INTRODUCTION

TWENTY YEARS AND CHANGE

By
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This Introduction provides an overview of the evolution of animal law over the past twenty years, demonstrating how changes in the law, social awareness, and legal education have directly affected this field. This Introduction describes both the positive and negative changes that have taken place, from the banning of dogfighting and cockfighting by federal law and some state laws; a spread in voter-adopted legislation providing for the protection of agricultural animals; and movements to reduce the use of chimpanzees in animal research; to the limitations of the Animal Welfare Act; changes in the United States Department of Agriculture (USDA) policy lifting the ban on USDA inspection of horsemeat; discrimination of certain breeds of dogs through breed-specific legislation; and the weakening of a number of federal laws providing protection to wildlife. This Introduction also provides an overview of case law, discussing attempts to achieve standing for animals and differing approaches in calculating damages for harm to pets. With respect to legal institutions, there has been an increasing presence of animal law sections within the American Bar Association and state bar associations. Animal law has also expanded within legal education. This is evidenced by the emergence of animal law conferences, publications in animal-focused law reviews and textbooks, animal law courses at prestigious law schools, and full-time professors specializing in the area of animal law.

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ANIMAL LAW

I. INTRODUCTION

This twentieth anniversary edition of Animal Law Review creates an appropriate space for a little reflection and perspective. In the world of animal law, twenty years is a long time and many things have changed—most for the better, but not all. Those individuals actively engaged in seeking changes in law for animals feel the frustrations of slow progress, reversals, and small victories on a daily basis. However, in the longer view, real progress on behalf of animals has occurred in the United States (U.S.), and this past progress supports a projection of future positive changes as well. This author wrote the introduction to the first volume of this groundbreaking law review, and has been an active scholar since then, riding the roller coaster of animal law’s successes and failures.

This Introduction will not review the contents of twenty years of publication by this esteemed journal, but will consider change and events in our broader community. This Introduction will touch upon changing social awareness in the U.S., changes in legal education, and some changes in the laws themselves. This topic could easily fill a book, but that will be for another time. This Introduction will simply review events in order to trigger the memories of those readers old enough to have been aware of the events over the past twenty years, or to illuminate the path of the past for younger readers.

There are a number of primary drivers of change in our society. First, as the human family has downsized and splintered with fewer children, the companion animal population has increased.\(^1\) Within many families, the emotional and social importance of the companion animal has become enhanced. This new status and personal connection with companion animals has supported an increasingly large political base of support for changing laws.

Second, public awareness of animal issues and abuses has been significantly enhanced by decades of campaigns by all the national animal advocacy organizations. This awareness has supported increased membership in national groups, which in turn has raised more financial resources to engage in campaigns. For example, consider the state-level ballot initiatives to enhance the welfare of confined farm animals adopted in a number of states over the past decade, through the efforts of a number of national and local animal organizations.2 Twenty years ago, no one would have predicted that after a string of ballot victories, the Humane Society of the United States (HSUS) and the United Egg Producers would support a federal compromise bill for egg-laying chickens, which became a proposed law in Congress but has not yet passed.3

Third, a significant driver of change has been the increasing number of lawyers who dedicate time and effort to deal with animal issues. State bar associations now have animal law sections, as does the American Bar Association.4 Since the early 1990s, national groups have hired increasing numbers of lawyers who grow more sophisticated every year in their pursuit of protection and rights for animals. Legal education has seen an explosion of interest and energy, particularly at Lewis & Clark Law School, which is discussed in Part V(B). The number of lawyers engaged in animal issues is slowly growing around the world.

While the primary focus of this Introduction is on the U.S., the world at large cannot be ignored as we are all much more interconnected than we were twenty years ago. Few could have predicted in the early 1990s the role that China has come to play in many animal issues. Their growing population and wealth5 has increased demand for

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4 See infra pt. V(A) (discussing the formation of animal law sections within state bar associations and the American Bar Association).

both wildlife6 and agricultural animal products.7 Wildlife products include shark fins, elephant ivory, and tiger products.8 The same increase in population and wealth has supported more commercial meat consumption.9 In 2013, a Chinese firm began the process of purchasing Smithfield Foods, Inc., a U.S. firm that is one of the largest pork producers in the world.10 However, China has yet to adopt a national anti-cruelty law addressing protections for the welfare of agricultural animals.11

On the other side of the world, the member states of the European Union (EU) have been long concerned with the practice of killing baby seals for their skin.12 In 2009, the EU adopted a new regulation on the issue, which prohibits the sale of seal products anywhere in the EU.13


What is most striking about this directive is that the first sentence of the regulation is clearly written from an animal welfare perspective, and not from a conservation or environmental perspective.  

Finally, the ultimate global issue, atmospheric warming, is placing many animals and their habitat at risk, from penguins to polar bears.  

II. CHANGING LANDSCAPE

Social changes arise on an individual basis and through shared public events. The cumulative effect of individual changes can produce social changes of attitude. Whether we, as a society, should protect endangered species, was a question for the 1970s. Whether we should allow the promotion and use of cigarettes has been a forty-year-old question. What should we think about dogfighting? While dogfighting was first outlawed in New York in 1867, the issue did not have broad social visibility. But in 2007, the troubles of Michael Vick, a highly paid professional football player, brought national attention to this issue. The details of the treatment and fate of the dogs used in 

14 Id. (“Seals are sentient beings that can experience pain, distress, fear and other forms of suffering.”).  


the crime were brought before the entire nation in the world of sports and the broader public.20

So today, not only is dogfighting a crime, but mere attendance at a fight is criminalized by a number of state laws.21 At the federal level, the law is more narrowly drawn to focus upon those who sponsor, exhibit, or are in direct contact with the dogs used in fighting.22 On the coattails of this shunning of dogfighting, cockfighting finally reached the position of illegality in all states as well.23 But while the social consciousness and the laws are very clear about the illegality of dogfighting, it continues to exist as an underground culture.24 Dogfighting has been a stubborn practice to eliminate, as it has been absorbed into broader social problems such as urban gang activity.25

Changes have also occurred in the realm of exotic animals, due to a number of events. In 2009, a pet chimpanzee mutilated the face of a human neighbor.26 In 2011, an exotic animal owner in Ohio let fifty

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21 See e.g. Mich. Comp. Laws Serv. § 750.49(2)(f) (Lexis 2012) (making attendance at a dogfight illegal).

22 7 U.S.C. § 2156(a)–(b) (2012) (making it unlawful to “knowingly sponsor or exhibit an animal in an animal fighting venture” and “knowingly sell, buy, possess, train, transport, deliver, or receive any animal for purposes of having the animal participate in an animal fighting venture”).


large animals, such as tigers and bears, out of their cages and then killed himself. The broader social judgment following these acts was confirmation that chimpanzees and other exotic and dangerous animals should not be in private ownership. Laws seeking to eliminate this state of affairs have been adopted to preclude private ownership.

One of the most complex and difficult animal issues to approach is the use of animals in scientific research. No federal law precludes any species of animal from use by science. But a possible change is coming from within the scientific community, and not as the result of changing law. For chimpanzees, the end of their use in scientific research may be realized in the near term, because of recommendations within the federal establishment at the National Institutes of Health. This is a prime example of how changing social attitudes can result in better outcomes for animals.

III. ENTRENCHED LANDSCAPES

Of course, positive change for animals has not occurred everywhere. Not everyone believes animals deserve our attention and concern. Significant economic interests often resist change, manifesting as political power. For example, consider the Laboratory Animal Welfare Act (AWA), our limited national law for animal protection originally passed in 1966. To this day, agricultural animals are specifically excluded under the definition of “animal.” Research animals received enhanced protections with the 1985 amendments, but in 2002, under the leadership of Senator Jesse Helms, rats, mice, and birds were specifically excluded from the AWA’s coverage. With one or two modest improvements in the animal fighting section, there have been no major additional protections for domestic animals by amendment to the AWA since 1986.

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28 See e.g. Ohio Rev. Code Ann. § 935.01 (West 2012) (“No person shall possess a dangerous wild animal on or after January 1, 2014.”).


31 Id. at § 2132(g).


IV. LANDSCAPES IN FERMENT

An example of an issue in ongoing ferment is the slaughter of horses for human consumption. Twenty years ago, at least three slaughterhouses processed horsemeat for export to other countries, but in 2007 they began closing one by one.35 The federal budget for the U.S. Department of Agriculture (USDA) had a provision since 2006, which said that federal meat inspectors could not inspect horsemeat, thus stopping legal sale of horsemeat.36 More recently, the ban was dropped by Congress, and in 2013, a plant in New Mexico received a permit from the USDA to proceed with horse slaughtering.37 However, as of November 2013, the plant has not opened. The use of horsemeat for human consumption is opposed by many organizations,38 so the controversy will, without a doubt, continue into the next decade.

The treatment of agricultural animals in the U.S. is another area that has been receiving considerable attention. While the state legislatures seem unwilling to balance the corporate interest of profit against the welfare of pigs and chickens by the adoption of protective legislation, more recently the adoption of law by voter referendum has shifted the law toward protecting animal welfare. In the fall of 2008, California voters adopted Proposition 2,39 which outlaws the keeping of chicken, veal calves, and pigs in small confinement areas, although the implementation date is put off until 2015.40 Similar legislation was adopted in Michigan in 2009 under the threat of voter referendum.41 The public is directly deciding what is socially unacceptable, and keeping laying hens in small battery cages for their entire life has been

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36 Id. at pt. IV(B).
38 See generally Wild for Life Found. Equine Protec. Program, Facts That Refute the 7 Most Common Myths about Horse Slaughter (available at http://www.savingamericashorses.org/WFLF's_Facts_that_Refute_the_7_Most_Common_Myths_about_Horse_Slaughter.pdf [http://perma.cc/0TrD7ox64En] (accessed Nov. 17, 2013)) (noting that “[t]he majority of equine industry and community members oppose horse slaughter” (emphasis omitted)).
39 Cal. Health & Safety Code § 25990 (2008). Within some but not all states of the U.S., a proposal can become the law of the state by direct vote of the people of the state. See John B. Anderson & Nancy C. Ciampa, Ballot Initiatives: Recommendations for Change, 71 Fla. B.J. 71, 71 (1997) (“Twenty-three other states [besides Florida] also provide for some type of initiative and referendum process . . . .”). In California, such proposals are called propositions. This proposition was number two only because it was the second one listed on the ballot for the voters of the state in that specific election.
considered unacceptable every time the issue has been taken to the public. However, this is just one of many welfare issues concerning agricultural animals, so the debate shall continue.

Additionally, breed specific legislation, primarily where pit bulls are singled out for special restrictive or prohibitive status, is another issue in ferment.42 Arising out of the fear of harm by pit bulls, there have been bans and restrictions on ownership at the local and state level. As most courts have allowed such legislation to stand against an assortment of constitutional challenges, it is a continuing political controversy in the legislative branch.43 One aspect of this controversy that is particularly troubling is the imprecision in identifying exactly which dogs fall under these laws. Very few people—police included—can identify a “pit bull” from other short-haired, broad-chested breeds.44 This leads to uncertainty in the general population and the risk of arbitrary enforcement by police or neighbors. Social consensus on this issue has not yet been realized.

An important issue still seeking a new resolution is that of how to award damages for harm to pets. The common law rule that damages are determined by a subtraction of the fair market value of the property after the harm from the fair market value before the harm simply does not seem adequate to many pet owners. This is particularly true when the “property” in question is their beloved companion animal with whom they have real emotional attachments, but which may have no market value whatsoever.45 Over the past twenty years, a number of lawsuits have been filed seeking to establish a new measure of damages. While some lower courts have allowed new categories of damages, over the past decade every state supreme court that has considered the issue has declined to create a new category of damages.46 The best that these courts have done is to provide for reasona-

42 Safia Gray Hussain, Student Author, Attacking the Dog-Bite Epidemic: Why Breed-Specific Legislation Won’t Solve the Dangerous-Dog Dilemma, 74 Fordham L. Rev. 2847, 2848–52 (2006) (discussing breed-specific legislation, how “extensive media coverage of serious pit bull attacks has resulted in public fear of these dogs in particular” and that “the lack of finite standards . . . mak[es] it difficult to determine whether a particular dog should be categorized as a pit bull”); see generally Bad Rap, Breed Specific Legislation, http://www.badrap.org/breed-discrimination [http://perma.cc/0bWiiJ V4n7m] (accessed Nov. 17, 2013) (discussing the recent belief that select breeds are “born bad,” how this perception has resulted in laws banning pit bulls, and that that these bans have applied to dogs with large heads, muscular bodies, and short fur—regardless of their genetic makeup).

43 See e.g. Toledo v. Tellings, 871 N.E.2d 1152, 1158–59 (Ohio 2007) (holding that state and city laws did not violate the procedural or substantive due process rights or the equal protection rights of pit bull owners).


45 Favre, supra n. 33, at 128. For a full discussion of damages for harm to pets, see id. at 123–51.

46 For example, in 2013, the Supreme Court of Texas considered a petitioner’s appeal from the court of appeals’ decision holding that a dog owner may recover intangible
ble veterinary cost.\textsuperscript{47} While the legislative route is open as a method of producing new laws for damages, it has proven politically difficult, with commercial interests often in opposition. Kentucky and Illinois have adopted such legislation.\textsuperscript{48} Perhaps it will take another twenty years before this change can be fully realized.

One important goal of attorneys seeking legal rights for animals has been to allow animals to be plaintiffs in lawsuits.\textsuperscript{49} While this author has argued that animals already possess some legal rights in very limited cases, animals have not yet achieved personhood status.\textsuperscript{50} One positive sign for the future came in a 2004 case about dolphins and whales, where an attorney sought plaintiff rights for a class of marine mammals. The Ninth Circuit disallowed the claim, but did provide some positive language for future actions.\textsuperscript{51} In 2012, People for the Ethical Treatment of Animals (PETA) sought plaintiff standing for a killer whale at Sea World, but the court dismissed the case.\textsuperscript{52}

loss of companionship damages in the form of intrinsic or sentimental value property damages. The Supreme Court reversed that decision, ruling that dogs are ordinary property, with damages limited to market value, and noneconomic damages based in relational attachment are not permitted. \textit{Strickland v. Medlen}, 397 S.W.3d 184, 198 (Tex. 2013).

\textsuperscript{47} See e.g. \textit{Burgess v. Shampooch Pet Indus., Inc.}, 131 P.3d 1248 (Kan. App. 2006). \textit{Burgess} presented an issue as to the proper measure of damages recoverable for injury to a pet dog. The plaintiff's pet, a 13-year-old dog of negligible market value, suffered a dislocated hip after being groomed at defendant's business. \textit{Id.} at 1249. The appellate court found that the award of damages based on the veterinary bills was proper where the bills were not disputed and represented an easily ascertainable measure. \textit{Id.} at 1252. The court held that when an injured pet dog with no discernible market value is restored to its previous health, the measure of damages may include, but is not limited to, the reasonable and customary cost of necessary veterinary care and treatment. \textit{Id.}


\textsuperscript{51} \textit{Cetacean Community v. Bush}, 386 F.3d 1169, 1176 (9th Cir. 2004) (“But we see no reason why Article III prevents Congress from authorizing a suit in the name of an animal, any more than it prevents suits brought in the name of artificial persons such as corporations, partnerships or trusts, and even ships, or of juridically incompetent persons such as infants, juveniles, and mental incompetents.”).

\textsuperscript{52} \textit{Tilikum v. Sea World Parks & Ent., Inc.}, 842 F. Supp. 2d 1259 (S.D. Cal. 2012).
After more than five years of development, Steven Wise and the Nonhuman Rights Project filed their first case in December 2013.\footnote{Press Release, Nonhuman Rights Project, First-Ever Lawsuits Filed on Behalf of Captive Chimpanzees to Demand Courts Grant Them Right to Bodily Liberty (Dec. 2, 2013) (available at http://www.nonhumanrightsproject.org/wp-content/uploads/2013/11/NhRP-Press-Release-Dec-2-2013.pdf (accessed Dec. 30, 2013)).} Their goal is to have a court acknowledge the legal personhood of an animal, that is, that a particular animal has the capacity to hold some legal right.\footnote{Michael Mountain, Nonhuman Rights Project, Appeals Court Sides with Ringling Circus, http://www.nonhumanrightsproject.org/2011/11/04/appeals-court-sides-with-ringling-circus [http://perma.cc/0yAMnzMdBmG] (Nov. 4, 2011) (accessed Nov. 17, 2013) ("The Nonhuman Rights Project is focusing on establishing legal personhood for such nonhuman animals as elephants. Success will open the door to basic legal rights for these animals and ensure they will have their day in court.").} So the next twenty years may be more fruitful for this critical issue than the past twenty years have been.

V. LEGAL INSTITUTIONS

A critical measurement of the advancement of the animal movement is observable by considering the changes that occur within our legal institutions, and over the past twenty years significant change has occurred. The animal movement had almost zero visibility within legal institutions in the early 1990s, but it can be found many different places today.

A. Formal Institutions

Raising legal policy issues about animals at meetings of attorneys (bar associations) twenty years ago was not taken seriously by the legal establishment. Initial inroads in this portion of the legal world occurred with the creation of recognized committees within state bar associations (usually denoted as an animal law section or committee).\footnote{In the U.S., lawyers are organized at the state level, not the national level. There are fifty or more bar associations across the country, at least one per state. For a list, see Animal Leg. Def. Fund, Bar Association Animal Legal Section and Committees, http://aldf.org/resources/law-professional-law-student-resources/law-professionals/bar-association-animal-law-sections-and-committees [http://perma.cc/0YvJB1HscBF] (updated Sept. 10, 2013) (accessed Nov. 17, 2013).} The first such event happened in Michigan in 1995, when the State Bar of Michigan accepted the application of a group of attorneys to form an Animal Law Section.\footnote{St. B. of Mich., Animal L. Sec., Membership Form: Section No: 32 (Nov. 2012) (available at http://www.michbar.org/animal/pdfs/join.pdf [http://perma.cc/0Z1J6a7AFza] (accessed Nov. 17, 2013)).} Also during the 1990s, the Bar Association of the City of New York had a long-standing animal committee, which sponsored a number of important conferences over the years.\footnote{Interview by Maddie’s Fund with Jane Hoffman, Pres., Mayor’s Alliance for NYC’s Animals (2003) (available at http://www.maddiesfund.org/Maddies_Institute/Articles/In_the_Beginning_Jane_Hoffman.html [http://perma.cc/0e1mYzjujp9] (accessed Nov. 17, 2013)).} The importance of these sections is that they are a critical educational
catalyst for practicing attorneys, as almost all of them hold educational conferences at least once a year. Their efforts within the formal associations of lawyers are building credibility about the seriousness of the issues and the professionalism of the advocates among the larger group of attorneys who do not have personal interests in animal issues. While a hard count is difficult to obtain, over twenty state bar associations and a dozen regional associations have organized animal law committees.58

A few years after formal organization began at the state level, an animal law committee was realized at the national level within the premier national association of attorneys, the American Bar Association (ABA). Through considerable effort by a few individuals, an animal law committee within the Tort Trial and Insurance Practice Section (TIPS) of the ABA was approved in the fall of 2004.59 This committee has been very active within the ABA.60 Its presence will hopefully foster further acceptance of animal issues within the broader bar activities, such as conferences, books, and legislative proposals.

B. Legal Education

At approximately the same time as the initiation of Animal Law Review, at the same school, Lewis & Clark Law School, an overlapping group of law students formed the first Student Animal Legal Defense Fund (SALDF) chapter.61 As with Animal Law Review, initial financial and staff support for SALDFs were provided by the Animal Legal Defense Fund (ALDF). The SALDF group at Lewis & Clark Law School began an annual Animal Law Conference, which has become an important annual national conference.62 This period also marked the beginning of a growing presence within legal education.

58 Animal Leg. Def. Fund, supra n. 55.
60 ABA/TIPS, supra n. 59.
61 Tischler, supra n. 50, at 37–38, 39.
Publications of articles in law reviews are critical to the development of scholarly thought on public issues. It was almost a decade before the next animal law journal came into existence, the *Journal of Animal and Natural Resource Law* at Michigan State University. There are now several online law journals for animals in the U.S. Additionally, there are now journals in Brazil and Finland.

Besides the publication of scholarly articles, another important measure of progress is the teaching of animal law within law schools. While a few courses on animal law were taught in the 1980s and early 1990s, it was introduction of the course to Harvard Law School in 2000 that served as a landmark event. There are two aspects of this occurrence that are important to note. First, it was taught by Steven Wise, past president of the ALDF and activist attorney, as an adjunct professor, not by one of the tenured professors at Harvard. An outsider to academia was appointed to open the door within academia. As of 2013, there is a much broader group of both full-time professors and adjuncts teaching in the law schools across the country. The number of full-time professors with a focus on animal law has grown sufficiently to support the creation of an animal section within the American Association of Law Schools.

Second, the occurrence of the class at Harvard gave legitimacy—in the broad readership of the New York Times—to the issue that had not previously been considered. An article in the newspaper about the
course and the animal rights movement resulted in a cascade of press coverage about the animal movement generally and possible legal changes specifically.\textsuperscript{69}

When Steven Wise taught at Harvard, he had to use his own materials, and before a wider teaching of the topic could occur, it was necessary to create a national textbook. As most individuals do not have the ability or time to put together an entire semester’s worth of teaching materials, published materials are essential before courses can be widely taught. For deans and faculty to approve the creation and teaching of new courses, it is very helpful to be able to show a national textbook that defines the scope and nature of the course by its chapter headings. As might be expected, pioneer teachers, who were and are still adjunct professors at various law schools, wrote the first book published in 2000.\textsuperscript{70} It should be noted that the demand for the course within a law school most often arose not from the deans or faculty of the various schools, but from the law students. In 2008, this author published the second textbook on animal law with the legal publishing house, Aspen Press.\textsuperscript{71}

Increasing student demand, the publishing of textbooks, and the availability of attorneys already active in the movement to teach the course have created a significant increase in the number of law schools offering a course in animal law over the past fifteen years. Omitting the intervening details, consider the scope of the interests today, as measured by both the number of law schools that are offering the course and the number of law schools where students have self-organized to promote animal issues. The best count is kept by the ALDF and is available on their website.\textsuperscript{72} In the fall of 2013, the site listed over 140 law schools offering the course, and even more law schools with student SALDF chapters.\textsuperscript{73}


\textsuperscript{70} Pamela Frasch, Sonia S. Waisman, Bruce A. Wagman, and Scott Beckstead drafted the book, \textit{Animal Law} (Carolina Academic Press 2000). By conscious decision, the book focused on classic legal issues like damages, torts, standing, and property law, rather than legal rights for animals, which was perhaps too radical for law faculties to accept. It is now in its 4th edition. Pamela Frasch has since joined academia full time at Lewis & Clark Law School.

\textsuperscript{71} Favre, \textit{supra} n. 33. Additional teaching materials include, Tammie L. Bryant et al., \textit{Animal Law and the Courts: A Reader} (Thompson/West 2008); and \textit{Animal Rights: Current Debates and New Directions} (Cass R. Sunstein & Martha C. Nussbaum eds., Oxford U. Press, Inc. 2004).


\textsuperscript{73} Id. (listing a total of 147 law schools in the U.S. and Canada with animal law course offerings).
As another important step in the building up within academia, Lewis & Clark Law School has created the first program to offer a Master’s of Law in animal law, under the umbrella of their Center for Animal Law Studies. It should also be noted that while most law schools offer a single course in animal law and occasionally two courses, Lewis & Clark offers over a dozen every year.

While this Introduction’s focus is primarily on the U.S., it should be noted that the teaching of animal law is slowly expanding around the world. In the summer of 2014, there will be a global conference with professors attending and speaking from all over the world, including Australia, Spain, Portugal, Brazil, South Africa, the U.S., Canada, Kazakhstan, and China. The three major universities with animal programs are co-sponsoring the event: Lewis & Clark Law School, Michigan State University College of Law, and the Universitat Autònoma de Barcelona of Spain (who will host the conference). This should provide a strong boost for the development of animal law on a global basis over the next twenty years.

C. The Practice of Animal Law

A limited number of individual attorneys in large urban cities have found a way to generate income with the practice of animal law. Adam Karp of Washington State is one of the earliest such individuals. There are a wide variety of issues that come before practicing attorneys, including: “The city just took my dog to the pound for biting someone and they said they were going to kill it tomorrow”; “My neighbor just shot my cat when it jumped our fence”; “I want to leave some money for my two adorable cats”; and “They sold me a sick dog, it died thirty days after we got it.” Many attorneys provide help to animal owners with limited or no attorney fees charged (pro bono). As the animals have no money, and many animal owners have limited financial resources, this difficulty in income generation is not expected to change in the foreseeable future.

77 Id.
Attorneys can also practice animal law on the broader plane of public policy as an employee of a nonprofit organization. ALDF has a long practice of hiring attorneys to carry out litigation and projects. Other national organizations, such as the Humane Society of the U.S. and the American Society for the Prevention of Cruelty to Animals, now hire attorneys to deal not just with private matters, but to file impact litigation on behalf of animals and to lobby for new laws at the national and state level.\(^79\) Perhaps forty attorneys are so engaged now in the U.S. on a full-time salary basis. In the experience of this author, no other county in the world has as many private attorneys dealing with animal issues.

\section*{D. Prosecutors and Judges}

While considerable progress has been made within the world of law schools and attorney organizations, judge and prosecutor organizations do not yet reflect the same degree of change. As by the nature of their positions, these individuals must consider a wide variety of human issues; therefore, there is less room for animal issues or for those who specialize in animal issues. There is no organized training for judges on animal issues. It is only in the last few years that training of prosecutors has proceeded on a systemic basis with the help of organizations such as the National District Attorneys Association.\(^80\) Over the past decade, some of the larger prosecutor offices in big cities have allowed a few individuals to specialize in animal cruelty cases. When judges finally recognize animal issues as a serious part of the law, then a major milestone will be reached. This should be one of the goals for the next twenty years: outreach to judicial organizations.

\section*{VI. COURT OPINIONS}

In the past twenty years, many lawsuits have been filed on behalf of animals, both criminal and civil, at the state and federal level. A few are mentioned here to give a sense of the diversity of the opinions.

One goal of the attorneys within animal law has been to obtain standing for humans to sue at the federal level, particularly under the Animal Welfare Act (AWA). As animal organizations are not normally licensees of the federal agencies, and do not typically have economic interest in regulatory efforts, normal standing arguments do not sup-


port standing claims in federal lawsuits. Between 1991 and 1998, the Animal Legal Defense Fund (ALDF) brought a sequence of two federal lawsuits that resulted in the D.C. Court of Appeals holding that one of the plaintiffs, an observer of a particular chimpanzee at a zoo, had standing to question the underlying regulations of the U.S. Department of Agriculture (USDA) about the sufficiency of the federal regulations. Standing was based upon the aesthetic interests of the individual plaintiff in seeing animals in a positive physical setting: “Mr. Jurnove has made clear that he has an aesthetic interest in seeing exotic animals living in a nurturing habitat.” This conceptualization of standing supported another plaintiff in a civil case under the federal Endangered Species Act (ESA).

In 2010, the U.S. Supreme Court heard appeal of a criminal case concerning the distribution of dogfighting videos. This involved a difficult First Amendment issue which resulted in the Court, with an 8–1 vote, striking down the federal law which prohibited depictions of animal cruelty, and had been passed to primarily control the Internet distribution of “crush” videos. Notwithstanding a thoughtful dissenting opinion by Justice Alito, the majority held that protection of animals was not a compelling state interest so as to justify the intrusion upon the First Amendment rights of the defendant. The words of the opinion suggest that animal protection issues are not yet perceived as important by these Justices.

Perhaps the most litigated public policy issue at the state level focused on the appropriate measure of damages to the owners of animals who have been harmed by the acts of another. While a number of lower court opinions have allowed damages beyond the traditional measures of the common law, in the past decade every state supreme court that has considered the issue has refused to change the common law rules, always with the caveat that if change is sought, it must be taken by the legislature, not the courts.

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81 Animal Leg. Def. Fund, Inc. v. Glickman, 154 F.3d 426, 445 (1998) (en banc). The plaintiff visited a zoo a number of times where a chimpanzee was kept in solitary confinement; the plaintiff claimed the conditions violated the AWA. Id. at 429–30.

82 Id. at 432.

83 Am. Socy. for Prevention of Cruelty to Animals v. Ringling Bros. & Barnum & Bailey Circus, 317 F.3d 334 (D.C. 2003). In this case, the plaintiffs’ claim was that the training methods used by the circus on elephants constituted a violation of the federal ESA, for causing harm to a listed endangered animal. Id. at 335. After a full trial, the judge found that the former elephant trainer did have the required interests in the animals to support a claim of Article III standing. Id. at 338.


85 Id. at 482; see 18 U.S.C. § 48 (2012) (amended by Pub. L. No. 111-294, 124 Stat. 3177 (2010), which Congress adopted following this Supreme Court opinion) (making it illegal to create or distribute a recording which depicts one or more living animals “intentionally crushed, burned, drowned, suffocated, impaled”).

86 See supra nn. 45–48 and accompanying text (discussing issues underlying the calculation of damages for harm to pets).

87 See e.g. Goodby v. Vetpharm, Inc., 974 A.2d 1269, 1273–74 (Vt. 2009) (finding plaintiff failed to demonstrate a compelling public policy reason to expand the common
VII. WILDLIFE

Wildlife has received special attention and protection over the past forty years as an element under the umbrella of the environmental movement. But over the past decade or so there has been very little new legislation on behalf of wildlife.

For wildlife in the U.S., the picture is mixed. Trapping and sport hunting laws dealing with wildlife have not seen any significant change. No major changes in the legislation for wildlife protection have occurred, with the venerable Endangered Species Act (ESA) reaching the mature age of forty in 2013.\textsuperscript{88} It continues to be a significant tool for protection of wildlife and their habitat, but does not deal with welfare issues.

Some weakening of the laws has occurred recently. Amendments to the Migratory Bird Treaty Act in 2004 removed protection for non-native birds.\textsuperscript{89} A 2004 amendment to the Wild Horses and Burros Act\textsuperscript{90} has made it easier to get older, unwanted horses off the range land of the western U.S.\textsuperscript{91} In 2004, provisions were added to the ESA and the Marine Mammal Protection Act (MMPA) reducing the burden on the U.S. Department of Defense in complying with these laws, when noncompliance is necessary for the national defense of the country.\textsuperscript{92}

Outside the ESA, those who see wildlife as a “problem” continue to have strong voices. For example, under the ESA, the wolf was reintroduced in Yellowstone National Park in 1995.\textsuperscript{93} The program was such a great success that the expanding population of wolves re-inhabited much of their original range.\textsuperscript{94} The wolves were so successful in increasing their population that after a number of legal battles, they

have been delisted—meaning no longer listed as endangered or threatened—at the federal level. In many states, laws were quickly adopted permitting the hunting of wolves that, a year before, had full federal protection.\(^95\)

Internationally, wildlife seems to be at increased risk every year. For example, consider the plight of elephants and rhinos—“Given the current rate of poaching, children from West or Central Africa will one day speak of elephants and rhinoceroses as we speak of mammoths: as magnificent creatures belonging to the past.”\(^96\) The legal system does not seem to have an answer to the increasing demands for wildlife products such as ivory and rhino horn by an increasing number of humans.

VIII. CONCLUSION

The past twenty years have been a time of significant change. Organizations have spent millions of dollars to help animals and to change attitudes and the law. Like the changing of a course for a very large ship, it takes time and space to realize change. Animals are so entwined in our everyday world by habit and tradition that it is difficult to take apart each thread to conduct a critical analysis. But more and more are doing so. The next twenty years will be as unpredictable as the past twenty years have been, but this author is optimistic that on balance, the animals will be more respected and more protected in 2034. Certainly, *Animal Law* will be around discussing the issues of the day, and with a bit of luck, this author will be around to contribute to the Introduction for Volume 40.

