

How To Advocate For Animals

In Criminal Law

David B. Rosengard || Jamie Contreras
Senior Staff Attorneys



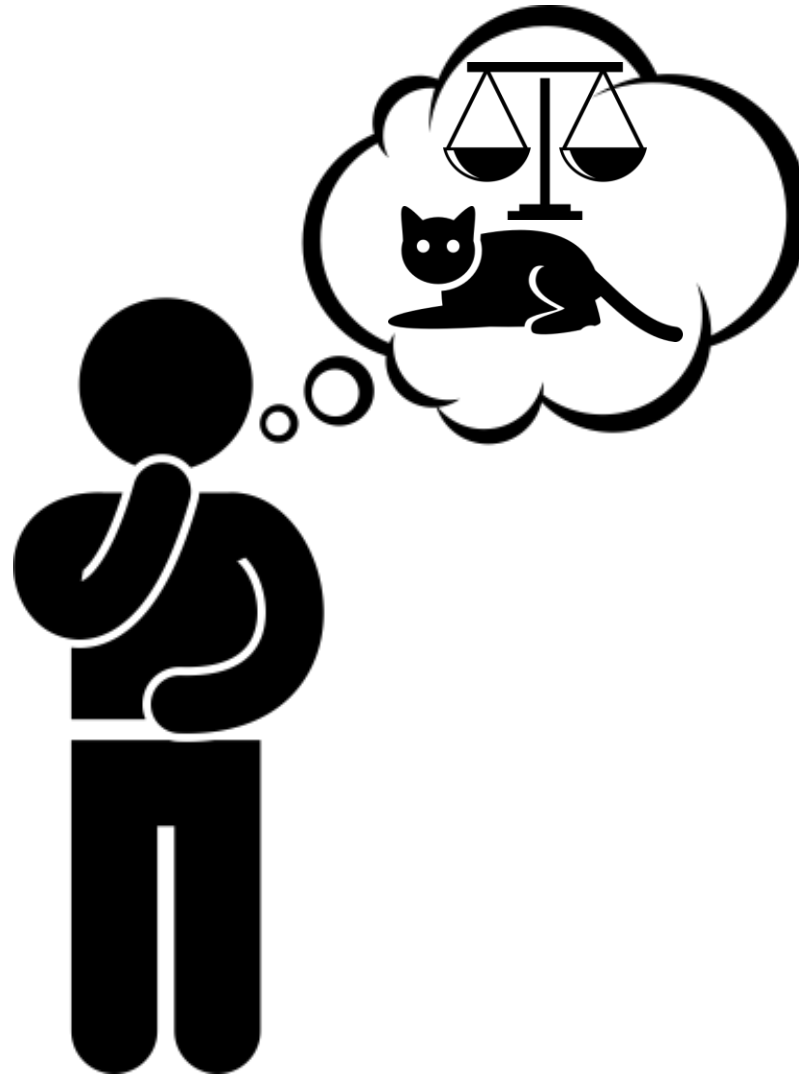
WHERE DO **ANIMALS** FIT UNDER THE LAW?

Key Factors

- Property Status
 - What does property status mean for animals?
 - What does property status *not* mean?
- Sentience & Selfhood
- Human Relationships & Human Context

Animalness Is Significant

- Unique Needs
- Unique Challenges
- Unique Relevance



FOR EXAMPLE, A MOUSE



Intersections Between Animal Status & Criminal Law

Jamie Contreras



ANIMAL STATUS IN CRIMINAL LAW



Animals are property, but in a category by themselves

- Rights, but with corresponding responsibilities and restrictions

Evidence

- Animals are evidence of animal cruelty—but evidence who must be fed and cared for

Crime Victims

ANIMALS AS PROPERTY

Rights and benefits associated with ownership

- **Right to control/exclude**
- **Right of possession**
 - Exclusive: interference with possessory rights may be a crime/tort
 - Rights vis-à-vis government/police
- **Right to transfer ownership**
- **Authority to make decisions about reproduction, care**



BUT...THEY ARE PROPERTY **UNLIKE ANY OTHER**

Although they can be owned, animals are not things

- **Alive** and “sentient”—feeling creatures capable of suffering



WITH OWNERSHIP COMES RESPONSIBILITY

- **State laws set the floor of minimum care for an animal, and outlaw acts of cruelty – regardless of ownership**
 - Not all animals are treated equally
 - Example: some states exclude “livestock” from definition of “animal” for purposes of cruelty laws
 - Or include in definition of animal, but exceptions for slaughter, research, animal husbandry, veterinary procedures
- **Owner can lose right of possession/ownership**
 - Pretrial forfeiture
 - Upon conviction for abuse/neglect



ANIMALS AS EVIDENCE



The animal himself or herself is evidence of the crime, subject to the rules of evidence.

Animals held as evidence are usually housed in a shelter or humane society until trial (and potentially through appeal)

- Can be expensive, especially when multiple animals
- May strain shelter resources, especially in small counties
- Chain of custody issues may cause shelter to limit who may interact with the animals



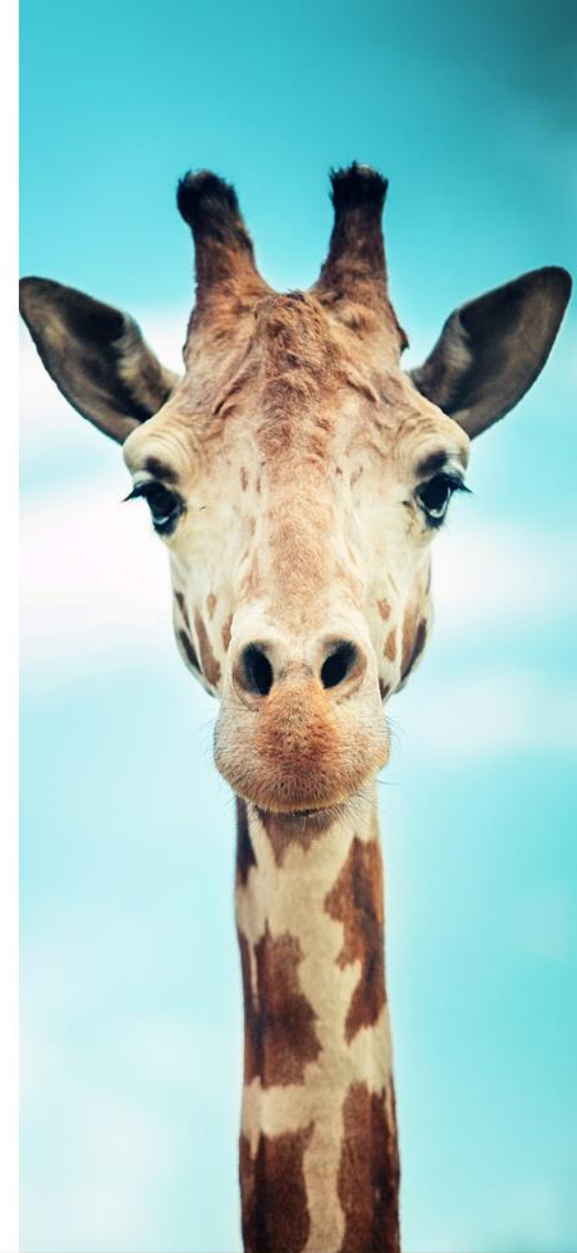
ANIMALS AS CRIME VICTIMS

- As a practical matter: animals are the victims of abuse and neglect, because they are the ones who suffer as the result of the crime.
- As a legal matter: question of legislative intent
 - *State v. Nix/State v. Hess (Oregon)*
 - Legal issue: How many “victims” of animal neglect, for purposes of determining number of convictions/sentence (*i.e.*, “merger”)
 - Anti-merger statute did not define “victim”
 - Analysis: who did the legislature intend to protect in enacting the crime?



IMPLICATIONS OF CRIME VICTIM STATUS

- **Abuser may have to pay restitution**
- **Enforceable rights against abuser?**
 - *Justice v. Vercher* (awaiting argument in Oregon Court of Appeals)
 - Issue: does Oregon law as set forth in *Nix* establish that animals are the victims of animal cruelty, such that the animal can bring a civil action for negligence per se?
- **Potential access to some formal crime victim rights?**
 - Timely resolution
 - Victim impact statement
 - Right to protection



Doing Advocacy in The Criminal Context

David B. Rosengard



CASE STUDY: CONNECTICUT

Desmond's Case

- Shelter Surrender & Adoption
- Abuse & Death
- Case Resolution

Desmond's Army

- Non-Attorneys
- Effective vis-à-vis Specific Cases and Systemic Change

Desmond's Law

- § 54-86n (2016)
- First Courtroom Animal Advocate Program (CAAP) Law

Desmond's Advocates

- Attorneys and Law Students
- Assist Court re: Interests of Justice in Animal Cruelty Cases
 - Cf. (Human) Victim Rights Attorneys



CRIM ANIMAL ADVOCACY: LEGAL PRACTITIONERS

Practicing Attorneys

- Options if you are...
 - ...a Prosecutor.
 - ...Defense Counsel.
 - ...not largely in crim practice.

Law Students & Attorneys (Practicing or Retired)

- Options if you are...
 - ...Anywhere.
 - ...in Connecticut or Maine.



CRIM ANIMAL ADVOCACY: NON-PRACTITIONERS

Laws

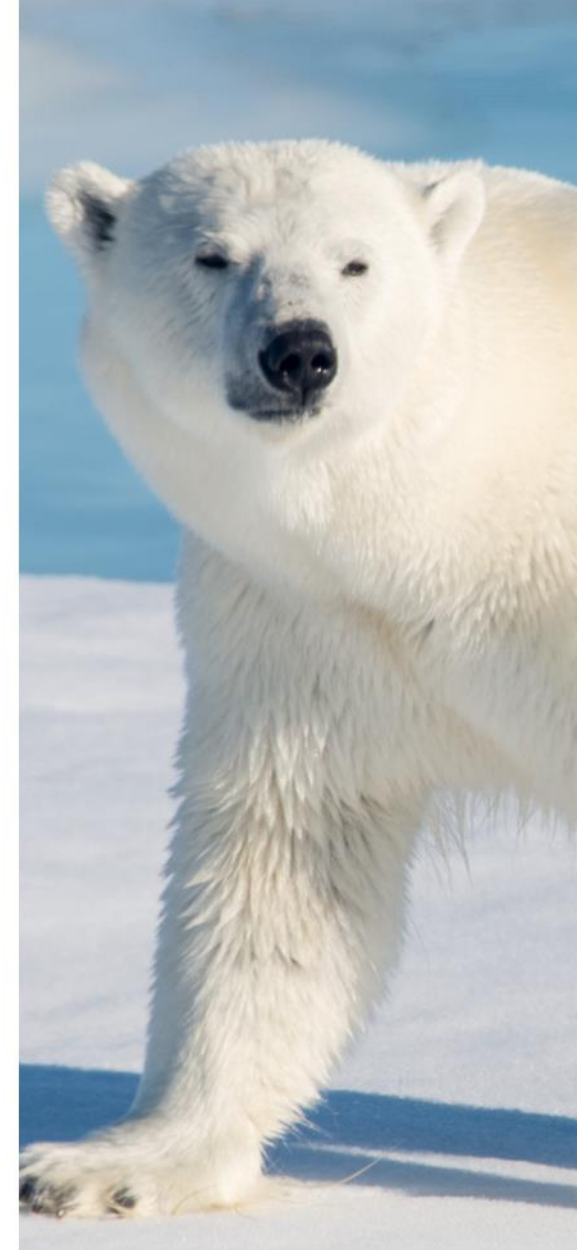
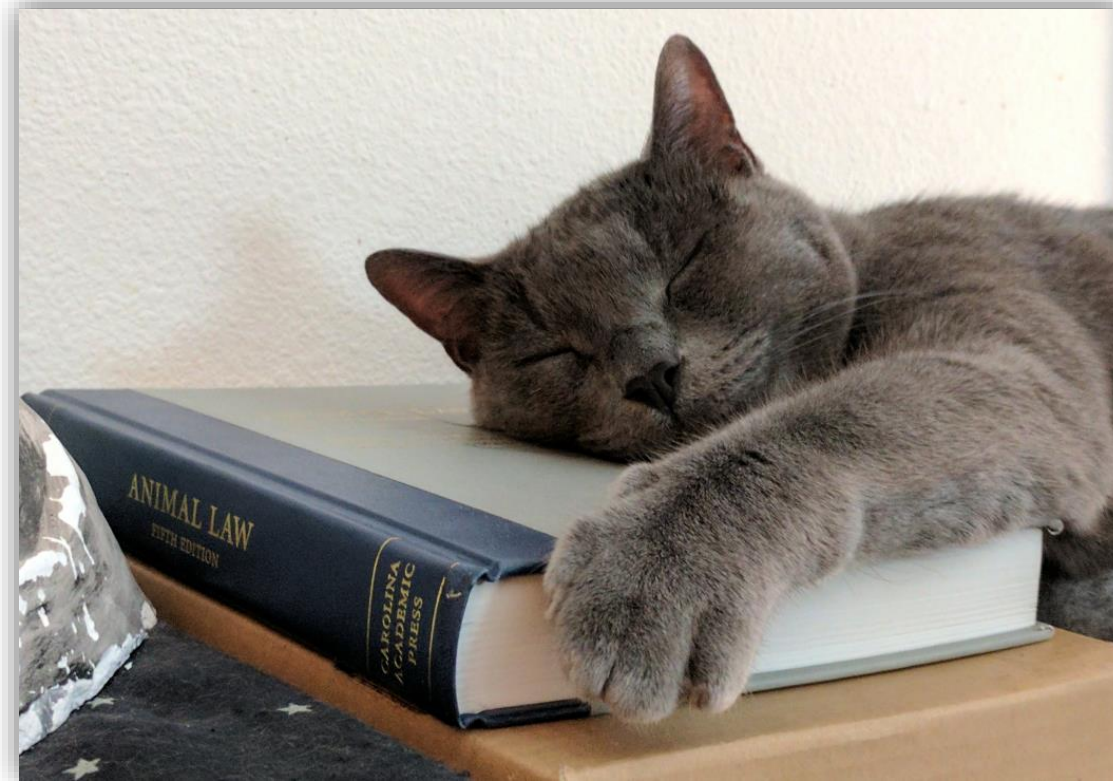
- Legislative Work
- Electoral Pressure

Incidents

- Prevention
- Effective Reporting

Cases

- Visibility
- Community Engagement



“SOCIAL NORMS AND CONVENTIONS”

- *State v. Newcomb* (Oregon Supreme Court, 2016)
 - Issue: whether a dog owner suspected of neglecting her dog had a constitutionally protected interest in the dog’s blood, after the dog was lawfully seized—such that blood test results had to be suppressed
 - Owner’s argument: right to privacy in the “contents” of the dog, her property
 - Oregon Supreme Court:
 - No right to privacy in the dog’s blood. A blood draw for purposes of medical diagnosis and treatment after the dog was lawfully seized “is not a form of government scrutiny that, ***under legal and social norms and conventions***, invades a dog owner’s protected privacy rights” under the Oregon Constitution, and owner had no reasonable expectation of privacy under the Fourth Amendment.



Thank You!

(and Questions)

For more information, contact
info@aldf.org

