

# The Future of Animal Law: Moving Beyond Preaching to the Choir

Megan A. Senatori and Pamela D. Frasch

## Introduction

Discussing the place of women on the United States Supreme Court, Justice Ruth Bader Ginsburg recently was asked in an interview with *The New York Times Magazine* how she could work with men over the years as the only woman in the room.<sup>1</sup> She responded:

I always thought that there was nothing an antifeminist would want more than to have women only in women's organizations, in their own little corner empathizing with each other and not touching a man's world. If you're going to change things, you have to be with the people who hold the levers.<sup>2</sup>

Her response, though intended to address women's advancement in the practice of law, caused us to ponder the future of animal law.

Research shows that animal law<sup>3</sup> as a field of practice and as a legitimate academic subject has succeeded in the past thirty years at engaging lawyers and law students who believe that justice compels the legal system to consider

**Megan A. Senatori** is Adjunct Professor teaching animal law at the University of Wisconsin Law School and Marquette University Law School, and a partner at DeWitt, Ross & Stevens, S.C.

**Pamela D. Frasch** is Assistant Dean and Executive Director of the Center for Animal Law Studies at Lewis & Clark Law School.

1. Emily Bazelon, *The Place of Women on the Court*, N.Y. Times Magazine, July 7, 2009, <http://www.nytimes.com/2009/07/12/magazine/12ginsburg-t.html> (last visited Aug. 2, 2010).
2. *Id.*
3. The field of animal law, like other fields of study, does not have a uniform philosophical point of view, but rather, is taught from numerous diverse and compelling vantage points. For purposes of this article, however, we will focus on those academics, practitioners, and students in the field who view animal law's development as one means to enhance animal protection by fostering discussion and debate over society's treatment of animals. Unless otherwise indicated, the term "animal law" in this article will be synonymous with those in the field who seek, through the legal system, additional protections for and more compassionate treatment of animals.

the interests of the most vulnerable in society, whether human or nonhuman.<sup>4</sup> Because animal law has grown so dramatically in its stature among this group, it would be easy for animal law attorneys<sup>5</sup> to rest on their laurels; they could stay in their own little corner, empathizing with each other. Such complacency, however, would be unfortunate because animal law attorneys possess an unprecedented opportunity today to influence the outside world where concrete advancements for animal protection can be made.

As we look to the future of animal law, one goal of pedagogy, scholarship, and practice in this field should be to facilitate advancements in animal protection by finding ways to reach out more often (and more effectively) to those who move the levers of power. Section I of this article provides an overview of the overwhelming success of animal law. Section II compares developments in environmental law and explores four “levers” that animal law attorneys must pull more often to create opportunities to advance animal protection in the law. Finally, Section III provides concrete actions that animal law attorneys may take to further develop the field, and, in so doing, expand the circle of compassion for animals beyond the already converted.

### **I. The Animal Law Pioneers**

A paradigm shift is an effective redefinition of a field of endeavor. The closest analogy from biology is the pioneer. A pioneer opens up a new domain and makes available a new field that can be occupied by those coming later.<sup>6</sup>

In any great social movement, ideas are shaped and the boundaries are pushed by intellectual pioneers who have identified a wrong in society that must be righted. Pioneers are special folks who cannot witness a wrong and do nothing about it. They insist on more from society, and, in doing so, they often are met with criticism, anger, ridicule, and scorn for challenging the status quo. Proving the wisdom of the adage that “no good deed goes unpunished,” pioneers sacrifice their time, energy, financial resources, and sometimes their credibility, to create for those who come later the privilege of a “new field of endeavor.”

Thirty years ago, there was no such thing as “animal law” as a defined field of academic study or practice. Sure, there were attorneys who loved animals. There were criminal prosecutions for animal cruelty. There were disputes over the ownership of animals. There even were some environmental lawsuits involving the protection of species. But animal law as a framework to consider the interests of animals in our legal system—that novel concept did not yet

4. See e.g., Joyce Tischler, *The History of Animal Law, Part I (1972–1987)*, 1 *Stan. J. Animal L. S. Pol’y* 1, 10 (2008).

5. We use the term “animal law attorneys” throughout to describe attorneys who work in the field of animal law, whether as professors, practitioners, or even students of animal law.

6. William H. Rodgers, Jr., *The Most Creative Moments in the History of Environmental Law: The Who’s*, 39 *Washburn L. J.* 1, 22 (1999).

exist. It came to fruition through the dedication of lawyers who were frustrated by the historical indifference and failure of our legal system to meaningfully consider the interests of animals.

The sweeping acceptance of animal law in the last decade has, perhaps, been surprising to these pioneers. In 1977, Seton Hall Law School became the first law school in the country to offer an animal law course, taught by Adjunct Professor Theodore Sager Meth.<sup>7</sup> Today, animal law is taught at no fewer than 116 law schools across the country, including Harvard, Northwestern, Columbia, Cornell, Georgetown, University of Chicago, and Stanford.<sup>8</sup> Because new animal law courses have recently been added to law school curricula nationwide with such alacrity, it is virtually impossible to obtain an accurate count at any given time. In what may be the ultimate mark of academic approval and acceptance, the American Association of Law Schools (AALS) approved the creation of an Animal Law Section in 2008, with its mission to “create a forum for legal academics writing and teaching in the diverse area of animal law.”<sup>9</sup>

Acceptance of animal law within the legal profession today also reaches well beyond the law school curriculum. Animal law is recognized by the bar on a national level with at least eighteen states creating bar sections or committees devoted to animal law: Arizona, Connecticut, Florida, Georgia, Indiana, Illinois, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Missouri, New Jersey, New York, Oregon, Pennsylvania, Texas and Washington.<sup>10</sup> Numerous regional bar sections and committees are devoted to animal law, including: Cuyahoga County, Ohio; the California cities of Los Angeles, San Francisco and San Diego; the Missouri cities of Kansas City and St. Louis; in New York, Nassau County, Suffolk County and New York City; Tulsa, Oklahoma; and the District of Columbia.<sup>11</sup> In 2005, the American Bar Association’s Tort Trial and Insurance Practice Section created the ABA Animal Law Committee.<sup>12</sup> In recent years, a career as an “animal defense lawyer” has even been listed as one of the top ten “hot” or “cutting edge” careers for job seekers.<sup>13</sup>

7. Tischler, *supra* note 4.

8. Animal Legal Defense Fund, Animal Law Courses, <http://www.aldf.org/article.php?id=445> (last visited Feb. 24, 2010).

9. Joan Schaffner, Letter from the Chair, Newsletter, Animal L. Sec. of the AALS (Dec. 2008), <http://www.animallaw.info/policy/poalsnews.htm> (last visited Feb. 24, 2010).

10. Animal Legal Defense Fund, Bar Association Animal Law Sections and Committees, <http://www.aldf.org/article.php?id=277> (last visited Feb. 24, 2010).

11. *Id.*

12. *See, e.g.*, Margaret Graham Tebo, Pet Project: New ABA Committee on Animal Law Focuses on Post-Katrina Rescue Efforts, *A.B.A. J.*, Dec. 2005, at 72.

13. *See e.g.*, CareerBuilder.com, 10 Cutting Edge Jobs, <http://www.careerbuilder.com/Article/CB-561-Who-is-Hiring-10-Cutting-Edge-Jobs/> (last visited Feb. 25, 2010); American Bar Association, Hot Practice: Animal Law Grows in Stature, Offering New Opportunities, <http://www.abanet.org/lsd/studentlawyer/mar06/hotpractice.html> (last visited Feb. 24,

Given the explosion of the field, it may seem as if animal law was embraced overnight. That is not the case. The efforts of a myriad of pioneers over decades culminated in the development of the field we recognize today as “animal law.”<sup>14</sup> We do not name them here, because there are too many, and their contributions too valuable, to risk denigrating any by inadvertently omitting a name. Their ideas once were subversive, radical, and, to some, even downright comical. As David Favre, an animal law professor at Michigan State University College of Law, described in a 2005 article, “[t]o raise animal issues at attorney meetings (bar associations) a decade ago, often resulted in the attorneys’ cat calls and dog barking: it was not taken seriously by the legal establishment.”<sup>15</sup> It is easy to forget the perilous trail these pioneers blazed, because animal law now raises fewer eyebrows (and barely any cat calls or dog barking).

The animal law pioneers followed in the footsteps of environmental law pioneers, attempting to gain a foothold in the law school curriculum as outsiders. The accomplishment of this feat sometimes gets taken for granted by animal law students today—because they know of no time when the field did not exist. Environmental law broke down a similar barrier: “As a field of law that didn’t exist, environmental law was obliged to enter the law school curriculum by the tried and true method of outsiders—stealth.”<sup>16</sup> Early environmental lawyers named their courses with nondescript titles like “Equitable Remedies,” “Law and Science,” and “Law and Nature.”<sup>17</sup> Students enrolled in these vaguely titled courses critically analyzed the role of the law in environmental protection. Stealth is no longer necessary—today such courses are simply titled “Environmental Law.”

Animal law attorneys utilized no comparably sneaky course titles, just a novel agenda: to foster discussion in the legal profession regarding the interests of animals—living beings that the law traditionally has treated as lacking cognizable interests at all. Animal law proved itself unique as an area of legal study in that it analyzed the law from the perspective of the subject of study, the animals themselves:

What we now [call] Animal Rights Law or Animal Law began when attorneys consciously considered animal-related legal issues from the perspective of the animal’s interests, when they began to view the animal as the *de facto* client, and where the goal was to challenge institutionalized forms of animal abuse and exploitation.<sup>18</sup>

---

2010).

14. For an overview of the pioneers of Animal Law, written by one of the pioneers herself, see Tischler, *supra* note 4.
15. David Favre, *The Gathering Momentum*, 1 *J. Animal L.* 1, 3 (2005).
16. Rodgers, *supra* note 6, at 1.
17. *Id.* at 2.
18. Tischler, *supra* note 4, at 3.

As a result of this focus, however, animal law courses arguably tend naturally to draw students already likely to view protection issues through the prism of animals' interests, even when classes are taught from a neutral perspective. Thus, while animal law has developed at an unprecedented pace in the last three decades, its success may be principally attributable to animal law attorneys simply preaching to the proverbial choir.

## II. The Four Levers of Social Justice

Animal law can be viewed as simply an area of academic study or as an important component of a larger social justice movement aimed at more compassionate treatment of animals. Like other areas of social justice study—such as women's rights, racial inequality, disability rights, or environmentalism—professors of animal law often wish to improve the lives of their subject of study outside the classroom. That does not mean, however, that animal law professors should, or do, indoctrinate students with particular viewpoints. Students in animal law classes, as in any other law school course, should be encouraged to consider critically the real-world, practical effects of legal issues on the subjects of their study. To meet that objective, effective pedagogy should include presenting all sides of the arguments to stimulate creative-thinking by creating a space where students can develop their *own* views on animal protection issues. For example, in the animal law courses at University of Wisconsin Law School, Lewis & Clark Law School, and Marquette University Law School, students are told on the first day of class that arguments based solely on animals' emotional appeal will not survive rigorous analysis. In other words, critical thinking is demanded in animal law courses, no matter how emotional the facts the lawyers examine or how aesthetically appealing the subject of their study. Students in animal law courses sometimes express surprise at the difficulty of this task, especially when they have surrounded themselves with people who share their views on animal protection issues.

To translate the development of animal law into real world changes that better the lives of animals, those in this field must do more than convince those already predisposed to view legal questions through the prism of the animal's interests. How does the advocate make a compelling argument to advance animal protection, persuading those who are uninterested or disinterested in animal welfare? To make real advances, animal law attorneys must critically analyze issues and change social mores and attitudes; they must do so without simply appealing to emotion in response to the many difficult legal, moral, and ethical questions that abound when animal and human interests compete.

The field of environmental law had to tackle this same predicament—by finding ways to persuade those uninterested in environmental protection to care about the environment. Advocates moved beyond their converts and accomplished this task so effectively that today their cause is embodied simply

by a color—Green.<sup>19</sup> This movement fostered such widespread support because environmentalists refused to stay in their own little corner of the world. Instead, they found ways to champion environmental protection by becoming adept at engaging those who hold the levers of power. They did so by moving several smaller levers, which then provided the opportunity to convince the powerful to change fundamentally how our society views the environment and to become stakeholders in protecting it.

*A. The First Lever: The Human-Interest Factor*

Human beings are a self-interested bunch. We tend to view ourselves as the center of the world, with the animals and environment existing to satisfy our needs and desires.<sup>20</sup> Although it is comforting to believe that an ethical epiphany or sudden moral consciousnesses spawned the green movement, it arguably was fear, rather than enlightenment, that proved to be the catalyst for change. At some point, humans recognized that by exploiting the environment, we ultimately were harming our own interests. This human-interest factor was perhaps the single most important lever in environmental protection.

Professor Richard Lazarus of the University of Chicago explains the widespread shift in focus on the environment in his book, *The Making of Environmental Law*:

Indeed, by the early 1970s, a fundamental reconceptualization of both time and space underlay the extraordinary depth of public concern. The American public saw humankind and the natural environment differently than it had in the past. To some extent, this transformation in public perception captured the public's imagination and aspirations. Yet, in other respects, it generated substantial public concerns and, indeed, widespread fears, especially as they related to threats to human health and survival. In both respects, changing conceptions of time and space compelled a transformation in law generally and the emergence of a comprehensive legal regime for environmental protection in particular.<sup>21</sup>

19. Merriam Webster's Online Dictionary, <http://www.merriam-webster.com/dictionary/green> (last visited Feb. 24, 2010) (defining "green" as "relating to or being an environmentalist political movement" or "concerned with or supporting environmentalism" or "tending to preserve environmental quality").

20. See, e.g., Steven M. Wise, *Rattling the Cage* 35-48 (Perseus Books 2000).

21. Richard J. Lazarus, *The Making of Environmental Law* 55 (Univ. of Chicago Press 2004).

This shift in thinking about the environment has been called “the Rachel Carson Paradigm,”<sup>22</sup> a reference to her classic book *Silent Spring*, which brought to light the far-reaching social costs of pesticide use:

[A]llowing private and public enterprises to act as if they are unconnected islands, where out of sight is out of mind, means that a society risks a short- and long-term shipwreck on the shoals of its own detritus—not just an accumulation of toxics, but also a host of other social costs and unintended consequences.<sup>23</sup>

*Silent Spring* is an excellent example of how effectively human-interest arguments can prompt humans to act in ways they might otherwise reject as incompatible with their own interests. The book is replete with human-interest arguments that complemented the ethical and moral arguments favoring environmental protection. In a chapter titled simply “The Human Price,” Carson set forth, for example, the many social costs and how human interests intertwined with the environmental destruction that had occurred, harms that had gone unexamined and accepted as the price of industrialization.<sup>24</sup> She described the serious human health risks of pesticide abuse: cancer, memory loss, liver problems, damage to the nervous system, mental disorders, mania, to name just a few.<sup>25</sup> In “River of Death,” Carson laid out the impact of pesticide use on the animals, fish, and birds as a result of poisons in our lakes, rivers, and streams.<sup>26</sup> She was careful, however, to also connect these harms to broader concerns—the “rivers of death” did not just affect the environment, but had a direct impact on humans and their economic interests.<sup>27</sup> In “And No Birds Sing,” Carson tied together the deaths of birds from pesticide use with worker safety in orchards.<sup>28</sup> In “Indiscriminately From the Skies,” Carson detailed harms to the environment caused by pesticide spraying from planes, and tied it directly to the contamination of milk and farm produce.<sup>29</sup> A reading of *Silent Spring* drove home people’s personal stake in such issues and made them impossible to ignore.

While some academics may argue that the development of environmental law was responsible for fostering this fundamental shift in public opinion—and it did, undoubtedly have some impact—it was not a direct cause-and-

22. Zygmunt J.B. Plater, From the Beginning, A Fundamental Shift of Paradigms: A Theory and Short History of Environmental Law, 27 Loy. L.A. L. Rev. 981, 982 (1984).

23. *Id.*

24. Rachel L. Carson, *Silent Spring*, 187-198 (Houghton Mifflin 1994) (1962).

25. *Id.*

26. *Id.* at 129-52.

27. *Id.* at 140.

28. *Id.* at 103-27.

29. *Id.* at 159.

effect relationship. Other scholars would argue that the sweeping growth of environmental law was made possible only because it was preceded by changing attitudes to support environmental protection:

[T]he historical roots for modern environmental protection law cannot be simply derived from preexisting traditional natural resources laws. They are instead at least as likely to be found in the widespread social, urban justice movements concerned with public health in the United States, which led to the enactment of state and local legislation throughout the 19<sup>th</sup> and 20<sup>th</sup> centuries. Viewed from this perspective, the environmental laws of the 1970s may be more accurately described as the “culmination of an era of protest” rather than as the beginning of an entirely new movement.<sup>30</sup>

By contrast, animal law attorneys sometimes shy away from human-interest arguments in favor of moral and ethical arguments for animal protection. Many animal law attorneys believe that humans have a moral and ethical duty to protect animals without regard to human interests; this should occur, they say, because animals have inherent value and independent interests of their own that ought to be respected. Regardless of the compelling nature of this argument, it is equally clear in our experience that this viewpoint is accepted by an exceedingly small percentage of the general public. Indeed, when animal and human interests come into conflict, human interests, quickly and unsurprisingly, trump the ethical and moral arguments favoring animal protection.

In a well-known (and entertaining) debate over animal rights between philosopher Peter Singer and Judge Richard Posner of the U.S. Court of Appeals for the Seventh Circuit, the judge rejected the notion that humans have a duty to animals that arises from their own interests, and argued that most humans reject that view as well:

I do not agree that we have a duty to (the other) animals that arises from their being the equal members of a community composed of all of those creatures in the universe that can feel pain, and that it is merely “prejudice” in a disreputable sense akin to racial prejudice or sexism that makes us “discriminate” in favor of our own species. You assume the existence of the universe-wide community of pain and demand reasons why the boundary of our concern should be drawn any more narrowly. I start from the bottom up, with the brute fact that we, like other animals, prefer our own—our own family, the “pack” that we happen to run with (being a social animal), and the larger solidarities constructed on the model of the smaller ones, of which the largest for most of us is our nation. Americans have distinctly less feeling for the pains and pleasures of foreigners than of other Americans and even less for most of the nonhuman animals that we share the world with.<sup>31</sup>

30. Lazarus, *supra* note 21, at 50–51 (citations omitted).

31. Animal Rights Slate, June 15, 2001, <http://www.slate.com/id/110101/pagnum/all/> (last visited Feb. 24, 2010) (a debate between Peter Singer and Richard Posner).



Because of the self-interested prism through which most humans view the world, Posner argues that philosophical arguments about animal rights will not “expand and invigorate laws that protect animals.” Instead, he argues that it is “facts that will stimulate a greater empathetic response to animal suffering and facts that will alleviate concern about the human costs of further measures to reduce animal suffering.”<sup>32</sup>

There is, of course, no way to confirm whether Posner is correct. On the other hand, the possibility that humans someday uniformly will adopt a collective worldview that animals hold interests in their lives that require humans to cease using them to serve their interests does seem unlikely. For example, one might consider the fraction of Americans who are vegetarians (7.3 million people, or 3.2 percent of the adult population) or vegans (1 million people, or 0.5 percent of the adult population).<sup>33</sup> The vast majority of Americans, even those who love animals and concern themselves with their welfare, do not hold those views to such a high degree that they eschew eating meat or wearing clothing made from animal products. That is not to suggest that Americans who are not vegetarians or vegans do not care about animal welfare—because the majority of Americans *do* care about humane treatment of animals.<sup>34</sup> Caring about general animal welfare, however, is distinguishable from caring about animals because they have “rights” or because humans have “duties” to animals. Animal law attorneys must, therefore, broaden their horizons, and advocate for animal protection by pulling the human-interest lever more often. Doing so does not undermine animal protection arguments, it enhances them, by recognizing that humans and animals often share interests that are more aligned than many people initially realize.

### *B. The Second Lever: The Credible Witness*

The development of environmental law also succeeded due to the contributions of a wide array of non-lawyers who brought credibility to environmental protection issues. As William H. Rogers, Jr., Stimson Bullitt Professor of Environmental Law at the University of Washington School of

32. *Id.*

33. Vegetarian Times, Vegetarianism in America, [http://www.vegetariantimes.com/features/archive\\_of\\_editorial/667](http://www.vegetariantimes.com/features/archive_of_editorial/667) (last visited Feb. 24, 2010).

34. *See e.g.*, 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, 137-38 (2006).

Law, explained in *The Most Creative Moments in the History of Environmental Law: The Who's*, some of the most significant contributions to the development of environmental law came from non-lawyers:

Two of the most creative inputs in the history of environmental law were the work of non-lawyers. Lynton Caldwell, a political scientist, did much to define and form the field in its early days with his invention of NEPA. Equally impressive is the work of Robert Bullard, a sociologist, whose writings gave us the environmental justice movement. Bullard's task was the more difficult of the two because he engineered a successful "invasion" of a field that had been taken over, defined, and appropriated. Bullard succeeded, perhaps, because as a non-lawyer he was undeterred by all he did not know about the fixed patterns of environmental law and the distinguished personages who ruled it.<sup>35</sup>

The development of environmental law was also made possible by the work of a diverse cross-section of non-lawyer "environmentalists" described as:

[A] typical, motley, collection of citizen volunteers: fishers, college students, aging hippies, retired foresters, ecologists, homemakers, bird watchers and other nature lovers, a few brave and foolhardy employees within the ranks of the industry and the Forest Service (including the remarkably courageous Association of Forest Service Employees for Environmental Ethics (AFSEEE)), other public citizens, and several post-Rachel Carson non-governmental organizations (NGOs) dedicated to environmental advocacy and legal action. [These environmentalists were] largely comprised of volunteers and amateurs with severely limited resources and, at least until recently, little acknowledged legitimacy or hope of success.<sup>36</sup>

The contributions of non-lawyers were likewise an important component of *Silent Spring*, in which Carson put those who held the levers (chemical manufacturers and "the control men in state and federal governments") toe-to-toe against those she argued were "best qualified to discover and interpret wildlife loss" (the scientists).<sup>37</sup> Carson argued that in deciding which of these competing views on environmental issues to accept, "the credibility of the witness is of first importance."<sup>38</sup> She argued that the wildlife biologists were the credible witnesses, while the "control men" "like the priest and the Levite in the biblical story, choose to pass by on the other side and to see nothing. Even if we charitably explain their denials as due to the shortsightedness of the specialist and the man with an interest this does not mean we must accept them as qualified witness."<sup>39</sup>

35. Rodgers, *supra* note 6, at 16.

36. Plater, *supra* note 22, at 985.

37. Carson, *supra* note 24, at 86.

38. *Id.*

39. *Id.*

The field of animal law, however, has not adequately capitalized on the many non-lawyer “credible witnesses” concerning animal protection issues. Instead, lawyers have primarily led the charge on animal protection issues within the field. Research shows, however, that the public generally regards lawyers as some of the least credible witnesses in any profession. A 2002 study by the American Bar Association Section of Litigation, for example, found that consumers have four central criticisms of lawyers: “The American public says that lawyers are greedy; lawyers are manipulative; lawyers are corrupt; and that the legal profession does a poor job of policing itself.”<sup>40</sup> In fact, only 19 percent of respondents said they were “extremely” or “very” confident in the legal profession/lawyers.<sup>41</sup> The American Bar Association concluded that “negative perceptions of lawyers run deep and wide, as do the possible remedies.”<sup>42</sup>

By contrast, a 2009 study by Pew Research found that the public has a high regard for scientists, which it found were “very highly rated compared with members of other professions: Only members of the military and teachers are more likely to be viewed as contributing a lot to society’s well-being.”<sup>43</sup> Medical doctors<sup>44</sup> and veterinarians are held in similar high regard.<sup>45</sup> Nonetheless, animal law attorneys have been somewhat reluctant to rely more heavily on non-lawyers to further animal protection due, in some measure, to divisiveness over specific issues. Animal law attorneys have not effectively partnered with scientists due to differences of opinion on issues such as animal research. Animal law attorneys have not effectively partnered with veterinarians due to differences of opinion on issues such as the recovery of non-economic damages

40. Section of Litigation, American Bar Ass’n, *Public Perceptions of Lawyers: Consumer Research Findings* 7, April 2002, <http://www.abanet.org/litigation/lawyers/publicperceptions.pdf> (last visited Feb. 24, 2010). The study found that 69 percent of respondents believed that lawyers were greedy; 73 percent believed that lawyers were manipulative; and only 26 percent believed that the legal profession does a good job of disciplining lawyers.

41. *Id.* at 6.

42. *Id.* at 33.

43. The Pew Research Center for the People and the Press, *Public Praises Science; Scientists Fault Public, Media* 1, July 9, 2009, <http://people-press.org/reports/pdf/528.pdf> (last visited Feb. 24, 2010). By comparison, only 23 percent of respondents had a high regard for lawyers. *Id.*

44. *Id.*

45. JAVMA News, *Veterinarians Rate High on Honesty, Ethics*, Feb. 1, 2007, <http://www.avma.org/onlnews/javma/feb07/0702010.asp> (last visited Mar. 11, 2010) (discussing a Gallup Poll that found that approximately 71 percent of survey respondents rated the honesty and ethical standards of veterinarians as high or very high). By comparison, only 18 percent of survey respondents rated the honesty and ethical standards of lawyers as high or very high—with survey respondents finding lawyers as only slightly more honest and ethical than stockbrokers (17 percent), senators (15 percent), Congressmen (14 percent), insurance salesmen (13 percent), HMO managers (12 percent), advertising practitioners (11 percent), and used car salesmen (7 percent). *Id.*

for the injury or death of a companion animal. Animal law attorneys have not effectively partnered with business professionals due to differences of opinion on economic and market issues.

Animal lawyers must not allow disagreements on specific issues to create a barrier to partnering with other professions on issues of agreement. Non-lawyers are credible witnesses for animal protection and lawyers must reach out to them more often.

### *C. The Third Lever: Widespread Outsider Buy-In*

In his article, "Politics and Procedure in Environmental Law," Professor David Farber discussed citizen-based reform as a type of "republican movement" made possible by widespread public participation.<sup>46</sup> In a republican movement, citizens "acquire information about legislative positions, but they also acquire information about the state of the world that may lead to a change in their own expressed preferences."<sup>47</sup> Farber describes the original Earth Day as the product of a republican movement. Other scholars similarly contend that environmental law gained acceptance because "[a] diverse array of interests, most of which are 'outsiders,' had thrust it into the legal system."<sup>48</sup>

The general public began to champion environmental protection as a cause only after people learned about environmental protection issues when the media, as outsiders, began reporting critically on such issues in the wake of *Silent Spring*. In his introduction to the 1994 edition of *Silent Spring*, former Vice President Al Gore discussed the role of the media in drawing the general public to consider environmental protection issues:

Eventually, both the government and the public became involved—not just those who read the book, but those who read the news or watched television. As sales of *Silent Spring* passed the half-million mark, *CBS Reports* scheduled an hour-long program about it, and the network went ahead with the broadcast even when two major corporate sponsors withdrew their support. President Kennedy discussed the book at a press conference and appointed a special panel to examine its conclusions. When the panel reported its findings, its paper was an indictment of corporate and bureaucratic indifference and a validation of Carson's warnings about the potential health hazards of pesticides. Soon thereafter, Congress began holding hearings and the first grassroots environmental organizations were formed.<sup>49</sup>

46. Daniel A. Farber, Politics and Procedure in Environmental Law, in *Law and Environment*, at 184, 187 (Robert V. Percival & Dorothy C. Alevizatos eds., Temple University Press 1997).

47. *Id.* at 188.

48. Plater, *supra* note 22, at 983.

49. Al Gore, Introduction, in *Carson*, *supra* note 24, at xvii-xviii.

Although it is hard to imagine today, there was a time when outsiders viewed environmentalists with almost comically extreme skepticism, fear, and scorn:

[D]efendants attempted to get the environmentalists' attorneys disbarred, to have the environmental law clinic that had brought several cases disbanded, and to have the law professors supervising student efforts censured by their university.<sup>50</sup>

Environmental protectionists then, like animal lawyers today, also suffered harmful stereotyping that made it difficult to garner the credibility critical to effective advocacy:

The citizens who spoke for the trees, the ecosystem, and the overall social-cost accounting initially could find no place in the public policy forum. Citizen environmentalists had no expertise, it was argued; this was a field for professionals. If they did find professionals willing to speak for the overview, these voices would be dismissed as disgruntled mavericks. In other cases the environmentalists have been straightforwardly excluded as gratuitous self-appointed interlopers, with no official stake in the matter. In the press as well as the corridors of power, environmentalists are often treated as marginal gadflies, at least until they get an injunction.<sup>51</sup>

Today, in contrast, the role of the law in protecting the environment is so widely accepted that a recent Harris Poll found that 53 percent of respondents had taken steps to “green” their lives, and 72 percent believed that their personal actions were significant to the health of the environment.<sup>52</sup> Moreover, environmental protection is considered an important political issue, with 41 percent of respondents in a recent poll reporting that they believed the environment was the single most important issue facing Americans.<sup>53</sup> Clearly, environmental protection has received outsider buy-in. In fact, the environmental protection movement was so successful that today, the “outsider” is arguably the person who *does not* champion the cause of environmental protection.

50. Plater, *supra* note 22, at 991.

51. *Id.* at 989.

52. The Harris Poll, The Environment... Are We Doing All We Can?, No. 63, June 19, 2008, available at <http://www.harrisinteractive.com/vault/Harris-Interactive-Poll-Research-The-EnvironmentAre-We-Doing-All-We-Can-2008-06.pdf> (last visited Aug. 2, 2010).

53. Pew Research Center for the People and the Press, On Obama's Desk: Economy, Jobs Trump All Other Policy Priorities, Jan. 22, 2009, <http://pewresearch.org/pubs/1087/economy-jobs-top-public-priorities-2009> (last visited July 13, 2010). For the years 2006–2008, 56–57 percent of respondents consistently believed that environmental issues were a top priority.

As we look to the future of animal law, we must, therefore, ask ourselves how animal law is viewed outside the animal protection legal community and whether that view serves or undermines animal protection. We view this question through different prisms, one as an academic, the other as a litigator in private practice. From these vastly different perspectives, we know that the view of animal law from outside the animal protection legal community is still one of trepidation, and, sometimes ridicule. As one animal law student recently explained on an exam:

Animal law is, for whatever reason, a field that does not seem to be taken seriously. Even people within our field laugh at the concept of animal law. Cases involving animals are often seen as a waste of time, energy and resources. And, more than anything, we're entrenched in years and years of tradition. We have always regarded animals as property. Our entire legal system is built on this assumption. If nothing else, I think people are very fearful of change, even when that change might be warranted and necessary.<sup>54</sup>

Animal lawyers are all too familiar with the sarcasm and cajoling they sometimes receive from outsiders. We cannot count the number of times we have been asked if we teach animal law because we like animals better than humans, or whether we are radical animal rights activists, or why we choose to devote our time and attention to animals when there is so much human suffering. Such comments can become tiresome, but they have real value because they serve as a reminder that outside the field, animal law continues to be misunderstood and sometimes even viewed with skepticism.

Therefore, as we look to the future of animal law, we must consider how the field is viewed from the outside. Animal law attorneys must interact and thoughtfully engage with outsiders more often and reject the comfort of staying within our own community.

54. Anonymous student on the animal law exam at Marquette University School of Law.

*D. The Fourth Lever: Political Pressure*

The success of the environmental protection movement also was made possible because moving the first three levers eventually culminated in political pressure that resulted in the passage of a host of federal laws aimed at environmental protection. In the 1970s alone, the following environmental laws were passed:<sup>55</sup>

**Major Federal Environmental Protection  
Statutes Enacted during the 1970s**

Statute	Year
NEPA	1970
Clean Air Act	1970
Federal Water Pollution Control Act	1972
Federal Insecticide, Fungicide, and Rodenticide Act	1972
Noise Control Act	1972
Coastal Zone Management Act	1972
Endangered Species Act	1973
Safe Drinking Water Act	1974
Forest Rangeland Renewable Resources Planning Act	1974
Federal Coal Leasing Act Amendments	1976
Toxic Substances Control Act	1976
Resource Conservation and Recovery Act	1976
National Forest Management Act	1976
Federal Land Policy and Management Act	1976
Clean Air Act Amendments	1977
Clean Water Act Amendments	1977
Surface Mining Control and Reclamation Act	1977
Outer Continental Shelf Lands Act	1978

Animal law enjoys no comparable comprehensive federal regulatory scheme. While there are federal animal protection laws, the federal regulatory scheme is more of a crazy quilt than a blanket of protection. For example, the animals that our society undoubtedly uses on a scale far greater than any others are farm animals. In 2009, over nine billion animals were slaughtered in the United States for food.<sup>56</sup> However, not a single federal law governs how

55. Chart reproduced from Lazarus, *supra* note 21, at 70.

56. Nat'l Agric. Statistics Serv., U.S. Dep't of Agric., *Livestock Slaughter: 2009 Summary* (April 2010), available at [http://usda.mannlib.cornell.edu/usda/nass/LiveSlauSu//2010s/2010/LiveSlauSu-04-29-2010\\_new\\_format.pdf](http://usda.mannlib.cornell.edu/usda/nass/LiveSlauSu//2010s/2010/LiveSlauSu-04-29-2010_new_format.pdf) (last visited Aug. 2, 2010) and Nat'l Agric. Statistics

farm animals are treated on the farm up until the moment of slaughter.<sup>57</sup> And the few federal laws that do exist to protect farm animals do not even apply to all species of farm animals.<sup>58</sup>

What would the field of animal law look like if animals were provided with even a fraction of the federal protections and oversight given to our environment? Animal law scholars addressed this novel question at the Future of Animal Law Conference at Harvard Law School on March 31, 2008, in a panel entitled “Into the Future: Is the U.S. Ready For a Federal Animal Protection Agency?” The discussion was valuable and thought-provoking. Should animal protection be a matter of state or federal concern or both? Should the federal government have a larger role in animal protection? If so, would federal oversight help, or undermine, animal protection efforts? What would animal protection look like if there were more federal oversight and national standards, such as the creation of an Animal Protection Agency akin to the Environmental Protection Agency?

We raise the thought here not to suggest that the solution to animal protection necessarily lies in federal regulation or oversight, but rather, to stimulate thinking about the creative reforms that might be effective if there were more political pressure to protect animals through the law. The creation of the Environmental Protection Agency likely was a development more momentous than environmentalists once could have imagined possible. The EPA today leads the charge on a national level in promoting environmental protection and ensuring proper stewardship of the environment. Looking toward the future, lawyers should look for novel ways to similarly protect animals, by taking into account what political pressure will, and will not, support.

#### *E. Hallmark/Westland: A Case Study In The Four Levers*

There are many examples one could use to demonstrate how positive change in animal protection can result when the four levers are pulled. The scandal involving football star Michael Vick shined a light on the dark world of dog fighting and fostered outsider interest in an animal protection issue that had not been part of the national discussion. Similarly, Hurricane Katrina prompted new discussions regarding the role of government in creating disaster relief plans that include provisions to care for animals caught in these disasters. This is an issue that outsiders had not previously considered, until hurricane victims were shown on television broadcasts risking their lives to

---

Serv., U.S. Dep’t of Agric., Poultry Slaughter: 2009 Summary (Feb. 2010), *available at* <http://usda.mannlib.cornell.edu/usda/nass/PoulSlauSu//2010s/2010/PoulSlauSu-02-25-2010.pdf> (last visited Aug. 2, 2010).

57. *See, e.g.*, Bruce A. Wagman, Sonia S. Waisman & Pamela D. Frasch, *Animal Law: Cases and Materials* 419–21 (4th ed., Carolina Academic Press 2010).

58. *Id.*



save their pets. Here, however, we focus on the Hallmark/Westland scandal, because it is a particularly instructive example of how the four levers can be used effectively in animal protection cases.

In Fall, 2007, the Hallmark Meat Packing Company and Westland Meatpacking Company (“Hallmark/Westland”) in Chino, California, attracted national attention after undercover video shot by an investigator for the non-profit organization, Humane Society of the United States, showed abuses of downer cattle by plant workers. Company workers were caught on the video forcing staggering cows to stand and to walk to the kill box, abusing the animals by moving them with forklifts, striking them in the face and eyes with a paddle and deploying an electric cattle prod repeatedly to shock the animals in the face and eyes.<sup>59</sup> One employee took a high-pressure water hose and shot water into a downed cow’s mouth, taunting, “Get up or die.”<sup>60</sup> The public outrage that ensued came not just from horrified “animal rights activists” but also from a broader cross-section of “outsiders”; angry members of the public who demanded answers from those who hold the levers.

One “outsider” was Mike Ramos, the district attorney for San Bernardino County, California. When he reviewed the videos, he publicly stated: “it makes your stomach turn to see what they did to the cows in this situation.”<sup>61</sup> In a move exceedingly uncommon in farm animal cases, Ramos charged two of the workers depicted in the videos with animal abuse; both workers eventually pleaded guilty.<sup>62</sup> The USDA Food Safety and Inspection Service similarly characterized the actions as “egregious violations of humane handling regulations.”<sup>63</sup> The USDA, however, attempted to defuse the spectacle by initially declaring the incident an “isolated event.”<sup>64</sup> It was too late—because another powerful force wanted answers: the public.

As Americans across the country sat down to enjoy their breakfasts, ABC News described for those too faint of heart to look at their television screens what the undercover videos had depicted: “disabled cows, being shoved, prodded, fork lifted into the slaughterhouse.”<sup>65</sup> For those Americans preferring

59. Will Bigham, *Westland/Hallmark Slaughterhouse Worker Sentenced to 270 Days in Jail for Cow Abuse*, San Bernardino County Sun, Sept. 25, 2008, *available at* 2008 WLNR 18474808.

60. *Id.*

61. NPR Morning Edition Transcript, *Beef Recall Follows Animal-Abuse Scandal*, Feb. 18, 2008, *available at* 2008 WLNR 3174209.

62. Bigham, *supra* note 59.

63. USDA, *Questions and Answers Hallmark/Westland Meat Packing Co.*, Feb. 17, 2008, [http://www.fsis.usda.gov/PDF/HallmarkWestland\\_QAs.pdf](http://www.fsis.usda.gov/PDF/HallmarkWestland_QAs.pdf) (last visited Feb. 24, 2010).

64. *Id.*

65. Good Morning America Transcript, Feb. 18, 2008, *available at* 2008 WLNR 3249341.

to start a quiet morning with another kind of broadcast, National Public Radio provided listeners with a graphic description of the videos:

As the cow's knees buckle, she's scooped up on a forklift and dumped into a pen, where she thrashes about in mud and feces trying to raise herself. A worker repeatedly pokes her with an electric prod in a vain effort to get her on her feet. In another section of the video, workers in blue jumpsuits punch, kick, and drag cattle across feces-smearred floors en route to their slaughter.<sup>66</sup>

Once the public learned about the videos, it demanded to know how such horrible treatment of animals could possibly have happened at a facility under federal oversight.

The public anger at the animal cruelty confirmed by the videos, however, was also fueled by a looming human-interest: Did the beef processed at Hallmark/Westland from downer cattle present a risk to human health? Because downer cows carry a higher risk of spreading illness, such as mad cow disease, there was a direct human-interest in the animal abuse at Hallmark/Westland. Even more alarming, Hallmark/Westland had been the supplier of beef for the National School Lunch Program.<sup>67</sup> Within forty-eight hours of the USDA's interview with the Humane Society's undercover investigator, the USDA announced the recall of more than 143 million pounds of beef.<sup>68</sup> Approximately 50 million pounds of that beef had gone to school districts across the country or to federal programs for the poor or elderly.<sup>69</sup>

Due to the public health concerns tied to the consumption of downed cattle, the images of cruelty now had the attention of the news media and the general public. And, the public wanted to know if this really was just an "isolated incident" as the USDA initially proclaimed. The press delved into that question. A March 25, 2008, headline from *USA Today* reported that "Cattle Abuse Wasn't Rare Occurrence; Government Records Show Other Slaughterhouses Broke Humane-Handling Regulations."<sup>70</sup> The article described humane-handling violations at other plants, including one facility cited for pushing a downed cow 15 feet with a forklift, and other companies "cited for dragging downed but conscious animals, letting downed cattle be trampled and stood on by others. And, in one case, using 'excessive force'

66. NPR Morning Edition Transcript, *supra* note 61.

67. USDA, Hallmark/Westland Beef Recall - Information for School Officials & Parents (last updated Oct. 29, 2008), <http://www.fns.usda.gov/fns/safety/hw-information.htm> (last visited July 13, 2010).

68. USDA, California Firm Recalls Beef Products Derived from Non-Ambulatory Cattle Without the Benefit of Proper Inspection, Feb. 17, 2008, [http://www.fsis.usda.gov/pdf/recall\\_005\\_2008\\_Release.pdf](http://www.fsis.usda.gov/pdf/recall_005_2008_Release.pdf) (last visited Feb. 24, 2010).

69. Matthew L. Wald, Meat Executive Admits Sick Cattle Were Used, *N.Y. Times*, Mar. 13, 2008, available at 2008 WLNR 4882657.

70. Julie Schmit, Cattle Abuse Wasn't Rare Occurrence; Government Records Show Other Slaughterhouses Broke Humane-Handling Regulations, *USA Today*, Mar. 25, 2008, available at 2008 WLNR 5684360.

with a rope and an electric prod to get a downed cow to stand.”<sup>71</sup> A series of articles in *USA Today* over the next few months continued to focus attention on the Hallmark/Westland scandal.<sup>72</sup> On May 21, 2008, the newspaper reported that “[t]hirty-four of the USA’s 800 livestock slaughter plants have been temporarily shut down this year because government inspectors detected inhumane handling of animals—three times the number suspended for the same reason in all of 2007.”<sup>73</sup> Faced with documented incidents of inhumane treatment of animals at other slaughter plants, the USDA eventually was forced to admit that what it had initially called an “isolated incident” was perhaps not entirely isolated after all. By the end of 2008, press reports quoted USDA inspectors as labeling oversight as “weak.”<sup>74</sup> *USA Today* reported that the USDA’s inspector general admitted that inspectors do not watch all areas of plants continually and could miss instances of animal abuse.<sup>75</sup>

The link between the animal abuse shown on the undercover videos and entry of those animals into the food chain eventually also was confirmed, heightening public health concerns. *The New York Times* reported that “Meat Executive Admits Sick Cattle Were Used.”<sup>76</sup> Steve Mendell, an executive of Westland/Hallmark, initially testified before the Oversight and Investigations Subcommittee of the House Energy and Commerce Committee that sick animals were not slaughtered for food, so no public health issue existed.<sup>77</sup> The article detailed Mendell’s about-face “when shown a second video in which a ‘downer’ cow was shocked and abused by workers trying to move it to the ‘kill box,’ then finally shot with a bolt gun and dragged by a chain to the processing area.”<sup>78</sup> Fortunately, no human illnesses have been linked to the abuses at Hallmark/Westland. The American public, nonetheless, wanted to be sure such a mess would not reoccur.

In March 2009, the USDA announced a final rule to amend the federal meat inspection regulations. Now in effect, the rule bans the slaughter of cattle that become non-ambulatory or disabled after passing initial inspection by Food

71. *Id.* This article also notes that many of these violations had occurred in 2004, when there was no ban on the slaughter of non-ambulatory cows. This distinction was surely one without a difference to the general public.

72. Julie Schmit, Inhumane-Handling Issues Halt More Slaughter Plants; Actions Reflect More Uniform Enforcement, *USA Today*, May 21, 2008, available at 2008 WLNR 9558440 [hereinafter *Inhumane Handling Issues*]; Julie Schmit, USDA Takes Closer Look at Meat Plants, *USA Today*, Feb. 19, 2008, available at 2008 WLNR 3202229; James R. Healey & Julie Schmit, USDA Orders Largest Beef Recall: 143.3 Million Pounds, *USA Today*, Feb. 18, 2008, available at 2008 WLNR 3142533.

73. Schmit, *Inhumane-Handling Issues*, *supra* note 72.

74. Phillip Brasher, Meat Plant Oversight Is Weak, USDA Says, *Des Moines Register*, Dec. 10, 2008, available at 2008 WLNR 26298903.

75. Schmit, *supra* note 70.

76. Wald, *supra* note 69.

77. *Id.*

78. *Id.*

Safety and Inspection program personnel.<sup>79</sup> In a press release, Agriculture Secretary Tom Vilsack characterized the rule as one that would “enhance consumer confidence in the food supply and improve the humane handling of cattle.”<sup>80</sup> The final rule had not come without opposition. The American Meat Institute, the National Meat Association, and the National Milk Producers Federation had initially opposed the ban, but then dropped their opposition, presumably under public pressure.<sup>81</sup>

Then, in another unprecedented turn of events, the U.S. Department of Justice announced in May 2009, that it would seek to join the Humane Society of the United States in a lawsuit pending in the U.S. District Court for the Central District of California against Hallmark/Westland for fraud and deception.<sup>82</sup> The announcement came with a strong message of deterrence from the Assistant Attorney General:

The alleged misrepresentation by Hallmark and Westland could have impacted the health of many of our nation’s most vulnerable citizens—our school children.... Our intervention in this case demonstrates how seriously we will pursue allegations such as these.<sup>83</sup>

Thus, for the first time, the federal government stood shoulder-to-shoulder with a non-profit animal protection organization in a lawsuit involving the mistreatment of farm animals.<sup>84</sup>

79. US Fed. News, Agriculture Secretary Vilsack Announces Final Rule for Handling of Non-Ambulatory Cattle, June 12, 2009, available at 2009 WLNR 11242964. As the article describes, prior to the new rule, there was not a complete ban on the slaughter of non-ambulatory cattle. Rather, the prior rule (published in July 2007), allowed a case-by-case re-inspection of cattle that became non-ambulatory disabled after ante mortem inspection.

80. *Id.*

81. Associated Press, Meat and Dairy Groups Now Back Downer-Cattle Ban, Apr. 25, 2008, available at <http://www.iptv.org/mtom/story.cfm/news/1160> (last viewed Feb. 24, 2010). See American Meat Institute, AMI Seeks Declaratory and Injunctive Relief Against California Law That Is Preempted by the Federal Meat Inspection Act, Dec. 24, 2008, <http://www.meatami.com/ht/d/ArticleDetails/i/44892> (last visited July 13, 2010) (announcing, in a press release after Hallmark/Westland and prior to the new rule, that it was intervening in a lawsuit pending in the U.S. District Court for the Eastern District of California “to block enforcement of a State law banning any species of non-ambulatory livestock at federally-inspected meat packing plants”).

82. Ben Goad, Government Joins Suit Against Chino Meat Plant, Press-Enterprise, May 2, 2009, available at 2009 WLNR 8538552.

83. *Id.* (quoting U.S. Assistant Attorney General Tony West).

84. Gillian Flaccus, Packing Plant Sued Over Use of “Downer” Animals, Seattle Times, Sept. 25, 2009, available at 2009 WLNR 18970136.

Animal law attorneys can learn lessons from Hallmark/Westland. In the span of just over a year, widespread public pressure forced the USDA to make a rule change intended to reduce animal suffering.<sup>85</sup> Is it possible that the final rule would have become law without each of the four levers? Yes, but anecdotal evidence suggests that it is not likely. For example, while other animals, such as pigs, become downed in the slaughter process, there is no comparable federal rule that prohibits the slaughter of non-ambulatory pigs, because they do not become infected with mad cow disease.<sup>86</sup> Moreover, animal welfare groups had complained about the inhumane treatment of cattle at Hallmark/Westland long before the scandal broke, but nothing was done.<sup>87</sup> It took a human-interest (public health), credible witnesses (the District Attorney and the media), outsider buy-in (the public), and political pressure, to create a stake in remedying the animal abuse depicted in the videos. The true impact of Hallmark/Westland is difficult to quantify, but it is not a leap to suggest that it generated a public discussion that caused people across the country to pause and reflect, even if only for a brief moment, on the suffering of farm animals.

It is easy for the public to turn away from animal abuse, to persuade themselves a story lacks credibility, to dismiss the abuse as an “isolated incident,” to pretend that arguments are advanced merely by radical “animal rights activists,” and to believe that if there is truly a wrong taking place, someone else will fix it. As Hallmark/Westland showed, such attitudes appreciably change when the skeptic has a direct stake in the outcome and when credible witnesses confirm the facts, and outsiders condemn the conduct at issue, making it impossible to turn away.

### III. Moving Beyond Preaching to the Choir

If animal law is to continue to grow as vigorously as it has over the past thirty years, animal law attorneys must find ways to pull the levers more often. Although there are many ways to make progress, we offer suggestions here simply to stimulate discussion regarding the future of animal law and to encourage development in this dynamic field. We offer these suggestions in no particular order, as each contributes to more successfully engaging all four levers in slightly different ways.

85. Whether the rule change produced measurable improvements in the treatment of farm animals is a subject of legitimate debate. We use Hallmark/Westland as an example here merely to demonstrate the sort of “perfect storm” that can result when the four levers are pulled.
86. *See, e.g.*, Joe Vansickle, Will “Downer” Sows Be Next?, *Nat’l Hog Farmer*, July 15, 2008, <http://nationalhogfarmer.com/behavior-welfare/0715-groups-usda-ban/index.html> (last visited Feb. 24, 2010).
87. Julie Schmit, Meat Plant Concerns Raised for Years; Animal-Rights Group Sent Letter in 1996, *USA Today*, Feb. 28, 2008, available at 2008 WLNR 3878981.

*A. Partnering With Other Professions*

Animal law attorneys must reach out more often to seek the advice and aid of other professionals in advancing animal protection, particularly because, when it comes to credibility with the public, lawyers suffer from an abysmal perception. By “linking” with other professions, advocates for animal protection could develop skill-sets and bring in diverse viewpoints not considered frequently enough in this field. Such partnerships also would create “credible witnesses” who could garner public respect on animal protection issues.

This was precisely the model adopted by the Center for Animal Law Studies, in collaboration with the Animal Legal Defense Fund, and the Student Animal Legal Defense Fund at Lewis & Clark Law School, at its annual animal law conference last fall. The conference, entitled “Animal Law: The Links,” had at its core a goal of recognizing “links” among animal law and other disciplines, philosophies and social movements:

This year’s conference will explore animal law and its link to other areas of the law and professional disciplines, philosophies, and social movements. Panel sessions will include topics such as the link between animal law and: domestic violence; climate change; international trade; religion; the media; and social justice movements. In addition to panels on animal law and the link, the conference will also highlight hot topics in animal law, cutting-edge legislation, criminal law, [and] a Holocaust survivor’s moving perspective on animal issues.<sup>88</sup>

By collaborating with professionals in other disciplines and social movements, conference attendees could view animal law through different prisms and find commonalities with other social movements. This cross-pollination, if you will, is critical to further development of animal law. It is part of the reason why environmental law was so successful—because environmental protection issues enjoyed the credibility brought by professionals from other disciplines.

Veterinarians should be one profession with whom lawyers should work more closely. Interest in animal welfare issues has started to shape the veterinary profession in measurable ways. As of the early 1990s, only six of twenty-eight veterinary schools in the United States identified this topic as important in their strategic plans.<sup>89</sup> In 2005, the American Veterinary Medical Association created its Animal Welfare Division.<sup>90</sup> The environment in veterinary schools across the country also is shifting. *DVM Newsmagazine* reports that veterinarians who graduated twenty or thirty years ago may have had to adapt to animal welfare changes, while graduates just coming out of veterinary school have

88. Center for Animal Law Studies at Lewis & Clark Law School, Animal Law: The Links, [www.alawconference.org](http://www.alawconference.org) (last visited Feb. 24, 2010).

89. Andrew N. Rowan, Ph.D., AAAS Symposium—Veterinarians and Animal Welfare: What Role Should the Profession Play?, Aug. 1, 2006, Rowan: <http://veterinarymedicine.dvm360.com/vetmed/Medicine/AAAS-symposiumdashVeterinarians-and-animal-welfare/ArticleStandard/Article/detail/364365> (last visited Aug. 2, 2010).

90. *Id.*

been acclimated to these changes throughout their lives. Dr. Marguerite Pappaioanou, executive director of the Association of American Veterinary Medical Colleges, notes that it is important for veterinary colleges to ensure that new graduates are well-grounded in animal welfare and she views this as a positive development.<sup>91</sup> According to *DVM Newsmagazine*, these changes are the result of “both external and internal issues,” including “public demand.”<sup>92</sup> These changes are also visible within the American Veterinary Medical Association (“AVMA”). In early 2010, the organization adopted a policy urging veterinarians to report animal abuse and neglect, stating that AVMA “considers it the responsibility of the veterinarian to educate clients regarding humane care and treatment of animals.”<sup>93</sup> On animal abuse and neglect, lawyers should partner more often with veterinarians who can both provide essential expert information and serve as credible witnesses, inside and outside the courtroom.

Lawyers also should maintain their own credibility on animal protection issues by advancing compelling arguments and marshalling evidence rooted in concrete facts supported by scientific study and scholarship. Animal law attorneys should always endeavor first and foremost themselves to be “credible witnesses.” They also, importantly, must never overplay their hand or they risk losing credibility with the public, causing future arguments in favor of animal protection to be branded by the general public as “radical” or lacking credibility.

### *B. Advocating Human-Interest Arguments*

Animal law attorneys always should look for credible human-interest arguments to complement moral and ethical arguments favoring animal protection. It is crucial that such arguments be rooted in fact, rather than principally appealing to the emotional bond many humans have with animals. Fortunately, this is a relatively achievable goal since human interests often are intertwined with animal protection issues. For example:

- Combating dog fighting also can prevent related drug- and gang-activity, gambling, and other illegal acts;
- Establishing humane farming methods can result in improved public health, consumer protection, worker safety, and the safeguarding of the environment;
- Preventing animal abuse also prevents violence to humans and property crimes.

91. Christina Maccjko, *Animal-Welfare Concerns Are Changing the Way DVMs Work*, *DVM NewsMagazine*, Apr. 1, 2009, <http://veterinarynews.dvm360.com/dvm/Veterinary+news/Animal-welfare-concerns-are-changing-the-way-DVMs-/ArticleStandard/Article/detail/591627> (last visited Aug. 2, 2010).

92. *Id.*

93. *DVM NewsMagazine*, *AVMA Changes Policies on Abuse Reporting, Molting Chickens, and Cosmetic Docking of Lambs' Tails*, Jan. 13, 2010, <http://veterinarynews.dvm360.com/dvm/ArticleStandard/Article/detail/651834> (last visited Aug. 2, 2010).

By intertwining moral and ethical arguments on behalf of animals with human-interest arguments, lawyers give members of other constituencies a personal stake in the outcome of animal protection.

### *C. Building Outsider Buy-In*

Attorney involvement in facilitating humane treatment of animals need not be restricted to purely legal issues. Lawyers can play an equally important role in cultivating compassion for animals beyond the typical boundaries of the practice of law. An excellent example is the innovative Humane Education Project of the American Bar Association's TIPS Animal Law Committee.<sup>94</sup>

In March 2009, the ABA's Animal Law Committee partnered with a nonprofit organization, Humane Education Advocates Regarding Teachers ("HEART") to "cultivate compassion and empathy in our youth toward animals and foster respect for the environment."<sup>95</sup> The joint project teaches humane education classes in public schools with volunteer lawyers and law students and in conjunction with public school teachers.<sup>96</sup> The project also produced a book entitled *ABA Humane Education Project Teaching Manual* that provides lesson plans and addresses a wide-range of animal welfare issues.<sup>97</sup> In Spring 2009, the project kicked off in New York City and the District of Columbia, where fourth- and fifth-grade students participated in a four-lesson humane education program.<sup>98</sup> Early reports are extremely favorable, with teachers and volunteers reporting that the courses have been invaluable in helping develop empathy and compassion for the earth, including the environment and the animals with which we share our planet.<sup>99</sup> The project was made possible through the efforts of lawyers Meena Alagappan, chair of the ABA-TIPS Animal Law Committee, and Professor Joan Schaffner of George Washington University Law School, a member of the Association of American Law Schools and founder of its Animal Law Section. The program was extended to Chicago in spring 2010, through a collaboration of HEART, the Animal Legal Defense Fund, and the Northwestern Student Animal Legal Defense Fund.<sup>100</sup>

94. For more information about humane education programs, see Lydia S. Antoncic, A New Era in Humane Education: How Troubling Youth Trends and a Call for Character Education Are Breathing New Life into Efforts To Educate Our Youth About the Value of All Life, 9 *Animal L.* 183-213 (2003).

95. Meena Alagappan, Successful Launch of Humane Education Public Service Project, [www.abanet.org/tips/animal/projects/heart.html](http://www.abanet.org/tips/animal/projects/heart.html) (last visited Feb. 24, 2010).

96. *Id.*

97. *Id.*

98. Animal Legal Defense Fund, ABA-TIPS Humane Education Project-Chicago, <http://www.aldf.org/article.php?id=1131> (last visited Feb. 24, 2010).

99. Alagappan, *supra* note 95.

100. Animal Legal Defense Fund, *supra* note 98.



Another way to cultivate compassion for animals outside of the legal profession is through the development of undergraduate courses in human-animal studies:

[A] recent survey of the United States has found that more than 110 university and college courses—representing over 20 academic disciplines—have “Animals and Society” as one of their themes, and that these courses are concentrated in law (87), philosophy (29), animal science (18), and sociology (24). The social sciences are still notoriously underrepresented as a whole, however, and there is only a smattering of such courses in each of psychology (9), anthropology (6) and criminology (1).<sup>101</sup>

Such courses allow students to consider ethical and moral issues surrounding the use of animals. Courses on human-animal studies provide valuable viewpoints that have become increasingly scarce given that few Americans now live in rural areas or have regular interactions with animals, other than companion animals.

Animal law advocate and philanthropist Bob Barker recently recognized the value of undergraduate education regarding animal ethics when, on Feb. 11, 2008, he presented his alma mater, Drury University, with a \$1-million endowment to create a model program for undergraduate animal studies.<sup>102</sup> The flagship course of the program, “Animal Ethics,” is a “multidisciplinary class” “team-taught with professors from biology, law, sustainability, psychology, criminology, philosophy, religion, and anthropology.”<sup>103</sup> The course lists as its goals the desire to:

- Develop an understanding of and ability to apply diverse models of ethical decision-making, specifically about animal ethics;
- Acquire a commonly shared language and set of conceptual skills, including logic and critical thinking abilities for analyzing values issues;
- Further their ability to recognize the validity of diverse and/or opposing approaches to ethical decision-making and questions about animal ethics;
- Assume personal responsibility for their own values system with regard to animal ethics;
- Actively reflect on the relationship between personal responsibility and participation in a democratic society, with a focus on animal ethics.<sup>104</sup>

101. Piers Beirne & Meena Alagappan, A Note on Pedagogy: Humane Education Making a Difference, 5 *J. for Critical Animal Studies* (2007), available at [http://www.criticalanimalstudies.org/JCAS/Journal\\_Articles\\_download/Issue\\_7/bierne.pdf](http://www.criticalanimalstudies.org/JCAS/Journal_Articles_download/Issue_7/bierne.pdf).

102. Drury University, Alumnus Bob Barker To Present Drury with \$1 Million Gift, [www.drury.edu/multinl/story.cfm?ID=21705&NLID=246](http://www.drury.edu/multinl/story.cfm?ID=21705&NLID=246) (last visited Feb. 24, 2010) (press release).

103. *Id.*

104. Fall 2009 Animal Ethics Course Curriculum at Drury University, [www.drury.edu/multinl/](http://www.drury.edu/multinl/)

These are just a few examples of ways that lawyers can cultivate compassion for animals inside and outside of the legal system. The possibilities for humane education are endless, as the variety of diverse perspectives such courses can offer.

#### *D. Facilitating More Opportunities For Animal Lawyers*

Although “animal defense lawyer” recently was declared a “hot career,” there are still exceedingly few jobs in the field. As a result, attorneys who wish to use their law degree in some fashion to better the lives of animals are often disappointed when they cannot find a full-time job as an animal law attorney in a nonprofit organization. A full-time animal law career is not, however, a prerequisite to improving the lives of animals through the law. The contributions of attorneys who do not practice animal law full-time should be valued and fostered to further animal protection.

Lawyers interested in animal protection can make extremely valuable contributions to cultivating compassion for animals by working on animal protection issues with the folks who hold the levers in law firms, corporations, court systems, and government. There, attorneys can hone their advocacy skills by handling a wide variety of cases in various legal contexts outside of animal law. Moreover, the personal contacts that lawyers make “on the outside” enhance the opportunity to communicate with people who hold the levers regarding animal protection issues.

Lawyers likewise can make important contributions to animal protection by volunteering with charitable animal welfare groups in their local communities. These organizations generally are grossly underfunded and so overwhelmed with the day-to-day demands of caring for homeless and unwanted animals, that they would be well-served by lawyers’ involvement. Lawyers interested in animal protection also can serve on the boards for their local humane organizations or donate time to pro bono representation of animal welfare groups. Moreover, lawyers who are not full-time animal law practitioners can make important contributions to the field by participating as mentors, coaches, or supervisors of law students interested in animal law. A prime example is the annual National Animal Law Competition held at Harvard Law School and co-sponsored by Lewis & Clark Law School’s Center for Animal Law Studies and the Harvard Student Animal Legal Defense Fund. Each year, students from law schools across the country travel to Cambridge to compete in moot court, closing argument, and the legislative drafting and lobbying competition involving animal law problems.<sup>105</sup> In recent years, students

---

story.cfm?nlid=377&id=22401 (last visited Feb. 24, 2010).

105. In 2009 and/or 2010, the following schools competed in the National Animal Law Competition (in alphabetical order): Albany Law School; UC Berkeley School of Law; Boston College Law School; Charleston School of Law; Cornell Law School; Duquesne University School of Law; Florida Coastal School of Law; George Washington University Law School; Harvard Law School; John Marshall Law School; Lewis & Clark Law School; University of Michigan Law School; Michigan State University College of Law; University

have been especially challenged (and privileged) by the participation of real judges from federal and state courts across the country.<sup>106</sup> Their involvement is invaluable because it requires students to advance arguments to esteemed jurists who do not necessarily favor animal protection. Each year, the judges have reported how valuable they found the experience and how impressed they were with the skills of students competing.

#### *E. Fostering Diversity of Viewpoint*

One common (and mistaken) assumption by outsiders is that animal law courses are viewpoint-specific in favor of animal rights. Animal law and animal rights are not, however, synonymous. While “animal rights” is a valuable philosophy that should be examined in animal law courses, it should not be the only one. Therefore, animal law professors should be more vocal in ensuring that their courses are not mistakenly perceived as an “animal rights” course (unless, of course, their course truly is an “animal rights” course). This distinction is significant for several reasons.

First, diversity of viewpoint is an extremely valuable educational tool for generating discussion in animal law classes. The opportunity for diversity is lost, however, if students shy away from the course under the mistaken assumption that their views will be unwelcome, or if they do not speak up in class to advance positions they believe will be “unpopular” with fellow students. Over the years, some of our best teaching moments came when we, as educators, were not preaching to the choir. A particularly memorable semester at the University of Wisconsin Law School involved extremely thought-provoking and respectful debates between a student who believed that by the year 2050 the entire world would be vegan, and another student who grew up on a buffalo farm. Each student perceived the legal issues through a specific prism; both offered important insights that fostered lively debate among the entire class. At Lewis & Clark Law School, students often are asked to prepare for in-class debate and discussion by taking on a role inconsistent with their personal opinion. Through these various processes we encourage our students to consider complex legal issues from all sides, including those with which

---

of New Mexico School of Law; New York Law School; Northeastern University School of Law; Northwestern University School of Law; Oklahoma City University School of Law; Pace Law School; University of Pennsylvania Law School; University of the Pacific; McGeorge School of Law; Quinnipiac University School of Law; St. Thomas University School of Law; South Texas College of Law; Southwestern Law School; Temple University, Beasley School of Law; University of Chicago Law School; University of Louisville, Brandeis School of Law; University of Nebraska College of Law; University of Washington School of Law; and Widener University School of Law.

106. In recent years, the following list of federal and states judges generously contributed their time to the moot court portion of the National Animal Law Competition at Harvard (in alphabetical order): Judge Susan P. Graber, U.S. Court of Appeals for the Ninth Circuit; Judge David McKeague, U.S. Court of Appeals for the Sixth Circuit; Judge Patricia K. Norris, Arizona Court of Appeals, Division One; Benita Pearson, U.S. Magistrate Judge; Judge Lee H. Rosenthal, Southern District of Texas; and Judge D. Brooks Smith, U.S. Court of Appeals for the Third Circuit.

they personally disagree. Similarly valuable contributions to class discussion have been made over the years by veterinarians, police officers, breeders, social workers, farmers, and scientists.

Second, diversity of viewpoint is critical to the overall development of animal law as a field of study and scholarship. Animal protection issues rarely are black and white. Even within “the choir” of animal law attorneys, there are wide differences in opinions on animal protection issues. Students in animal law courses must, therefore, be encouraged to consider and to advance competing legal arguments, including those with which they personally disagree. When examining an animal abuse case, students should be encouraged to make arguments in favor of both the prosecution *and* the criminal defendant. By playing devil’s advocate, students hone their advocacy skills and are forced to abandon emotionally charged arguments in favor of the critical legal thinking that judges will require of them when they become lawyers.

Finally, animal law attorneys should endeavor to cultivate the same compassion they hold for animals for their fellow humans. Given the terrible manner in which our society often treats animals, it is easy to become jaded, entrenched in absolutist positions on animal protection issues, and to make moral judgments regarding people with whom we disagree. Instead, animal law attorneys should facilitate compassion for animals at all levels of society, both inside and outside the law, without making counter-productive moral judgments about the humans who pull the levers.

### **Conclusion**

We hope that thirty years from now, scholars will look back to this time as the moment when animal law began to gain widespread acceptance akin to environmental law, and opportunities that we cannot even imagine today were born. Animal law attorneys cannot effectively facilitate compassion for animals through the legal system by staying in their own corner of the world empathizing and agreeing with one another. They must instead move beyond preaching to the proverbial choir, and into the great unknown, where the future of animal law as a new field of endeavor is yet to be written.