

INTRODUCTION

BUILDING OUR FUTURE

By
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*We clasp the hands of those that go before us,
And the hands of those who come after us.*¹

The chasm between the animal rights ideal and the widespread, institutionalized exploitation and oppression of animals seems insurmountable. Animal advocates are shackled by a legal system that supports the status quo and by a society that either ignores or acquiesces in the abuse. If we are to succeed in building a society that protects the interests of animals, we must pause to survey where we have been and where we are now to chart a clear course toward the future. Moreover, we must teach others what we have learned, so that they can continue the work we started.

After thirty years in this field, I reflect with satisfaction on the growth of an area of the law that began when I was in college.² This statement bears repeating because many attorneys and students do not realize how young the field of animal law is. When I entered law school in 1974, there were no animal law courses or seminars, no student chapters, and no casebooks. There were no national organizations bringing animal law cases in a coherent, ongoing manner. What we, as

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¹ Wendell Berry, *Healing*, in *What are People For?* 10 (North Point Press 1990).

² Joyce Tischler, *The History of Animal Law, Part I (1972–1987)*, 1 *Stan. J. Animal L. & Pol'y*, 6 (2008) (available online at <http://sjalp.stanford.edu/pdfs/Tischler.pdf> (last accessed Nov. 8, 2008)). The first animal rights case, *Jones v. Butz*, 374 F. Supp 1284 (S.D.N.Y. 1974), *aff'd*, 419 U.S. 806 (1974) was filed in 1973.

pioneers in a new field of law, had was a “clean slate”³ waiting to be written on. As we tested the legal theories we were developing, many of us did not consciously realize that a byproduct of our work was the creation of a new legal specialty.

One of the legacies of the “first generation” of animal law advocates will be the building of an infrastructure for the teaching of animal law. The earliest attempt at laying such a foundation was in 1977, when the first animal law course was taught at Seton Hall University School of Law.⁴ Jolene Marion, then a law student at Seton Hall and one of the pioneers of animal law, convinced Professor Theodore Sager Meth to teach a course entitled “The Law and Animals.”⁵ The course only lasted that one semester, the syllabus is long gone, and, sadly, Jolene is no longer with us. Six years later, in 1983, a second animal law course, entitled “The Law of Animals,” was taught at Dickinson School of Law at Penn State University by Professors Leslie MacRae and Geoffrey Scott.⁶ That course “evolved” to include a broad range of scientific issues that impact the law, and thus no longer focused solely on animals.⁷ In 1985, Jolene, then a staff attorney for the Animal Legal Defense Fund (ALDF), introduced an animal law course at Pace Law School.⁸

During the next fifteen years, animal law courses were taught sporadically, sometimes by full-time professors but often by attorneys in private practice serving as adjunct professors. Syllabi varied widely, and each professor had to create his or her own materials. Steven Wise recalls that creating the course materials for his 1992 course “was a cumbersome process, having to decide how to structure a course, deciding what materials to use, then finding and copying them. All manually, of course. No WestLaw.”⁹ His course materials, painstakingly gathered and copied for dissemination to his students, included cases, federal and state statutes, philosophical and religious essays, and a wide variety of law review articles. The year 2000 brought two major advancements. First, it heralded the publication of a casebook on

³ Telephone Interview with Henry Mark Holzer, prof. *emeritus*, Brooklyn L. Sch. (Mar. 6, 2007), on his early work and the agenda he developed for the first conference on animal rights law, held in 1981. “The fact is: I was writing literally on a clean slate; there was nothing.”

⁴ Tischler, *supra* n. 2, at 10.

⁵ Telephone Interview with Theodore Sager Meth, prof. *emeritus*, Seton Hall Univ. Sch. of L. (Dec. 11, 2007).

⁶ Memo. from Geoffrey R. Scott & Leslie MacRae, Profs., Dickinson Sch. of L., to Edward W. Haughney, Chairperson, Curriculum Comm., Dickinson Sch. of L. (Feb. 10, 1984) (copy on file with *Animal L.*).

⁷ E-mail from Geoffrey R. Scott, Prof., Dickinson Sch. of L., to Matthew Liebman, Staff Attorney, Animal Legal Defense Fund (Dec. 9, 2007, 8:13 a.m.) (copy on file with *Animal L.*).

⁸ Jolene Marion, *Animal Law Seminar Syllabus*, Pace L. Sch. (Fall 1985) (copy on file with *Animal L.*).

⁹ E-mail from Steven M. Wise, Prof., Vt. L. Sch., to Joyce Tischler (Sept. 16, 2008, 12:08 p.m.) (containing Syllabus and Reading List for Wise’s Animal Rights Law class at Vermont Law School, Summer 1992) (copy on file with *Animal L.*).

animal law.¹⁰ That casebook was the essential tool used by advocates of animal law classes to convince law school administrators to introduce such courses into their curriculum. Instructors no longer had to gather all of the materials themselves, and the casebook created a greater continuity in the syllabi and focus of animal law courses.

The second major event was the decision by ALDF, made after an intensive strategic planning process, to focus a significant portion of its energy and financial resources on a comprehensive, long-term program to establish student chapters and introduce animal law courses into a broad range of law schools.¹¹ As a result of this new program, which supplied ALDF staff to work with law school administrators and provided a variety of services to student chapters, the number of animal law classes increased from twelve in 2000 to more than 100 as of this writing.¹² Some of the most prestigious law schools in America now have animal law classes, including Harvard, Stanford, Duke, Lewis & Clark, NYU, Columbia, UCLA, Berkeley, Cornell, Georgetown, and a host of others.¹³

The spectrum of animal law educational activities has broadened greatly throughout the years: Professor David Favre of Michigan State University has written a second casebook¹⁴ and developed the Animal Legal and Historical Web Center,¹⁵ a valuable resource for those interested in animal law. Professors Taimie Bryant, Rebecca Huss, and David Cassuto have recently published a third casebook,¹⁶ and other scholarly books and treatises are in the drafting stages. Student chapters of ALDF and other student groups are operating at 124 law schools in the United States and seven law schools in Canada.¹⁷

There are four law reviews devoted exclusively to animal-related issues: *Animal Law*, published by students at Lewis & Clark; the *Journal of Animal Law* at Michigan State University; the *Journal of Animal Law and Ethics* at the University of Pennsylvania; and the *Stanford Journal of Animal Law and Policy* at Stanford University. The groundbreaking animal rights legal theories developed by Steven

¹⁰ Pamela D. Frasch, Sonia S. Waisman, Bruce A. Wagman & Scott Beckstead, *Animal Law* (1st ed., Carolina Academic Press 2000).

¹¹ ALDF formalized its Animal Law Program and set as its goal the establishment of animal law classes in every ABA accredited law school in the United States.

¹² See Animal Legal Defense Fund, *Animal Law Courses*, <http://www.aldf.org/article.php?id=445> (last accessed Nov. 8, 2008) (providing a current list of animal law classes in the U.S. and Canada).

¹³ *Id.* Lewis & Clark's first animal law class was in 1997.

¹⁴ David Favre, *Animal Law: Welfare, Interests, and Rights* (Animal Leg. and Historical Ctr. 2003).

¹⁵ Mich. St. Univ. College of L., *Animal Legal and Historical Web Ctr.*, <http://www.animallaw.info/> (last accessed Nov. 8, 2008).

¹⁶ Taimie L. Bryant, Rebecca J. Huss & David N. Cassuto, *Animal Law and the Courts: A Reader* (Thomson West 2008).

¹⁷ Animal Legal Defense Fund, *Student Animal Legal Defense Fund (SALDF) Chapters*, <http://www.aldf.org/article.php?id=446> (last accessed Nov. 8, 2008) (providing a current list of student chapters in the United States and Canada).

Wise¹⁸ attracted and influenced eminent legal scholars such as Professors Cass Sunstein and Martha Nussbaum of the University of Chicago, who went on to publish a book on animal rights and the law,¹⁹ and Professors Laurence Tribe and Alan Dershowitz of Harvard Law School.²⁰ There are a growing number of conferences being held on a variety of animal law topics.²¹ And in the last five years, it has become more common for me to meet law students who tell me that they entered law school to practice animal law.

This is wonderful progress, and the time is ripe to conjure up some new and audacious goals. The first generation of animal law practitioners shared a vision of filing lawsuits that would protect animals and establish their legal rights. Our experiences in handling those lawsuits taught us to distinguish between the gains we can realistically achieve today and the ideas that hold potential for tomorrow. As the field of animal law has blossomed, we need a fresh vision and new dreams that will help us to expand our reach and carry out the next phase of our efforts. I hope to see the development of far more intensive and extensive animal law programs at law schools, with masters and LLM degrees being offered in animal law. The day will come when students specializing in animal law will graduate with a highly sophisticated understanding of the field, having taken individual course offerings such as federal animal protection statutes, administrative law and animals, international animal law, companion animal law, estate planning for animals, wildlife litigation, prosecution of cruelty cases,

¹⁸ Steven M. Wise, *Rattling the Cage: Toward Legal Rights for Animals* (Perseus Books 2000) (asserting that human entitlement to basic rights should apply to nonhuman animals); Steven M. Wise, *Drawing the Line: Science and the Case for Animal Rights* (Perseus Books 2002) (exploring the capabilities of various species and to what extent they meet the criteria for personhood).

¹⁹ Cass R. Sunstein & Martha C. Nussbaum, *Animal Rights: Current Debates and New Directions* (Oxford Univ. Press 2004). Sunstein was at University of Chicago Law School at the time he wrote this book. He has since moved to Harvard Law School.

²⁰ Professor Tribe, a leading Constitutional law expert at Harvard Law School, has since written and lectured on legal rights for animals. In a 2001 article, he wrote: "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." 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 (2001). Professor Dershowitz included a chapter entitled "Do (Should) Animals Have Rights?" in his recent book, *Shouting Fire* (Little, Brown and Co. 2002).

²¹ A partial list includes the annual conferences held at Lewis & Clark Law School and by the Texas Bar Association Animal Law Section. The Association of the Bar of the City of New York Committee on Legal Issues Pertaining to Animals has sponsored scholarly conferences on numerous topics. In 2007, several committees of the American Bar Association Tort Trial and Insurance Practice Section (TIPS), the ABA Section of Science and Technology, and Duke University School of Law hosted a conference on animals and bioengineering. In 2004, at ALDF's Future of Animal Law Conference at Yale Law School, the dean of the law school, Harold Koh, an eminent international human rights attorney, spoke to the attendees, welcoming the opportunity to discuss cutting-edge legal issues with the foremost experts in the field.

veterinary law, farmed animal litigation, animal rights theory and philosophy, drafting animal protection legislation at the state and federal level, understanding and using the initiative process for animals, the European Union and animal protection, the history of animal protection and rights, and more.

Future animal law programs will include specialized clinical programs offering students the chance to experience state-level tort litigation, federal administrative rulemaking, state anti-cruelty prosecutions, drafting legislation and initiatives, or a variety of other hands-on work. Institutes will serve as resources and think tanks to solve ongoing problems such as standing to sue on behalf of animals, non-economic damages, and the property status of animals. Visiting scholar programs will introduce students to the finest minds in animal law, both in the United States and other countries. Fellowships will enable post-graduate students to spend time working for animal protection agencies in the United States or working overseas with foreign governments and nongovernmental organizations to introduce animal protection and anti-cruelty laws. The opportunities for training animal law advocates and creating positive change in the United States and the rest of the world are boundless.

That bright future is close at hand because many of these ideas are already on the drafting table at Lewis & Clark Law School. Lewis & Clark holds a unique place in the annals of animal law education. Much has been written about the growth and history of the animal law program at Lewis & Clark.²² We can thank the foresight and persistence of then-students Nancy Perry, Ben Allen, and Matt Howard, who, in 1993, founded the first student chapter of the ALDF, convinced a somewhat reluctant faculty to support the founding of *Animal Law*, and persuaded ALDF to fund the journal's cost of printing and distribution. And, in their "free" time, these groundbreakers held a conference that has been presented annually ever since. Each of those tasks, by itself, is impressive. What started at Lewis & Clark could have stalled in much the same way as it did at other law schools. The fact that animal law has flourished at Lewis & Clark is a testament, both to the vision of the students who started it and to the determination of the many students who have come through this school and worked to keep animal law alive. With the establishment by Laura Ireland Moore of the National Center for Animal Law (NCAL) in 2001, Lewis & Clark had its first full-time staff devoted to overseeing the animal law program at the school. Although NCAL is no longer operating, its contributions to the field are appreciated. In fact, Lewis & Clark

²² See e.g. Richard J. Katz, Michael C. Blumm & Holly Anne Gibbons, *Origins of Animal Law: Three Perspectives*, 10 *Animal L.* 1 (2004) (remarking on the tenth anniversary of *Animal Law*); Nancy V. Perry, *Ten Years of Animal Law at Lewis & Clark Law School*, 9 *Animal L.* ix (2003) (In 1993, the students at Lewis & Clark Law School founded the first student chapter of ALDF and, in 1995, *Animal Law* debuted as the first and only journal of its kind. Ever since, Lewis & Clark has brought about drastic improvements in the scholarship and the heightened awareness of animal law.).

stands as having the most diverse program for students interested in animal law.

We stand now on the cusp of a new era for animal law education. In the fall of 2008, the Center for Animal Law Studies at Lewis & Clark (CALs or the Center), in collaboration with the Animal Legal Defense Fund, opened its doors. It is a collaborative effort between Lewis & Clark Law School and the Animal Legal Defense Fund to create a world-class animal law program. The Center will bring together leaders in the growing community of animal law professionals to explore cutting edge legal strategies that will advance the interests of animals. It will include a litigation and legislative clinic to teach students the essentials of litigating cases that impact animals and identify key animal protection legislative needs. Symposia hosted by CALs will result in published papers on a host of animal law topics. It will develop animal law curricula for use in law schools throughout the nation, as well as create sophisticated animal law research and writing opportunities for publication in scholarly journals. CALs is working to develop national and international fellowships and visiting scholar programs, as well as partnerships with environmental programs to focus on international wildlife issues and environmental/animal cross-over projects.

Moreover, CALs will help to identify and create professional opportunities for students and graduates who are committed to putting their legal skills to work for animals. The Center's Executive Director, Pamela Frasch, has a long and impressive history in the field of animal law. She is one of the co-authors of the casebook *Animal Law* and teaches the survey and advanced courses on animal law at Lewis & Clark. For the past twelve years, Pamela has served as part of the senior management staff of ALDF, developing ALDF's Criminal Justice Program. As of August 1, 2008, Pamela is a full-time employee of Lewis & Clark and will be spearheading the development of this exciting new endeavor. She is joined by CALs clinical director, Katherine Hessler, professor and former Associate Director of the Center for the Interdisciplinary Study of Conflict and Dispute Resolution at Case Western Reserve School of Law. Kathy is a former Board member of ALDF. She taught an animal law seminar at Case Western, where she also ran clinics in civil litigation, family law, and community development. Kathy is well-known in the field of animal law and much admired by her students. Pamela, in describing CALs, stated, "Our goal is to be a combination think tank and training ground for attorneys who want to be in the field and we want to be as comprehensive as we can be to provide the best education possible in animal law."²³

This issue of *Animal Law* includes some articles that exemplify the dichotomy between what is possible today and what we can dream about for the future. For years, animal law advocates have attempted

²³ E-mail from Pamela Frasch, Exec. Dir. Ctr. Animal L. Stud., to Joyce Tischler, *Comments on the Future of Animal Law* (Sept. 18, 2008) (copy on file with *Animal L.*).

to posit arguments for the appointment of guardians *ad litem*, so that humans could directly represent the interests of animals. Thus, it was with great relish that we witnessed the U.S. Attorney requesting the appointment of a guardian/special master in the lawsuit that resulted in the court-ordered forfeiture by Michael Vick of the dogs he had abused.²⁴ Professor Rebecca Huss shares with us her experience as that special master, whose job was to determine the fates of those dogs, and Alexis Curry Fox explores the potential for the use of special masters to advance the legal protection of animals. Dane Johnson asks the intriguing question: Can and should copyright protection extend to works created by captive animals such as gorillas, chimpanzees, and elephants? Kate Paulman reviews the pet food recall of 2007 and the recall's future impact, and Caroline Forell reviews the close link between violence to animals and domestic violence.

With this issue, *Animal Law* continues its proud tradition of scholarly analysis of a broad range of animal law topics. I hope you will join me in celebrating the establishment of the Center for Animal Law Studies at Lewis & Clark, which will solidify Lewis & Clark's position as a top choice of students, scholars, and practitioners who wish to study and develop the field of animal law.

²⁴ Second Or. as to Disposition & Appointing Guardian/Spec. Master, *U.S. v. Approximately 53 Pit Bulldogs*, No. 3:07CV397 (E.D. Va. Oct. 15, 2007).

