

A CASE STUDY ON CRUELTY TO FARM ANIMALS: LESSONS LEARNED FROM THE HALLMARK MEAT PACKING CASE

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INTRODUCTION

“I need the public to understand that my office takes all cases involving animal cruelty very seriously . . . [and i]t doesn’t matter whether the mistreated animal is a beloved family pet or a cow at a slaughterhouse. Unnecessary cruelty will not be tolerated and will be prosecuted to the fullest extent allowed by law.”

San Bernardino County
District Attorney
Michael A. Ramos (February 15, 2008)

One morning in January 2008, images of horrific animal cruelty were blasted by Internet, television, and print media throughout the country. The story was all the more shocking in that the animals at issue were cows at a commercial slaughter plant—a place from which Americans usually avert their gaze.

The images of dairy cows so ill or injured that they could not stand, being battered, shocked, and nearly drowned to force them into the kill box, struck a chord with the American public. Abusing downed animals is at odds with our venerable national public policy against torturing animals.

The reaction was swift and far-reaching. The Hallmark Meat Packing plant was closed indefinitely, the U.S. Department of Agriculture (“USDA”) initiated the largest meat recall in U.S. history, and two of the plant’s employees were arrested and charged with animal cruelty. The case at the Hallmark plant is remarkable—both for the degree of cruelty and sadism recorded, as well as the vigor of the response to such cruelty by the public, the media, and state and federal officials. The case also reflects a changing trend in the United States.

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The American public is no longer averting its gaze when it comes to farm animal cruelty. In fact, U.S. consumers and policy makers are taking a long-overdue, hard look at the way we treat animals raised for food, and the moral and practical consequences of the abusive industrial farming system that has developed over the last fifty years. As discussed herein, *Hallmark* may or may not turn out to be a turning point in the humane movement, but it certainly provides an illuminating case study of how the regulatory system addresses farm animal treatment and the limits and loopholes that need to be remedied at both the state and federal levels.

I. FARM ANIMAL WELFARE IN THE UNITED STATES

Though no less capable of suffering than their domestic and wild counterparts, animals raised for meat, eggs, and milk in the United States have long been denied any meaningful protection while enduring the most egregious forms of mistreatment at all stages of their lives. Since the 1950s, a commercial obsession with high-yield production methods and mechanization has replaced the traditional farming practices many still imagine when we think of life on a farm. Farmers, faced with pressures to produce in greater quantities and at lower prices, succumbed to increasingly harsh and industrial techniques that treat animals as machines, rather than living, breathing individuals with natures, instincts, and needs.

Recently, however, consumers have become more interested in organic foods and in the welfare of the animals they are consuming. Trends in favor of “cage-free” eggs and other less inhumane production standards have been on the rise. Schools, universities, communities, and well-known businesses—such as Ben & Jerry’s Ice Cream and Wolfgang Puck Companies—have adopted higher animal welfare policies for their operations. In 2002, voters in Florida passed a ballot measure banning the use of gestation crates (a confinement practice for breeding pigs that immobilizes sows for the majority of their pregnancies). In Arizona in 2006, a similar measure passed banning both gestation and veal crates. Shortly after, Smithfield Foods, Inc., the world’s largest pork producer, announced a phase-out of its use of gestation crates, citing concerns regarding animal welfare. Nearly 800,000 Californians signed petitions to place a measure banning gestation crates and veal crates, as well as battery cages for egg-laying hens, on the November 2008 ballot. The writing is on the wall and consumer demand, as well as legislative trends, will help to eliminate some of the most egregious confinement and intensive farming practices that came into vogue in the last several decades.

II. LITTLE ON-FARM PROTECTION CURRENTLY AVAILABLE

While more than ten billion land animals are raised for consumption annually by the U.S. meat, egg, and dairy industries, nearly all of those animals are not afforded even basic welfare protections for the vast majority of their lives. They are entirely excluded from the federal Animal Welfare

Act. State laws may protect them, but such state laws are rare and typically weak, such as the New Jersey “humane regulations” that actually codify as “humane” some of the cruelest factory farming practices in the world, rather than providing any meaningful protections. A challenge to these regulations is currently pending before the New Jersey Supreme Court.

Ironically the greatest protection afforded to farm animals usually comes on the day of their slaughter if they are fortunate enough to be included as a covered species. Unfortunately despite the reality that birds raised for meat and eggs comprise more than 95 percent of all land-based animals slaughtered for food, the U.S. Department of Agriculture does not include them under the coverage of the Humane Methods of Livestock Slaughter Act of 1978 (“HMLSA”). For those animals who are considered to be protected under HMLSA, those protections have long been utterly dependent on appropriate enforcement by the USDA—the very agency now under scrutiny for falling down on that job in the Hallmark case.

III. THE HALLMARK CASE AND THE NEED FOR REFORM

The Hallmark Meat Packing plant supplied meat to the Westland Meat Company, which, in turn, was the second-largest supplier of beef to the USDA’s Commodity Procurement Branch. This branch provides beef not only to the National School Lunch Program, but also to needy families and the elderly. While the USDA and the livestock industry have tried to suggest that Hallmark was the exception—the “bad apple” among slaughter plants—this appears unlikely as the USDA designated Westland its “Supplier of the Year” in 2004–2005. If the level of protection documented in the film viewed by millions—helpless cows bellowing in pain and anguish as they are shocked in the eyes, rectum, and face repeatedly; run over with fork lifts; and otherwise tortured—is the best that farm animals may ever hope for, we must acknowledge that farm animals are, in effect, not protected at all.

In the Hallmark case, after careful and thorough documentation of the abuses inflicted on the cattle, the Humane Society of the United States (“HSUS”) contacted the appropriate authorities in the District Attorney’s office in San Bernardino County, California, to request prosecution under section 597 of California’s penal code, which prohibits “tortur[ing], torment[ing],” and “cruelly beat[ing], mutilat[ing], or cruelly kill[ing] any animal.” The HSUS also pushed for prosecution under California Penal Code section 599f, which requires that slaughter plant personnel take “immediate action to humanely euthanize” nonambulatory animals “or remove the animal from the premises” and that “a nonambulatory animal may not be dragged at any time, or pushed with equipment at any time.” Due to the pressing need to inform the public of the activities and illegalities at the Hallmark facility, the HSUS released the footage publicly.

Public disclosure spurred members of Congress to react with investigations and calls for greater protections of farm animals and for the people who consume them, and also apparently caused the USDA to accelerate its

reaction. For example, when the District Attorney announced his decision to file both felony and misdemeanor animal cruelty charges against one Hallmark manager and misdemeanor charges against another employee, the USDA apparently hastened its efforts, finally moving forward to interview the HSUS investigator late into that same Friday night. Within 48 hours of the USDA's interview with the HSUS investigator, on a Sunday afternoon of a holiday weekend, the USDA held a press conference to announce the massive meat recall, setting forward an even more intense wave of activity, including Congressional scrutiny and action.

IV. USDA LACKS AUTHORITY TO TRULY DETER FARM ANIMAL ABUSE AT SLAUGHTER PLANTS

The experience at Hallmark shows that the USDA's regulatory scheme is woefully inadequate in comparison with California's criminal animal cruelty laws and in light of consumers' reasonable hope that farm animals be treated even remotely humanely. The Hallmark case highlights one of the most significant shortcomings of the USDA's animal handling regulations. The agency lacks the power to criminally charge—or even civilly fine—offending individuals and/or companies. Thus, the agency simply has no authority to specifically target and punish those responsible for violating its humane handling regulations. In response to even the most horrific animal cruelty, the USDA only has the authority to write up a citation, to which management need only respond with a plan for corrective action, or *temporarily* shut down the slaughter plant that employs the abusers, an action rarely taken by the agency. The USDA cannot require the suspension or termination of employees—no matter how egregiously or regularly they abuse animals.

In the 2002 Farm Bill, Congress amended the HMLSA to give USDA the authority to punish the mishandling of nonambulatory animals at slaughter plants by civil complaint and by criminal charges. However, Congress set conditions on that grant of authority: first, USDA must investigate and report on the problem, and then, if the Secretary feels they are needed, the agency may promulgate regulations. The agency has done none of this. Thus no act of Congress currently empowers USDA to seek criminal penalties or civil fines for the abuse of nonambulatory animals documented at Hallmark.

A comparison to a similar federal inspection regulatory scheme, the Occupational Safety and Health Administration ("OSHA") regulations, puts the USDA's meager penalties in proper perspective. While the USDA lacks authority to punish individuals even when its inspectors catch them in the act of torturing animals, OSHA officials may seek both fines and jail time for an employee who merely tips off co-workers about an impending OSHA inspection. USDA's relatively toothless animal handling regulations are extraordinarily out of step with the American public's growing expectation that regulators will ensure animals raised for food are not needlessly tortured.

In response to the abuses documented at Hallmark, Congress held multiple hearings on the issue, including one Energy & Commerce Oversight Subcommittee hearing where the president of Hallmark Meat Packing Plant had to be subpoenaed to attend to explain his company's actions. Additionally, Senator Diane Feinstein, with Senators Akaka, Stevens, and Boxer, have introduced S. 2770, which would establish meaningful civil penalties for those who abuse animals at slaughter facilities. S. 2770 addresses the existing problem that USDA may currently "suspend" a plant with serious violations for just a few hours, creating some appearance of enforcement rather than any meaningful consequence. The legislation also would apply new penalties to any violation of a ban on slaughtering downed animals or of the HMLSA. The tiered system triggers a fine based on a set percentage of the facility's gross income (e.g., the fine would be larger for larger-scale plants) for the first violation, a one-year shutdown for the second violation, and a permanent shutdown in the case of a third violation. The bill would also require USDA to finalize the pending rule to provide public disclosure of the names of establishments, such as groceries, restaurants, and schools, in receipt of recalled meat.

One striking result of this investigation is clear—once presented with evidence of criminal animal cruelty, the District Attorney, unlike the USDA, criminally charged two abusers. If the HSUS had not worked with the San Bernardino District Attorney's office to prosecute the individuals who routinely tortured downer cows at Hallmark, there is every reason to suspect that the USDA would not have detected the abuse. And as experience bears out, even if the agency did detect such abuse, it could only respond with a meager slap on the wrist of Hallmark's management, namely a paper write-up or a temporary shut-down. Neither of these outcomes would remove offending employees, ensure any consequences for those who violate the law, or send the message to others in the industry that there is a high price to pay for torturing animals. Although many may not be ready to eschew meat, eggs, and dairy entirely, Americans have nevertheless made it clear through their pocketbooks, elected officials, and ballot initiatives that they simply will not abide such a fundamental failure to prevent the most outrageous animal cruelty.

CONCLUSION

Public trends, while encouraging, must be codified into both state and federal laws to truly protect farm animals. As the Hallmark case demonstrates, the need for both state and federal action is pragmatic as well as principled. Unlike California's criminal justice system, the USDA can mete out no consequences to the individual abuser and, thus, neither deters abuse nor removes offenders from a position to repeat it. Perhaps most importantly, the USDA's current penalties do not make an example of those who torture animals. Congress should address this by granting the USDA the authority to punish those who torture farm animals. In the meantime, the USDA's complete lack of authority to target individual offenders for their

cruel acts can and should be supplemented by state law prosecutions. To facilitate this, most states will need legislation extending cruelty laws to farm animals; California's laws allowing for prosecution of the Hallmark employees are the exception rather than the rule.

In sum, there is a glaring need for a federal scheme that can truly ensure food safety and animal welfare. Likewise the states' unquestionable interest in protecting public health and welfare, and in deterring animal cruelty, demand that state laws are enacted to prohibit cruel practices. We can only hope that the lessons learned at the great expense of so many helpless and miserable animals at Hallmark need not be repeated before state legislatures and Congress take action to protect all farm animals from such torture and abuse.