying for Licenses and Renewals, 82 Fed Reg 40077 (proposed August 21, 2017) (to be codified at 9 CFR parts 1 & 2).
9. Cima, *APHIS considers stricter animal welfare licensing*, *JAVMANews* (AVMA) (September 27, 2017) <<https://www.avma.org/News/JAVMANews/Pages/171015e.aspx>>.
10. Connecticut Votes for Animals, *Desmond's Law Information* (2016) <<https://www.ctvotesforanimals.org/desmondslaw>>.
11. Third-Party Inspection Programs Under the Animal Welfare Act; Public Meetings, 83 Fed Reg 2959 (January 16, 2018).
12. Marrero, *Critics blast outsourcing federal animal inspections*, *Tampa Bay Times* (March 8, 2018) <http://www.tampabay.com/news/business/agriculture/Critics-blast-outsourcing-federal-animal-inspections_166189440> and *Animal Advocates*, *Ingham County Legal News* (April 2, 2018) <<http://legalnews.com/ingham/1456914/>>.
13. USDA, *USDA Announces It Will Not Recognize Third-Party Inspections and Certifications*, *APHIS Bulletin* (May 25, 2018) <<https://content.govdelivery.com/accounts/USDAAPHIS/bulletins/1f27bf1>>.
14. Calder, *Where was white tiger cub seized in Louisiana? Officials mum, but rapper's video offers clue*, *The New Orleans Advocate* (January 5, 2018) <http://www.theadvocate.com/new_orleans/news/article_cd39b624f26a11e7b4aa-67c82122a7a0.html>.
15. *Neglected white tiger cub now living at Alpine sanctuary Lions Tigers & Bears*, *ABC 10 News* (January 2, 2018) <<https://www.10news.com/news/neglected-white-tiger-cub-now-living-at-alpine-sanctuary-lions-tigers-bears>>.
16. *What is CITES?*, *Convention on International Trade in Endangered Species of Wild Fauna and Flora* <<https://www.cites.org/eng/disc/what.php>>.
17. 50 CFR 23.1(c).
18. 50 CFR 23.1(b).
19. *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, Art XI, March 3, 1973 <<https://www.cites.org/eng/disc/text.php#exttop>>.
20. *Id.*
21. Eighteenth meeting of the Conference of the Parties, *Convention on International Trade in Endangered Species of Wild Fauna and Flora* <<https://www.cites.org/eng/cop/index.php>>.
22. American Bar Association Resolution No. 105 (Revised), ABA (February 9, 2015) <https://www.americanbar.org/content/dam/aba/images/abanews/2015mm_hodres/105.pdf> and ABA, *ABA joins the call for stricter laws regulating private possession of dangerous animals*, *ABA Journal* <http://www.abajournal.com/magazine/article/aba_joins_the_call_for_stricter_laws_regulating_private_possession_of_dange/news/article/judges_and_the_administrative_state/?icn=sidebar&ici=bottom>.
23. AVMA, *AVMA Animal Welfare Division Director's Testimony on the Captive Primate Safety Act Before the House of Representatives Comm on Natural Resources* (March 11, 2006) (Statement of Gail Golab, PhD, DVM) <<https://www.avma.org/News/PressRoom/Pages/Testimony-golab-080311.aspx>>.
24. Nyhus & Tilson, *The Conservation Value of Privately Owned Tigers*, *AZA Annual Conference Proceedings*, Association of Zoos & Aquariums (Doherty & Girton, eds., 2003), 55–59 and Ass'n of Zoos & Aquariums, *AZA White Paper: Personal Possession of Non-Human Primates* (July 21, 2015) <https://www.speakcdn.com/assets/2332/personal_possession_of_non-human-primates_7212015.pdf>.
25. USDA, *Position Statement: Large Wild and Exotic Cats Make Dangerous Pets*, Animal and Plant Health Inspection Service (February 2000) <http://www.aphis.usda.gov/animal_welfare/downloads/big_cat/position.pdf>.
26. Born Free USA, *Summary of State Laws Relating to Private Possession of Exotic Animals* <http://www.bornfreeusa.org/b4a2_exotic_animals_summary.php>.