



Spring 2007

Animal Law Committee

WHO SPEAKS FOR THE ANIMALS?

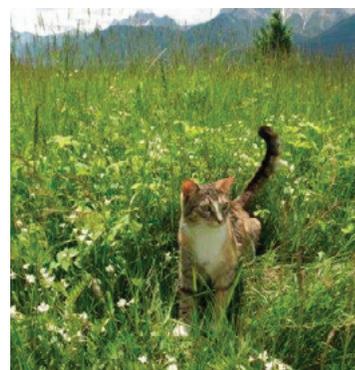
By: Wendy Anderson

I represent crazy cat ladies. In particular, I represent those who care for stray cats. Yes, the vast majority of these caregivers, in the order of 80%, are women. And yes, many of them wear tennis shoes; some, sweatshirts stamped with paw prints. But in the past two years I have come to realize that these cat ladies have a unique voice that needs to be heard in the public policy debate on legal protections for animals. In particular, the public needs to know that their definition of protection is rooted in sterilization, not “humane” killing; and, moreover, that they are dedicated to protecting individual animals, and do so at great personal cost. But their voices aren’t heard. That women have long been marginalized is a historic fact, and that the legal remedies have been incomplete is a present reality. As lawyers concerned with animal issues, we need to be aware of who is and isn’t speaking for animals today, and why.

Factual Background

You may be aware that this country is in the midst of a public policy debate over the use of lethal methods to control the stray animal population. But you may not be familiar with the details. In a nutshell, the relevant facts are these: The number one documented cause of death of all cats in the United States is intentional killing in animal pounds and shelters. *See, e.g., Gary J. Patronek et al., Risk Factors for Relinquishment of Cats to an Animal Shelter, 209(3) JAVMA 582, 582 (1996).*

The most comprehensive research indicates that 70–73% of cats entering animal shelters in the United States are killed. National Council on Pet Population Study & Policy, *The Shelter Statistics Survey, 1994–97*, www.petpopulation.org/statsurvey.html (last visited Mar. 16, 2007).



Samplings of shelters show that 15.8% of dogs entering shelters are reclaimed, but only 2.0% of cats are. *Id.*

Cats are now the most populous pet animal in the United States, numbering 90.5 million animals living in 37.7 million households, compared to 73.9 million dogs in 43.5 million households. American Pet Products Manufacturers Association, Inc., *Industry Statistics & Trends*, www.appma.org/press_industrytrends.asp (last visited Mar. 16, 2007). Cats have also usurped dogs to become the most populous stray animal, with a population believed by some scientists to rival that of pet cats. *See, e.g., American Association of Feline Practitioners, AAFP Position Statement on Free-Roaming Abandoned and Feral Cats, www.aafponline.org/resources/statements/feral_cats.htm* (last visited Mar. 16, 2007); see also, Julie Levy, *Feral Cat Management*, in *SHELTER MEDICINE FOR VETERINARIANS AND STAFF* 337, 337

(Lila Miller & Stephen Zawistowski eds., 2004). Many of these stray cats are “feral,” a term indicating that the cat has been raised without direct human contact and is unsocialized and fearful of interacting closely with humans. Given their fearful mental state, it is cruel to force these animals to live in a human home. Because they are not adoption candidates, virtually all are killed upon admittance to animal shelters.

Anachronistic Laws and Government Services

The primary cause of the cat mortality rate is that current animal control laws are vestiges of laws written in the nineteenth century—laws that existed to address damage caused by animals: economic loss, property destruction, bodily injury and disease. The species of concern then was dogs; the damage ranged from worrying and killing livestock to transmitting rabies in an age before vaccinations and treatment existed. The animal control laws sought to remedy damage by making dog owners liable to compensate injured parties.

This notion of controlling damage that dogs caused eventually became shorthand for controlling the population, as if the sheer existence of the dog population was a per se harm. Even in the context of the nineteenth century and dogs, that proxy is debatable. It is unfounded in the context of the twenty-first century and the new, unowned stray cat population. Cats do not worry or kill livestock; today we have rabies vaccination and prophylactic treatment. Moreover, feral cats are by nature timid and fearful of humans—and a single cat may, in his or her lifetime, travel the continuum of pet cat to feral cat and back again. Nevertheless, a number of jurisdictions, assuming that the sheer fact of the stray cat population requires legislation, have amended the animal control laws to include cats.

Citizen Dissenters

Virtually every jurisdiction in all fifty states has a stray and feral cat population, and many have adopted such legislative measures. Yet individual citizens nationwide are confronting the animal control system and rejecting it. For many people this begins when they stumble across a colony of cats in their neighborhood or near their place of employment and become concerned about the welfare of the individual animals. When they respond to their first impulse—to call the local animal control or animal shelters for help—they discover that the “service” offered is to trap and kill the animals. Person after

person rejects this “service” as inhumane and unnecessary. Each year, Alley Cat Allies fields 45,000 requests for an alternative that promotes the welfare of the individual animals while ensuring that they do not proliferate.

Willingness to Pay to Protect

Individuals who care for stray and feral cats not only reject that government system, but are willing to self-sacrifice—literally, to pay—to protect the individual animals. Their commitment includes providing species-appropriate food, outdoor shelters, and veterinary care (sterilization, rabies vaccinations, and emergency treatment). One scientific study documents that these caregivers spend a median of \$5 per week—up to a maximum of \$50 per week—on the cats. Lisa A. Centonze & Julie K. Levy, *Characteristics of Free-Roaming Cats and Their Caretakers*, 220(11) JAVMA 1627, 1629 (2002). And willingness to pay extends to significant time commitments. Individuals caring for cat colonies commit to a daily and time-consuming routine of feeding and watering the cats; monitoring their health; and trapping the cats to sterilize, vaccinate, and provide veterinary care. Many caregivers perform this routine for years, if not decades.

While many individuals take these steps alone, some form networks—often evolving into 501(c)(3) organizations—to bring about social and government reform by providing more care for more cats. They provide information and training for stray and feral cat care, usually operate monthly high-volume spay-neuter clinics for feral cats, and serve as a safety net for both caregivers and animals. These networks are communities of like-minded people who believe these cats deserve to live, are convinced the cats do not pose them personal risks, and are willing to self-sacrifice both time and money to protect the animals in their care.

Valuing Animals and the Public Policy Debate

It is important to step back and consider the significance of these facts in the context of public policy decision-making. As Cass Sunstein has observed, the intrinsic value of animals need not, and probably will not, be decided in philosophical debates over moral status. Wayne Hsiung & Cass R. Sunstein, *Climate Change and Animals* (John M. Olin Law & Economics Working Paper No. 324), available at www.law.uchicago.edu/Lawecon/index.html. Sunstein argues, “If people care about animals and are willing to pay to protect them, then animals should be a matter for policy

regardless of their moral status.” *Id.*, at 13. Willingness to pay is usually determined by contingent valuation studies, but one weakness of these studies is their hypothetical nature. Yet what we have is in fact a body of people who are actually and personally paying to protect individual animals. Moreover, they are doing so despite and in response to the existence of a government service—paid for by citizen tax dollars—which they reject.

These women hold a deep conviction that the lives of each individual cat matter. They believe stray cats—even feral ones—pose no real risk to humans. But perhaps most importantly, they contend that the best interest of the cats is not to be killed, but to be sterilized, vaccinated, and—when unsocialized to humans—returned to their original habitats. Scientific studies have documented that the longevity and disease rates of stray and feral cats are comparable to owned, pet cats. *See, e.g., Irene T. Lee et al., Prevalence of Feline Leukemia Virus Infection and Serum Antibodies Against Feline Immunodeficiency Virus in Unowned Free-Roaming Cats*, 220(5) JAVMA 620, 621 (2002); *see also, Karen C. Scott et al., Characteristics of Free-Roaming Cats Evaluated in a Trap-Neuter-Return Program*, 221(8) JAVMA 1136, 1137–1138 (2002). Any policy debate over how much we should pay to protect animal life must include these women. Let us remember that in a deliberative democracy, “debate on public issues . . . [should be] . . . uninhibited, robust, and wide open.” *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964). This not only advances the interest of the individual citizen, but ultimately the public’s interest in receiving complete information on matters of governmental and social affairs.

Intimidation by the Orthodoxy

Every member of a group that dissents from the majority to seek social reform faces a difficult choice: advocate her position publicly and expose herself to risk, or remain underground but with limited resources. The choice for caregivers is whether they should “out” themselves and the cats they care for and join a network or group, or stay under the radar and rely solely on their own resources. Successful networks serve as a buffer protecting individual caregivers from the government and private entities. In particular, they protect against entities that espouse the dogma that the existence of the stray population is the problem, and that lethal control is effective and acceptable. They also act as a voice in the legislative process; some have secured public

funding for high-volume spay-neuter clinics, and others handle complaint calls about cat colonies forwarded from animal control.

The risks for caregivers of “outing” themselves are real and varied. Like any orthodoxy, the entrenchment of the animal control system resists change and tries to quell any group or individual who tries to change it. It also has garnered public support through misinformation: the idea that stray cats are better off being given a “humane death” than allowed to live outside, or the notion that people who care for stray cats cause, rather than alleviate, the “problem” of the stray population. In the past sixteen years Alley Cat Allies has learned that individual caregivers have been subjected to verbal and physical harassment, job loss, eviction, and death threats. The animals they seek to protect are harassed, shot at, tortured, and poisoned by members of the public. Most often, they are trapped and taken to animal control; at best, animal control will allow the caregivers to retrieve the cats only if they “admit they are owners,” and assume the liability that the law imposes on the original owners of animals. Fines can run into the thousands of dollars. Most often, however, the cats are summarily killed. These risks are enough to chill any desire to participate in the network and advocate publicly for change.

The Unheard Voice

Groups who dissent from a majority often share another significant characteristic: they are formed by socially stigmatized citizens. The vast majority of stray and feral cat caregivers are females over the age of forty. In an independent survey, 83% of caregivers were female, and 69% were age forty or over. Lisa A. Centonze & Julie K. Levy, *Characteristics of Free-Roaming Cats and Their Caretakers*, 220(11) JAVMA 1627, 1629 (2002). These percentages are consistent with Alley Cat Allies’ sixteen years’ experience with caregivers across the nation. One public opinion poll reveals “a huge gender gap” on whether animals entering shelters should be killed “to control overpopulation.” Lake Research Partners, *Best Friends Animal Society: A Presentation on Findings from a Nationwide Survey*, April 2006.

What has recently struck me is that these female caregivers are seeking to reform animal damage control laws that went on the books hundreds of years before women even gained the right to vote in this country. Of course, the 19th Amendment, enacted in 1920, was only the beginning of the

Animal Law Committee Newsletter Spring 2007

women's rights movement. Remember, women were also disqualified from jury service, and as late as 1947, twenty states still expressly prohibited it. William N. Eskridge, Jr., *Some Effects of Identity-Based Social Movements on Constitutional Law in the Twentieth Century*, 100 Mich. L. Rev. 2062, 2126 (2002). And these historic changes in the laws do not reflect social changes; in 2005 women were still earning only 81 cents to every dollar their male colleagues earned, and while marital rape may now be a crime, domestic violence against women continues. Positive political rights do not erase the continuing realities faced by the "weaker sex."

The women I represent are well aware of the risks that face them and the cats they care for if they reveal themselves. Alley Cat Allies knows of countless women who hide their daily care activities from even their husbands, family, and friends, sure that they would be dismissed as "crazy." They make themselves vulnerable by traveling to the cat colonies alone, often at night and in out-of-the-way locations, rather than reveal their activities. Many are too afraid to join networks. By choosing to protect themselves by remaining underground, they self-censor.

The discrimination that exists in larger society also applies when we look at animal law. The women who do speak out for these animals are harassed and intimidated. Is this issue not given proper consideration because the animals are just cats? Because the advocates are just women? Are the cats considered "just cats" *because* women are their primary advocates? It is not my intent, at this time, to unravel the web of prejudice that complicates this issue, only to ask you to be aware of it.

Concluding Remarks

I began this piece by quipping, "I represent crazy cat ladies." This was, I confess, my attitude when I began working for Alley Cat Allies. I was not conscious of it, however, until four months into the job, when I spoke with a caregiver—I will call her Rhoda—who was debating whether or not to get involved in a lawsuit being developed by Alley Cat Allies. Rhoda was 75 years old and had her own housecats. Yet she revealed to me that for six years she had been managing three cat colonies. Five out of seven nights, she spent two hours checking on those colonies. She made sure the fifty or so cats were spayed or neutered, found homes for the social adults and kittens, and returned feral adult cats to their

original habitats. (She found someone else to trap the cats when necessary, admitting, "I'm just not good at trapping.") Her nightly activities centered on providing them cat food to keep them from dumpster diving. Originally, Rhoda spent over one hundred dollars on cat food per month, until that cost was reduced when she located a food voucher program. I hung up, astonished: Rhoda was articulate, organized, persistent, and committed. She saw a group of individual cats and realized she could make their lives better. Through enormous commitment and sacrifice, she did.

I never met Rhoda or saw her picture. She may wear tennis shoes and cat sweatshirts. On the other hand, she may wear an Ann Taylor suit. I don't care. She and many other caregivers have a lot to tell the rest of us about the value of animals. For their benefit and ours, we ought to listen.

[Wendy Anderson](#) graduated law school in 1988. She litigated insurance coverage actions for environmental contamination and toxic torts at Howrey & Simon. She then served as the Senior Counsel and Ethics Officer of the national American Red Cross, and as the Managing Attorney of the Animal Legal Defense Fund's litigation office. Ms. Anderson is currently the Legal Director of [Alley Cat Allies, Inc.](#)

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