

SYMPOSIUM

INTRODUCTION

By

Clayton Gillette and Joyce Tischler*

Joyce Tischler describes the development of the field of animal law from the first animal law conference to its current recognition as one of today's most important issues. Tischler traces the beginnings of animal law and its development, both parallel to and as part of the animal rights and protection movements. Tischler further explores common dilemmas facing animal lawyers and how these dilemmas, along with their responses, have helped shape animal law as we know it today.

Jamie Hobbs: Welcome everybody. Good morning. My name is Jamie Hobbs, and I am here representing the New York University (NYU) School of Law's Student Animal Legal Defense Fund (SALDF). Thanks a lot for coming out. We are very excited about the program we have today, with a number of great panelists and speakers. We hope that it is going to be a great event. We should all thank Delci Winders for putting it together. She did most of the work for this, but she has a sore throat and cannot be up here to introduce the program.

Just a couple of reminders. First, we ask you to turn your ringers off on your cell phones. Second, if you are here for Continuing Legal Education (CLE) credit, make sure you signed in when you arrived, or make sure you sign in after lunch. There will be certificates at the end. If you have any questions about that, the people at the front desk should be able to help you.

We will not be providing lunch, unfortunately, but we do have information at the table about local area restaurants—particularly vegetarian restaurants. There is a lot to eat within the surrounding block,

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© Joyce Tischler 2006. Joyce Tischler is the Founding Director of the Animal Legal Defense Fund (ALDF). She earned her J.D. from the University of San Diego in 1977.

so if you want some information about that, grab it on your way out. Without further ado, Vice Dean Gillette is here from the law school with some opening remarks.

Gillette: Good morning. Thank you. On behalf of Dean Ricky Revesz of NYU Law School and on behalf of the faculty, I want to welcome you to NYU and to thank you for being here to attend this first SALDF symposium. As I am sure you are all well aware, legal change tends to occur very, very slowly; it occurs incrementally rather than in large steps. Thus, I think it is all the more remarkable the way the animal rights movement has taken off in a very, very short time in American law schools generally, and at NYU in particular.

There are now well in excess of sixty law schools that offer courses or seminars in animal rights law.¹ At NYU, we are blessed with David Wolfson's presence, offering a course in animal law.² This dramatic increase in a brand new field is something that does not happen very frequently. The fact that a new field has arisen is, first of all, a remarkable event in the history of legal education. It is also a remarkable credit to those, especially the students, who have driven this movement. Certainly at NYU Law School, it has been the students who have lobbied for including courses about animal rights in the curriculum. We owe a debt of thanks to the students for being sufficiently motivated and energetic to drive the law school to address the students' concerns within our law school curriculum.

The fact that there is a new field, of course, means there are novel legal issues that have to be addressed. In an area such as animal rights, one must ask, "What exactly are the rights that are to be protected? How do they get addressed? How do they get protected? Who is charged with addressing them?" These are the extraordinarily complicated, difficult, and fascinating issues that are the subject matter of your symposium today. Given my view of the program, I think you are going to have a wonderful day listening to extremely interesting and experienced panelists talking about these difficult and fascinating issues.

We owe a particular debt of thanks to Delci Winders, who did a spectacular job putting this symposium together from the beginning—from the initial suggestion for a symposium, right through the implementation stage. But I know you are not here to listen to me. Let me get out of your way and make sure that you have plenty of time to enjoy the speakers and ask the questions that are on your minds. I just want to, again, welcome you, thank you, and wish you an extraordinarily successful symposium. Take care.

¹ ALDF, *Programs: Animal Law Courses*, <http://www.aldf.org/content/index.php?pid=83> (accessed Nov. 30, 2006).

² N.Y.U. Sch. L., *Course Management System*, <http://its.law.nyu.edu/StudentCourseInfo.cfm>; *select* Wolfson, David in the Instructor drop-down menu (accessed Nov. 11, 2006).

Hobbs: Thanks Dean Gillette. Now I want to introduce our first speaker. We have a very distinguished speaker to introduce the topic of animal law today. Joyce Tischler co-founded the Animal Legal Defense Fund (ALDF) and has served as its Executive Director for twenty-five years, bringing a number of extremely important and historic cases in the development of animal law.³ She now serves as the agency's Founding Director and continues to write on, lecture on, and promote the field of animal law.⁴ So, without further ado, here is Joyce.

Tischler: Good morning. Thank you to the NYU SALDF for hosting this symposium on a topic that is of the utmost importance to any litigator who is attempting to advocate for animals. What are the barriers we face when we try to bring animals' interests into the courtroom, and how do we overcome those barriers?

I am very pleased to be here today and to see so many people who are interested in animal law. When I was in law school in the late 1970s, there were no conferences like this one.⁵ There were no animal law courses⁶ or SALDF chapters.⁷ In fact, there was no animal law, because we had not invented it yet. What we had in those early days were the seeds of animal law: a deep and abiding respect for other creatures and an understanding that large numbers of animals are living lives filled with misery, suffering, and frustration. We had a strong desire to use the power of the law to speak on behalf of those who cannot speak for themselves and to bring their needs to the table and into the courtroom.

In 1979, when the animal rights movement was in its infancy—before Alex Pacheco and Ingrid Newkirk formed People for the Ethical Treatment of Animals (PETA);⁸ before Wayne Pacelle worked for the Fund for Animals⁹—a group of attorneys met in the Fund for Animals'

³ Voiceless: Fund for Animals, *August 2005: Joyce Tischler*, http://law.voiceless.org.au/law_talk/august_2005_joyce_tischler.html (accessed Nov. 11, 2006).

⁴ ALDF, *Resources: ALDF v. Woodley*, <http://www.aldf.org/resources/details.php?id=162> (Mar. 31, 2005).

⁵ David Favre, *The Gathering Momentum*, 1 J. Animal L. 1, 2 (2005) (noting that the first national animal law conference took place at Brooklyn Law School in 1981).

⁶ *Id.* at 2 (discussing how animal law courses have only been offered for a little over a decade).

⁷ Natl. Ctr. Animal L., *Animal Law at Lewis & Clark Law School*, <http://www.lclark.edu/org/ncal/lewisandclark.html> (accessed Sept. 23, 2006) (noting that the nation's first SALDF chapter was established at Lewis and Clark Law School by students in 1993). For a complete listing of current Student Animal Legal Defense Fund chapters and other student animal law organizations, see ALDF, *Programs: SALDF Chapters*, <http://www.aldf.org/content/index.php?pid=51> (accessed Nov. 30, 2006) [hereinafter *SALDF Chapters*]; see also Natl. Ctr. Animal L., *Animal Law Student Organizations*, <http://www.animallawstudents.net/main.cfm?id=organizations> (accessed Nov. 12, 2006).

⁸ PETA, *Ingrid Newkirk*, <http://www.ingridnewkirk.com/> (accessed Nov. 11, 2006) (noting that PETA was founded by Ingrid Newkirk and Alex Pacheco in 1980).

⁹ HSUS, *HSUS Appoints Wayne Pacelle as Chief Executive Officer - Designate*, http://www.hsus.org/press_and_publications/press_releases/

office in San Francisco.¹⁰ They were there to try to figure out what they could do to help animals, to teach themselves about the federal and state laws that related to animals and the problems that animals face.¹¹ Similar groups were likely meeting in New York City and in Los Angeles, and perhaps in other places as well. On Thanksgiving weekend in 1981, Professor Henry Mark Holzer of Brooklyn Law School held the very first conference of lawyers and law students who were interested in animal rights.¹² He invited our little San Francisco group to attend the conference and advised us to “occupy the field.” I remember wondering what on Earth he was talking about; what field?

When we arrived at the conference, we met thirty or so other attorneys from various parts of the United States who shared our interest, our passion. It was a moment of awakening. I recall meeting a brash young attorney from Boston named Steven Wise. There was a very thoughtful law professor from Detroit, who looked pretty conservative, but looks can be deceiving. That fellow’s name is David Favre. They helped us to form the first board of directors for the little group that we had, and the group became a formal organization the next year. Initially, we called it Attorneys for Animal Rights, later changing the name to ALDF.¹³ We began to explore what we could do for animals and how we fit in with the nascent animal rights movement.

In the early to mid-1980s, the animal rights movement was heavily involved in grassroots activism to protest the conditions under which animals suffer. Thousands of animal activists were demonstrating and picketing in many parts of the United States.¹⁴ Some of them were engaging in civil disobedience and risking arrest, and they looked to our attorney members to provide them with pro bono criminal defense representation. They seemed to distrust us, perhaps because we wore suits and were part of “the establishment.” In their eyes, our only reason for existence was to advise and represent them. And represent them we did. We spent many hours doing this criminal defense work, and, while I have fond memories of the cases and personalities of the activists, the legal issues were pretty straightforward—we were not breaking any new ground for animals. We yearned for something more—lawsuits that would offer protections directly to animals. So we started to do what litigators do: we filed lawsuits. We worked on hunt-

the_hsus_appoints_wayne_pacelle_as_chief_executive_officer_designate.html (Apr. 26, 2004) (noting that Wayne Pacelle had previously served as the Executive Director of the Fund for Animals).

¹⁰ Favre, *supra* n. 5, at 2.

¹¹ Voiceless: Fund for Animals, *supra* n. 3, at ¶ 4 (noting that issues discussed included the use of animals in research, factory farming, hunting, trapping, and federal and California laws that related to animals).

¹² Favre, *supra* n. 5, at 2.

¹³ *Id.* (noting that ALDF’s original name was Attorneys for Animal Rights).

¹⁴ See e.g. *Use of Rabbits in Testing Cosmetics Draws Protest*, N.Y. Times B2 (May 14, 1980) (describing a group of several hundred people protesting in front of Revlon Cosmetics regarding the use of rabbits in cosmetics testing).

ing, trapping, and research laboratories, as well as companion animal and farmed animal issues. I would like to describe a few of these lawsuits. They show our creativity and our drive; sometimes, they reflect our youth and naivety about how the legal system works. I hope that they will give you a sense of how animal law got started.

In 1985, our Boston chapter, led by Steven Wise and Sarah Luick, filed a lawsuit against the Provimi Veal Corporation.¹⁵ The dairy industry considers male calves to be useless, because they do not produce milk. So Provimi created a use for those calves. It developed a system in which calves were removed from their mothers and put into crates, or intensive confinement. Calves, if you have ever spent any time around them, are rather bouncy and playful. They are, after all, children: energetic and animated. If you are part of an industry that views calves as nothing more than “meat on the hoof,” you do not want them to play. You want to put them in intensive confinement so they stand still, eat less, and do not build muscle. You feed them an iron deficient diet so that the meat will be the pale color that consumers prefer. Then you sell them for a higher price as “milk fed” veal.

We wanted to end this abysmal practice that forced such misery on calves, and our Boston chapter filed a lawsuit that was rather innovative. As civil litigators, we had no authority to enforce the state anti-cruelty law, so we looked for other legal approaches to the problem. We decided to seek injunctive relief to bar Provimi from selling the meat of calves raised in total confinement, because, we argued, total confinement violates the state anti-cruelty laws.¹⁶ Second, we argued that the meat was tainted, because it lacks iron, and thus violated consumer protection laws.¹⁷ We sought an injunction to prohibit the sellers of specially fed veal from selling this meat unless they displayed on the side of the package a truthful explanation of how the calves were raised.¹⁸ The judge understood what we were trying to do and was not going to go there.¹⁹

The barrier that the court presented to us was that our lawsuit was preempted by federal and state schemes which regulate the labeling, packaging, and marketing of meat.²⁰ The court assumed that we had standing, but did not rule on it.²¹ The appellate court upheld the dismissal.²² This case contributed to the early consciousness of the American consumer of the substandard conditions in which these calves are forced to live.

¹⁵ *ALDF v. Provimi Veal Corp.*, 626 F. Supp. 278, 278 (D. Mass. 1986) [hereinafter *Provimi I*].

¹⁶ *Id.* at 280.

¹⁷ *Id.* at 281.

¹⁸ *Id.* at 278.

¹⁹ *Id.* at 287.

²⁰ *Id.* at 282–85.

²¹ *Provimi I*, 626 F. Supp. at 280.

²² *ALDF v. Provimi Veal Corp.*, 802 F.2d 440, 440 (1st Cir. 1986) [hereinafter *Provimi II*].

In another case filed in 1985, Jolene Marion, who headed our (then) New York office, alleged that “the leghold trap is a cruel device which inflicts [upon animals intolerable] suffering” and unjustifiable injury and ought to be banned.²³ The plaintiffs in the lawsuit included the Humane Society of the United States (HSUS), ALDF, the American Society for the Prevention of Cruelty to Animals (ASPCA), the Fund for Animals, Animal Welfare Institute, PETA, Defenders of Wildlife, the Rockland Audubon Society, and other animal protection and conservation groups, as well as veterinarians who had treated dogs and cats who had been caught in traps and individuals whose dogs or cats had been caught in traps.²⁴ The defendant was the New York Department of Environmental Conservation.²⁵ Jolene had submitted affidavits from twenty-four veterinarians, stating their opinion that the trap is indeed a cruel device.²⁶ The lead affidavit was from a former trapper and veterinarian named George Whitney, who described in graphic detail—spanning eight pages—what an animal experiences from the moment the jaws of the trap close until the moment of his death.²⁷

The relief Jolene [Marion] requested was a declaration that the leghold trap violates New York’s anti-cruelty law, a declaration that the use of the trap is in fact a public nuisance, and an order enjoining the Department of Environmental Conservation from permitting the use of the leghold trap.²⁸ The judge was very gracious. He said that “[i]f this Court could substitute its own personal feelings and emotions in place of the law and legal precedent, we could end this opinion here with a decision favoring the protection of animals.”²⁹ The barrier, according to the judge, was that New York’s Environmental Conservation Law allows the trapping of wildlife with certain specified restrictions.³⁰ Therefore, the court concluded that the state legislature had intended to authorize leghold traps, because the law did not specifically prohibit those traps.³¹ The legislature, by failing to limit or deny the traps, had concluded that their use does not violate the anti-cruelty law.³² The case was dismissed, and another barrier went firmly up.³³

I mention these cases, because they are among our first attempts to identify a situation in which animals were suffering and dying, and to develop legal theories and pursue remedies based on existing law.

²³ *ALDF v. Dept. Envtl. Conserv.*, No. 6670/85, slip op. at 2 (N.Y. Sup. Dec. 6, 1985).

²⁴ *Id.*

²⁵ *Id.*

²⁶ Pl.’s Mot. Hrg. ¶ 1 (Oct. 8 1985).

²⁷ Aff. George Whitney 1–8 (Sept. 20, 1985).

²⁸ *Dept. Envtl. Conserv.*, slip op. at 1.

²⁹ *Id.* at 3.

³⁰ *Id.*

³¹ *Id.* at 4.

³² *Id.* at 4–5.

³³ *Id.* at 6.

We were asking judges to interpret the law to meet the needs of exploited animals. In many cases, the court refused to grant our wishes. In other words, we lost. We did not lose because we were inept; we lost because our legal system abhors change. It reveres the status quo. By analogy, there are some very sophisticated and competent lawyers who challenge the death penalty regularly.³⁴ They lose year after year, because our society is not ready to make that change. Judges do not like to admit that they are emotional beings, but they are. Sometimes, they reach a decision based on their value system, and then find a way to justify it. Changing the way the law views and treats animals is going to take time and repetition.

However, it was not all bad news, even in the early days. There was a series of California cases in which we employed the talents of an environmental law firm, Remy & Thomas, to test whether California's equivalent of the National Environmental Policy Act (NEPA), the California Environmental Quality Act (CEQA), could be used to protect wildlife.³⁵ In one lawsuit, plaintiffs—Mountain Lion Coalition, Sierra Club, ALDF, Fund for Animals, and Defenders of Wildlife—successfully challenged a regulation issued by the California Fish and Game Commission that would have allowed a hunting season for mountain lions for the first time in sixteen years.³⁶ The California Superior Court issued writs of mandate in 1987 and 1988, setting aside the Commission's decision and instructing the Commission to conduct an adequate environmental analysis prior to setting future mountain lion hunts.³⁷ The Commission had failed to prepare a legally sufficient analysis of the cumulative impacts of the hunting season on the mountain lions.³⁸ This lawsuit halted the planned hunt and paved the way for a more comprehensive legislative moratorium on mountain lion hunting in California.³⁹

The Fund for Animals and ALDF went on to tackle the issue of black bear hunting in California. We were able to stop a black bear hunt and force the Fish & Game Commission (and Department) to prepare an environmental analysis that complies with CEQA for any future black bear hunts.⁴⁰ In 1990, we sued to halt both an archery and a regular hunting season on bears. We lost on the firearm season,⁴¹ but

³⁴ See e.g. *U.S. v. Sampson*, 275 F. Supp. 2d 49, 54 (D. Mass. 2003); *Buell v. Mitchell*, 274 F.3d 337, 345 (6th Cir. 2001); *U.S. v. Johnson*, 239 F. Supp. 2d 924, 929 (N.D. Iowa 2003).

³⁵ *Mt. Lion Coalition v. Fish & Game Commn.*, 263 Cal. Rptr. 104, 105 (Cal. App. 1 Dist. 1989).

³⁶ *Id.* at 110.

³⁷ *Id.* at 105.

³⁸ *Id.* at 109.

³⁹ *Id.* at 110.

⁴⁰ Judm. Fourth Cause Action at 4, *Fund for Animals v. Fish & Game Commn*, No. 361662, (Cal. Super. Aug. 20, 1990) (on file with *Animal L.*).

⁴¹ Pet. Writ Mandate at 1, *Fund for Animals v. Fish & Game Commn*, No. 361662, (Cal. Super. Aug. 20, 1990) (on file with *Animal L.*).

won on the archery hunt,⁴² with the Court holding that the California Fish & Game Commission “failed to meaningfully ‘consider . . . the welfare of individual animals’ within the meaning of Fish and Game Code Section 203.1.”⁴³ To our knowledge, that was the first time that section of the law had been used. These lawsuits forced a state fish and game agency to base the setting of hunting seasons on scientific evidence and the more in-depth environmental analysis mandated by CEQA.⁴⁴ They also brought to light a little known section of the California Fish and Game Code, which mandates that the Fish and Game Commission consider the welfare of individual animals in setting hunting seasons.⁴⁵

As the field expanded, the number of lawsuits grew. There were lawsuits to recover damages when companion animals are killed or injured;⁴⁶ lawsuits challenging deer hunts,⁴⁷ the trapping of river otters,⁴⁸ and the removal of wild horses from federal lands;⁴⁹ lawsuits challenging will provisions that mandate the euthanization of the testator’s companion animals;⁵⁰ and lawsuits involving will provisions which would create an honorary trust to ensure the proper care of an animal.⁵¹ In 1987, the United States Patent and Trademark Office reversed its long-standing policy of denying the patentability of animals and agreed to accept a patent application for new species of animals created by genetic engineering.⁵² We sued, unsuccessfully, to try to stop the grant of that patent.⁵³ Then ALDF board member, Peter Lovenheim, was the first to utilize a shareholder action to challenge

⁴² Judm. Fourth Cause Action, *Fund for Animals*, slip op. at 4–5.

⁴³ *Id.* at 1.

⁴⁴ *Id.* at 4.

⁴⁵ Cal. Code Regs. Fish & Game Code 1:2:1 § 203.1 (2006).

⁴⁶ *Bueckner v. Hamel*, 886 S.W.2d 368 (Tex. App. 1994); *Burgess v. Taylor*, 2001 Ky. App. LEXIS 26 (Mar. 9, 2001); *Schrage v. Hatzlacha Cab Corp.*, 788 N.Y.S.2d 4, 4 (N.Y. App. Div. 2004).

⁴⁷ *Minn. v. City St. Louis Park*, No. 94-2856, slip op. at 1 (Minn. Dist. Apr. 14, 1994); *Fund for Animals v. Fla. Game & Fresh Water Fish Commn.*, No. 82-1481-CIV-EPS, slip op. at 1 (S.D. Fla. Nov. 10, 1982); *Humane Socy. U.S. v. County Monroe*, No. 1282/93 slip op. at 1 (N.Y. Sup. Mar. 24, 1993); *Comm. Abolish Sport Hunting v. Palisades Interstate Park Commn.*, 444 N.Y.S.2d 161, 161 (N.Y. App. Div. 1981).

⁴⁸ *Westermann v. Mo. Conserv. Commn.*, No. 964-02539, slip op. 1, 1 (Mo. Cir. Nov. 19, 1996).

⁴⁹ *Found. Horses Other Animals v. Babbitt*, No. CV-97-3520-KMW, slip op. at 1 (C.D. Cal. Jun. 25, 1997); *Dahl v. Clark* CV-R-124-ECR, slip op. at 1 (D. Nev. Dec. 31, 1984); *Fund for Animals v. U.S. Bureau Land Mgt.*, 2006 WL 2381022 (Aug. 18, 2006).

⁵⁰ *Smith v. Avanzino*, T.R.O. Hrg. Transcr. 6:8 (June 17, 1980).

⁵¹ *In re Lyon’s Estate*, 67 Pa. D & C.2d 474, 474 (Pa. Franklin Co. Ct. 1974) (holding that a reserve of sufficient funds be held in an honorary trust for the benefit of the decedent’s pets in order to accomplish the decedent’s intent, and where the executrix has agreed to undertake the responsibility of care); see also *In re Stewart’s Estate*, 13 Pa. D & C.3d 488, 490 (Pa. Franklin Co. Ct. 1974) (holding that the wish of the decedent be carried out and that her three cats live out their lives with adequate funds for their care).

⁵² *ALDF v. Quigg*, 932 F.2d 920, 920 (Cal. App. 1991).

⁵³ *Id.*

corporations that invest in cruel practices, such as the forced feeding of geese to produce pâté de foie gras.⁵⁴

Since 1987, we have sued the United States Department of Agriculture (USDA) five times, in an ongoing effort to challenge that agency's failure to enforce the Animal Welfare Act and bring reality to Congress' intent to provide for the humane treatment of animals in research laboratories, circuses, and zoos.⁵⁵

In the process of bringing all of these lawsuits, something surprising happened. A new area of the law was forming, taking shape with each new case, each new legal theory. Jolene Marion was the first attorney to bring together the pieces in an academic format, and she introduced the first animal law course.⁵⁶ One of the challenges she and others faced was that they had to create their own course materials. In some cases, these course materials were over one thousand pages long, very cumbersome for the professor and the students.

A major step forward occurred in 2000, when a group of attorneys—Sonia Waisman, Pamela Frasch, Bruce Wagman, and Scott Beckstead—came together and wrote the first animal law case book.⁵⁷ In 2003, David Favre published a second case book.⁵⁸ With the availability of case books and attorneys willing to teach the courses as adjunct professors, the number of animal law classes increased very rapidly. In 2000, there were twelve animal law classes offered in the United States.⁵⁹ Today, over seventy law schools, including Harvard, Stanford, Duke, Lewis & Clark, NYU, UCLA, and Columbia, offer animal law classes.⁶⁰ There is legal scholarship that did not exist when we first started that little group in San Francisco.⁶¹

⁵⁴ *Lovenheim v. Iroquois Brands, Ltd.*, 618 F. Supp. 554, 554 (D.C. Cir. 1985).

⁵⁵ *ALDF v. Veneman*, No. C-03-3400, slip op. at 4:19 (N.D. Cal. Mar. 2, 2004) (order granting motion to dismiss, currently on appeal to the U.S. Court of Appeals, 9th Circuit); Animal Welfare Act, 7 U.S.C. §§ 2131 et. seq. (1966).

⁵⁶ The first U.S. law school to offer an animal law course was Pace University in 1986. In 1990, Rutgers School of Law and Vermont Law School each added animal law courses to their curriculums. E-mail from Steven M. Wise, Pres., Ctr. Expansion Fundamental Rights, Inc., to Animal L., *Information for Animal Law article* (Sept. 6, 2006) (copy on file with *Animal L.*).

⁵⁷ Pamela D. Frasch, Sonia S. Waisman, Bruce A. Wagman & Scott Beckstead, *Animal Law* (Carolina Academic Press 2000).

⁵⁸ David Favre, *Animals: Welfare, Interests, and Rights* (Mich. St. U., Det. College L. 2003).

⁵⁹ E-mail from Stephen Wells, Exec. Dir., ALDF, to Joyce Tischler, Founding Dir., ALDF, *Animal Law Classes and Seminars* (Oct. 6, 2006, 11:49 a.m.).

⁶⁰ A list of current animal law courses taught in U.S. and Canadian law schools, including the professors who teach them, is available on the websites of both ALDF and the National Center for Animal Law. ALDF, *supra* n. 1; Natl. Ctr. Animal L., *Important Courses for Animal Law Attorneys: Animal Related Courses and Information*, <http://www.lclark.edu/org/ncal/courses.html> (accessed Nov. 11, 2006).

⁶¹ Current legal journals specializing in animal law include *Animal Law*, Lewis & Clark Law School; *Journal of Animal Law*, Michigan State University; *Journal of Animal Law and Ethics*, University of Pennsylvania Law School; and *Journal of International Wildlife Law and Policy*. For a list of additional academic publications on

Steven Wise has gone on to write two highly original and scholarly books about animal rights and animal law theory.⁶² In doing so, he has reached a wider audience than we had reached before, including eminent legal scholars Professor Cass Sunstein of the University of Chicago Law School, whose most recent book is called *Animal Rights: Current Debates and Directions*;⁶³ Professor Alan Dershowitz at Harvard Law School, whose recent book, *Shouting Fire*, has a chapter on animal rights;⁶⁴ and Professor Laurence Tribe of Harvard Law School, who has written and lectured on legal rights for animals, and who stated in a 2001 law review article in *Animal Law*:

I certainly haven't solved the problem of how best to persuade others to share one's deep intuition that chimps and dolphins and dogs and cats are infinitely precious—like ourselves, and that it is unjust, that it is obscene and evil to treat them as things that anyone can really own.⁶⁵

Another advancement has been the growth of animal law student groups. Law students became actively involved in forming animal law student groups at a fairly early stage. Between 1992 and 1995, a superstar named Nancy Perry started the first SALDF chapter, an animal law class, and the first animal law journal at Lewis & Clark Law School.⁶⁶ Nancy established such a firm base that these programs continue to flourish.⁶⁷ In 2001, Laura Ireland Moore founded the National Center for Animal Law (NCAL). NCAL is housed at Lewis & Clark Law School and provides training and support for law students interested in animal law.⁶⁸

Today there are eighty-two SALDF chapters in the United States and two in Canada.⁶⁹ There are three law reviews devoted exclusively to animal issues: *Animal Law*, published at Lewis & Clark; *the Jour-*

animal law, see Natl. Ctr. Animal L., *Recommended Readings in Animal Law*, <http://www.lclark.edu/org/ncal/reading.html> (accessed Nov. 11, 2006).

⁶² Steven M. Wise, *Rattling the Cage: Toward Legal Rights for Animals* (Perseus Bks. 2000); Steven M. Wise, *Drawing the Line: Science and the Case for Animal Rights* (Perseus Bks. 2002).

⁶³ Cass R. Sunstein, *Animal Rights: Current Debates and Directions* (Cass R. Sunstein & Martha C. Nussbaum eds., Oxford U. Press 2004).

⁶⁴ Alan M. Dershowitz, *Shouting Fire: Civil Liberties in a Turbulent Age* ch. 9 (1st ed., Little Brown & Co. 2002).

⁶⁵ 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, 7 (2001).

⁶⁶ Natl. Ctr. Animal L., *The Nancy Perry Golden Cougar Award for Outstanding Achievement in Animal Advocacy in Oregon*, <http://www.lclark.edu/org/ncal/award.html> (accessed Nov. 11 2006).

⁶⁷ Lewis & Clark L. Sch., *Student Animal Legal Defense Fund at Lewis & Clark Law School*, <http://www.law.lclark.edu/org/saldf/> (accessed Nov. 11, 2006); Lewis & Clark L. Sch., *Law Registrar: Animal Law*, <http://www.lclark.edu/dept/lawreg/law449.html> (accessed Nov. 11 2006); Lewis & Clark L. Sch., *Animal Law Review: The Nation's First Law Review Devoted Exclusively to Animal Issues*, <http://www.animallawreview.org> (accessed Nov. 11, 2006).

⁶⁸ NCAL, *Home*, <http://www.lclark.edu/org/ncal/> (accessed Nov. 11, 2006).

⁶⁹ *SALDF Chapters*, *supra* n. 7. In addition, there are nearly a dozen new chapters currently forming. *Id.*

nal of Animal Law at Michigan State University; and *the Journal of Animal Law and Ethics* at the University of Pennsylvania.⁷⁰ Simultaneous with the growth of student groups and animal law classes has been the growth of bar sections and attorney groups.⁷¹ The first bar association to allow the formation of an animal law section was the State Bar of Michigan.⁷² The Association of the Bar of the City of New York has a longstanding and active animal law committee that has sponsored a number of scholarly conferences.⁷³ There are now thirteen active state bar sections, nine active regional bar sections, and two new state bar sections forming, all of which are devoted to animal law.⁷⁴ There are also private groups of attorneys, such as Georgia Legal Professionals for Animals, Inc.⁷⁵

One of the more interesting recent developments is the formation of an animal law committee within the Tort Trial and Insurance Practice Section of the American Bar Association (ABA).⁷⁶ Additionally, the Animal Legal and Historical Web Center offers online resources to people looking for animal related laws, legislation, courses, and cases.⁷⁷

Unfortunately, jobs in animal law are still scarce, but that is changing. More animal protection organizations are hiring staff attorneys.⁷⁸ HSUS has established a very impressive litigation department, headed by Jonathan Lovvorn, who will be speaking this weekend.⁷⁹ The ASPCA, ALDF, Physicians Committee for Responsible Medicine (PCRM), PETA, and Animal Protection Institute have also

⁷⁰ *Supra* n. 61 (providing information on animal law journals).

⁷¹ ALDF, *Resources: Bar Association Animal Law Sections and Committees*, <http://www.aldf.org/resources/details.php?id=101> (Jan. 1, 2006) [hereinafter *Bar Sections*].

⁷² St. Bar Mich., *Animal Law Section: Petition for Animal Law Section Creation*, <http://www.michbar.org/animal/petition.cfm> (July 10, 1995) (petition to the State Bar of Michigan for the creation of a new Animal Law Section).

⁷³ Assoc. B. City N.Y., *Committees: List of Committees*, <http://www.nycbar.org/Committees/index.htm#>; scroll to Legal Issues Pertaining to Animals (accessed Nov. 11, 2006); Assoc. B. City N.Y., *Events Calendar: Concentrated Animal Feeding Operations in New York State: Environmental and Animal Welfare Issues*, http://www.nycbar.org/EventsCalendar/show_event.php?eventid=505 (accessed Nov. 11, 2006).

⁷⁴ *Bar Sections*, *supra* n. 71.

⁷⁵ Ga. Leg. Profs. Animals, Inc., *Home*, <http://www.georgialpa.org> (accessed Nov. 11, 2006).

⁷⁶ ABA, *Animal Law Committee*, <http://www.abanet.org/tips/animal> (accessed Nov. 11, 2006).

⁷⁷ Animal Leg. Historical Web Ctr., *Michigan State University College of Law: Animal Legal & Historical Web Center*, <http://www.animallaw.info> (accessed Nov. 11, 2006).

⁷⁸ Am. Socy. Prevention Cruelty Animals, *Legal Information*, http://www.aspc.org/site/PageServer?pagename=about_legal (accessed Nov. 11, 2006); Phys. Comm. Responsible Med., *Career Opportunities: Legal Fellow*, <http://www.pcrm.org/about/careers/LegalFellow.html> (accessed Nov. 11, 2006); Animal Protec. Inst., *API Staff*, http://www.api4animals.org/d1_staff.php (accessed Nov. 11, 2006) [hereinafter and collectively *Organization Legal Departments*].

⁷⁹ HSUS, *The HSUS Launches Litigation Section*, http://www.hsus.org/press_and_publications/press_releases/the-hsus-launches-litigation-section.html (Dec. 1, 2004).

added attorneys to their staffs.⁸⁰ We have witnessed the rise of private firms, such as Meyer & Glitzenstein in D.C., Egert & Trakinski in New York,⁸¹ Evans & Page in San Francisco,⁸² and Animal Law Associates of Wisconsin.⁸³ A growing number of individual attorneys, such as Amy Breyer in Chicago, Adam Karp in Seattle, Robert Newman in Southern California, and a host of others, are building solo animal law practices.⁸⁴

Today, animal law conferences and programs abound, including NCAL's annual moot court competition at Harvard,⁸⁵ Lewis & Clark SALDF's annual conference,⁸⁶ and programs offered by the New York, D.C., Texas, and other animal law bar committees.⁸⁷ In April 2004, David Favre and Kristina Hancock held an international animal law conference at California Western School of Law in San Diego.⁸⁸ Attorneys from India, Ghana, Portugal, Australia, and New Zealand educated attendees about the treatment of animals in their native lands.⁸⁹

Also in 2004, ALDF held its "The Future of Animal Law" conference at Yale Law School.⁹⁰ The Dean of the law school, Harold Koh, an eminent international human rights attorney, spoke to our attendees,

⁸⁰ *Organization Legal Departments*, *supra* n. 78.

⁸¹ Meyer Glitzenstein & Crystal, *Home*, <http://www.meyerglitz.com> (accessed Nov. 11, 2006); Lewis & Clark L. Sch., *Animal Law Conference Speaker Biographies*, <http://www.lclark.edu/org/saldf/2006bios.html>; *scroll to Amy Trakinski, Esq.* (accessed Nov. 11, 2006).

⁸² Santa Clara U., *School of Law Faculty: Corey Evans*, http://www.scu.edu/law/faculty/all/fcty_1359.html (accessed Nov. 11, 2006); Santa Clara U., *School of Law Faculty: Geneva Page*, http://www.scu.edu/law/faculty/all/fcty_1358.html (accessed Nov. 11, 2006).

⁸³ Animal L. Assocs. Wis., *About Us*, <http://www.animallawassociates.com/about.htm> (accessed Nov. 11, 2006).

⁸⁴ *L. Offs. Amy A. Breyer, LLC*, Mission Statement, <http://www.AnimalLawOnline.net> (accessed Nov. 11, 2006); Animal L. Offs. Adam P. Karp JD MS, *Home*, <http://www.animal-lawyer.com> (accessed Nov. 11, 2006); Newman & Newman, *Robert Newman: Attorney at Law*, <http://www.theanimallawyer.com/index.html> (accessed Nov. 11, 2006).

⁸⁵ Natl. Ctr. Animal L., *Appellate Moot Court & Closing Argument Competitions*, <http://www.lclark.edu/org/ncal/mootcourt.html> (accessed Nov. 11, 2006).

⁸⁶ Lewis & Clark L. Sch., *Annual Animal Law Conference*, <http://www.lclark.edu/org/saldf/conference.html> (accessed Nov. 11, 2006).

⁸⁷ N.Y. St. B. Assn., *Special Committee on Animals and Law: Programs Conducted by the Special Committee on Animals and the Law*, http://www.nysba.org/MSTemplate.cfm?Section=Program_Material&Site=Special_Committee_on_Animals_and_the_Law&Template=/ContentManagement/HTMLDisplay.cfm&ContentID=69176 (accessed Nov. 11, 2006); D.C. B. Assn., *Animal Law Committee of Environment, Energy and Natural Resources Section*, http://www.dcbbar.org/for_lawyers/sections/environment_energy_and_natural_resources/animal_law/index.cfm (accessed Nov. 11, 2006); St. B. Tex. Animal L. Sec., *Animal Law Institute*, <http://www.animallawsection.org/institute.php> (accessed Nov. 11, 2006).

⁸⁸ Cal. W. Sch. L. News, *International Animal Law Conference Comes to San Diego*, <http://www.cwsl.edu/main/default.asp?nav=news.asp&body=News/AnimalLaw.asp> (Mar. 22, 2004).

⁸⁹ *Id.*

⁹⁰ Yale L. Sch., *YLS to Host Conference on Animal Law, Nov. 5-7*, <http://www.law.yale.edu/news/2168.htm> (Oct. 29, 2004).

welcoming the opportunity to discuss cutting edge legal issues with the foremost experts in the field.⁹¹

For the future, we see more mainstreaming of animal law in the law schools and in the bar sections. We are going to see specialization within the field. I can recall years ago sitting on the phone with Steve Wise and commiserating about the difficulty of being a jack of all trades, because we would be trying to master the Federal Patent Act one day, NEPA the next, and a state law governing recovery for an injury to a dog on another. We were spread pretty thin. We are starting to see attorneys who specialize in handling farmed animal cases. Others will focus solely on companion animals. I hope we will see the creation of many more jobs for those students and attorneys who want to practice animal law.

But our primary focus is—and should be—on how to more effectively use the courts and legislatures to gain greater protections for animals. When we began practicing animal law, our goal was to make life qualitatively better for animals. Each case that we brought educated us about the barriers that we face. We did not set out to make standing law, nor to become standing experts. Dealing with the issue of standing and every other barrier has been a practical necessity.

I would like to tell you a short story about the opportunities that we sometimes have to overcome barriers. Years ago, when ALDF was a lot smaller, I was often the one who answered the phone. Then, as now, we received requests for advice and assistance from all parts of the United States. Often, we would be called by someone who would say, “The neighbor next door leaves his dog tied to a tree in the back yard all of the time. The dog barks for hours, and this is terribly cruel. I have called animal control and the humane society, and no one will do anything. What can you do?” That person was frustrated, and so was I. At that time, I could not see a way to help. As a civil litigator, I had no authority to enforce state anti-cruelty laws, and if the local authorities would not act, I had no way to help that poor dog.⁹²

I have learned that frustration is a valuable emotion. When I am frustrated, I may not know exactly where I am headed, but I know I am headed in a good direction. When we ask ourselves, “What can I do?” we can begin to break through the barrier, often in unexpected ways. In response to the legion of cruelty cases that were not being investigated and prosecuted, we realized that there *was* something we could do. We could contact prosecutors handling cruelty cases and offer free legal assistance; we could do legal research for them, submit an *amicus curiae* brief, or use our specialized knowledge to locate expert witnesses, such as veterinarians who specialize in forensic medicine.

⁹¹ *Id.*

⁹² See generally William A. Reppy, *Citizen Standing to Enforce Anti-Cruelty Laws by Obtaining Injunctions: The North Carolina Experience*, 11 Animal L. 39 (2005); *ALDF v. Woodley*, No. 04 CVD 1248 (N.C. 11th Dist. Apr. 12, 2009) (ALDF sued under North Carolina General Code section 19A to enjoin cruelty.).

We knew that prosecutors are overworked and understaffed; if we could support their work, perhaps it would translate into more aggressive enforcement of state anti-cruelty laws. We began to build a program around this simple idea.

A few years later, Pamela Frasch, an attorney in private practice who volunteered for ALDF and had assisted us on a hoarder case,⁹³ wrote me a letter in which she set out a number of excellent ideas for expanding this program of assisting prosecutors. She wondered if we would hire her to implement her ideas, and our answer was “yes.” Under Pam’s leadership, this program, now called the Criminal Justice Program (CJP),⁹⁴ has pioneered training sessions for prosecutors and law enforcement officials,⁹⁵ analysis and charting of all fifty states’ cruelty laws,⁹⁶ the creation of model laws,⁹⁷ and work in various states to improve anti-cruelty laws.⁹⁸ Pam and her staff have brought in Federal Bureau of Investigation agents to talk to law enforcement officials about the connection between violence to animals, domestic violence, and child abuse.⁹⁹ CJP is reaching out to law enforcement officials in a way that they can understand and with tools that they can utilize. We turned our original idea, borne of frustration, into a program that is helping to assure that more cruelty cases are investigated and prosecuted aggressively. Plainly stated, when one is faced with barriers, it helps to think outside the box.

A visual image that I find particularly useful was offered in a recent law review article, authored by David Favre.¹⁰⁰ He described a “river” separating human beings from other animals.¹⁰¹ Humans have rights and protections, and they are on one side of the river, while animals, who are classified as property, are on the other side.¹⁰² The river represents the barrier between those who have rights and those who are rightless. But, as David points out, rivers have areas in which they are narrower and in which they are shallower. Transforming the way our society views and treats animals is no small feat. Thus, it is important for us to look for the narrow, shallow parts of the river.

⁹³ ALDF, *Resources: The Horror of Animal Hoarding*, <http://www.aldf.org/details.php?id=104> (May 4, 2005) (noting the various hoarding cases ALDF has worked on).

⁹⁴ ALDF, *Programs: Criminal Justice Program*, <http://www.aldf.org/content/index.php?pid=22> (accessed Dec. 5, 2006) [hereinafter *CJP*].

⁹⁵ *Id.*

⁹⁶ ALDF, *Store: Animal Protection Laws of the United States of America*, https://www.aldf.org/store/details.php?prod_id=84 (accessed Dec. 5, 2006).

⁹⁷ Stephan K. Otto, *Model Animal Protection Laws*, http://www.aldf.org/assets/62_aldfmodellaws133.pdf (2006).

⁹⁸ *CJP*, *supra* n. 94.

⁹⁹ See e.g. Whatcom County Sheriff’s Office, *Investigating & Prosecuting Washington Animal Cruelty Cases*, <http://www.wacounties.org/CHJ/2005/CHJ-0528-AttachmentPG14.pdf#search=%22aldf%20fb%22> (accessed Nov. 11, 2006).

¹⁰⁰ David S. Favre, *Judicial Recognition of the Interests of Animals - A New Tort*, 2005 Mich. St. L. Rev. 333, 337.

¹⁰¹ *Id.*

¹⁰² *Id.*

Barriers sometimes operate on a subtle level. An obvious barrier is a law that does not have a citizen suit provision. A less obvious barrier may be the underlying values that judges bring to the bench. The formal barrier may be the judge's written opinion that the plaintiff does not have standing, but underlying that is the judge's sense of who ought to be allowed access to the court. Our job as legal advocates is to effectively communicate the needs of our clients, the animals, within the confines of the existing legal system and to overcome barriers. We must not inadvertently create barriers, because we do not understand or respect the values of our audience.

Today, you will hear from some of the foremost litigators and legal scholars in the field of animal law. It is interesting that this conference is focused not on litigation per se, but on barriers to litigation. The bottom line is that we cannot help animals if we cannot get past those barriers.

Earlier, I used the analogy of the death penalty cases.¹⁰³ That analogy is closer than we would like to think, because each time we lose a case, our clients stay on death row. It is not only death row—it is death and torture row. Animal law exists because large numbers of other feeling individuals are kept in a perpetual state of suffering. Our primary objective must be to alleviate their pain, to protect them to the best of our abilities, given the current state of the law. To accomplish that, we must find ways to get past the barriers and win on the merits. We must build a body of law that provides our clients with more effective protections and rights.

In the final analysis, the important questions to ask ourselves are: "Did I win the case? Was I an effective advocate? How many animals have I gotten out of a persistent state of suffering?"

¹⁰³ *Supra* n. 34 and accompanying text.

