

## **LAW REVIEW**

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### **ARE CHICKENS “LIVESTOCK”?**

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Having recently enjoyed the c.d., “The Omnivore's Dilemma” by Michael Pollan, where Pollan exposes the agri-business industry in the U.S., including the slaughtering of corn-fed, antibiotic-injected cattle I was intrigued by a recent case on commercial poultry killing.

#### Are Chickens “Livestock”?

This case decides whether chickens, turkeys and other domestic fowl are excluded from the humane slaughter provisions of the Humane Methods of Slaughter Act of 1958 (HMSA). There really is such an Act.

In particular, the plaintiffs, the Humane Society of the United States and other animal advocates generally out of the Bay Area, believe that poultry should be considered “other livestock” as that phrase is used in the HMSA. (Would it be more humane to be clubbed over the head like a cow than have your neck slit like a chicken? But I am getting ahead of myself).

#### Humane Methods of Slaughter Act

In 1958 Congress passed the HMSA mandating that “the slaughtering of livestock and the handling of livestock in connection with slaughter should be carried out only by humane methods.” Humane slaughtering. Now there’s an oxymoron.

Two methods of slaughtering are deemed humane under the code: “(a) in the case of cattle, calves, horses, mules, sheep, swine and *other livestock*, all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut; or (b) by slaughtering in accordance with the ritual requirements of the Jewish faith...instantaneous severance of the carotid arteries with a sharp instrument.” *70 Fed.Reg. 56 (Sept. 28, 2005)*. Boy, that sounds humane.

The Humane Society and other plaintiffs argued that “other livestock” includes chickens, turkeys and other domestic fowl.

As the court pointed out, the legislative history of the HMSA vacillated and was somewhat unclear whether poultry was covered by the Act.

#### U.S. Department of Agriculture

The U.S.D.A. initially ruled that poultry was livestock but changed its regulations to exclude poultry from the definition under HMSA. No lobbying by agri-business was involved, of course.

The U.S.D.A. issued a Federal Register Notice entitled “Treatment of Live Poultry Before Slaughter” that said the HMSA requires that humane methods be used for handling and slaughtering livestock but does not include comparable provisions concerning the handling and slaughtering of poultry. However, the U.S.D.A. Notice added: “lived poultry must be handled in a manner that is consistent with good commercial practices, which means they should be treated humanely.”

Part of the plaintiffs' argument for humane treatment of poultry was based upon that U.S.D.A Federal Register Notice.

#### Federal Trial Court

The federal district court found the plaintiffs had "standing" to bring the lawsuit, then ruled in favor of the U.S.D.A., finding that chickens, turkeys and other poultry were not covered by the Humane Methods of Slaughter Act. Both the plaintiffs and the U.S.D.A. appealed.

#### Humane Society Loses

The Ninth Circuit Court of Appeals dealt the plaintiffs a fatal (but humane) blow finding they did *not* have standing—the right to bring the lawsuit in the first place—under federal law. Case dismissed.

Editorial comment: I am tempted to rail that once again big corporate agribusiness prevails, but the federal court clearly followed the law in ruling that chickens and turkeys are not livestock as defined in the HMSA. However, agri-law is written by and for major agriculture corporations. So the deck was stacked.

For a graphic description of how poultry is "harvested"—and all sorts of thoughtful and frightening insight on how our food finds its way to the dinner table—read "The Omnivore's Dilemma".

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