

Laws for Paws

BY TIM EIGO
PHOTOGRAPHY BY MICHAEL MERTZ

A New Breed of Law Section



Animal law was a long time coming.

It's curling up and making itself at home on the legal couch—but only after science and public opinion have whistled and patted the pillows.

Like most practice areas, it doesn't run far out ahead of the pack, ferreting out bold initiatives. Instead, it treads cautiously in areas already explored by other fields.

In January, the Animal Law Section of the State Bar will be two years old—14 in dog years—and it follows a path laid for it by evolving scientific knowledge and a public that grows more attached to animals with every passing year.

Stephanie Nichols-Young is the section chair, and she has practiced animal law for years; she has worked on wildlife issues, regulation of horse and greyhound racing, and even the state's cockfighting ban. But she understands that the organized law comes late to the world of kennels and stables.

"How many people do you know whose pets are like members of the family?" she asks. "You love them, and they love you back, and I think we just recognize that more."

Flowing from that altered view, she says, are legal implications. That's where the Animal Law Section comes in. "It's important that we have a forum to talk about what the new developments are."

Section co-founder Tracy Miller is in practice at Ogletree, Deakins, Nash, Smoak & Stewart PC in Phoenix. She has always been interested in animal welfare issues, and has served on the board of the Animal Legal Defense Fund. As she spoke on the phone one day in 2003, she asked her friend Stephanie Nichols-Young if she had any animal issue ideas that were local and that could involve lawyering skills.

Nichols-Young also had been on the ALDF board and knew of state bar sections in other states. Would Miller be interested in helping to start a section in Arizona?

Miller agreed. The coming months were a whirlwind of writing bylaws and circulating petitions that sought to demonstrate widespread lawyer interest.

Tracy Miller recalls that some of her fellow lawyers who were hunters joked about signing on for section membership. They ultimately didn't. But Nichols-Young says, "With no effort, we got [about] 80 signatures."

"We said, 'Omygosh, there really is interest.'"

But interest in what, exactly? →



Sarah Perry (at left), Stephanie Nichols-Young and Tracy Miller of the Animal Law Section. Companions joining them (from left) are Teela, Asian, Fidget and Seamus.

HAIR/MAKEUP by SLYVIA HARDT
Shot at ASLANIAN STUDIOS, PHOENIX



Lawyers looking to animal law for a centuries-old jurisprudence—as is found in contracts, property and even criminal law, for example—are barking up the wrong tree.

First off, the section had to assure the Board of Governors and fellow lawyers that the new group would not be an animal *rights* section. There would be no lobbying against cosmetics companies, no call for animal suffrage, no blood thrown on fur coats. As Nichols-Young points out, “We are a mandatory bar, and we can’t be an advocacy section; we have to be an academic section to consider the law.”

But when that fear was allayed, there still was the question: What is animal law?

Animal law is really an interrelated web, as well as the process of weaving that web. According to section member Chris Wencker, a lawyer with Hochuli & Benevides PC in Tucson, identifying those interrelations is a vital part of practicing in the area.

“To me, the area of animal law [addresses] the way the law deals with animals, because they’re different from property, they’re different from humans. And they’re widespread—there are companion animals, wildlife, animal research—and there’s a lot of interaction with them, but we really don’t have a substantive body of law dealing with animals. To me, the area of animal law is trying to develop that body of law.”

Section member Julie Hall agrees. She is a Tucson solo practitioner whose practice is in death-penalty representation. She also serves as the section’s CLE Committee chair, and when asked to provide examples of issues in which animal law might be implicated, she reels off a list.

“Cruelty is a big one. There are custody disputes over animals. There are vicious dog cases, so there are a lot of tort issues. You have your barking dog cases. You have all sorts of issues with animal welfare organizations. You have trusts and estates—people want to provide for their animals after their own death.”

That last category is a huge one. Animal care experts report that they most often are asked questions about trusts for animal family members—ranked right behind questions about barking dogs.

Section Vice Chair Sarah Perry also stresses the interrelated nature of the field. She says, “I think people don’t know what animal law means.” Some may see it as a hybrid, she admits, but she compares it with a practice like elder law: “It’s one of those areas where there’s no such thing, but it’s a collection of all different areas. It’s administrative, regulatory, criminal, civil, property law.”

Those diverse roots appeal to many lawyers, like Perry and Wencker, who honed an interest in animal law in law school. Perry, now a commercial and health care litigator at Snell & Wilmer, established (with a fellow student) a chapter of the ALDF at ASU Law School. And Wencker started an animal law student group at the University of Arizona Law School.

“Hard to define” and “evolving” are terms used by even a national expert on the practice.

David Favre, a Professor of Law at Michigan State University,



Stephanie Nichols-Young, Section Chair

has been a proponent, apologist and one-stop clearinghouse for animal law for decades. And his Web site animallaw.info, which has been online for four years, is arguably the top dog of animal law knowledge. But the question of definitions still hounds him.

“There is so much information on such a diversity of topics that nobody has gathered all that together in one place,” Favre says. “I’ve had to convince my dean of this; he thinks animal law is some little subset of law, [but] it’s really a cross-section of almost every area of law: It’s tort law, it’s property law, it’s contract law, it’s all sorts of issues.”

What does that mean for someone practicing in the area, or, even more precarious, starting a section dedicated to it?

“Saying ‘I do animal law’ doesn’t strike [people] as being an area that you ought to call animal law. But once you start talking about it, they get it. But it’s not a category that’s been out there very long.”

Part of the challenge, Favre agrees, is the mixed-breed nature of the area. But another dilemma is its proximity to a loaded phrase.

“Animal rights’ is a hot-button term,” he says. “People even stay away from saying ‘animal law’ because they’ll transition immediately to animal rights. It is a term that one doesn’t throw around lightly.”

He recalls that he probably first used the term “animal law” sometime in the 1980s, “but not very loudly.”

For that very reason, a diverse membership is important to the section.

Nichols-Young identifies the largest single group in the section as those who prosecute animal cruelty cases. The next-biggest bloc



are estate planning attorneys, who help people provide for their companion animals and pets when their humans die or are incapacitated.

But the section also includes members who represent agricultural and dog-racing clients. No, laughs Tracy Miller, we're not "just a bunch of tree-huggers."



Helping lawyers in animal law practice is a major task that Chris Wencker has set out for himself. To do that, he decided to compile a deskbook.

"I want to collect what authority there is that's available," he says. "I want to gather all of these together in one volume."

That compilation will include statutes, regulations, county ordinances and municipal and local government ordinances, as well as some key cases.

"It's slow going," Wencker admits. He hopes to have the book published by 2006.



If the law is evolving, its developments stem from changes that are evident in families and in commerce. For example, according to the American Pet Products Manufacturers Association, 63 percent of American households have a pet—and a significant portion probably would decline to say that they "own" the pet.

That comes to more than 69 million homes. Across the country, that means more than 73 million dogs and 90 million cats—and don't get us started on birds, fish and reptiles. Animal guardianship has increased almost 19 percent in 10 years.

And those "companion animals" come with staggering costs. It is estimated that this year Americans spent more than \$35 billion on animal purchases and care—that figure was \$17 billion in 1994.

That is no small kibble. Even drug sales for animals have seen double-digit growth year to year, as Americans become more and more willing to pay for medical procedures for family members with fur, fins or feathers.

The embracing of animal America has extended to mainstream sentiment, as well, in ways ranging from the serious to the humorous.

- Following the devastation of Hurricane Katrina that struck the southeast in August, many national news stories focused on the failure to plan for animal evacuations. Bipartisan legislation



Sarah Perry, Section Vice Chair

Animal Law Resources

www.animallaw.info—The Animal Legal & Historical Web Center, out of Michigan State University. It includes news and law, often state-specific.

www.animallaw.com—A clearinghouse for animal-related legal information, from the International Institute for Animal Law.

www.animallegalreports.com—A subscription service that provides case decisions nationwide.

www.lclark.edu/org/animalaw—A student-run law review at Lewis & Clark Law School in Portland, Ore. It seeks to cover all sides of animal-related topics.

was sponsored that would require that disaster preparation plans have provisions for evacuating companion and service animals. As one commentator wrote, "Listen up, FEMA. ... Fido may not be a child, but he's sure not a toaster oven either."

- The U.S. Department of Agriculture reversed an earlier decision to end its certification of pet food as organic. Though organic pet food was only a small portion of the \$14 billion pet food segment, sales had increased 63 percent in one year, and its purchasers were vocal.
- A new law required that airlines report how many of the estimated 2 million pets it transports each year are injured, killed or lost during flights. This continued a trend for the law to view pets in guardianship terms rather than in property rights terms.
- Board-certified veterinarians work in a dizzying variety of spe-



Tracy Miller, Section co-founder

cialties, and many people pay tens of thousands of dollars for animal care.

- Honda Motor Co. unveiled a minivan designed for dog owners. The concept car included amenities like a rear seat that converts into a holding pen, tire treads shaped like paw prints and a built-in dashboard dog carrier—so you can interact with your dog while you drive.

Those remarkable social changes present lawyers with opportunities.

In a society in which animals have become important parts of

families, more and more people are also growing attuned to the legal needs of pets and even non-companion animals. Lawyers stand to benefit in that scenario.

But social changes present an obstacle to lawyers, as well. For the law has hardly kept pace with a public that sees animals as worthy of protection and attention in much the same way humans are. And clients and prospective clients express surprise at the disconnect between their notions and the law's view of animals.

"There is an assumption in our culture," says Nichols-Young, "that animals are protected under the law, and that's just not always the case. That's something that I think we need to educate people about. Essentially, animals are property in the eyes of the law in this country and in the state. And generally, that's how they're treated."

She says that it is not only the public that is ahead of the law; even science has developed more complex findings about animals.

"All the things that I was taught that are bright lines between animals and humans aren't really true," she says. For example, "We all learned that animals don't have language; well, that's not true. Animals make tools and use them."

"That's a disconnect. The law hasn't caught up."

Professor Favre of MSU sees the same disparity between perception and law.

"Human beings have had pets for centuries," he says, "but it does seem like in the past 20 or 30 years, the pet's role is transforming to be more of an actual family member, to be the child substitute."

"There's a disconnect between what [lay people] would expect and what's actually there. They're often shocked."

Animal law as a practice is growing—but how quickly?

Professor Favre says, "I would be surprised if within five years we don't have a bar section in a good majority of the bar associations."

That would translate into amazing growth. According to the Animal Welfare Defense League, only six state bars have animal law sections (Arizona, Connecticut, Michigan, Minnesota, Texas and Washington). Five other state bars have animal law committees (Florida, Missouri, New Jersey, New York and Pennsylvania).

In addition, Massachusetts has one section in the process of forming, and there are nine regional bar sections or committees. And the ABA Tort Trial & Insurance Practice Section has an animal law committee.

The near future for the section involves education—for its members, for other lawyers and for the public. The group is focused on staging a statewide animal law conference by spring 2006. But the section is open to new ideas.

"We're figuring out what people would like from us and what they need from us," says Julie Hall.

"We're still in our infancy," she laughs, energized by the challenge of fashioning a new practice—and a new way of thinking. 