Growing Up with Animal Law: From Courtrooms to Casebooks

Bruce A. Wagman

Over the past eighteen years I have had the rare privilege of riding on the waves of intellectual, legal and academic development of the field of animal law.[1] I started by incorporating isolated bits of pro bono work into a civil litigation practice and in 1996 I began teaching animal law. Since late 2005 my work has consistently been more than 90 percent animal law. I have had the honor of teaching full semester animal law classes more than twenty times at four Bay Area law schools, guest lecturing and speaking at conferences and classes in other schools across the nation, and co-authoring *Animal Law: Cases and Materials*, originally published in 2000 and now in its fourth edition.[2] Each day I am grateful for the gift of this practice, the result of a truly providential mix of coincidence and circumstance. My path as a lawyer for the animals, and as an animal law professor and lecturer, has paralleled the incredible growth in the field. During my tenure in animal law's thrall it has become a rapidly growing, vital social justice movement. It has developed much like environmental law, its natural older cousin, which attracted so many in the 1960s and 1970s. Given that animal law and I have grown up together, I have been asked to write this article, which will discuss our mutual path in practice and academia.

Bruce Wagman is a partner with Schiff Hardin LLC and has a nationwide animal law practice representing many animal protection groups, as well as individual clients. His work includes litigation in state and federal courts, consulting, legislative efforts, and teaching. He is the co-editor of the first casebook used in law schools on the subject.

1. I would like to thank those who helped me create the experience described here. There are too many to mention, but most notable are the law professors who inspired me (Brian Gray, Leo Martinez, and Rick Marcus), the mentors in animal law who motivated me, the human family who supported me (Deborah and my parents), my colleagues in the field, and my law partners who did not doubt me despite my hard turn away from conventional areas. But most of all, I thank the suffering animals whose faces I envision every day when I get up to fight and who say to me, in their mute innocence, "Please help." This article is dedicated to all those who will die before we can save them.

2. Bruce A. Wagman, Sonia S. Waisman & Pamela D. Frasch, Animal Law: Cases and Materials (4th ed., Carolina Academic Press 2010).

Puppyhood

Roughly two decades before I graduated from Hastings Law School in San Francisco in 1992, those who helped found the field of animal law had already taken the crucial first steps.[3] With a limited number of dedicated lawyers doing the work, and with the law schools basically devoid of regular animal law classes, in 1992 the field was still just a feisty but undeveloped kitten's meow, with clear promise to turn into a big cat. I was doing a federal clerkship in San Francisco that year when the American Bar Association's convention came to town.

I am neither religious nor prone to revelations or sudden conversions, and I had the only one of my life in a small seminar room at the Marriott Hotel in San Francisco at that convention. I had no expectations for the session on "Animal Rights Law," but I was curious and my wife Deborah was interested as well; and it was an afternoon out of chambers. Although I had no intention to use my J.D. to work for animals, law school had triggered my desire to change some of the problems I perceived in our society. In particular, Brian Gray's Native American Law class made me seriously consider working in that field. I never went further with that pursuit, mainly because of what happened at that ABA seminar. But it is a fact that Professor Gray uncovered in me the drive that from that point forward kept me on the path I still travel.

Deborah and I walked in wholly unprepared for what we were about to hear and learn. There was a celebrity panel, but two stand out still. William Kunstler was one of those iconic civil rights attorneys who had represented scores of activists and social objectors, including the protesters at the 1968 Democratic convention in Chicago. In his final years (he died in 1995) he turned his attention to animal issues. Then there was Joyce Tischler, a woman who would, from that point forward, be my mentor, client, and colleague. Joyce was one of the founders of the Attorneys for Animal Rights,[4] which by that time had become the Animal Legal Defense Fund (ALDF).[5]

At the time I considered myself an animal lover. I lived with five or six companion animals and one wife, but I had limited knowledge about the treatment of the majority of animals in America, and how they were impacted by the institutions and industries that use them. I was a meat-eating, milkshake-loving barbequer with leather boots. I don't think I had heard the phrase "animal rights" and I surely had no idea what the law had to do with animals, aside from the fact that like most Americans I incorrectly assumed the anticruelty laws I heard about were keeping the country's animals safe and free from harm. When I found out that day how very wrong I was, I decided to try to help right that wrong with my law degree.

3. For a history of animal law's beginnings, see Joyce Tischler, The History of Animal Law, Part I (1972–1987), 1 Stan. J. Animal L. & Pol'y 3–12 (2008), *available at* http://sjalp.stanford.edu/pdfs/Tischler.pdf.

4. *See id.* at 10.

5. *See id.* at 25–26.

I cannot tell you today what anyone in particular said at that session, but I know that the speakers objectively described a crushing list of tragedies and holocaust experiences for billions of animals in America. They exposed the ignored instances of legalized (and illegal) cruelty occurring at every level of our world. I learned about individual and institutional acts (many fully sanctioned by the law) that indisputably cause an unimaginable level of pain and suffering. Somehow for the first time I saw the faces of the cows and pigs and chickens being slaughtered and tortured for my food; and I realized that in all the ways that matter they were the same as the dogs and cats sleeping in my house. I realized that my personal choice to eat one and feed the other was arbitrary and capricious, and I felt that I personally, and the law, were contributing to their suffering. From what I remember the program was presented in a very unemotional and academic context. Perhaps most important for the topic at hand, interspersed with the discussion of the animals' treatment was the fascinating notion that lawyers were taking up their keyboards and applying their brains to make a change. Legal advocacy for animals was a viable means of effecting change. As lawyers, we could not change the world for every animal. But for each animal we helped to save, or whose life we improved, we would change her world completely.

My path was set that day. For some reason I do remember what happened when we left the room at the Marriott. Stunned into sadness, the tears from what we had heard and seen still drying on our cheeks, the distance to the escalator seemed endless. I know I turned to Deborah and the only words I could say were, "It's over, isn't it?" Deborah knew what I meant and simply nodded. We changed our diet that day.

But for purposes of this article, it wasn't over. Really, it had just begun.

The Puppy Explores the Backyard

I soon joined Morgenstein & Jubelirer, a thirty-lawyer civil litigation firm in San Francisco. I have been with that core group of lawyers ever since, and they have uniformly supported me throughout my career, even as my animal law practice slowly consumed all my time. Before I even started at Morgenstein I had written to virtually every organization I could find an address for that had "animal" in its name. I offered my services, not fully realizing that I had minimal skills and less experience to provide. Nevertheless, a few responded, and I soon found myself with one or two pro bono cases on different issues, but all focused on helping animals in some way. Some of them sought a direct impact—where one or more identifiable animals would have a better life if we were to prevail. Those kinds of cases range from "death row dog" cases in which my clients seek to save the lives of animals sentenced to death because they have been deemed dangerous, to lawsuits brought on behalf of the endless number of animals exploited by industry. Other "indirect impact" cases challenged the ingrained prejudices and notions about animals that I was discovering permeated both the law and societal opinion. Those actions hopefully serve to educate and forge change in the way we think about and treat animals.

The indirect impact cases include, among others, consumer misrepresentation cases challenging fraudulent advertising about the treatment of animals produced for food or fur, as well as cases seeking more than market value for the negligent or intentional deaths of companion animals.

While working up those first cases and doing the legal research required, I began to appreciate how intellectually challenging animal law issues are, and how perfectly they would lend themselves to analytic and academic scrutiny. The added ethical/moral perspective, and the emotional impact of many of the fact patterns, presented what I still believe is a unique opportunity for legal scholars and students, as well as practitioners. That singular nature arises from the orchestra of challenges to those studying in the area. It has its analogs in civil rights, environmental, administrative, tort, contract, property, criminal, constitutional, and wills and trusts law—but it establishes itself as its own specialty because of the dualistic approach the law takes with respect to animals. That is, the law protects some species from cruelty (companion animals) and subjects others to unmitigated and unregulated acts of pain and suffering (farmed animals). If we compare different cultures and sometimes even different states or towns, the same animals may be protected in one and legally tortured in another. Contrary to a consistent rule of law or contemporary morals, it makes socially accepted distinctions based on species without consideration of the basic reasons for our supposed concern about animal cruelty. This schizophrenia in the law creates weighty fodder for classroom discussion, and makes the law exciting. And given the multiple and profound considerations, there is no clear right or wrong, and there are profound policy issues to be addressed.

In this early phase I found a 1983 book called *Animal Law* by David Favre and Murray Loring.[6] Favre was a professor at Michigan State University College of Law and also a founder of ALDF. I was thrilled when he took my telephone call, engaging the eager student on the other end. He confirmed the complexity and challenge of the issues that I was seeing. I realized that he was part of a very small contingent of practitioners and legal scholars in the area. At the time, no more than six animal law classes were offered around the country. The case law and the literature at that point, though, demanded attention.

My nature is to follow my passion, and as the practice developed, so did my desire to do more. At the same time, I was considering a life in academia. I was the rare student who found law school to be exciting and enjoyable, owing in large part to some great teachers, and their examples motivated me in that direction. Within a year or two, my Contracts professor Leo Martinez had called and on short notice asked me to fill in teaching Insurance as an adjunct at Hastings.

6. David Favre & Murray Loring, Animal Law (Quorum Books 1983).

I enjoyed the teaching, and kept up the class for four years. I also loved practicing law, and realized that the purely academic life was not for me. My path was defined at that point—I would, as much as possible, be both adjunct professor and civil litigator.

Taking a Walk Outside

While I was teaching insurance law and moving towards my eventual role as an animal law professor, I was slowly growing my animal law practice. A large part of it was still pro bono, but paying clients contacted me with a variety of matters—their dogs had bitten a neighbor, their neighbors had bitten their dog, their cat had been injured or died while at the veterinarian or a groomer. Several of the country's leading animal protection organizations became clients. The work included legal research and drafting memoranda; writing *amicus curiae* briefs on a number of issues; and preparing complaints and litigating. It was intellectually frustrating, challenging, and exciting. There were virtually no cases directly addressing the factual scenarios we faced. In many of the cases, the status of animals as legal property—despite their undisputed sentience—was an underlying and often overriding concern. Most confounding sometimes was the amount of suffering animals regularly experienced with virtually no legal recourse for them or their appointed protectors.

From a non-legal point of view, the cases were both emotionally draining and crucibles for great debate. As I developed the scientific knowledge that most animals experience pain, deprivation, starvation, and terror in the same way I do, the daily reports of the mistreatment of animals weighed heavy on my heart and mind, and stimulated me to work harder. At the same time, the cases placed in stark relief the aforementioned moral dilemma of society's confused obligation to avoid animal cruelty, contrasted with the fact that standard practices affecting billions of animals raised for food lead to indisputable extreme pain, suffering, and distress.

In 1995, as my interest in animal law grew, and my zeal for insurance law diminished, I thought of approaching Hastings to initiate an animal law class. Such classes were still very few and far between, with most devalued from the main curriculum by their placement in summer or evening sessions. The Hastings class never would have started without two crucial partners. The real catalyst was the student group that lobbied for the class; and they were supported by the curriculum committee which had the brilliant foresight to make Hastings one of the first law schools to create a permanent elective course in animal law.

In 1996, I taught the first Animal Law class at Hastings. I think it was only the coincidence that I was already an adjunct at the school that landed me the slot teaching the course, but I gladly took it. And as of 2010, Hastings has offered the class for fifteen years, every fall semester.

Before the Hastings class began, animal law as a law school discipline was putting its best paws forward in a few other places, most notably Portland, Oregon. In 1992, the law school at Lewis & Clark College held its first animal law conference, a gathering that has become an annual tradition for me and many compatriots.[7] In 1995, a group of Lewis & Clark law students, with support from ALDF, established *Animal Law Review*, the first law journal dedicated solely to the area. Fifteen years later, *Animal Law Review* remains an exemplary illustration of the nearly infinite number of issues that arise in the discipline.

I had been teaching animal law for more than five years before I fully realized what a perfect combination of law, policy, sociology, and philosophy this area presented for the academic community. And I only understood that after a law school's civil procedure professor had audited my class. He excitedly told me that he had come with little expectation, but over the course of the two hours had gained an appreciation of the unique mix of procedural and substantive law that animal law presented. Recognizing that we were dealing with living property, he was intrigued by the compelling nature of the ethical questions animal law presents to us as a society, as practitioners, and as academicians. He also realized the procedural issues that this area raises. That conversation was more than a decade ago now, but it is a true explanation of the value of animal law—a social barometer, a distinct and challenging legal field, and an area bursting with potential academic examination and discourse.

One of the challenges of teaching animal law, especially for a practitioner and animal advocate like me, is to present it in an objective manner. Doing so has always been my firm intention—to welcome all viewpoints, assume nothing about the way students feel about animals, accord all sides fair consideration, and maintain the brisk and healthy exchange of ideas that is necessary in the academic environment. At the beginning of each semester, I tell students that despite my personal feelings or the nature of my practice, there is no right or wrong, and all positions and opinions must be respected in our discussions. Because this is an emotional subject for many students, I have learned to mediate disputes between diametrically opposed positions, such as those that might arise between the proud leather-wearing hunter and the hardcore vegan who runs a cat rescue. And while occasionally I must take up the argument for those who are my typical courtroom adversaries, usually there are students who will do that.

One of the best things about the class over the years has been the diversity of student opinions. Regardless of their preconceived notions about animal issues when they walk in the door, most students have their beliefs tested. I welcome and hope every year to attract students who range from meat-eaters who support dog fighting to radical vegans who believe that there can be no justice for animals until they have the right to sue in their own names and capacities. The wider the gap in their positions, and the more willing they

7. ALDF had held a number of conferences in the 1980s, and began its Future of Animal Law series again in 2004 at Yale Law School.

are to express those in a measured legal argument, the closer we get to full examination of the issues from all sides. And students on both ends of the animal protection spectrum have told me that the course has challenged their values and comprehension of the treatment of animals in our society.

Playing with the Big Dogs

Lawyers took their first steps in the animal law field in the early 1970s, and ALDF, the Humane Society of the United States (HSUS) and many other groups have been using the law to fight for animals for roughly thirty years. But the growth from the early 1990s to now has been exponential in every aspect—law school classes, student groups and related law school activities, regional and national conferences, animal law clinics, and an explosion in the number of private practitioners spending some of their time in the area. The media attention has paralleled the growth as well. Over the same period my own practice has gone from the occasional case and teaching at Hastings, to a practice dedicated almost entirely to animal law (since 2005), teaching the class at four Bay Area law schools, and co-editing four editions of the casebook. In 2007 Morgenstein & Jubelirer combined with Schiff Hardin, a coast-to-coast firm with over 400 lawyers and offices across the country, resulting in a full-time, big firm national animal law practice.

I am often asked, "why animal law, and why now?" That is, what is it about this point in history that has burst the dam of animal cruelty and caused the flood of courses, books, lawyers and social commentators to focus on animal issues? Not just why do we animal lawyers do what we do, but why is it that we are so supported in our effort to ride this flood and fight for animals, and teach about those fights? And I imagine sociologists, philosophers, academicians, and politicians could all give you a different answer, backed up by statistics, and a compelling hypothesis. My own work looks forward, not pondering why I have been given this opportunity. But if I had to venture a guess based on my experience and involvement, I would base the growth in this area on three things—the exponential increase in institutionalized animal abuse and cruelty in the name of human interests, causing more and more animals to suffer at greater and greater levels; an increased appreciation of the inner lives and consciousnesses of animals thanks to a growing scientific body of information establishing the undisputed similarities between human and animal sentiency; and an emotional response to at least the most egregious acts of cruelty to animals, whether deemed legal or not. I think the same tidal rush that has increased the practice of animal law has brought it into academia, although it is without doubt that the thousands of students who have taken animal law courses around the country now constitute a growing group eager to work in the field. Without the courses providing a basic animal law education, the richness of the dialogue and the size of the animal lawyer community would be clearly diminished.

When I started teaching at Hastings in 1996, there was no casebook or other text that covered enough of the area to use as a coursebook. But class was starting, and so I hastily assembled the best materials I could find. I handed out approximately 1,500 photocopied pages over the semester, usually with a two-week lead time for students. I had obtained three or four syllabi that were available from courses that were being taught at the time, and found myself designing and defining the course as it progressed. The readings included extended philosophical arguments regarding animal sentiency and the reason to grant animals greater protection, as well as a slew of cases covering a broad range of animal-related issues.

The selection was not random, but there is significant enough overlap in many animal law cases that the class and I worked together to identify common concepts and important distinctions in precedent at that time. In those first years of teaching, I quickly recognized another aspect of animal law. In addition to the statutes that directly addressed animal issues (like the anti-cruelty laws, the Endangered Species Act, the Animal Welfare Act), much of the precedent demanded a new way of looking at traditional areas of law. While the basic principles of torts, property, criminal, contracts, and constitutional law are the initial points of reference, the introduction of animals into the cases often changed the focus of the courts and law. It was an important observation—animal law is both brand new and directly tied to the past.

My private practice was very busy then, but the students and the newness of the experience stimulated me to spend significant time on the course. Not only did I have to select the materials, I had to study them in detail, so that I could both teach and respond on the topics addressed. Looking back, I am not sure how it all happened, and I have the greatest gratitude for the students in those first few years who suffered through piles of documents as I (and they) formulated a sense of what worked best for teaching purposes. Some of them were as excited about the prospect as I was, and we wanted to make it work.

The class was filled with the hope that if this succeeded, it would benefit practitioners, future students, and the academic community, and help bring animal law into the general curriculum as a vibrant, serious focus area. There is also no question that those early animal law classes (at Hastings and across the country, as the numbers increased) were under moderate to extreme scrutiny by law school professors and administrators as well as special interest groups on larger university campuses (such as the biomedical research or agricultural departments). Faculty members were concerned that animal law classes were a front for radical activists interested only in inciting students. As far as I know, that has never been the case anywhere, and it certainly is not and was not in my classes. The purpose has always been to expand legal education and enhance student learning in an area of escalating current attention. There is, of course, another goal: animal law teachers have been motivated by the desire to protect innocent and unrepresented animals in our society just as the environmental and civil rights law programs were founded by lawyers who believed they had a mission to stop injustice in those areas. And like the significant and valuable

precedent and legal doctrine created by those social justice predecessors, animal law classes bring scholarly and intellectual discipline and credibility to the field. Over the years I have been teaching, the number of students who express a very serious interest in devoting some portion of their practice to animal law issues has skyrocketed. I also get calls from undergraduate students, seeking advice on what law school to choose in order to pursue a focus in animal law. There is a clear demand for these courses that will likely only increase. This is the real proof that the advent of the coursework has stimulated the number of lawyers willing to take these cases, whether as pro bono counsel on rare occasion, or as a career.

For the first four years, each time I taught the class I took some materials out of the course readings, added some, and kept trying to refine and better define the course. I have also always begun each day of each Animal Law class with a "current events" section. I do this as a way to validate animal law's frontier status as a new and burgeoning area, and also because as a law student, I loved hearing about the real world practical applications of the law I learned. The newness of animal law probably makes this an even more valuable aspect than for other courses. The current events section ranges from five to fifteen minutes. The topics vary and include discussion of recent opinions or newly-filed cases; new laws regarding animals; and increasingly, short lectures on the status of cases I am currently litigating. Often, I can tie one of my pending cases to the assigned reading for the week, thus combining the lesson with the current events. Other times it is simply a lecture on something of particular note or importance to the field. This year we talked about pending cases, oral arguments, and decisions in state and federal appellate courts, as well as the U.S. Supreme Court. The current events section always gets high marks on student evaluations.

Somewhere in the second or third year of the Hastings course, Joyce Tischler approached me with the idea of assisting in the preparation of a casebook. There were still few animal law classes nationally; even at Lewis & Clark, with its journal and conference, the first full-semester class only appeared in 1998.[8] And there was no law school-ready book available. So along with my co-editors, we began work on one with the hope that an "official" book would further legitimize the field as an academic specialty and enable interested scholars to learn and teach it. The book did that for many, and ultimately also had the unintended effect of becoming a reference guide for animal law practitioners.[9]

There was much discussion and debate among the editors as to how to proceed with our undertaking, which we knew could have immediate effects with respect to academic acceptance of the field, and long-term impact as (hopefully) more and more students took classes. We all wanted the book to include the cases, laws, and ideas in a traditional, objective casebook format.

8. It has been taught every year since that first class.

9. Wagman et al., *supra* note 2.

We knew that discussion of the legal, social, and philosophical issues was inevitable, given the nature of the cases. It very much needed to leave any moral judgments to the reader. In line with that agreement, we made a conscious decision to limit the philosophical and ethical discussions about whether animals should have "rights" (and the related debate of just what that means). Instead, we set out to define the field, identifying its boundaries but leaving it wide open for inclusion and application: "Animal law is, in its simplest (and broadest) sense, statutory and decisional law in which the nature—legal, social, or biological—of nonhuman animals is an important factor."[10]

In order to convey the message that this was substantive law that academicians and practitioners and judges could understand, most of the chapters were simply titled with an area of law: Torts, Property, Constitutional Law, Wills and Trusts, Contracts, and Criminal Law. A separate chapter very briefly surveyed a handful of the most notable federal laws governing animals. In acknowledgment of the fact that ours was a casebook tracking a social justice movement, we included a final three-page closing, written by Joyce Tischler, looking to the past and the future of legal considerations for American animals.

Publication of the book was paralleled by the continued expansion of my animal law practice. In the four years after publication, opportunities mushroomed. New clients came from both the private and nonprofit sectors. The media was increasingly engaged and the public occasionally outraged by the practices exposed and the legal biases against animal interests. The work gained in frequency and intensity, as well as in emotional impact. From that point forward, I have received daily reports of animal suffering, usually at the hands of humans, and it has taken a subtle but noticeable toll. There were the individual cases of cruelty to companion animals, and the overwhelming, seemingly insurmountable degree of torture perpetrated on billions of animals each year in food production. Perhaps the thing that affected me most was the fact that for the majority of reports I received, my conclusion was that the offending acts were either legal or unredressable in the courts. Animal law thus distinguished itself in another way—its inevitable connection to the individuals who were at its core but who, unlike other clients, were legal nonentities. In this it is a unique area, which makes it that much more of a fight. Practicing animal law teaches and requires practitioners to incorporate but subjugate emotions in order to best represent their putative clients, the animals.[11]

Another milestone in animal law's ascendancy occurred in 2003 when Harvard Law School hosted the first annual National Animal Law Competition, which included moot court and closing argument events. The competition has since become an annual event, with students and state and federal court judges coming from around the country to participate.

10. *Id.* at xxxi (Preface to the First Edition).

11. For an examination of the trauma experienced by those working in the field, see Taimie L. Bryant, Trauma, Law, and Advocacy For Animals, 1 J. Animal L. & Ethics 63 (2006).

By early 2004, I was spending more than half of my time on animal law cases, with my employment and products liability work diminishing. The Hastings class was in its eighth year, and I had begun to teach at Stanford, Boalt Hall, and the University of San Francisco law schools as well. (The Stanford and Boalt classes are offered biannually but I dropped the University of San Francisco class after a few times, in deference to my growing practice.) The first Hastings class had about ten students, and class size was ten to fifteen until the first Boalt offering, which attracted roughly twenty-five students.

The classes have steadily grown in class size, and so too have student animal law groups. Around the country the most numerous have been Student Animal Legal Defense Funds (SALDFs), formed and run with the support of ALDF. These groups have both rallied for classes with their administrations and worked to educate their student bodies about the legal issues surrounding animals.

Juggling a full-time litigation practice and weekly classes is not always easy, but for the most part I have been able to either make classes or bring in accomplished substitutes. Often the reasons for my absences become subsequent topics for the current events part of class. I was teaching at Boalt in the spring of 2005 while litigating a large animal hoarding case in Sanford, North Carolina.[12] I had managed to incorporate the case into the class and arrange my travel and work schedule so that I did not miss any classes until the trial in late March. With Joyce filling in for me at Boalt, I went back to Sanford. In a decision that shocked everyone, the court handed roughly 350 abused dogs (and 21 birds) over to ALDF, the plaintiff in the case. Without question, that was my biggest victory to that point and the decision resulted in immediate salvation for all those animals, who had been living painful and neglected lives. Watching that case unfold was, for my students, a real-life tutorial in the law. The case had been filed about a month before the semester started, and we won the trial about a month before class ended. The students had discussed many doctrines and learned a large amount of law just following the case on its fast track from preliminary injunction through discovery, trial preparation, trial, and judgment. To top it off, they were able to rejoice in the final result. (The case went on for more than another year until the North Carolina Court of Appeal affirmed the judgment and the state Supreme Court denied *certiorari*.)

12. Animal hoarding or "collecting" occurs when a person has more animals than they can adequately care for, neglects them to the point of suffering, and denies that there is any problem. Hoarders are terminal recidivists and hoarding is the number one threat to the health and safety of companion animals, impacting probably more than 250,000 American animals each year. *See, e.g.*, Lisa Avery, From Helping To Hoarding To Hurting: When the Acts of "Good Samaritans" Become Felony Animal Cruelty, 39 Valparaiso U. L. Rev. 815 (2005); Colin Berry, Gary Patronek & Randall Lockwood, Long-Term Outcomes in Animal Hoarding Cases, 11 Animal L. 167 (2005); Joshua Marquis, The Kittles Case and Its Aftermath, 2 Animal L. 197 (1996).

Shortly after that, I reached a point where my practice was more than 90 percent animal law, a figure that has remained consistent now for five years. That evolution was paralleled by the steady growth in animal law on law school campuses. At present there are 120–140 SALDFs at American law schools; 116 law schools have offered at least one animal law class, with many giving the elective a permanent place on the curriculum. Lewis & Clark has established itself as the leader in the field. In addition to the journal and the moot court (which it organizes), the school founded the Center for Animal Law Studies (CALS). Lewis & Clark also established an animal law clinic, offers multiple classes in different aspects of animal law, including special summer sessions designed in part to make animal law available to students around the country whose law schools do not offer the course. For the past several years I have guest lectured one day of one of the two-week summer session courses in Portland, and the classes are always well-attended with students coming from all over the country.

Another boost to animal law curricula came from former talk show host Bob Barker, long a proponent of sterilization for companion animals. Barker gave endowments to a small number of law schools, with the gift conditioned upon the offer of an animal law course at least every other year. His gifts certainly guaranteed animal law classes at the few institutions he endowed, but the reach was limited. Rising demand by students across the country, and the work of ALDF's Animal Law Program, are surely the two single most important factors responsible for the growth of the field inside of law schools. The Humane Society of the United States (HSUS) has also contributed its support and personnel on a regular basis: my guest lectures at the Lewis & Clark summer sessions are part of a class taught by Jonathan Lovvorn and Nancy Perry of HSUS, and HSUS also runs an animal law fellowship (supported by a Barker grant) at Georgetown University.

HSUS's most significant contribution came when, in 2005, under Jon Lovvorn's direction, the organization established its Animal Protection Litigation section. The section is now a roughly twenty-five lawyer department that runs litigation around the country and is in high demand among matriculating students. HSUS, one of the largest of the animal protection groups worldwide, also engages in extensive lobbying efforts and supports important legislation around the country. It has recently backed several new laws aimed at eliminating the most restrictive and cruel confinement practices used for raising animals in food production.

My work has included representation of a long list of animal protection groups. The cases have involved a wide range of species and issues, in courts across the country, and I offer here a few additional examples: (1) In federal court in California, ALDF and the Chimpanzee Collaboratory and two individuals successfully sued to obtain permanent custody of chimpanzees who had suffered the lifetime of abuse that is standard for exotic animals used in film, television, and public exhibitions. (2) With Schiff Hardin's top appellate lawyers working for HSUS, we supported the State of Illinois in its

effort to stop the slaughter of horses for human consumption. (3) I worked with Schiff's Atlanta office representing two individuals who successfully sued the Georgia Commissioner of Agriculture to shut down illegal gas chambers approved by the Commissioner and used in animal shelters there. (4) Schiff and two other firms represented a dog rescue group that forced a systemwide change in Los Angeles County shelters based on extensive violations of state requirements of veterinary care and a mandatory holding period for all animals brought to the county's shelter.

I've also focused on cases of individual animal cruelty. I've been involved with hoarding cases involving dogs, cats, birds, horses, sheep, and, in one situation, hundreds of exotic animals including chimpanzees and other primates. As a parallel to the legislation against factory farming confinement practices, ALDF has challenged those practices in court on the basis of the cruelty involved, and others have also sued based on the pollution caused by those facilities. Currently ALDF and HSUS lawyers are working together to preserve a California law (which the meat industry wants to eliminate) that requires humane euthanasia of animals who are too sick or weak to stand up.

I've also been involved at multiple stages in other legislation around the country, from drafting through discussion with representatives, and from local ordinances to state and federal laws. As the exciting work has developed, and new ideas and doctrines emerged, the editors of *Animal Law* were compelled to publish a second and then a third edition. We considered supplements to the book, but they simply could not serve to adequately address the interconnections between contemporary advances and the older cases that had been their building blocks. By 2009, the third edition, published in 2006, already needed updating. (In 2008 we had welcomed a second casebook[13] and an animal law reader[14] to the expanding literature.) When we sat down to discuss the updates that would result in the fourth edition, we expected there to be only moderate change. But by the end of that first meeting, poring over our notes saved since the prior edition's publication, we realized that virtually every chapter would have to be significantly overhauled just to incorporate new cases that expanded the field. As 2010 dawned, the fourth edition of *Animal Law* was published.[15] As it went to press, important animal-related cases were pending at every level of court, including the U.S. Supreme Court. Thousands of lawyers from law firms around the country—sole practitioners as well as international heavyweights—were doing some animal law. Many of the big firms were donating pro bono time. The pro bono work is crucial here—the animal advocacy groups operate on limited nonprofit budgets, and the big firm pro bono practices are running complex litigation, often against the

13. David S. Favre, Animal Law: Welfare, Interests, and Rights (Aspen 2008).

14. Taimie Bryant, David Cassuto & Rebecca Huss, Animal Law and the Courts: A Reader (West 2008).

15. Wagman, et al., *supra* note 2.

ample resources of entrenched and moneyed industry interests. In my own practice, I work with many pro bono lawyers who do the lion's share of the work for the groups I represent.

One indicator that animal law had seated itself in academia came for me in August 2009: the list of enrollees for the Fall 2009 class at Hastings included *sixty-two* students.

With the exception of grading sixty-two essay exams, it turned out that teaching that many students was not much different than twenty, although there is the considerable input of many new voices. Because animal law is still in its early stages, the benefit of scrutiny of its doctrines and theories cannot be underestimated. At Schiff, I regularly seek feedback and advice from my partners whose varied practice areas and experience provide an immeasurable viewpoint on the steps we are taking and the arguments we are making in the courts. The input of pro bono counsel who are motivated to help but are similarly unfamiliar with the field is likewise invaluable. And the students, from wide backgrounds and with disparate reasons for taking the class, add one more layer of external insight that is constantly molding the field.

Across the nation, classes are being offered and respected academics are becoming intrigued by the intellectual challenge of animal law. Constitutional law scholar Laurence Tribe invested himself in the dialogue when Harvard Law School had its first Animal Law class. Cass Sunstein, Administrator of the White House Office of Information and Regulatory Affairs (on leave from professorships at Harvard and the University of Chicago Law School) has published multiple works in the area.[16] Tenured faculty like David Favre at Detroit College of the Law and Taimie Bryant at UCLA Law School—along with many others—have continued to publish thought-provoking articles in the specialty journals in the area (there are at least four now) or the general literature.[17] Interested professors, occasionally at the urging of students, have picked up the materials and volunteered to teach their school's first animal law

16. *See, e.g.*, Animal Rights: Current Debates and New Directions (Cass Sunstein & Martha Nussbaum, eds., Oxford Univ. Press 2004); Cass R. Sunstein, Standing for Animals (with Notes on Animal Rights), 47 UCLA L. Rev. 1333 (June 2000).

17. Professors Favre and Bryant have been at it longer than most, but there are far too many to name who are permanent faculty with a serious interest in advancing the thinking and the doctrines of this area. *See, e.g.*, Taimie Bryant, Similarity or Difference as a Basis for Justice: Must Animals Be Like Humans To Be Legally Protected from Humans?, 70 Law & Contemp. Probs. 207 (2007); David N. Cassuto, Bred Meat: The Cultural Foundation of the Factory Farm, 70 Law and Contemp. Probs. 59 (2007); Kathy Hessler, Mediating Animal Law Matters, 2 J. Animal L. & Ethics 21 (2007); Taimie L. Bryant, Animals Unmodified: Defining Animals/Defining Human Obligations to Animals, 2006 U. Chi. Legal F. 137, 162–67 (2006); William A. Reppy, Jr., Punitive Damage Awards in Pet-Death Cases: How Do the Ratio Rules of State Farm v. Campbell Apply?, 1 J. Animal L. & Ethics 19 (2006); David S. Favre, Judicial Recognition of the Interests of Animals—A New Tort, 2005 Mich. St. L. Rev. 333, 341 (2005); David Favre & Vivien Tsang, The Development of Anti-Cruelty Laws During the 1800's, 1993 Det. C. L. Rev. 1 (1993).

courses. And of course adjuncts have brought their practical experience and knowledge in the field to new schools and students, while other non-academics have written extensively in the area.[18]

My practice has focused on litigation, counseling, consulting, legislative efforts, and teaching. But the needs of animals and their advocate groups spread even wider. My presence at a full service law firm has led to opportunities for other Schiff lawyers, who join the ranks of big-firm lawyers around the country. Wills and trusts issues are becoming more common, such as devising lifetime care plans for companion animals after their human guardians die. Schiff Hardin lawyers have assisted new organizations in obtaining and maintaing nonprofit status. They have helped with publication, defamation, and copyright issues that have arisen for animal advocate groups as well as acted as outside employment counsel and consultants.

The full circle of animal law can be seen in my assistance to Chimpanzee Sanctuary Northwest.[19] I worked with two sanctuary groups, both interested in rescuing and supporting chimpanzees, and assisted in their merger. Simultaneously I undertook the negotiations for release of the Cle Elum Seven, seven chimpanzees rescued from a biomedical supply facility and now living at the sanctuary, after the chimpanzees had experienced up to three decades of isolated deprivation and suffering. Schiff's nonprofit group helped with the establishment of the new group, and Schiff lawyers provided advice on the contracts that needed to be executed. As a member of the board of directors, I now continue to help the sanctuary with its advocacy program and other issues. This snapshot proves that the magnitude of legal areas upon which animal law touches are, at this point, no different than any other vital organization, and lawyers of all specialties meet those needs.

Putting Our Best Paws Forward

Despite animal law's dramatic growth over the past twenty years, the absence of meaningful job opportunities for interested advocates stalls further progress. The success to date has been far more than might have been predicted in 1979, 1989, or even 1999. The advent of over 100 courses and more than 150 student groups has led to an overflow of candidates ready to be legal animal advocates—but there are virtually no jobs. The twenty-five slots at

18. *See, e.g.*, Kelly Wilson, Note, Catching the Unique Rabbit: Why Pets Should Be Reclassified as Inimitable Property Under the Law, 57 Clev. St. L. Rev. 167 (2009); Jonathan R. Lovvorn, Animal Law in Action: The Law, Public Perception, and the Limits of Animal Rights Theory as a Basis for Legal Reform, 12 Animal L. 133 (2006); Janice M. Pintar, Comment, Negligent Infliction of Emotional Distress and the Fair Market Value Approach in Wisconsin: The Case for Extending Tort Protection to Companion Animals and Their Owners, 2002 Wis. L. Rev. 735 (2002); William C. Root, Note, "Man's Best Friend:" Property or Family Member? An Examination of the Legal Classification of Companion Animals and Its Impact on Damages Recoverable for Their Wrongful Death or Injury, 47 Vill. L. Rev. 423 (2002).

19. This sanctuary in Cle Elum, Washington, currently cares for seven chimpanzees rescued from a biomedical research facility. For more information, see http://chimpsanctuarynw.org (last visited July 27, 2010).

HSUS and the limited positions at ALDF and in a few other groups represent only a fraction of the lawyers who stand ready, willing, and eager to do this work. Each year some percentage of my students tells me they attended law school with the sole goal of becoming a force for legal change for animals. The greatest benefit to the field at this point would be the establishment of additional fellowship programs in animal law. These fellows would be trained by animal law practitioners in the unique vagaries and doctrines of animal law, while simultaneously providing them the crucial basic training to be litigators prepared to bring cases to trial, and advocates ready to assist in the development of new laws. The fellowship programs would simultaneously provide jobs and a forum to increase animal law's nationwide coverage, functioning both as educational platforms and law firms for the animals. The continued progress of academics, with the addition of these new legal advocates for the animals, is the face of animal law's future.