

CONCLUSION

By
David J. Wolfson*

David Wolfson concludes the events of the day by highlighting some of the significant issues raised by the participants in the conference, as well as the obstacles animal lawyers have faced and are working to overcome, including legal, political, and cultural barriers. Wolfson ends on an optimistic note, stating that given that the basic foundations of the animal protection movement are correct, the movement should ultimately be successful.

Moderator: At this time, I would like to reintroduce David Wolfson. As the program says, he wears many, many hats. One of the things he is doing right now is teaching an animal law course here at NYU.¹ I would like to thank him and all of the other panelists who teach animal law at law schools throughout the country. It is very, very important work. So, on behalf of all of your students, I want to thank you for sharing your knowledge and your passion.

Wolfson: Thank you very much. I know you have all had a very long day. I think it has been a terrific day, and the panels and participants have been great. I just want to make some closing remarks to try and summarize the conference. I will try to make the comments as brief as possible. My hope is to bring together some of the themes that I have seen throughout the day. At the beginning, I want to do what Len [Egert] has already done and thank the people from the NYU SALDF group, in particular Sandeep Kandhari, Jamie Hobbs, Stephanie Zabela, Tara West, Victoria Wei, and also I see Aaron Meyers here, who did a great job.

In particular, I want to thank Delci Winders, who has done an unbelievable amount of work putting this conference together. She has given each of the panelists a dissertation—a list of questions that she has thought of in connection with the subjects that we have been talking about today. Each list of questions is probably six to seven pages long, single spaced. I honestly believe that if you put these lists together, there is not one issue in animal law that has ever been thought

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¹ N.Y.U. Sch. L., *Course Management System*, <http://its.law.nyu.edu/StudentCourseInfo.cfm>; select Wolfson, David in the Instructor drop-down menu, select Search (accessed Nov. 11, 2006).

of that is not on those pieces of paper. So I think these students, and Delci in particular, deserve a round of applause.

The title of today's discussion was "Confronting Barriers to the Court Room for Animal Advocates." I think it is clear that there are a significant number of obstacles that make changing the way animals are treated, either politically or legally, difficult. The obstacles, I think, are rather easily identified, and we have discussed them all throughout the day. There are cultural issues that we have to face, as well as the inconsistencies in people's attitudes, the sheer numbers, the sheer size of the problem, and the amount of money invested in the current system.

People who hear me speak know it is impossible for me to go more than two minutes without saying that every year in the United States, ten billion farmed animals (excluding fish) are killed for food.² I just did it again. Seven years ago, I heard Taimie Bryant say that the animal issue is particularly difficult, because the treatment of animals lies at the intersection of power and convenience. Meaning that the problem for animals is: (a) they have no power, and everyone else has a great deal of it, and (b) it actually seems very convenient for people to use animals in the ways that they do. That makes it particularly difficult to change the system. Furthermore, some people feel that it is rather inconvenient to change the way that animals are treated, although obviously it is not that difficult. In fact, the most important action we can take is to not eat animals. This is the easiest act that an activist can take in terms of influencing the world around them.

We have also talked about legal barriers, standing issues, problems of the federal court system, and the fact that the federal courts seem to have changed in the last fifteen or twenty years, becoming more conservative. We have addressed the issue that maybe the United States Supreme Court is not the best place to end up if you want to argue on behalf of an animal at this time. And while legislation may offer a great deal of advantages and opportunities, at this particular moment, legislation does not seem to be that realistic in a large number of areas. But for me today, what has been more important is to see the responses to the barriers and obstacles. Yes, there are a great deal of barriers; there are a great deal of obstacles. But I am particularly impressed with the ways in which people have chosen to respond to them.

² HSUS, *An HSUS Report: The Welfare of Animals in the Meat, Egg, and Dairy Industries*, http://www.hsus.org/farm/resources/research/welfare/welfare_overview.html (Feb. 27, 2006); see generally David J. Wolfson, *Beyond the Law: Agribusiness and the Systemic Abuse of Animals Raised for Food or Food Production*, 2 *Animal L.* 123 (1996) (comparing the lack of protections accorded farmed animals in the U.S. to the many statutory accomplishments in Europe); David J. Wolfson & Mariann Sullivan, *Foxes in the Hen House: Animals, Agribusiness, and the Law: A Modern American Fable*, in *Animal Rights: Current Debates and New Directions* 205 (Cass R. Sunstein & Martha C. Nussbaum eds., Oxford U. Press 2004).

Animal law is a very interesting field to be involved in, for a number of reasons. In particular, you can feel a little crazy at times, because on one day, you can stand up and talk about how incredibly well you are doing, which we are—we are doing unbelievably well. As Vice Dean Gillette said at the very beginning, the growth of animal law in the last ten to fifteen years is truly astounding. I regularly have these sort of pinch me moments where I look up and I say, “Well this is interesting. I never thought this would happen.” I was at a conference at Harvard a while back where Professor Dershowitz was arguing on behalf of rights for animals.³ Larry Tribe had also recently argued for rights for animals.⁴ If someone had told me I would listen to Alan Dershowitz at Harvard Law School saying such a thing, I never would have believed it. So we have clearly done unbelievably well.

But obviously, at the same time, we have not done that well, given the significant size of the problem and the overwhelming issues that we still face. So it is sort of hard to put those two things together. Yes, we have done really, really well, but at the same time we have got so much to do. Sometimes, I feel like I am running after a train that I know I have to catch. I know that I am running quicker than I used to; the problem seems to be that the train is also going a little faster than it used to. And that can be a little bit depressing.

For me, the most important thing that was said—well, there were so many important things—but one of the things that Dale Jamieson said that struck me is that, in many ways, we have already won most of the arguments. The key issues have already been proven: that animal issues pose a serious ethical concern; that animals are treated in ways that are very hard to justify, and the majority of the time are very unnecessary; that there is a great deal of need for change; and that people should care about those issues. I think, by and large, we have proven that. So obviously, the question is, “Well, what do we do next?”

I want to very quickly raise for you some of the issues that struck me during the day. The first one that I heard a few times was the issue of myths—the fact that there are a number of beliefs out there that clearly are not true, and that we have a responsibility to address them and point out where they go wrong. For example, I think there are still myths about exactly what animals are capable of doing and how, in particular, they are treated. I think it is fair to say that most people do not know how the vast majority of animals—farmed animals—are treated in our society. I think, as other people pointed out in the context of standing issues, there are also other myths that need to be addressed. For example, the idea that if we were to give animals

³ Alan M. Dershowitz, Symposium, *The Evolving Legal Status of Chimpanzees*, 9 *Animal L.* 1 (2003).

⁴ See generally Laurence H. Tribe, *Ten Lessons Our Constitutional Experience Can Teach Us about the Puzzle of Animal Rights: The Work of Steven M. Wise*, 7 *Animal L.* 1, 2 (2001) (discussing the constitutional issues facing animal rights).

standing, the floodgates would open. As one of the panelists noted, many states have taxpayer standing, and that does not seem to be a big problem.⁵ Another example is the argument that you need the right individuals to bring cases, because private individuals—individual citizens—are not necessarily the ones who will prosecute or pursue the cases particularly well. Jonathan [Lovvorn] made the excellent point that when he goes into court, the cases that he sees all the time just falling away, because people are not following them, are the individual cases. Also, there is the question of legal personhood. As Eric [Glitzenstein] stated, people say that personhood is this complicated issue that needs to be dealt with, when in fact, the law is already dealing with issues of personhood in quite subtle ways.

Tied to that, and probably the most important issue, is simply getting the message out. This is the area that we have to focus on, the issue of access to information. Over the last five years, this has probably become a little more difficult, because in the post-9/11 world—with the focus on bioterrorism and so on—there has been a very strong effort by the animal-use industries to make it harder for people to see what is going on in the institutions that use animals.⁶ We need to get the message out and educate people, for a number of reasons. The most obvious reason is for cultural change. In order for people to agree with us and to follow what we are saying, they need to see what is going on. In terms of competitiveness, we need to get these things out in the open. For people or organizations that are producing products through “humane” methods, the ability to confirm what exactly is happening inside other companies is very important, so that “humane” products may be sold effectively.

Also, as was said in one panel regarding the issue of standing, we need to have access to information. We must be able to see the animals so that we can actually be injured when they are treated cruelly under the current standing laws. This is where I come back to Taimie [Bryant] again, who said that we need transparency, and that transparency leads to transformation and accountability. I think that is exactly right. Obviously, one area to particularly focus on here is corporate disclosure and the labeling of products. I think that will be very important going forward.

Ultimately, at the end of the day, we are just trying to change the world. That is what we are trying to do here; we are just trying to basically change everything from top to bottom. This is obviously not an easy thing to do. It is obviously going to be very hard; it will involve a large amount of hard work. It will involve incrementalism and step-by-step change, which means that, at times, we will be forced to accept

⁵ Varu Chilakamarri, *Taxpayer Standing: A Step Toward Animal-Centric Litigation*, 10 *Animal L.* 251, 264 (2004).

⁶ Ethan Carson Eddy, *Privatizing the Patriot Act: The Criminalization of Environmental and Animal Protectionists*, 22 *Pace Env'tl. L. Rev.* 261, 262 (2005); *Animal Enterprise Terrorism Act*, Pub. L. No. 109-374, 120 Stat. 2652 (2006) (amending previous version, 18 U.S.C. § 43 (2002)).

things we do not want to accept, which is unpleasant. It makes us feel a great sense of discomfort that we can only have a small thing today, when we want so much more.

But I think as Jonathan [Lovvorn] correctly pointed out, just because you are having problems doing something in a small way does not mean that you will be more effective in a more radical way. It just means that things take time. You have to do the hard work. A lot of it is not particularly glamorous, but lawyers are very good at doing hard work that is not particularly glamorous. The role of lawyers is actually very, very important, and this is one of the things that I think has distinguished the animal protection movement from other movements. Lawyers really seem to have made a difference.⁷ The rise of animal law in the last fifteen years is astonishing, but unfortunately, law can only do so much. I think, as was discussed by Len [Egert] in the last panel, it is a two-way conversation. There is an interaction between cultural norms and legal change, and we just have to be aware of that as we move forward.

I do believe that it is getting better. Just look at the activity that was discussed in our panels: the numerous cases that are out there now; the fact that there are more law courses, more scholarship, more academic studies of animal-human interaction; and a whole host of other media, whether it be through plays or film or other methods. It is heartening that there is more discussion.

I was fortunate enough to be at Duke Law School a week ago where the Dean introduced a panel on animal law and said that she felt that animal issues, and animal law in particular, in twenty years would be considered to be one of the most important issues around.⁸ She discussed a conversation she had with Linda Greenhouse, who is a *New York Times* journalist.⁹ They were sitting there trying to work out what would be the issue that in twenty years people would look back at and say, "You know, we should have paid more attention to that one. It was incredibly important. It was really worthy of concern and we missed it." The issue they felt was probably one of the most important was animal law.

You just have to see the panelists today, the unbelievable talent that we have in the movement and in the law students that are coming up (based upon my own experiences teaching the students at NYU and other law schools), the energy, the creativity, the fresh approaches that they apply to these problems. It seems to me that, actually, things are going to get better in significant ways. Eric [Glitzenstein] articulated at the end of the last panel that, at the end of the day, we are

⁷ See generally Tim Eigo, *Laws for Paws: A New Breed of Law*, 42 *Ariz. Atty. 14*, 15 (Dec. 2005) (discussing the nature and growth of animal law).

⁸ Duke L., *Duke Law Events - Podcast*, <http://www.law.duke.edu/infoweb/streaming.php?filternumber=1920;select> Great Lives in the Law: Linda Greenhouse (Feb. 13, 2006).

⁹ Duke L., "Great Lives in the Law" features Linda Greenhouse February 13, http://www.law.duke.edu/features/2006/greatlives_greenhouse.html (accessed Nov. 11, 2006).

right on the basic points. It is quite clear that how we treat animals is an issue of intense and immense social concern. I think it is very clear that we do an incredible amount of harm to animals without any real justification nearly all of the time. When we do so, we hurt them, we hurt ourselves, and we hurt the environment. All of these things come together in very significant ways. When you tend to be right about things like that, when the essential point of your movement is the correct one, then I think, ultimately, there is a really good chance you will get what you want. Because I do think that, if you are telling the truth, as Eric said, the truth does tend to win.