

## Animal Law in Court and Congress: A Roundtable with Practitioners

**Editors' Note:** *As part of this symposium issue on animal law, the Journal of Legal Education conducted a roundtable discussion with five young attorneys active in the field—practitioners and advocates—about what attracted them to animal law practice, how their law school experience influenced their career paths, the special challenges and rewards of this field, and the future direction of scholarship and litigation. Below is the edited transcript of that conversation, conducted July 13, 2010. The Journal plans to publish similar conversations on emerging legal fields in future issues.*

**JOURNAL OF LEGAL EDUCATION:** What experiences in law school have proved most valuable to your work in animal law?



**NANCY PERRY:**<sup>1</sup> I went to Lewis & Clark Law School where there was a real focus on environmental law. That was important to me because I wanted to understand some of the larger issues that surround animals, particularly wildlife. There is a social movement attached to environmental law and by immersing myself in that field, I was able to look at how it has developed and understand how animal law as a body of law could progress. Involving myself in moot court was an invaluable way to learn to digest large volumes of complicated material and then marshal it to defend a cause on my feet and under fire. That has translated very well to policy work because at any moment walking the halls of Congress you can run into a member of the House or the Senate and be asked about one of your bills. You have to immediately recall specific details and make them useful for that law maker, as something they can relate to all the other issues their constituents are concerned about—public health, environmental concerns, food safety, human safety. There are a number of ways to make arguments for animal protection. So the moot court experience was invaluable. Also volunteering for a political campaign during law school,

1. Nancy Perry is Vice President of Government Affairs for The Humane Society of the United States in Washington, DC. She oversees all legislative work to protect animals, including statewide initiatives, state lobbying and federal lobbying. A graduate of Lewis & Clark Law School, she founded the Student Animal Legal Defense Fund, the Animal Law Journal, and the Animal Law conference. Perry co-teaches Animal Law at George Washington University Law School and Lewis & Clark Law School.

finding mentors who would show me what they were doing and then learning how to do those things myself outside the classroom helped me to understand how I could use my legal training in the future.



**COBY DOLAN:**<sup>2</sup> I came to law school with a political background, having worked in the Florida Legislature. I was exposed to a lot of animal welfare issues in the state and knew that to be an effective advocate for animals I needed more of a legal tool set. Lewis & Clark has that really good combination; you get the broader environmental component but you're able to look at the individual within a species. You can't be effective at the macro level unless you have an understanding and empathy for the individual.

**JLE:** What prompted each of you initially to take animal law courses in law school?



**JESSICA ALMY:**<sup>3</sup> I had a long-standing passion for animal protection and previously worked for the Humane Society of the United States so I entered law school knowing that I wanted to pursue animal law, in particular litigation. What was interesting to me once I got there was how other courses could be useful as well. NYU just had a single course in animal law so I had to really build a curriculum that would assist me in doing the kind of law I wanted to practice. I took Administrative Law, Advanced Administrative Law, and Environmental Law in addition to that animal law course. One other thing I thought particularly helpful was our Environmental Law Clinic which was at the Natural Resources Defense Council. I got to work with litigators and on briefs while I was there. That was extraordinarily helpful.

2. For the past three years, Coby Dolan has served as the Legislative Director for Congresswoman Debbie Wasserman Schultz (FL). In that role, he advises on all legislative areas and assists in the development of policy positions and legislative initiatives. Prior to coming to Capitol Hill in 2007, he spent eight years as a staff attorney, first at Earthjustice and then at Ocean Conservancy, working on numerous natural resource issues. His passion and focus have been on marine species, including turtles, sharks, a wide array of fish species, and manatees. Dolan received his law degree from Lewis & Clark Law School in 1999, and his bachelor's from Duke University in 1989.
3. Jessica Almy was inspired to pursue a career working to protect animals by her mother, who founded an animal shelter, rehabilitated injured and orphaned wildlife, and brought her to her first protest at the age of four. After a brief stint as a newspaper reporter, Jessica earned her M.S. in Animals and Public Policy from Tufts University and landed a position as a wildlife advocate for The Humane Society of the United States. She received her J.D. from New York University School of Law in 2009 and joined the public interest firm Meyer Glitzenstein & Crystal, where she practices animal protection and environmental litigation.



**ZAK SMITH:**<sup>4</sup> I went to UCLA and I didn't take a specific animal law class; I just took a general environmental law class then followed that up with an environmental law clinic. Clinic experience is very useful and I want to echo what Jessica mentioned regarding the ability to use other resources in law school or classes that can still help you achieve your goals. I took a class on civil rights litigation in part because I was interested in that topic and also because of the instructor, Mark Rosenbaum [Chief Counsel] at the ACLU of Southern California. That might have been one of the more useful classes I took. Although it was focused on civil rights specifically, we worked on identifying a problem, whether it was civil rights, the environment, a particular animal species, or a habitat that needed protection, and then identifying what laws we could use to build a case addressing that problem. Sometimes you're able to and sometimes you're not but it's about learning a methodology to identify an issue and then looking at all of the tools, and sometimes thinking outside of the box and getting creative with laws on the books that sometimes don't initially meet your exact needs.

**JLE:** Did all of you have an interest in animal law before you began law school?



**MATTHEW LIEBMAN:**<sup>5</sup> I did. I knew going into law school that I wanted to do animal protection law.

**PERRY:** Definitely. I had worked in the field of animal protection more as an activist and felt like I needed to understand the legal framework better. I chose Lewis & Clark because, while there was no animal law field at the time, there was an environmental law field and it has expanded since that time. I'm sort of jealous of students who go to school now because they have so many more choices and opportunities.

4. Zak Smith is a Staff Attorney at the Natural Resources Defense Council (NRDC), where he focuses on marine mammal protection. A product of California's public universities, Zak got his bachelor's degree from the University of California, Berkeley and his law degree from UCLA School of Law.
5. Matthew Liebman is a staff attorney at the Animal Legal Defense Fund, where he works on all aspects of ALDF's civil litigation. Before coming to ALDF, Matthew clerked for the Honorable Warren J. Ferguson of the United States Court of Appeals for the Ninth Circuit. Matthew graduated with distinction from Stanford Law School in 2006, and from the University of Texas at Austin in 2001 with a degree in philosophy.

**JLE:** As you've worked in this field what have been some of the biggest challenges or difficulties that you've encountered as attorneys, practitioners, or policy advocates?

**DOLAN:** I worked for six years with the Ocean Conservancy and I remember when I first applied for the job I was asked, "You're really more of an animal welfare guy, what are you doing here?" There is a perception that if you have an interest in these issues, you'll be marginalized and that these are just not issues that should be part of the public debate. We've come a long way in the last twenty years in changing that perception; I was just looking at a list of some of the legislation floating around now, and that long list is a testament to the fact that people realize that animal protection and animal welfare are important social issues. I don't feel the same sort of marginalization that I felt fifteen years ago.

**JLE:** Do others of you feel less marginalized and that animal welfare issues have become more important in the legal and policy domain?

**ALMY:** I'm the newest attorney in this group so I don't have a lot of experience but the bigger challenge I've noticed is that there is really an issue of standing, of getting your issues before the court. We use environmental law to advance the interests of animals because there are citizen suit provisions in some environmental laws. But there's a real challenge for people who love animals in trying to fashion claims that you can actually litigate in a court because the Animal Welfare Act<sup>6</sup> doesn't have a citizen suit provision and animals don't have standing in the courts. So it's difficult to get those interests before a judge and then once you do, there's the challenge of finding human beings who have a concrete interest in particular animals and will be harmed by the thing you want to stop. So I think from my perspective, standing is really the biggest challenge in advancing animal law.

**SMITH:** I would echo that completely. The way that the federal courts have increasingly worked out ways to keep the doors shut to litigation that protects animals and wildlife is a very big challenge. Unfortunately, many of the environmental laws on the books and the way they have been interpreted means they haven't proved as ground breaking as assumed in the 1970s when they were initially passed. Unless they can be updated, I continue to see the biggest challenge as standing.

6. 7 U.S.C. § 2131 *et seq.*

**JLE:** That nicely brings us to my next question which is, where do you see the frontier of animal law at this point and where do you see the breakthroughs in standing and substantive law to protect animals coming from—scholars or practitioners such as yourselves?

**LIEBMAN:** I have recently gotten interested in the international aspects of animal law. The globalization of capital has drastically changed the terrain of animal protection, and we see a lot of industries offshoring animal exploitation to factory farms in South America and research facilities in Malaysia, China, and India, relocating to places where the animal protection laws are either weak or entirely nonexistent. This has a lot of implications for the work we do because even domestic activism and litigation can have global ramifications. People are starting to pay more attention to how animal exploitation industries are globalizing, along with the resistance to those industries. As a result, there are interesting collaborations between large international NGOs and local grass roots groups, and we've seen a lot more countries start to develop animal protection legislation and even incorporate animal protection into their constitutions.

**JLE:** Are these developments coming from practitioners and advocates in the field or from scholarship?

**LIEBMAN:** I think it's both, but primarily from advocates in those countries and international NGOs that are pushing for those kinds of laws. Theorizing about the implications of globalization is something that does come from the academy, but the actual push for laws in other countries does seem to be a little more grass roots.

**PERRY:** I do think we really see both elements working in a complimentary way; having academic articles come out that push the envelope and press thinking beyond the current framework is very, very important from a policy standpoint. Even though a lot of policy doesn't rely on scholarship, policy can still be utilized to support the arguments. We're working right now to ban the slaughter of horses for human consumption in the U.S. It's been a long battle; we've argued against this practice from the cruelty standpoint, and we've argued based on cultural norms and environmental law. But recently the journal *Food and Chemical Toxicology* published an article about how phenylbutazone, a drug commonly used on horses, is harmful to humans when these animals are slaughtered and eaten. That's a scientific journal, not a legal one, but it has helped advance the human safety argument and demonstrates how the policy can move forward when scholars develop arguments grounded in science. The real take-home message for the animal welfare movement is going to be how to collaborate with other fields. I would echo what Zak and others said on the value of working with partners in social justice movements, the religious

community, consumer advocacy groups, and environmental organizations. These are critical connections; we cannot focus on our differences with other social movements, we have to collaborate with those groups to gain political power. Coby knows very well that we can pass legislation in the House of Representatives, but a lot of it dies before it can pass in the Senate. We have twelve wildlife bills, some of which have a direct impact on the gulf oil crisis right now, that have passed the House, but getting the Senate to act requires huge political capital and we need various constituencies to push together.

**JLE:** Who excites you in this field with their legal work and why? Are they academics or other practitioners?

**LIEBMAN:** Bruce Wagman has been a big influence in my career. He taught the animal law class at Stanford, and he was pretty influential in getting me here at ALDF.

**DOLAN:** Present company aside, I'd point to the legislators, litigators, and academics who are pushing that frontier. As Nancy pointed out, a number of other social justice, religious, and consumer advocate-type groups are merging their agendas and pushing policy. As Jessica knows, Eric Glitzenstein and Katherine Meyer are amazing litigators and they've taught me so much. When we worked together on a manatee case about a decade ago, we toured a rehabilitation center and a baby manatee swam up and was just so interested in us. Eric turned to me and said, "You know, Coby, it's really important every now and then to get out and see the clients." They are both the kind of people who can work with a very broad cross section of social justice groups and know how to bring those communities together in a way that was missing for a long time.

**PERRY:** Jonathan Lovvorn, vice president and general counsel for the Humane Society of the United States, started our program just over five years ago and they've now done more litigation in the field of animal law than any individual or organization. He's personally removed dogs from puppy mills, he has constructed an enormous practice using legal strategies no one has thought to employ, and has gone after farm animal abuse repeatedly and successfully, most recently by supporting ballot measures like Proposition 2 in California.

**JLE:** What was Proposition 2?

**PERRY:** Proposition 2 was a historic farm animal protection measure that passed in California in November 2008 which bans the extreme confinement of animals in battery cages, and gestation and veal crates. It has changed the face of farm animal issues because the vast majority of animals on this planet

are raised for food and they have historically had almost no protection against gross abuses because the concern for profit over welfare has gone unchecked for a half century. Jon was one of the first people who really made the case for more humane practices along with David Wolfson, another great legal mind at Milbank Tweed in New York and council for Farm Sanctuary.<sup>7</sup>

**DOLAN:** Their efforts have changed what we see on the shelves in the supermarket. Ten years ago you couldn't find eggs in Safeway that were free range or animal cruelty free but now there has been a complete revolution in how we approach food in this country. I see that happening on Capitol Hill with the way lawmakers approach certain legislation. Another example: nineteen years ago when I became a vegetarian people looked at me like I had three heads. I would talk about it from the human health perspective and an environmental and animal welfare perspective—and lost a lot of people. But I argued that we are all connected, but have become less so for the last sixty years with the advent of large factory farms. People sort of accepted these inhumane practices because they were out of sight, out of mind, but this kind of litigation helps people understand it in a way that they didn't before and, therefore they're changing their buying and eating habits. That's just going to continue, and it's a huge credit to people like Jon.

**JLE:** Do any of you see yourselves returning to the classroom at some point and teaching in this field, and if so, would you approach the subject differently than when you were in law school?

**DOLAN:** I definitely do. I've been a mentor in every job I've had and in the back of my mind I've wanted to go back and teach more formally. I would of necessity teach it somewhat differently than the way that it was taught ten years ago because this is such an evolving field. Certainly I'd bring to it not just the litigation, but also the legislation and policy perspectives I've gained in the last decade. I would point out that it's not just about how you litigate but also how you write the laws so that you can litigate in the first place. And about the policy changes you implement to make sure you uphold and follow through on the courtroom victories. All of this goes together, and that's something I would definitely like to share in a classroom some day.

7. Farm Sanctuary ([www.farmsanctuary.org](http://www.farmsanctuary.org)), a non-profit group headquartered in Watkins Glen, N.Y., works to protect farm animals from cruelty, change how society views and treats farm animals, and promote vegan living.

**PERRY:** I teach an animal law course at George Washington Law School and an intensive summer animal law workshop for Lewis & Clark Law School. My focus is on the practical elements; we look at each of the major legal statutes—the Animal Welfare Act,<sup>8</sup> the Humane Slaughter Act,<sup>9</sup> the Endangered Species Act,<sup>10</sup> the Marine Mammal Protection Act,<sup>11</sup> the Migratory Bird Treaty Act,<sup>12</sup> and a host of others. We delve deeply so that students can understand how they came to be and where they could go, as well as some of the weaknesses that need to be addressed. The class focuses on the process of law making including ballot measures, which has been a really instrumental area, and a lot of focus on standing. I couldn't agree more with what Jessica said; if you're a law student today and you want to advance the cause of animal protection, you have to know administrative law cold and you have to know standing law cold. I first heard that advice from Eric Glitzenstein when he spoke at a conference at Lewis & Clark; he said if you want to help animals, know standing law, and he's been formative in advancing that area. But there is still work to be done and, I believe, a tremendous need for students to get a working knowledge on these subjects. You can't practice animal law whether you're in the courtroom or in Congress without understanding where the field has been and the pitfalls to avoid if you want to push policy or precedent forward.

**ALMY:** I want to get back to your previous question about teaching animal law. I'm too soon out of law school to know whether I would ever want to go back into teaching, but I do want to say that it's unfortunate that animal law is relegated to a two-credit night seminar at a lot of law schools. It's a really vibrant, upcoming field and law schools could offer courses that are more focused on animals rather than only a general survey course. When I was at NYU, we had a Student Animal Legal Defense Fund chapter and we hosted workshops on consumer law, the ballot initiative process, and on using environmental law to advance the interests of animals. Any one of those half-day workshops really could have been a semester-long law school class. The workshop speakers had enormous experience and a unique perspective. There's so much more that could be done with animal law in law schools and it's unfortunate that many schools aren't offering those kinds of broad courses.

8. *Supra* note 6.

9. 7 U.S.C. § 1901 *et seq.*

10. 7 U.S.C. § 1531 *et seq.*

11. 16 U.S.C. § 1361 *et seq.*

12. 16 U.S.C. § 703 *et seq.*



**JLE:** How about undergraduate training; did any of you have undergraduate experiences that enriched your legal studies when you hit law school?

**DOLAN:** When I was an undergraduate I had the good fortune to be classmates with David Wolfson, who is a real advocate and activist on animal welfare issues, and was even back then. I wasn't nearly as evolved in my understanding and views as he was at the time so I watched and learned from afar. But his presence on my campus had a profound effect on me even though he didn't know it at the time, and within a year or two out of college it set me on my path. There weren't animal law courses in the dark ages of the 1980s although there was David Wolfson on this one-man crusade. But on the question about law schools, I think there was a perception, even at Lewis & Clark, that animal law was somehow not a serious field but a distraction and a ridiculous thing. That perception dramatically changed at Lewis & Clark in the late 1990s through a lot of the work that Nancy and others did. Hopefully the law schools now adding these kinds of courses will begin to understand their value and give them more attention in the future. Watching how animal law has evolved at Lewis & Clark, I hope that it will evolve in the same way at other schools.

**JLE:** If you were visiting a law school animal law class today, or for those of you who are now teaching, how do you advise students and faculty about keeping up to date in this field given how fast you see legislation and precedent changing?

**PERRY:** This field is as much a social movement as it is an academic specialty so if you really want to stay up to date you need to follow the current litigation and a number of organizations. You might watch the Meyer Glitzenstein & Crystal website for what's going on with their really cutting edge caseload; the Animal Legal Defense Fund also keeps people abreast about new precedents and rulings; the alert lists of other advocacy organizations provide information on pending state and federal legislation; and the Humane Society of the U.S. is constantly updating its website. We keep updates on the extensive docket of our animal protection litigation department on the Humane Society of the U.S. website. You can't just follow the legal journals for scholarship although that's critically important; you really have to follow the advocacy groups as well.

**SMITH:** I would say that it is also most important to get out there and try to meet the people who work in these fields. One way to do that would be to go to the different conferences like at Lewis & Clark or the environmental law conference that is held yearly at Yosemite through the California Bar. I'm sure other state bar groups have sessions at their conferences that either directly or indirectly deal with animal welfare and animal law issues; that's a great way to keep up to date on the issues.

**JLE:** When you all have hit a rough patch—when you feel you’re not making progress or are dismayed by instances of animal cruelty—what inspires you to keep going?

**LIEBMAN:** I guess it helps that on most days there are more dogs than humans in the office here at ALDF so it helps, as Coby said, to reconnect with the clients. Also, all of the animals here in the office have been rescued and adopted, and even though the number of animals who are suffering in the world is staggering, for these animals who do make it out, it matters immensely to them.

**PERRY:** I couldn’t agree more. Because policy work is slow and frustrating at times, you really do need to roll up your sleeves and help rescues so that every now and then you see an animal go from jeopardy to safety in front of your eyes. Then you know for sure you have made a difference in that particular animal’s life, which counts 100 percent for that animal. It’s like the story of the individual who’s throwing starfish back into the sea along the beach. Someone asks why he bothers and he says because it matters to this one. We have to accept that although we can’t make all the changes we want, we’re in it for the long haul and if we don’t stay in it for the long haul then the animals are going to lose. But if we can be heartened by the individual feral cat that we get off the street or the farm animal we’re able to protect, that can keep us going.

**DOLAN:** It is a dichotomy: We see a lot of terrible stuff and people say, “this must be pretty depressing,” but when you are touched by a baby manatee you see the profound effect you’re having on that particular animal, and it inspires me and keeps me going. Another thing for me, I have two young daughters and it may sound like a cliché but I have such hope for the next generation because their starting point is so profoundly advanced from my starting point. It gives me confidence that while there’s a lot of misery in the world, there is a lot to be hopeful about and we are making progress.

**SMITH:** I have more of a pessimistic take. I actually am hopeful for issues of animal welfare and to some extent when it comes to wildlife, but I’m much less optimistic given projections of the number of species that are going to be going extinct over the next decade because of climate change. Even when you approach with the best science and argue that we should take action and help the polar bears, for example, Canada may say no. Those things happen routinely especially in the international realm. What keeps me going is not necessarily that I think we’re going to be able to solve some of these problems, rather because the people who support the work of organizations like NRDC fully understand that this is a fight worth fighting and they’re very thankful we do it. What keeps me going is knowing that this will continue and there are people supporting us who understand that what we’re doing is important.

**JLE:** Thank you all so much for this terrific conversation. Let me conclude by asking, is there anything else you all want to say that you think would be helpful?

**SMITH:** I think people really crave an honest discussion about many of these issues yet sometimes environmental organizations want to provide a sense that they can solve this problem. But that's not always the case. I hope that people can just be honest with the assessments. I'm more OK with the choices our society makes so long as those choices are based on the best information available. A good example is what's going on in the Gulf of Mexico and continued offshore drilling in risky environments. That might be where our society wants to go but I want that decision to be based on facts and on an honest assessment of the information that's available.

**LIEBMAN:** I agree with Zak and I think there's an absence of empirical analysis in a lot of the theoretical discussions of animal law. I'd like to see a lot more empirical studies, statistical analysis, and social psychology that really analyze where we are and what the promises are as we move forward.

**DOLAN:** I've been working a lot on the Gulf oil spill and it's just heartbreaking because so much of my work there over the last decade is being destroyed every day, but it reminds me that we can learn and grow as individuals and as a society, even from this tragedy. I think the whole point of environmental legislation is to help society make policy decisions with more awareness of the consequences from an animal welfare perspective. Whether you're working on energy policy or health policy or food policy, decisions made with animal welfare in mind tie in with social justice and environmental and human health to make these decisions more holistic. That doesn't mean I will agree with every policy decision, but it's not my way or the highway; I look at decision making and the impact that individuals and society have on other animals and on the environment as a continuum. In that continuum, perhaps the actions of a factory farm owner who's driving a Hummer might rate a 100 percent on an environmental/animal welfare impact scale—with 100 being the worst—and the ground squirrel is at zero. All of the rest of us are somewhere in between. I try to encourage people to think about where they are on the continuum and try to move themselves forward, to have less of an impact on the environment and be more humane and compassionate each day. Sometimes it's revolution but most of the time it's evolution, and you can inspire others by talking about specifics and encouraging others to think about the broader implications of their actions when they are making decisions, whether in terms of litigation or policy or just the day-to-day life choices we all make.

**JLE:** Well, that's a great note to end on. Thank you all for spending the hour with us.