

“Advising the Livestock Producer on Ag Gag Laws”

New York State Bar Association (“NYSBA”) Annual Meeting
Committee on Animals and the Law (“CAL”)

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I. BACKGROUND

A. THE TERM “AG GAG”

1. Definition

- a. “Ag gag” refers to anti-whistleblower laws that restrict employees from taking photographs or videos illustrating *alleged* cruelty to animals, food safety issues, and/or poor working conditions, during the farming process and/or restrict people such as activist and undercover journalists from obtaining illegal access (commonly through job application fraud) onto agricultural operations for this same purpose.
- b. These laws are also being used with regard to anti-fracking activists.

2. Variation from State-to-State

- a. There are only a handful of states that have “ag gag” laws; however, there is a lot of variation right now among those states. The laws range from creating criminal sanctions against the employee making the recording to criminal actions for distributing the recording after they have been made.
- b. States vary on what is and what is not an offense. Most existing laws may directly restrict unauthorized recordings at animal facilities or focus on gaining employment under false pretenses. In some versions of the statute, undercover video/photographer takers must submit unedited versions of the recordings to law enforcement authorities.

See Edward Cox et al., “Overview of Employment and Labor Law for Farms and Ranches” American Bar Association Webinar (February 20, 2013), available for purchase at

<http://shop.americanbar.org/eBus/Store/ProductDetails.aspx?productId=216251> (last visited November 21, 2014) at 56.

B. THROUGH THE LENS OF SUPPORTERS

1. From the Livestock Owner's Perspective

- a. Exposing the inside workings of the farming industry severely hurts business for farmers because viewers of such videos or photographs are only seeing one side of a picture.
- b. Proponents of the law are people in the farming and agricultural industry who see the animal cruelty videos posted by opponents as one time incidences and are also fearful of hiring people with fraudulent job applications, which would impair the production of their business.
- c. These videos are oftentimes taken out of context. The video and photography does not accurately portray what happens on the farm day in and day out; instead, it shows the worst isolated incidents that can usually be explained.

2. From the Agriculture Farm Worker Perspective

3. From the Perspective of Other Players in the Agriculture Industry

C. THROUGH THE LENS OF OPPONENTS

II. STATES WITH "AG GAG" STATUTORY PROVISIONS

A. BACKGROUND

1. In 2002, the American Legislative Exchange Council drafted a model bill called **The Animal and Ecological Terrorism Act**, which prohibited "entering an animal or research facility to take pictures by photograph, video camera, or other means with the intent to commit criminal activities or defame the facility or its owner".
2. Many states have adopted "ag gag" laws. These laws vary from state to state. States with the stricter "ag gag" laws include Iowa, Utah, Idaho, and Kansas.
3. **Timeline**
 - a. 1990 – Kansas
 - b. 1991 – North Dakota & Montana
 - c. 2011 – 4 proposed bills but none passed
 - d. 2012 -- 10 proposed bills and 3 passed (Iowa, Missouri, and Utah)
 - e. 2013 – 15 proposed bills but none passed

f. 2014 - Idaho

See Kathy Hessler, “Ag-Gag”) National Lawyers Guild Northwest Regional Conference (March 15, 2014) at 6 available at <http://2014nwnlregionalconference.files.wordpress.com/2014/03/ag-gag-cle-materials.pdf> (last visited November 27, 2014).

B. KANSAS (1990)

1. K.S.A. 47-1827 (1990) (see supplement)

(c) No person shall, without the effective consent of the owner and with the **intent to damage the enterprise** conducted at the animal facility:

(1) enter an animal facility, not then open to the public, **with intent to commit an act** prohibited by this section;

(2) remain **concealed**, with intent to commit an act prohibited by this section, in an animal facility;

(3) enter an animal facility and commit or attempt to commit an act prohibited by this section; or

(4) enter an animal facility to **take pictures by photograph, video camera** or by any other means.

(Emphasis added).

2. Comments

a. This was the first “ag gag” law.

b. Please note that the statute does not require that the person be an employee or independent contractor. It does require intent to damage the enterprise.

C. NORTH DAKOTA & MONTANA (1991)

1. Mont. Code Ann § 81-30-103 (1991)

(1) A person who does not have the effective consent of the owner may not acquire or otherwise exercise control over an animal facility, an animal from an animal facility, or other property from an animal facility with the **intent to deprive the owner of the facility, animal, or property or to damage the enterprise conducted at the animal facility**.

(2) A person who does not have the effective consent of the owner and who intends to damage the enterprise conducted at an animal facility may not:

(a) damage or destroy an animal facility or an animal or property in or on the premises of an animal facility;

(b) enter an animal facility that is at the time closed to the public with the intent to commit an act prohibited by this chapter;

(c) remain concealed in an animal facility with the intent to commit an act prohibited by this chapter;

(d) enter an animal facility and commit or attempt to commit an act prohibited by this chapter;

(e) enter an animal facility to **take pictures by photograph, video camera, or other means with the intent to commit criminal defamation;** or

(f) enter or remain on the premises of an animal facility if the person:

(i) had notice that the entry was forbidden; or

(ii) received notice to depart but failed to do so.

(3) The provisions of this chapter do not apply to lawful activities of a:

(a) government agency or its employees who are carrying out their duties under law or to lawful activities of a financial institution or other secured party; and

(b) humane animal treatment shelter or its employees whose primary purpose is the bona fide control or humane care of animals or the enforcement of 45-8-211.

(Emphasis added).

2. N.D. Cent. Code § 12.1-21.1-02 (1991)

No person without the **effective consent of the owner** may:

1. Intentionally damage or destroy an animal facility, an animal or property in or on the animal facility, or any enterprise conducted at the animal facility.

2. Acquire or otherwise exercise control over an animal facility or an animal or other property from an animal facility with the intent to deprive the owner and to damage the enterprise conducted at the facility.

3. Enter an animal facility, not then open to the public, with intent to commit an act prohibited by this section.

4. Enter an animal facility and **remain concealed** with intent to commit an act prohibited by this section.

5. Enter an animal facility and commit or attempt to commit an act prohibited by this section.

6. Enter an **animal facility and use or attempt to use a camera, video recorder, or any other video or audio recording equipment.**

7. Intentionally turn out or release any animal in or on an animal facility.

This section does not apply to lawful activities of a governmental agency carrying out its duties under law.

(Emphasis added).

D. IOWA, MISSOURI & UTAH (2012)

1. Iowa Code § 717A.3A (2012)

(1) A person is guilty of **agricultural production facility fraud** if the person willfully does any of the following:

(a) **Obtains access** to an agricultural production facility by **false pretenses**.

(b) Makes a **false statement or representation** as part of an **application or agreement to be employed** at an agricultural production facility, if the person knows the statement to be false, and makes the statement with an intent to commit an act not authorized by the owner of the agricultural production facility, knowing that the act is not authorized.

(2) A person who **commits agricultural production facility fraud** under subsection 1 is guilty of the following:

(a) For the first conviction, a serious misdemeanor.

(b) For a second or subsequent conviction, an aggravated misdemeanor.

(3) (a) A person who conspires to commit agricultural production facility fraud under subsection 1 is subject to the provisions of chapter 706. A person who aids and abets in the commission of agricultural production facility fraud under subsection 1 is subject to the provisions of chapter 703. When two or more persons, acting in concert, knowingly participate in committing agricultural production facility fraud under subsection 1, each person is responsible for the acts of the other person as provided in section 703.2. A person who has knowledge that agricultural production facility fraud under subsection 1 has been committed and that a certain person committed it, and who does not stand in the relation of husband or wife to the person committing the agricultural production facility fraud under subsection 1, and who harbors, aids, or conceals the person committing the agricultural production facility fraud under subsection 1, with the intent to prevent the apprehension of the person committing the agricultural production facility fraud under subsection 1, is subject to section 703.3.

(b) A trial information or an indictment relating to agricultural production facility fraud under subsection 1 need not contain allegations of vicarious liability as provided in chapter 703.

(Emphasis added).

2. Mo. Rev. Stat. § 578.013 (2012): Videotape or digital recording of farm animal abuse or neglect, duty to submit to law enforcement, violation, penalty

1. Whenever any farm animal professional videotapes or otherwise makes a digital recording of what he or she believes to depict a farm animal subjected to abuse or neglect under sections 578.009 or 578.012, such farm animal professional **shall have a duty to submit such videotape or digital recording to a law enforcement agency within twenty-four hours of the recording**.

2. No videotape or digital recording submitted under subsection 1 of this section shall be spliced, edited, or manipulated in any way prior to its submission.

3. An intentional violation of any provision of this section is a class A misdemeanor.

(Emphasis added).

3. Utah Code Ann. 1953 § 76-6-112 (2012)

(1) As used in this section, “agricultural operation” means private property used for the production of livestock, poultry, livestock products, or poultry products.

(2) A person is guilty of agricultural operation interference if the person:

(a) without consent from the owner of the agricultural operation, or the owner's agent, **knowingly or intentionally records an image of, or sound from, the agricultural operation by leaving a recording device on the agricultural operation;**

(b) **obtains access** to an agricultural operation under **false pretenses;**

(c)(i) **applies for employment at an agricultural operation with the intent to record an image of, or sound from, the agricultural operation;**

(ii) knows, at the time that the person accepts employment at the agricultural operation, that the owner of the agricultural operation prohibits the employee from recording an image of, or sound from, the agricultural operation; and

(iii) while employed at, and while present on, the agricultural operation, records an image of, or sound from, the agricultural operation; or

(d) without consent from the owner of the operation or the owner's agent, knowingly or intentionally records an image of, or sound from, an agricultural operation while the person is committing criminal trespass, as described in Section 76-6-206, on the agricultural operation.

(3) A person who commits agricultural operation interference described in Subsection (2)(a) is guilty of a class A misdemeanor.

(4) A person who commits agricultural operation interference described in Subsection (2)(b), (c), or (d) is guilty of a class B misdemeanor.

(Emphasis added).

E. ARKANSAS

1. S.B. 13-2013 Passed on April 12, 2013.

2. Makes it “improper animal investigation” by someone who is not a “certified law enforcement officer” a Class B misdemeanor with the potential for a civil penalty of \$5,000.

F. IDAHO (2014) (see supplement)

III. STATES WITH PENDING “AG GAG” LEGISLATION

A. CALIFORNIA

1. AB 343 (“Animal and Ecological Terrorism Act”)

- a. The bill would have “require[d] somebody recording a video at a farming operation to turn it over to law officers within 24 hours – in other words, before investigators could document any illegal activity under federal food-handling and safety laws.”
- b. This bill is still pending.
- c. For complete text, please see the supplement.

B. FLORIDA

1. H.B. 5143 – 2012

- a. This bill has been tabled.
- b. The proposed bill amends the Animal Research and Production Facilities Protection Act.
- c. Creates the offense of animal facility interference for creating or possessing, without the consent of the owner, a visual or sound recording made at the animal facility, which reproduces a visual or audio experience occurring at the facility

C. ILLINOIS

1. H.B. 5143 – 2012

- a. S.B. 373 extends the 2012 proposed legislation to include “industrial operations.” This bill does not address employment under false pretenses, addressing only the act of recording at an agricultural facility without consent. See infra Cox at 60.
- b. This has been tabled.

2. S.B. 1532- 2013

- a. Introduced bill will amend Illinois’s “Humane Care for Animals Act”

- b. “If the Department of Agriculture determines that a complaint made under the Act against a person or entity is false or unfounded and made with the intent to harass the person or entity, the Department may waive any confidentiality of the complainant and refer the matter to the State's Attorney for consideration of criminal charges against the complainant.”

D. MINNESOTA

- 1. **S.F. 1118 (see supplement)**
- 2. **H.F. 1369 – 2012 (see supplement)**

E. NEBRASKA

- 1. **L.B. 915 – 2012 (see supplement)**
 - a. The 2012 bill proposed the additional “ag gag” language, “Any person who obtains employment at an animal facility with the intent to disrupt the normal operations of the animal facility is guilty of a Class IV felony.” See infra Cox at 60.
- 2. **L.B. 204 – 2013 (see supplement)**
 - a. The 2013 bill parallels the federal Animal Enterprise Terrorism Act. See infra Cox at 60.

F. NEW HAMPSHIRE

- 1. **H.B. 110 – 2013**
 - a. Like the new Missouri law, the N.H. bill merely requires an unedited version of any recordings of animal cruelty to be submitted to law enforcement authorities. See infra Cox at 60.

G. NEW MEXICO

- 1. **SB 552 (“Livestock Operation Interference Act”) (see supplement)**
 - a. This bill is very similar to Pennsylvania, Missouri and Iowa.

H. NORTH CAROLINA

- 1. **S.B. 648 (“Commerce Protection Act”)**

- a. It contains the same language and provisions as many of the "ag-gag" bills listed below, including 1) photography bans, 2) job application/fraud, and 3) mandatory reporting within (in this case) 24 hours.

I. PENNSYLVANIA

1. HB 683

- a. The bill includes a prohibition against recording image or sound from an agricultural operation without consent and obtaining access to that operation under "false pretenses".
- b. See supplement

J. SOUTH CAROLINA

1. S788 ("Farm Animal and Research Facilities Protection Act")

- a. Proscribes "trespassing at an animal facility with the intent to cause damage or harm".
- b. According to the full act summary, "A person commits an offense if, without the effective consent of the owner, the person exercises control over an animal facility or the property located there, or if that person damages the facility or its property. A person also commits an offense if he or she enters a facility without the effective consent of the owner and remains concealed with the intent to disrupt or damage the enterprise conducted at the animal facility. Violation for disruption or damage to a facility or its property is a misdemeanor with a fine of up to \$10,000 and/or 3 years imprisonment. Violation for illegal entry is a misdemeanor with a fine up to \$5,000 and/or 1 year imprisonment."

K. VERMONT

1. S.162 ("An Act Relating To Agricultural Facility Fraud") (see supplement)

- a. Specifies a fine of up to \$1,000 for anyone who "makes a knowingly false statement or representation as part of an application to be employed at an agricultural facility".
- b. Referred to committee 3-19-2013

IV. **“AG GAG” LEGISLATION THAT WAS NOT ADOPTED (I.E., FAILED LEGISLATION)**

A. INDIANA

1. **S.B. 184 – 2012 (see supplement)**
2. **S.B. 373 – 2013 (“Trespass and Application Fraud”)** (see supplement)
 - a. Standard “ag gag” bill making it unlawful to record agricultural or industrial operations, including photographs or video recordings
 - b. Class A misdemeanor
3. **S.B. 391- 2013**
 - a. Would also make it unlawful to record agricultural operations as well as require the Indiana Board of Animal Health to maintain a registry of persons convicted of such crime.
 - b. Class A or Class B misdemeanor

B. MISSOURI

1. **Mo. Laws § 578.013**
 - a. Missouri’s original proposed “ag-gag” bill was not adopted, but there were new restrictions in 2012 placed on the use of recordings depicting animal abuse. See *infra* Cox at 61.
 - b. **Proposed Language**

1. Whenever any farm animal professional videotapes or otherwise makes a digital recording of what he or she believes to depict a farm animal subjected to abuse or neglect under sections 578.009 or 578.012, such farm animal professional shall have a duty to submit such videotape or digital recording to a law enforcement agency within twenty-four hours of the recording.

2. No videotape or digital recording submitted under subsection 1 of this section shall be spliced, edited, or manipulated in any way prior to its submission.

3. An intentional violation of any provision of this section is a class A misdemeanor.

C. NEW YORK

1. **S.B. 5172 – 2012 (“Unlawful tampering of farm animals”)**
 - a. Introduced but died in committee 1-4-2012
 - b. See supplement

D. TENNESSEE

1. **SB1248/ HB1191 (see supplement)**

"[I]t would be a crime for anyone to apply for employment with the intent to cause economic damage to the employer by taking unauthorized video or audio recordings while on the premises and then releasing the recording to a third party such as a newspaper. Under the bill evidence of animal cruelty captured on the recording would not be admissible. A first violation would be a Class B misdemeanor. A second violation would be a Class A misdemeanor."

2. Comments

- a. This passed the legislature on April 17, 2013 but was vetoed by the Governor on May 13, 2013.
- b. Similar to the bills introduced in Nebraska, Wyoming and New Hampshire
- c. Rep. Holt sent an email to HSUS Public Policy Coordinator Kayci McLeod saying that "propagandist groups of radical animal activists, like your fraudulent and reprehensibly disgusting organization of maligned animal abuse profiteering corporatists ... are intent on using animals the same way human-traffickers use 17 year old women," and referring to HSUS methods as "tape and rape" Heidi Hall, "Tennessee Rep's Email Calls Humane Society Methods 'Tape and Rape'", Tennessean, April 26, 2013.
- d. Both bills died in committee.

E. WYOMING

1. H.B. 126 – 2013 (see supplement)

- a. Wyoming's proposed "ag gag" law has language similar to the existing Utah law, which restricts recordings by employees who obtain employment under false pretenses and with the intent to record. The Wyoming bill specifically grants immunity from civil liability to good faith reporters of alleged cruelty. See *infra* Cox at 61.
- b. Died in Chamber action 2-26-2013

V. ANIMAL ENTERPRISE PROTECTION ACT (“AEPA”)

A. OVERVIEW

1. The Animal Enterprise Terrorism Act replaced the Animal Enterprise Protection Act of 1992.
2. This federal law prohibits any person from engaging in certain conduct "for the purpose of damaging or interfering with the operations of an animal enterprise."
3. This law was aimed at issues dealing with animal testing in the pharmaceutical industry, but can potentially be used to prosecute people violating state “ag gag” laws.

B. THE STATUTE – 18 USC § 43 – Force, Violence, and Threats Involving Animal Enterprises

(a) Offense.— Whoever travels in interstate or foreign commerce, or uses or causes to be used the mail or any facility of interstate or foreign commerce—

(1) for the purpose of damaging or interfering with the operations of an animal enterprise;
and

(2) in connection with such purpose—

(A) intentionally damages or causes the loss of any real or personal property (including animals or records) used by an animal enterprise, or any real or personal property of a person or entity having a connection to, relationship with, or transactions with an animal enterprise;

(B) intentionally places a person in reasonable fear of the death of, or serious bodily injury to that person, a member of the immediate family (as defined in section 115) of that person, or a spouse or intimate partner of that person by a course of conduct involving threats, acts of vandalism, property damage, criminal trespass, harassment, or intimidation; or

(C) conspires or attempts to do so;

shall be punished as provided for in subsection (b).

(b) Penalties.— The punishment for a violation of section (a) or an attempt or conspiracy to violate subsection (a) shall be—

(1) a fine under this title or imprisonment not more than 1 year, or both, if the offense does not instill in another the reasonable fear of serious bodily injury or death and—

(A) the offense results in no economic damage or bodily injury; or

(B) the offense results in economic damage that does not exceed \$10,000;

(2) a fine under this title or imprisonment for not more than 5 years, or both, if no bodily injury occurs and—

(A) the offense results in economic damage exceeding \$10,000 but not exceeding \$100,000; or

(B) the offense instills in another the reasonable fear of serious bodily injury or death;

(3) a fine under this title or imprisonment for not more than 10 years, or both, if—

(A) the offense results in economic damage exceeding \$100,000; or

(B) the offense results in substantial bodily injury to another individual;

(4) a fine under this title or imprisonment for not more than 20 years, or both, if—

(A) the offense results in serious bodily injury to another individual; or

(B) the offense results in economic damage exceeding \$1,000,000; and

(5) imprisonment for life or for any terms of years, a fine under this title, or both, if the offense results in death of another individual.

(c) Restitution.— An order of restitution under section 3663 or 3663A of this title with respect to a violation of this section may also include restitution—

(1) for the reasonable cost of repeating any experimentation that was interrupted or invalidated as a result of the offense;

(2) for the loss of food production or farm income reasonably attributable to the offense; and

(3) for any other economic damage, including any losses or costs caused by economic disruption, resulting from the offense.

(d) Definitions.— As used in this section—

(1) the term “animal enterprise” means—

(A) a commercial or academic enterprise that uses or sells animals or animal products for profit, food or fiber production, agriculture, education, research, or testing;

(B) a zoo, aquarium, animal shelter, pet store, breeder, furrier, circus, or rodeo, or other lawful competitive animal event; or

(C) any fair or similar event intended to advance agricultural arts and sciences;

(2) the term “course of conduct” means a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose;

(3) the term “economic damage”—

(A) means the replacement costs of lost or damaged property or records, the costs of repeating an interrupted or invalidated experiment, the loss of profits, or increased costs, including losses and increased costs resulting from threats, acts or vandalism, property damage, trespass, harassment, or intimidation taken against a person or entity on account of that person’s or entity’s connection to, relationship with, or transactions with the animal enterprise; but

(B) does not include any lawful economic disruption (including a lawful boycott) that results from lawful public, governmental, or business reaction to the disclosure of information about an animal enterprise;

(4) the term “serious bodily injury” means—

(A) injury posing a substantial risk of death;

(B) extreme physical pain;

(C) protracted and obvious disfigurement; or

(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty; and

(5) the term “substantial bodily injury” means—

(A) deep cuts and serious burns or abrasions;

(B) short-term or nonobvious disfigurement;

(C) fractured or dislocated bones, or torn members of the body;

(D) significant physical pain;

(E) illness;

(F) short-term loss or impairment of the function of a bodily member, organ, or mental faculty; or

(G) any other significant injury to the body.

(e) Rules of Construction.— Nothing in this section shall be construed—

(1) to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the First Amendment to the Constitution;

(2) to create new remedies for interference with activities protected by the free speech or free exercise clauses of the First Amendment to the Constitution, regardless of the point of view expressed, or to limit any existing legal remedies for such interference; or

(3) to provide exclusive criminal penalties or civil remedies with respect to the conduct prohibited by this action, or to preempt State or local laws that may provide such penalties or remedies.

C. CASELAW

1. U.S. v. Fullmer, 584 F. 3d 132 (2009).

VI. COUNSELING FARMS REGARDING UNDERCOVER SURVEILLANCE

A. JOB APPLICANTS

1. Interviewing

- a. **Get to know your job applicants.**
 - i. Dig deep into their resumes and ask probative questions.
 - ii. Ask for references and their school history.
- b. **Check references.**
 - i. This is critical in relation to protection from video surveillance.
 - ii. The applicants may be part of an organization with the capacity to pose as past employers with the appearance of a legitimate business through websites and elaborate references.
 - iii. If a past employer has a different phone number listed on a website, use that number rather than the one provided in the application.
- c. **Initial inquiries should be made by telephone.** References with favorable telephone checks should be sent a reference form. Providing a written format ensures the thoroughness of the process, provides a record, and encourages honest responses.
- d. **If discrepancies are reported at the written stage further action may include:**
 - i. Receiving clarification from the applicant,
 - ii. Use of a credit reporting agency as discussed above, if not already employed, or
 - iii. Notifying the applicant that employment will not be offered.

2. Background Checks

- a. **There are professional services available for background checks.** Such checks are considered consumer reports. Employers must, therefore, comply with the Fair Credit Reporting Act (“FCRA”).
- b. **Employers must provide a written disclosure to the applicant “that a consumer report may be obtained for employment purposes.”** This disclosure must be provided before the report is requested. The disclosure must be a stand-alone document. It cannot be included as part of an application form. The applicant must

authorize procurement of the report in writing. See 15 U.S.C. § 1681(b)(2).

- c. **Might have to disclose consumer report.** Employers who intend to take adverse actions, such as rejection of an applicant or termination of an existing employee, based on the information disclosed in a consumer report are required to provide the applicant with a copy of the consumer report and a written description of the applicant's rights in relation to the report. See 15 U.S.C.A. § 1681(b)(3).
- d. **Notice to reporting company.** Once an adverse action is taken, a notice must be provided to the applicant or employee providing contact information for the reporting company, a statement that the adverse action was not a decision of the reporting company, and information on the right to dispute the report.
- e. **Check state laws on reporting requirements.** Some state laws may be specifically identified as not preempted by the FCRA and may forbid use of credit reports for employment purposes.

B. NOTICE TO EMPLOYEES AND INDEPENDENT CONTRACTORS

1. Notice of prohibited devices and acts should be included in the employment application and posted at the workplace.

- a. The language of such notices should match that of corresponding state "ag-gag" laws.
- b. Notices should list specific devices that are prohibited, including smart phones.
- c. Ensure employees are aware of the serious nature of any recording on the premises.
- d. Such notices may designate any recordings taken on the premises as the property of the employer, and as such any recordings must be turned over to the employer at the termination of employment.
- e. The notice may also state permission to make any recording must be made from the employer in writing.
- f. Use the notices to provide transparency in the established procedures in case an employee violates the undercover surveillance policy and follow those procedures.

See infra Cox at 62.

2. It is recommend that procedures be established in the employee handbook and/or independent contractor agreement.

C. REACTION TO A BREACH

1. **Establish procedures for documenting the occurrence and the actions taken to retrieve employer property are critical.** Policies should establish efficient mechanisms for determining the contents of the recording device and suspected employees should not be held longer than necessary.
2. **Get a team put together before an incident.** This should include a public relations person.

VII. COUNSELING FARMS ON POSITIVE MARKETING, FIXING “BROKEN WINDOWS” AND STRENGTHING PUBLIC RELATIONS

A. VOLUNTARY ANIMAL WELFARE PROGRAMS

1. **Advising Farm to Participate in Voluntary Animal Welfare Programs:** Farm animal lawyers should consider advising clients to participate in livestock animal welfare programs. This shows a commitment to animal welfare on the farm. There have been examples of farms that have been prosecuted for livestock animal cruelty and after the District Attorney’s office learned of the farm’s participation and compliance with voluntary animal welfare programs, the DA dropped the charges for misdemeanor animal cruelty. This also helps the farm portray a positive public image.
2. **Available Programs:** Unfortunately, many of these programs have lost funding; however, there are still some voluntary animal welfare programs available either with a government agency or not-for-profit organization. Here are a few examples:
 - a. **New York State Cattle Health Assurance Program (“NYSCHAP”)-** <https://ahdc.vet.cornell.edu/sects/NYSCHAP/> (there are similar programs in other states such as Maine, New Jersey, & Utah)

B. MANAGING THEIR ONLINE REPUTATION

1. **Advising Clients to “Open Barn Doors” Online:** Agriculture lawyer should consider advising clients to open bar doors to public in other ways so that people do not feel a need to come on the property with undercover surveillance. Farms should consider more transparency online.
2. **Ways to “Open Barn Doors” Online:**
 - a. Get a farm website

- b. Offer virtual farm tours
- c. Have a YouTube Channel
- d. Post video clips and pictures on Instagram
- e. Use of other social media forums (e.g., Facebook, Twitter, Pinterest, LinkedIn)

3. **Send out Press Releases**

- a. Farms should brag about awards or an animal welfare certification

C. MANAGING REPUTATION IN YOUR COMMUNITY

1. **Advising Clients to “Clean-Up” Image in Their Community:** It’s great for farms to think online but they should also think local. Farms should take proactive steps to help manage their reputation in their community.

2. **Examples:**

- a. Sponsor a local baseball team
- b. Join the PTA
- c. Offer a farmtour
- d. Get involved in your county 4-H fair

D. RECORD-KEEPING

1. **Building a Defense to Animal Cruelty Charges:** Farms should consider keeping as much documentation that they can on everything they are doing right to care for their animals each day. This will be useful in court for any defense against animal cruelty charges.

2. **Example Records:**

- a. Feeding records
- b. Veterinary care
- c. Consultations with an extension specialist
- d. Observations on body conditions scores
- e. Training employees or independent contractors on animal handling techniques
- f. Consider memorializing proper animal handling techniques in the employee handbook
- g. Videos and photographs

VIII. ADDITIONAL RESOURCES

Edward Cox et al., “Overview of Employment and Labor Law for Farms and Ranches” American Bar Association Webinar (February 20, 2013), available for purchase at <http://shop.americanbar.org/eBus/Store/ProductDetails.aspx?productId=216251> (last visited November 21, 2014).

National Agriculture Law Center, “Animal Welfare” Law Library, available at <http://nationalaglawcenter.org/research-by-topic/animal-welfare/> (last visited November 21, 2014).

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