

INTRODUCTION

ORIGINS OF *ANIMAL LAW*: THREE PERSPECTIVES

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RICHARD J. KATZ*

I have a vivid memory of walking into the State Bar office in the mid 1970s to complete my registration as a lawyer. Part of the registration form requested a designation of the areas of practice, which would then be listed in the Bar Directory. Looking down the checklist of areas of practice, I could not find the area of practice I was most concerned with listed, and so checked the “OTHER” box and wrote in the words, “ANIMAL LAW.” As the bar staff and the senior attorney from my firm who accompanied me reviewed the application, I received quizzical looks and smiles followed quickly by “barks” and “moos.”

Now, almost 30 years later, no one is laughing at the hundreds of lawyers across the United States who practice ANIMAL LAW. Law professors now teach the subject of animal law from coast to coast in the United States and throughout the world. I have been lucky enough over the past years to meet animal lawyers from every continent. The growth of animal law over the last generation has given birth to and received sustenance from *Animal Law*.

* © Richard J. Katz, 2004. Mr. Katz has been practicing animal law for over 25 years—during that time he has saved or enriched the lives of hundreds of thousands of animals. Admitted to both the State Bar of Arizona and the Federal Bar in 1976, he founded and is current advisor to *Animal Law*. Director and Vice President of Animal Legal Defense Fund (ALDF) for more than 10 years, he recently resigned to become the Project and Litigation Attorney for ALDF. He reviewed, commented on, or drafted dozens of state and federal laws, as well as local ordinances throughout the United States. Multiple memberships include Gadfly, an ad hoc coalition of groups focused on marine mammals, and successful litigation includes the leading “pets-in-housing” case in Arizona.

Decades ago, when animal lawyers across the country first came together, they realized that the fight for recognition of the rights and protection of animals by the law had to be staged on two fronts. First, they committed to use what resources the law provided to protect the population of animals then existing. Additionally, they recognized that the only thing that would protect the populations of animals in the future would be to make animal law education available to those who would practice law in the coming generations.

Certainly we have seen movement in the right direction. Not only is animal law a subject taught in many law schools, there are animal law textbooks,¹ animal law conferences,² animal law internships, an animal law moot court competition,³ and animal legal centers. Most importantly, the journal you hold in your hand marks the 10th Anniversary of *Animal Law*.

I also have vivid and warm memories of being approached approximately 12 years ago (after speaking at the Public Interest Environmental Law Conference at the University of Oregon on animal law issues) by an eager and intelligent student from Lewis & Clark (“Hi, Matt”). He was gracious enough to ask me to speak at the first Student Animal Law Conference at Lewis & Clark the following school year. During lunch at the first Animal Law Conference, the eager student and two of his compatriots (“Hi, Nancy. Hi, Ben.”) kidnapped me, holding me prisoner until I promised to assist with the formation and publication of the first *Animal Law* journal.

Since that time I have had the pleasure of knowing and working with the amazing groups of Lewis & Clark law students who have built *Animal Law* into what it is today. You may not be aware that *Animal Law* has one of the highest distribution rates of any law journal in the United States. It has dealt with an extraordinary gamut of animal legal issues over the last 10 years, and has been both a source of education and inspiration to those of us who practice in the field of animal law. It has contributions from some of the brightest and well-respected people in this country, including Attorney General Bruce Babbitt,⁴

¹ Sonia S. Waisman et al., *Animal Law: Cases and Materials* (Carolina Academic Press 2001) (first published 1999); David Favre, *Animals: Welfare, Interests and Rights* (Animal Legal & Historical Web Center 2003); Cass R. Sunstein & Martha C. Nussbaum, *Animal Rights: Current Debates and New Directions* (Oxford U. Press 2004).

² For example, the annual Animal Law Conference hosted by Student Animal Legal Defense Fund (SALDF) and the National Center for Animal Law at Lewis & Clark Law School has attracted innovative speakers and enthusiastic attendees for the past 11 years.

³ The National Animal Advocacy Competitions take place each year in February at Harvard Law School. For more information, visit the National Center for Animal Law website at <http://www.lclark.edu/org/ncal/mootcourt.html>.

⁴ Bruce Babbitt, *Between the Flood and the Rainbow: Our Covenant to Protect the Whole of Creation*, 2 *Animal L.* 1 (1996).

Congressman Earl Blumenauer,⁵ Senator Mark Hatfield,⁶ Dr. Jane Goodall,⁷ the Honorable Elizabeth Furse,⁸ Professor Laurence Tribe,⁹ Professor Cass Sunstein,¹⁰ Professor David Favre,¹¹ Steven Wise,¹² Eric Glitzenstein,¹³ Professor Gary Francione,¹⁴ Professor Allen Watson,¹⁵ David J. Wolfson,¹⁶ and several other congressional representatives, among many other bright lights.

I now take my leave from the most substantive part of my relationship with *Animal Law* on the occasion of its 10th anniversary. On behalf of myself, those of the Animal Legal Defense Fund who supplied the funding for the Journal to get it off the ground, and the many animals who have been and will be positively affected by the Journal, I would like to thank all of the energetic, committed, and intelligent *Animal Law* supporters, with whom it has been my pleasure to work over the years. The list includes, but certainly is not limited to, Matt

⁵ Congressman Earl Blumenauer, *The Role of Animals in Livable Communities*, 7 *Animal L.* i (2001).

⁶ U.S. Senator Mark O. Hatfield, *From Microbe to Man*, 1 *Animal L.* 5 (1995).

⁷ Jane Goodall, *The Evolving Legal Status of Chimpanzees*, 9 *Animal L.* 1 (2003) (symposium); Dr. Jane Goodall & Steven M. Wise, *Are Chimpanzees Entitled to Fundamental Legal Rights?*, 3 *Animal L.* 61 (1997).

⁸ The Honorable Elizabeth Furse, *Wildlife—Our Most Valuable Public Resource*, 6 *Animal L.* i (2000).

⁹ 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).

¹⁰ Cass R. Sunstein, *Enforcing Existing Rights*, 8 *Animal L.* 1 (2002) (symposium); Cass R. Sunstein, *The Evolving Legal Status of Chimpanzees*, 9 *Animal L.* 1, 65–72 (2003).

¹¹ David Favre, *Time for a Sharper Legal Focus*, 1 *Animal L.* 1 (1995); David Favre, *Some Thoughts on Animal Experimentation*, 2 *Animal L.* 161 (1996); David Favre, *Integrating Animal Interests Into Our Legal System*, 10 *Animal L.* ____ (2004).

¹² Steven M. Wise, *How Nonhuman Animals Were Trapped in a Nonexistent Universe*, 1 *Animal L.* 15 (1995); Steven M. Wise, *Legal Rights for Nonhuman Animals: The Case for Chimpanzees and Bonobos*, 2 *Animal L.* 179 (1996); Steven M. Wise, *Thunder Without Rain: A Review/Commentary of Rain Without Thunder: The Ideology of the Animal Rights Movement*, 3 *Animal L.* 45 (1997); Dr. Jane Goodall & Steven M. Wise, *Are Chimpanzees Entitled to Fundamental Legal Rights?*, 3 *Animal L.* 61 (1997); Steven M. Wise, *Animal Thing to Animal Person—Thoughts on Time, Place, and Theories*, 5 *Animal L.* 61 (1999); Steven M. Wise, *Animal Law—The Casebook*, 6 *Animal L.* 251 (2000); Steven M. Wise, *Dismantling the Barriers to Legal Rights for Nonhuman Animals*, 7 *Animal L.* 9 (2001).

¹³ Eric Glitzenstein & John Fritschie, *The Forest Service's Bait and Switch: A Case Study on Bear Baiting and the Service's Struggle to Adopt a Reasoned Policy on a Controversial Hunting Practice within the National Forests*, 1 *Animal L.* 47 (1995).

¹⁴ Gary L. Francione, *Animals as Property*, 2 *Animal L.* i (1996); Gary L. Francione, *Animal Rights Theory and Utilitarianism: Relative Normative Guidance*, 3 *Animal L.* 75 (1997).

¹⁵ Alan Watson, *Rights of Slaves and Other Owned-Animals*, 3 *Animal L.* 1 (1997).

¹⁶ David J. Wolfson, *Beyond the Law: Agribusiness and the Systemic Abuse of Animals Raised for Food or Food Production*, 2 *Animal L.* 123 (1996); David J. Wolfson, *McLibel*, 5 *Animal L.* 21 (1999); David J. Wolfson, *Steven M. Wise: Rattling the Cage—Toward Legal Rights for Animals*, 6 *Animal L.* 259 (2000).

Howard, Nancy Perry, Ben Allen,¹⁷ Jim Goldstein, Lee Friedman, Coby Dolan, Laura Ireland Moore, Jennifer Rackstraw, and Holly Gibbons.¹⁸

¹⁷ Matthew Howard, Nancy Perry, and Ben Allen were integral in the creation of *Animal Law*.

¹⁸ Exceptional editorial board members of *Animal Law*.

MICHAEL C. BLUMM*

It is a bit of an urban legend that I was involved in the planning of *Animal Law*. In truth, I had nothing to do with it. A group of committed students, many of whom had been involved in the founding of the Student Animal Legal Defense Fund (SALDF) at Lewis & Clark Law School in 1992, approached me about the feasibility of establishing a law journal shortly after the first SALDF national conference in the fall of 1993. The chief advocates were Nancy Perry, Matt Howard, and Ben Allen. Matt and Ben were members of *Environmental Law*; Nancy, I knew from her attendance in my classes. They were convinced that there was a national audience for a law journal on animal issues. I told them that animal law really was not my area of expertise, although I do teach a lot of wildlife law in my courses. But they convinced me that the journal was a good idea—largely because they were so passionate about it.

One of the great things about our law school is that students matter—a lot. I felt that if these bright young people were willing to commit themselves to an academic project like this, they ought to have the support of the faculty. So, I provided some advice, and we put the issue of an animal law journal on the agenda for a forthcoming faculty meeting.

Despite a professional (and, I thought, persuasive) presentation by Nancy Perry at the faculty meeting, I think it is safe to say that the faculty did not embrace the idea with open arms. My colleagues identified all manner of potential problems, some of the concerns were well intended, some of them apparently aimed at obstructing the proposal. After the faculty tabled the proposal, the students had every right to be demoralized and dejected, but they set about to meet each and every one of the faculty's reservations.

One question had to do with how the journal would be funded, as several faculty members objected to spending student tuition dollars on it. Another had to do with a feared lack of faculty supervision. Still other reservations had to do with questions about long-term student interest in the field, and some concerns about whether this would be a legal or an advocacy journal. The students immediately drafted an agreement with the national Animal Legal Defense Fund (ALDF) that would cover the cost of printing the journal and distributing it to ALDF members. Richard Katz, formerly with ALDF and still an advisor to this journal, was the key supporter then—and for many years to follow. I volunteered to serve as faculty advisor. Although the students couldn't really prove that there would be long-term student interest in

* © Michael C. Blumm, 2004. Professor of Law, Lewis & Clark Law School; Faculty Advisor to *Animal Law*, 1994–present. Many thanks to fellow journal advisor, Nancy Perry '95, who refreshed my increasingly faulty memory. For her own account, see Nancy V. Perry, *Ten Years of Animal Law at Lewis & Clark Law School*, 9 *Animal L. i* (2003).

the journal, their passion and professionalism no doubt won the support of many faculty members.

At a second faculty meeting in spring of 1994, Nancy Perry patiently educated many of my colleagues on just how much “law” there was in animal law, from property to torts to contracts to wills and so forth. The ensuing faculty vote approved the journal, subject to ALDF funding, over three dissents. But there was enough ambiguity in the faculty’s approval that for the first six issues of the journal, the masthead read, “Students of Lewis & Clark Law School,” rather than “Lewis & Clark Law School.” I am happy to say those days are past.

As the journal proved itself over the ensuing years—with contributions from such luminaries as Laurence Tribe,¹ Cass Sunstein,² Alan Dershowitz,³ and Jane Goodall⁴—the school’s support has grown as well. Dean Jim Huffman, a fan of the entrepreneurial spirit, was enough of a supporter to ensure that the magnificent law review space in Wood Hall included sufficient space for *Animal Law*. The faculty approved academic credit for *Animal Law* participation some years ago. And the journal now has seven faculty advisors, including Peter Nycum, Dan Rohlf, Chris Wold, Art LaFrance, Janice Weis, and Laura Ireland Moore. Laura now heads up the National Center for Animal Law on campus and, with guidance of the Environmental and Natural Resources Law Committee, works to enhance curriculum offerings, as well as supports SALDF through the funding and hosting of the annual Animal Law Conference.⁵ Perhaps the best reflection of the stature of *Animal Law* at the law school was the faculty’s unanimous support for the program at a faculty retreat in 2003. What a difference a decade makes!

So, from a precarious foothold, *Animal Law* is now quite mainstream in the life of Lewis & Clark Law School. There is really only one reason for this: the steadfast determination of the founders and their successors to make it so. Virtually every board of the journal has faced challenges and has overcome them to produce a consistently high quality journal. It would not be fair for me to drop names because I would surely leave someone out, but those who created and maintained *Animal Law* for the past decade have done themselves—and all members of the Lewis & Clark Law School community—proud. For they have supplied concrete, continuing evidence that the enduring

¹ 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).

² Cass R. Sunstein, *Enforcing Existing Rights*, 8 *Animal L.* i (2002); Cass R. Sunstein, *The Evolving Legal Status of Chimpanzees*, 9 *Animal L.* 1, 65–72 (2003) (symposium).

³ Alan M. Dershowitz, *The Evolving Legal Status of Chimpanzees*, 9 *Animal L.* 1, 55–64 (2003) (symposium).

⁴ Jane Goodall, *The Evolving Legal Status of Chimpanzees*, 9 *Animal L.* 1 (2003) (symposium); Dr. Jane Goodall & Steven M. Wise, *Are Chimpanzees Entitled to Fundamental Legal Rights?*, 3 *Animal L.* 61 (1997).

⁵ To learn more, please visit www.lclark.edu/org/ncal.

strength of our law school lies in the creativity, passion, and persistence of its students. It's been a pleasure to be associated in a small way with this enterprise.

HOLLY ANNE GIBBONS*

*To a man whose mind is free there is something even more intolerable in the sufferings of animals than in the sufferings of man.*¹

Publication of the tenth annual *Animal Law* confirms that animal law is no longer an emerging field; instead, it has established roots that run both broad and deep.² On behalf of the current editorial staff, we are proud to offer this milestone volume. I am pleased to take this opportunity to express our appreciation to benefactors³ and reflect on the journal's growth and sphere of influence.

As noted above by Richard Katz and Professor Michael Blumm, law students conceived of, fought for, created, and continue to produce *Animal Law*. However, we do not do it alone. I want to thank our national advisors,⁴ particularly Richard Katz, who provides valuable insight and guidance—students recognize and appreciate his advocacy. Katherine Hessler, David Favre, Nancy Perry, Steven Wise, and David J. Wolfson not only contribute with suggestions and encouragement, but also by submitting outstanding articles. I also want to thank the

* © Holly Anne Gibbons, 2004. *Animal Law* Editor in Chief; J.D. candidate 2004; board member of Lighthouse Farm Sanctuary. I am deeply grateful to my thoughtful, generous partner, Shelby Knife; both his patience and extraordinary cooking sustain me. Additionally, I want to thank Charles H. McDonnell III for his insatiable curiosity; Linda O'Shea, Laura Ireland Moore and Kristin Gaston for their tutelage; and finally, Deacon John C. DeGraff J.D. for helping me find my legal path by recounting powerful stories regarding the horrors and rewards of both law school and practice. (For information about Lighthouse Farm Sanctuary, please visit www.lighthousefarm-sanctuary.org).

¹ Romain Rolland, *Jean-Christophe* (Publg. Group West 1996) (Originally published in a series of three from 1904–1912. In 1915 Rolland was the Nobel Prize Laureate in Literature after writing *Jean-Christophe*) (This quote speaks to my passion for providing a voice for the voiceless through animal law.).

² Animal law is a unique field because it exists only in conjunction with traditional areas of law. Examples include administrative law—working with (or against) agencies such as the US Department of Agriculture through federal statutes such as the Humane Slaughter Act or Animal Welfare Act; constitutional law—gaining standing for or on behalf of animals, protecting free speech for activists; contracts—fighting consumer fraud, regulating pet stores and breeders, enforcing pet insurance; criminal law—defending activists, prosecuting animal abuse or neglect; disability law—protecting access for assistance animals into housing or public places; environmental law—enforcing wildlife laws, protecting habitats; estate planning—including pet care in wills and trusts; family law—recognizing pets in prenuptial agreements, visitation rights, or guardianship actions; non-profit law—assisting organizations that protect animals such as humane societies and animal sanctuaries; property—advancing the common law to recognize that animals are different than other types of property, or working to change their property status; tort law—protecting animals through veterinary malpractice actions, and recovering loss of companionship or emotional distress damages.

³ Unfortunately, this space is insufficient to acknowledge all of the benefactors, but please see the initial pages of each volume of *Animal Law* for additional recognition.

⁴ Katherine M. Hessler, Richard J. Katz, Nancy V. Perry, William A. Reppy, Jr., Steven M. Wise, and David J. Wolfson.

ALDF board for their courage in funding this project ten years ago and for their continuing assistance.

In the early years of the journal, student editors received only personal gratification for their work and had no place to assemble on campus. The journal has since evolved from one to seven faculty advisors,⁵ whose dedication has resulted in academic credit for editorial positions held by students and beautiful, modern office space.⁶ Three advisors deserve special accolades. Professor Michael Blumm, our first brave faculty advisor, believed in—and continues to believe in—the aspirations of students; he goes to bat for us. He is also a consistent benefactor. Professor Peter Nycum supports the journal beyond advisory duties by sponsoring an academic scholarship for each Editor in Chief, as well as an annual award to one exceptional student board member.⁷ Finally, Laura Ireland Moore,⁸ who remained at Lewis & Clark as a staff member after graduating, offers assistance from the unique perspective of a former Editor in Chief. Her familiarity with the school and the journal provides essential institutional memory.⁹

We appreciate the support of national advisors, ALDF, Lewis & Clark Law School, faculty advisors, and benefactors; they enable authors and students to preserve excellence in this seminal journal.

Animal Law, indeed, is quite influential. It laid the groundwork for much of the current state of the field by providing a forum for how laws did, do, and should protect animals—supplying exceptional resources for students, lawyers, judges, and legislators. Advocates forge tools from the innovative legal theories that debut in the journal to help society's most vulnerable beings. Legal scholars recognize the value of *Animal Law* as a leading authority on animal law issues, as do lawyers and judges.¹⁰ Numerous state courts have cited *Animal*

⁵ Students wish to express their appreciation to Michael Blumm, Arthur LaFrance, Laura Ireland Moore, Peter Nycum, Daniel Rohlf, Janice Weis, and Chris Wold.

⁶ Additional school support comes from Dean James Huffman. For example, he graciously approves school funding for staff members to attend the National Conference of Law Reviews each year.

⁷ The Noodles Award is dedicated to Peter Nycum's dog, Noodles. The Editorial Board votes for the award recipient, who receives a cash gift, as well as his or her name on a plaque in the *Animal Law* office. The plaque honoring the winners describes the award's criteria and purpose as ". . . recogniz[ing] annually one of its members for those values we so treasure in our animal friends: loyalty, devotion, and unselfish love." *Animal Law* staff members appreciate his kind generosity.

⁸ Laura Ireland Moore is the founder and executive director of the National Center of Animal Law and an attorney with The Animal Law Practice.

⁹ Another sign of the journal's growth—representing growth of the animal law field—is the increased number and overall quality of articles submitted. In fact, for the first time, volume 10 offers two perspectives on the same animal law topic. For divergent views on veterinary liability in the current volume, see Chris Green, *The Future of Veterinary Malpractice Liability in the Care of Companion Animals*, and Mary Margaret Nunalee, *Modern Trends in Veterinary Malpractice: How Our Evolving Attitudes Toward Non-Human Animals Will Change Veterinary Medicine*.

¹⁰ Ninety-four law review articles have cited *Animal Law* to date.

Law articles,¹¹ as well as the U.S. Supreme Court.¹² Internationally, the Supreme Court of Israel cited to six separate *Animal Law* articles.¹³

In addition to assisting professionals protect animals, working on the journal as a law student enriched our learning experiences. The toils of working on a law review—late nights editing, endless meetings, and deadlines that inevitably coincide with exams—are thwarted by the knowledge that we are creating something grand.

Helping to create a compilation of cutting-edge ideas, which leads to alleviating animal suffering, grounds us within the otherwise treacherous, theoretical universe of legal education. It is both overwhelming and inspiring to contemplate the improved lives of individual animals'; lives made tolerable through this publication. It is humbling.

It is an honor to present the tenth volume of *Animal Law*.

¹¹ See e.g. *Rabideau v. City of Racine*, 627 N.W.2d 795 (Wis. 2001) (citing Steven M. Wise, *Recovery of Common Law Damages for Emotional Distress, Loss of Society, and Loss of Companionship for the Wrongful Death of a Companion Animal*, 4 *Animal L.* 33 (1998)).

¹² *Defenders of Wildlife v. Norton*, 258 F.3d 1136, 1139 (9th Cir. 2001) (citing Jeffrey S. Kopf, *Slamming Shut the Ark Doors: Congress's Attack on the Listing Process of the Endangered Species Act*, 3 *Animal L.* 103, 126 (1997)).

¹³ *Noah: the Israeli Federation of Animal Protection Organizations v. Attorney General*, Appeal 9232/01 (Supreme Court of Israel Aug. 2003) (decision to ban foie gras—a “delicacy” produced from the grotesquely enlarged livers of ducks and geese who were cruelly force-fed) (English translation available at <http://www.chai-online.org/foiegras.pdf>).