

2004 Animal Law Institute Conference, April 30, 2004 — Notes

by Marcy Covault

From the State Bar of Texas Animal Law Section, Animal Law Reporter (biannual electronic newsletter):

“The Animal Law Section of the State Bar of Texas has as its purpose to:

(1) promote and assist members of the profession in the study and understanding of the laws, regulations, and court decisions dealing with legal issues involving animals, and

(2) provide a forum for members of the profession to discuss the legal issues involved in human beings’ relationship and coexistence with animals.

It is not the purpose of this section to promote or consider moral or ethical issues involving “animal rights.”

Website: <http://www.animallawsection.org>.

Overall comments:

There was a mix of attendees, from young to established attorneys, students, animal control and rescue people, a member of the Austin Animal Advisory Commission, and miscellaneous others. Prof. Favre started out talking about he and his wife raising sheep and the wonder of a baby lamb. That set the tone for animal welfare rather than animal rights. [Do a Google search on all he’s been involved in, to decide for yourself if he’s sincere, sees the necessity for approaching in a different manner through legislation (with the same ultimate agenda), and read the notes from his talks below. MC]

Speakers:

- **David Favre, JD** (Professor, Michigan State University-DCL College of Law; national officer of Animal Legal Defense Fund; author of *Animal Law and Dog Behavior*, *International Environmental Law*, and *International Trade in Endangered Species*.)
- **Bill Davis, JD** (commercial litigation attorney in Austin)
- **Boyd Kennedy, JD** (Law Enforcement Division of Texas Parks and Wildlife Dept.)
- **Alyce Miller, JD** (Professor, Indiana University-Bloomington lit/creative writing; award-winning fiction writer and poet)
- **Joel Hailey, JD** (San Antonio probate law; former chair of Animal Law Section)
- **Laney Vasquez, JD** (Houston attorney; vice chair of State Bar of Texas Animal Law section; active with Texas Humane Legislation Network)
- **Christine Garcia, JD** (San Francisco, Animal Law specialist)
- **Althea Kippes, JD** (Professor, Golden Gate University, San Francisco; Animal law specialist)

David Favre, JD, Professor—Keynote speaker

Report from the Global Conference on Animal Welfare

- Attended a previous conference with speakers from around the world (First International Global Animal Welfare Conference), and is writing a book about the attitudes and legal structure regarding animals around the world
- Example: Ghana (reflects most of south Africa): traditional view of the world gives deference to animals (note: Christianity doesn’t take that view.)
 - dogs are functional animals—guards, not companions
 - cats are companions in the house
 - No national animal law, but have national wildlife law
 - have British hunting perspective on law

- only law is to license and control dogs (wild dog packs are a problem), but not enforced by most
- no animal shelters in cities
- Example: Moscow: female vet who is ARA says 50,000 strays in Moscow
 - 1,5 million keep dogs and cats in apartments
 - until recently, considered immoral to get animal fixed (“personal choice”)
 - For cats, spay/neuter and release unacceptable (AC people get paid for #'s they pick up)
 - ‘90’s: passed comprehensive animal law, but Putin refused to sign, so, no animal law.
- Example: China: Perspective that animals are tools be used and discarded
 - Idea of compassion doesn’t exist in many non-Christian ideologies [a bit biased?—MC]
 - Sun bears in China are kept in small cages all their lives and farm to get bear bile—this is sponsored by the government to take pressure off hunting wild bears
- Example: New Zealand – passed new animal welfare law: no use of primates in experimentation unless for their well-being, BUT no primates of 35) are being used that way anyway
- Example: India – law schools address animal law in the first year
 - India constitution has “duty to have compassion for living creatures”
 - Judges have the right to make law (where there is none)
 - India Supreme Court considers animal rights relevant
- European Union (France, Germany, UK. Soon: Poland etc.): Looks at conditions in the country of origin of production
 - Compromise in time, e.g., 10 years to phase in – working with World Trade Org (WTO) which maintains that “no country has the right to demand conditions o development of production in another country.”
 - (1) dolphin-safe nets for tuna – U.S. lost with WTO, twice
 - (2) shrimp/turtle-safe nets: U.S. lost, but then gave grants for nets – then approved.
 - Problem: EU laws may put member countries at economic disadvantage with WTO countries that don’t practice animal welfare.
- U.S. – there is no national animal welfare law re: experimentation—leaves it to the states.
- Globalization:
 - Read Friedman’s “The Lexus and the Olive Tree.”
 - Discussed Smithfield Hogs and Tyson Foods and how their (and other large corporations) globalization and world influence has made factory farming over the world almost untouchable by AR or AW.
- Favre: THE GAME HAS MOVED TO A NEW LEVEL. He’s 58 and would like to see some real changes before he dies (rather than minimal changes over the past decade or two).
- What do you need to do?
 - Need more attorneys part of the visionary process (have unique tools to deal with this)
 - Need good attorneys to deal at the WTO-level and file excellent briefs
 - Create coordinating global organization for animal welfare, e.g., “Species Survival Network” (focus on animal trade in wildlife, which is ahead of other areas)
 - Outside the U.S. and U.KK., there’s no AR, only animal welfare.
 - Need academic think-tank organization, a “scholarly component”—different from activist organizations, to study economics, animal science and law, research (which is influenced now by big agribusiness)
 - Animal Legal Defense Fund (ALDF) supports Lewis and Clark organization
 - Need to get more sophisticated in what we do
 - Need global information system
 - Need to figure out how to deal at a cabinet-level (some European countries do have this)

BILL DAVIS, JD

“Theoretical Approaches to Animal Rights” [Handout]

- Cass Sunstein – basic rights
 - went into a lot of definitions and logic debates about people vs. nonhuman animals
 - discussed positive law/natural law and utilitarianism, e.g. when is an animal’s rights trumped? How much does an animal’s right weigh (compared to a human’s)?
- Animal Rights vs. Animal Welfare: Empty cages vs. bigger cages

- Discussed Plessy v Ferguson “separate but equal and how to get to Broad v. Board of Education (integration).
- Discussed “Argument for Marginal Cases” (comparing animal rights with very retarded human rights)

BOYD KENNEDY, JD

TPWD 2003 Legislative Update [Handout]

- Primarily gave an update on Texas Parks and Wildlife rules and regs [don’t think he really had a clue about AR vs. AW—MC]

ALYCE MILLER, JD

Development of Children’s Legal Rights in Relation to Developing Legal Rights for Animals

[Handout: “Bless the Beasts and the Children: Talking “Rights” for Animals and Children]

Discussed her paper, “Development of Children’s Rights in Relation to Legal Rights for Animals.” [naïve—MC]

PANEL DISCUSSION ON ETHICS

[Handout: Predetermined ethics questions, primarily involving animal law and veterinarians]

DAVID FAVRE. JD

Integrating Animal Interests into the Legal System [Handout: DF draft on legislative language pertaining to wills & trust, divorce, damages, primates, adoption by Humane Society, Constitutional Provision. Note: this is a separate PDF file]

- ALDF is holding national conference at Yale this fall; will be working on Texas law book re: AR
 - What is a reasonable expectation for the AR movement?
 - time to phase out philosophers (Singer, Regan) and involve the lawyers
 - Enslavement of animals is useless rhetoric
 - there must be an evolution of the legal system
 - Problem: Hasn’t been a crossover of moral rights to legal rights
 - Property can have rights, but this is not a good term as it has too much baggage (AR)
 - What the term? “interest” (in the law)
 - It is the duty of the legal system to resolve the conflict of interests.
 - “Rights” is the end product of successful arguments of “interest”
 - First step: move the rhetoric from ownership to guardianship
 - What are some barriers?
 - Division in AR movement – no vision
 - Idea that “property” law is hindrance
 - “tradition” as user of animals
 - political/financial power/resources against change
 - Animal issues do not make tops in importance (as compared to human issues)
 - How might we get to “interests?”
 - Need presidential candidate who is not ashamed to talk about animals
 - Need many more law school students coming in with interests in helping animals
 - Federal levels won’t work (See Dred Scott case)—must be at state level
 - Evolution of laws
 - Animal cruelty laws (late 1800’s)
 - Wills and Trust – has been adopted in over 20 states (not Texas)
 - Changing law at state level: courts and legislature
 - Proposes new tort for animals which recognizes the basic rights of animals (“fundamental interests” (FI)). Elements:
 - Interest is of FI to the plainant animals
 - FI interest has been harmed by defendant
 - weighing of FI of animal outweighs defendant \$\$\$ interest
- (1) Example: A buys chimp and puts in 5x5 cage and shows of f to friends (banging on bars to get reaction).

Balance FI of chimp w/A's interests (ego)

(2) Example: What if chimp is in scientific research study? Favre thinks if you use specific animal case, you could win in court.

- What is acceptable to our society? This is evolving as our knowledge increases and awareness changes.
- Need to find little places to insert into the law “interests” of animals [see Section 5 draft—separate PDF]
- Notes that vet attitudes are 30 years behind where law ethics are. Vets “close ranks” to keep lawyers out.
- Can an organization like Texas A&M be vehicles for trusts for animals? Maybe, but no provision for enforcement.
- There is a section on Adoption by Humane Societies—extends HSs as guardians for best interests of the animals.
- Check out Texas Humane Legislation Network.
- See Oregon case about 200 birds where judge appointed an attorney to act in the “best interests of the birds.”

CHRISTINE GARCIA, JD

Practicing Animal Law [Handout: Practicing Animal Law: outline and examples]

- Judicial systems isn't the place for emotional solace
- Use property cases as base—find “peculiar value statutes”
- Set example by vegetarian or Vegan lifestyle
- Bragged about representing PETA activists who had broken the law

ALTHEA KIPPES, JD

Dog Fighting [Handout: Taking the Bite Out of the Fight: San Francisco's Response to Dogfights]

- Emphasized positive change in community by
 - reporting dog fighting,
 - working with local animal shelter to create ad campaign about dog fighting,
 - lobbying local elected officials,
 - volunteering legal services to human association or animal rescue group;
 - working with local police and shelters to implement administrative hearing process for owners of vicious and dangerous dogs.

JOEL HAILEY, JD

Animals and Probate Issues [Handout: “Estate Planning and Probate Concerning Animals”]

- Discussed animals as exempt property and ethical considerations
- Discussed estate planning for non-human family members, including samples for creating trust