



Animal Law Podcast: Transcript for Episode 85, Interview 1 with Sherry Colb & Michael Dorf and 2 with Jessica Rubin

Interview 1

Mariann Sullivan: Welcome to the Animal Law Podcast, Sherry and Michael. I'm so excited that you're here because you're here to talk about one of the most exciting things that's happened, whether good or bad; it's big, in a long time in animal law. I'm glad to have your perspective. So, welcome.

Michael Dorf: Thank you.

Sherry Colb: Thank you.

Mariann: As I mentioned when I was introducing you, we're talking about, of course, the decision in the New York Court of Appeals, which is the highest court in the state of New York. Which is confusing for everybody else in the country. It's not called the Supreme Court. About Happy the elephant and we can't go into a whole analysis of the decisions, including the dissents, which are really important and I just really hope that people read them because they're pretty amazing in a lot of ways and really important going forward.

But, having said that, could you just kind of set the scene with a kind of brief description and reaction to what happened in the Court of Appeals?

Michael: Sure. So, Happy is an Asian elephant who is over 50 years old. She's spent nearly her entire life in captivity. And for most of that time she has been in the Bronx Zoo, which is where she is now.

The reason she's called Happy is because the people who captured her thought it would be cute to name the various elephants after the seven dwarves in *Snow White and the Seven Dwarves*. And the other elephants in that group have since

perished. There were a few who didn't get along so much with Happy, which is not surprising. Elephants in captivity are not nearly as gregarious as they are in their natural environment. The Bronx Zoo has said it's going to discontinue its captive elephant program so it's not clear why they're continuing to hold her given that the plaintiffs led by The Nonhuman Rights Project have found an elephant sanctuary where she could live out her days in an environment much more suitable for an elephant. But the Bronx Zoo, despite not going forward with keeping elephants in captivity is keeping Happy and was therefore resisting this lawsuit that was brought on her behalf. As your listeners probably know, The Nonhuman Rights Project, which brings these lawsuits, styles them, as they did in cases involving some chimpanzees, as habeas corpus actions.

Habeas corpus is a Latin term for a writ that a court can issue that orders a captor or a guardian or a custodian to release a prisoner. And so if the lawyers were successful in arguing that Happy's captivity was unlawful, then the order would have been to release her into the custody of the elephant sanctuary. There's some discussion in the opinions about whether habeas corpus is appropriate, where you're attempting to move somebody from one form of captivity to another.

But that's ultimately just beside the point, there are lots of examples involving humans in which a person can bring a habeas corpus action to challenge particular custody in which they're in. Even though they're not ultimately going to be free, they can get a new trial, they can have their death penalty overturned, so forth.

What's unusual about the case, of course, is that habeas corpus has traditionally been employed by human beings. And so in order to get the case before the court, The Nonhuman Rights Project argued that Happy should be regarded as a legal person. Now, many people, I think, naturally tend to think that a person is synonymous with a human being, but that's not universally true in the law.

Corporations are persons within the meaning of the law. Municipalities can be persons, other governmental units. And so the argument was that if those other non-human entities can be persons, certainly Happy who is a being with all sorts of capacities that make her like humans in various important respects, ought to be treated as a person under the law as well, and was therefore entitled to be released.

The ultimate ruling was against the petition, the New York Court of Appeals holds that the writ of habeas corpus is only available to human beings. And their reason is essentially circular. They say, "Well, it's only ever been granted for human beings in the past, and we're not going to expand that." And they

essentially dismiss all of the arguments, but there are two dissents by two different judges who say, “You know what? The writ of habeas corpus is flexible and ought to extend to Happy whose captivity in the Bronx Zoo is really quite cruel and there's a much better alternative here.”

There's lots more to say but I'll stop there and maybe turn it over to Sherry to add more details.

Sherry: Yeah. So, what I would say about...we did an Amicus brief with Professor Laurence Tribe and our, or at least my, condition for being part of that was that I didn't want to do what many do in litigation with animals, which is to explain why the elephant is more entitled to freedom than other animals.

And so I think the argument that, “Look, this is an elephant and she can do all these things that very few other animals can do and therefore she should be freed.” That kind of argument strikes me as an unjust argument. That the problem with keeping her in captivity is not that she has a very good long-term memory or that she's extremely intelligent, which she does and is. But the fact that she is sentient and that she is suffering.

So our brief, I think, is free of the “elephants are more entitled than other animals, you know, more equal than the other animals” sort of claims. Which, I think, is part of The Nonhuman Rights Project approach. They tend to, at least so far, litigate on behalf of very charismatic and highly intelligent mammals and make arguments and kind of implicitly, I don't think it's explicit, but implicitly...When you say...and I had an exchange with Steven Wise about this once. But he said, he's only saying that these qualities, that of extra intelligence and autonomy...which I don't think is even a quality. I think it's really something we give to someone, but anyway...said that that's just sufficient for rights, but not necessary. But I think when we argue that some quality is sufficient, we are arguing that it's relevant. And if it's relevant, then its absence is relevant. So I don't really think you can escape the so-called, you know, the animals that matter and the animals that don't matter.

And just to be...I'm gonna be the negative one, I guess, the bad cop in this conversation, but there's a line. And I really like in many ways, Judge Wilson's and Judge Rivera's dissent. I think they're really powerful and they talk about how African Americans and women and children really did not have the status of person in any meaningful sense and yet courts saw fit to give them justice. Even at a time before Dred Scott was decided. And very shortly thereafter there was a writ of habeas corpus issued by states. So, it's a powerful tool, but I do think that it isn't really intelligence that makes some animals more entitled...oh yes...so I wanted to say that Judge Wilson at one point said, “Some people say

there won't be any dairy anymore. That's preposterous.” And I think the three of us would say, “I hope it's not preposterous. You know, it would be nice if there were no more dairy because that's horrific.” And the implication was that there's something special about elephants that will not extend to any other animals including to cows.

And then there's also some discussion. And I think that the way that litigation is framed, encourages this discussion among the dissenters. About how, you know, domestic animals are different. So it's okay to hold domestic animals in captivity because that's their natural state.

And actually it's not okay to do that. And, you know, for the very same reason that you can bring Happy from one confinement to a less restrictive environment, and that's appropriate for habeas. It also ought to be appropriate for habeas to take an animal who needs to be cared for by humans and move them from a slaughterhouse to a sanctuary.

So, what I guess gets me, and maybe that makes me a less practical person, is that I don't like the idea of selecting particular animals and then saying, “Oh, don't worry, this animal is special.” In any event, the case lost. At the same time, I'm really glad that there were the dissents, because I think a lot of people will read them and will understand that it's not been that long since men had complete dominance over women and could do whatever they wanted to them. And that what we do to animals is a reflection of that same kind of violent, sort of self-absorbed urge that if you allow people to express it, they'll do so in cruelty.

Mariann: Michael, can I just ask you a question about that? Because I read your recent column for Justia's Verdict, which I recommend to everyone.

And you talk a lot about this issue of the slippery slope, which is the issue that we either...as Sherry's talking about, maybe we should confront the issue of the slippery slope and talk about it and others say, “No, let's win this case. And we'll worry about the other cases later.”

And, as you point out, this is a real problem for lawyers in social justice movements, generally. Can you just talk about that a little bit?

Michael: Sure. So, this is ubiquitous for what are sometimes called cause lawyers, right? Public interest lawyers, whose goal in the case is not simply to win for their client, but also to have an impact. As we were talking before we went on air, that's why it's, as you said, called “impact litigation.”

And what you do to change the law sometimes is you make a compromise, right? You realize that the judges are not prepared to go as far as you want them to go, but you calculate that if we can win this case, then we maybe can build on it as a precedent. And it does make you as a lawyer, somewhat...dishonest is too strong a word for it. But less than fully honest, right? That is to say...I'll give a few examples from other contexts. Both of which I mentioned in the column. So, before Brown against Board of Education reversed the separate but equal doctrine the NAACP brought numerous cases in which they asked courts to rule that the existing segregated facilities were not equal. They said that, "Hey, separate but equal is the law of the land. These facilities are not equal, equalize them."

Now of course, the NAACP wanted to say that segregation per se was unconstitutional and they eventually got there. But the received wisdom is that part of how they got there was by making incremental moves.

So first you say "it's not actually equal even though it...but it's separate." And then you say "separate is inherently unequal." Same thing with the marriage equality movement. There were the initial cases, only were challenging initially laws that sort of outlawed same sex sexual relations. Then there were efforts to get civil unions and domestic partnerships and then marriage.

And so the strategy is that the judges are reluctant to go as far as you want, until society seems to be ready to go along, but you can sort of move them along step by step. And so this is a very common phenomenon for lawyers. And there are always going to be people, like Sherry, who will say, "Hey, but you're selling out what you truly believe in."

And sometimes they're right. That is to say, they're always right that you're not being fully honest. But sometimes it might be the case that you get the half step and it never leads to the full measure of justice and that could entrench the existing injustices.

I think the point I wanna make about this is I think we have to be sort of modest about what we know. I think there is a decent chance that this litigation, which doesn't even win on its own terms, will nonetheless move the ball forward a little bit, make it easier for the next elephant or the next chimpanzee and that maybe eventually that will pave the way for cows and pigs and chickens and fishes and other animals.

Uh, maybe not.

Sherry: Yeah. So first of all, I agree with that. So I'm not denying that sometimes the one bite at a time is gonna actually succeed in getting the whole apple. But I think that in a...I don't know...in a litigation environment where you kind of have lost every single case you've brought on this theory of "here's this special animal" that maybe if you're gonna lose, you might as well make the full argument rather than saying, "Oh, don't worry, because the other animals have no long term memory." Or whatever it is. I feel like, what are you getting? You're not even winning.

Mariann: I really am pretty sure that they never literally throw other animals under the bus. They do couch this pretty carefully in, as you pointed out, Michael, in saying, "we're talking about elephants here," and then they just don't talk about other animals.

Maybe that's the wrong approach, but they don't actually say other animals are stupid. They just say elephants are smart, in shorthand.

Sherry: You're right. They don't expressly say that the other animals are not entitled to rights, but they do emphasize things about the elephant that other animals lack. So, you know, if you do that, then the implication is that having those qualities or lacking those qualities is relevant to rights.

And so if somebody wanted to...I don't know if you won, and then somebody wanted to argue against you in the next case they could say, "Look! Look right here. Like look at all these qualities that are considered to be relevant to having rights." So I don't think...so, I think you're right, the briefs never say "the other animals are stupid or they're not entitled," but it's kind of like if a bunch of people were lined up for being killed and they didn't do anything wrong. And then the argument you made for saving some of them was, "Well, look, these have a really high IQ. These people have a really high IQ." Yeah. You didn't say that others don't, but it's implicit.

Mariann: You know, I see your point. I just didn't want people to have the wrong impression to think that briefs are filed saying cows are stupid and don't deserve rights. Because that did not happen.

Yeah. And I really wanna hear from you both about your thoughts, and they may not be the same thoughts I'm beginning to realize, about steps forward. Every time something happens, it creates a different situation. I mean, it creates a different set of basic history about where we are.

And even though they're just dissents, they're strong dissents in an issue that hasn't been talked about before. So where does this leave us? What are the best next steps?

Michael: So my take on this, I think, is that litigation, especially impact litigation is best employed, almost always is employed, as part of a multi forum strategy.

So you litigate for at least four reasons. One is you hope to win for your client. And I should say that insofar as Happy is the de facto client, there's a sense in which, if you're a lawyer you've gotta do what takes to win for your client. And that might mean throwing other animals under the bus. Even though we would think that that's problematic in all sorts of ways. So, so that's one.

Mariann: That's a huge problem for lawyers doing impact litigation. They have clients and they have a responsibility to those clients. To make the best arguments those clients have.

Michael: Right? So that's one goal, is to win for this client.

And again, your ethical obligation as a lawyer is to make that your primary goal, but you have other goals. You also want to move the law in a direction that you think is going to be productive. You can't always accomplish either of those things. It doesn't necessarily mean that the litigation is a failure.

You can win, or at least not lose, by losing insofar as you raise public awareness. Right? So that, you know, in connection with this litigation, there was a lot of public debate. There were articles written. Some of them, I think were ambiguous. But I think the overall effect was to raise public awareness and realization about the unfairness of the way we are treating elephants but, I think, invariably other animals as well.

And then the fourth goal is to maybe convert that public awareness into change, both at the individual level, so maybe some of those people become vegan, and ultimately, at the legislative level. So that even the majority opinion, which is terrible, does say, "Well, you know, you should take this to the legislature."

And insofar as there's powerful, some powerful language in some of the dissents, that's something that you can take to New York legislature to Congress, et cetera.

Sherry: I mean, this isn't really next steps, but I was just thinking about what I would do for a client like Happy if I were starting over from scratch.

And I think, I mean...this is gonna sound like really throwing everyone under the bus...but I think I would try to negotiate quietly with the Bronx Zoo to allow for her transfer to this sanctuary. Because I think they might have done that. Like, it was because they were sued in this very kind of public condemnatory way that they dug in their heels and they made these arguments that they really have no interest in making with respect to elephants because they're ending their elephant captivity program.

So I think that would've been potentially more effective if the only individual we're thinking about is Happy. Getting her out of there was not impossible and that this was not the way. Like, if you really would like your neighbor to stop doing something, the way to make that happen is not usually to bring a lawsuit against them and be in the front page of the New York Times or whatever.

So that would be one thing that occurred to me that would be focusing on her and what she needs, because the zoo is obviously not even committed to keeping elephants. And a lot of people, like, it's easy in a sense, you talk to people and they're like, "oh yeah, elephants, it's terrible that they do that."

And so, in a way, my first thought was it doesn't really challenge the paradigm to have this litigation. But then the dissenters made me realize just how...you know, every so often it occurs to you that, "Hey, like, Wow! I am so at a different spot on the spectrum."

Mariann: Yeah, that's like every hour that occurs to me. Every hour of every day.

Sherry: Yeah. Well so as I'm reading the dissents, I realize that this is maybe the first time they've really done a deep dive into sentience or not really sentience but just, animals and how we should feel about them. And even the idea that there's such a thing as injustice to an animal that it's not just a matter of feeling sorry but it's not just, what we're doing.

And so, in a way, those dissents give me pause on my theory that this litigation isn't really doing much. Because it did seemingly inspire at least two powerful people to start thinking about an issue in ways that may go beyond just the one species.

Mariann: Yeah, I had exactly the same impression. Of course, we could be wrong.

These people could have been interested in animal issues from childhood but I did not get that impression. I got the feeling that this was a real discovery process for those judges and their law clerks as well, probably too. And that's why they ended up taking such a deep dive into so many of the issues.

So I hope everybody reads them. If you haven't read them already and considers both of your positions, both where they match and where they don't match in the light of the decisions themselves and thinking about...well, of course The Nonhuman Rights Project will take their own next steps...but we all have to think about next steps. The whole world of animal protection law isn't sitting and just waiting to see what The Nonhuman Rights Project is going to do next and shouldn't be, so I think they should influence us all.

I'm really happy, *Happy*, that you came on to discuss the "elephant in the room." *laughs* Sorry, sorry...About this case, it's a fascinating case and I've read your column, Michael.

I have not yet read your column, Sherry, which only came out this morning, on the day that we're recording this. Really looking forward to doing it, I love all of the conversations going on about these cases. Any remarks to sum up?

Sherry: I thought it was interesting that the majority said that the comparison of Happy's situation to the situations of women and African Americans is odious.

And what's interesting is you then go to the dissenters who I believe are, respectively, African American and female, and they don't think it's odious at all. And they go into a lengthy discussion of, you know, what the analogy is and how important it is and really that we're talking about the oppressor. We're not saying that everybody is an elephant.

It's sort of interesting that the majority, like sometimes the majority reads the dissent and then changes their opinion in response. Yeah, but sometimes they don't and this time it looked like they did not.

Mariann: Yeah. I worked in an appellate court for many years and this looked like a decision where they were actually really annoyed with each other.

Michael: For a number of years, I routinely attended a, kind of, grand litigation planning strategy among advocates who were championing LGBTQ+ rights,

leading up to the Supreme Court's eventual marriage equality decision. Uh, two things stand out, which was there was always a debate about, “is this the right time to bring the case,” right?

Because if you bring a case and you lose, that can set you back because it makes a negative. And the arguments were always the same, which were, there were some people who were cautious and other people were saying “it's never the right time, so it's always the right time.” And the other thing that stood out to me was, in some sense, the pointlessness of our gathering. Because you would have all of the major organizations there, the Lambda, the ACLU's project, various other organizations... They could agree on a strategy but litigation in the United States is completely decentralized. So they agree a strategy, they say like, “oh, well, let's wait a few years.”

But meanwhile, somebody out in California hires a lawyer and they bring the case and now you're all in . And so, in that sense the question of what are the next steps, the next steps are everything!

Cause somebody's gonna do the thing and we just have to sort of then rally around them and hope for the best.

Mariann: Right. And they might not do it as well as you could so maybe you should just jump in. Yeah, no, that's a really, really good point. The more that happens, I think the better off animals are because the worse thing, the worst possible thing, for them is silence. At least we've got people talking.

Thank you for joining me to talk about it today. It's really such an important case. I'm so happy to have both of your insight. Thank you so much to Sherry and Michael for that analysis.

Interview 2

Mariann Sullivan: Welcome to the Animal Law Podcast, Jessica.

Jessica Rubin: Thank you. I'm really happy to be here.

Mariann: I am so happy to have you because I've been wanting to talk about this program for a long time. But before we talk about the program, let's talk a little bit about the problem it was designed to address. And you've pointed out that there's like this historic under enforcement of animal cruelty offenses, and that is something I certainly have always believed.

Can you go into that problem and why we believe that animal cruelty is too often ignored?

Jessica: Sure. So our state of Connecticut, like many other states, has kept records of historical treatment of animal cruelty cases. And when we looked back in Connecticut, it appeared that over 80% of animal cruelty cases were being dropped or dismissed somewhere along the way.

And so I together with former State Representative Diana Urban, put our heads together and thought about what we could do to help that problem, to help courts more thoroughly treat animal cruelty cases.

Mariann: Is this lack of fairness in both the failure to prosecute and in inadequate sentences?

Jessica: It's really across the board.

Unfortunately, the statistics don't separate out failure or lack of prosecution from lack of sentencing. We have an aggregate number of cases that are being dropped or dismissed. And I think, my experience over the last six years has been, you know, it's a combination.

And by creating this new advocacy program we were able to add an additional resource into the process to hopefully help courts more thoroughly handle the cases. And the cases are complicated. And often they're not given the attention that they warrant, not because people don't care or don't want to, but when you walk into a courtroom and you see the huge stack of case files that each prosecutor carries, you immediately understand why some cases tend to fall to the bottom of that stack.

Everybody in our court system is working under a tremendous burden. And so the advocacy program that we created in Connecticut adds a free resource to help with that burden. So at least one category of cases, animal cruelty cases, can get a little bit additional attention.

Mariann: Yeah, I think that's such an important point.

It isn't just because nobody ever cared about animal cruelty, but animal cruelty cases are complicated. They often involve medical evidence, your victim can't testify...Like there's all sorts of...A lot of times they happen behind closed doors and so it's very hard to gather evidence.

I think there's a lack of appreciation about how difficult these cases can be to prosecute. And then they're misdemeanors, which, you know, prosecutors don't get ahead by prosecuting misdemeanors necessarily...or they're frequently misdemeanors, not always. So let's talk about, Desmond's Law. I mean, that was the name of this law that started this program.

Can you kind of just tell us exactly what it does and what it, what it's attempting to accomplish?

Jessica: Connecticut enacted Desmond's Law in 2016 and what the law does is it allows courts in animal cruelty cases involving dog or cat victims to appoint an advocate. And the advocate can be either a supervised law student or a volunteer lawyer.

So either way, there's no cost associated with the appointment of an advocate. And the advocate is involved in the case and advocates for the interests of justice. And the interests of justice is a very broad term and it encompasses things ranging from the animal victim's wellbeing, if the animal is still alive, the safety of other potential animals...So for example, if a defendant lives in a household with other animals, you know, what can we do to secure the safety of those animals?

It also involves acquiring services in cases where the human animal bond can and should continue. So sometimes we help a defendant acquire animal training services or fencing or something to address the problem that that gave rise to the case.

And so our role really ranges from those kind of actions, you know, protecting the animal victim, protecting other animal potential victims, and also educating the court. Sometimes there are uncertain issues of law that we can research and then provide to the court and the prosecutor and the defense counsel.

And we offer our recommendations on appropriate outcomes. We also gather factual information. We interact with veterinarians and animal control officers and other law enforcement personnel who have been involved in the case. And then we can present their information if, for example, they're unable to make it to court.

We can convey their information and their input to the court. Again, to help with a robust consideration and resolution of a case.

Mariann: Yeah. It really does seem very exciting. And I would imagine prosecutors are happy to get this kind of help. I hope they are. There's a couple of things I wanna go back to.

And I understand that originally the language that the advocates would represent the interest of the animal victim, and then they ended up passing this version that they would represent the interest of justice. And you, if I recall correctly from the article that I read, you were, at first, not thrilled with that.

And you have come to believe that it was actually an excellent change. Is that right?

Jessica: That's right. I believe some... So the original suggested language was that the advocate would represent the animal. Period. And in the legislative process that was changed to say that the advocate represents the interest of justice. Which at first I thought was a little bit vague as a charge. But in practice, it's actually been a very generous term because it allows the advocate to consider and speak to and make recommendations regarding a wider range of things. Like the example I provided earlier, which was, you know, if there are other potential victims in the household, the advocate can speak to that or issues of community safety.

Also if the animal victim is deceased in a case, the advocate, you know, wouldn't... if the advocate's role was just representing the animal victim, our role would not exist in a case of a deceased animal. So it gives us an actual broader charge.

I do want to return just to an earlier point that you made, where you said prosecutors must be very happy for the help that the advocate provides.

In many cases, the defense lawyer is also very appreciative of the assistance that the advocate can provide. In the examples that I gave, you know, working with the defendant to acquire services, helps everybody. It helps the court too. So the court's been have been appreciative of our help. And it's important to me that we are not, as advocates, aligned with the prosecution or defense.

I see our role as sort of a three part hybrid. We are a part victim advocate, giving voice and visibility to the animal victim in the case. We are also sometimes a case manager, as I explained, you know, acquiring services for a defendant. And we're also an expert witness. We can educate the court about facts and law that relate specifically to animal cruelty cases that, you know, inform them what other courts are doing and what the relevant law might be.

So I see our role as, as combining those three pieces.

Mariann: I wanna talk about the clinic, because I think this must be a great experience for the students. But another thing that might have caught people's ears, as you were talking about the law and which I know was also a bone of contention, if I can use that word...it's limited to cats and dogs.

And I think that you oppose that and perhaps you still oppose it. And I wanna get into some of the implications of that maybe later in the discussion, when we talk about what some of the criticisms have been of the law. But was that a difficult compromise to make?

Jessica: SO difficult. So, as I mentioned, I worked very closely with representative Diana Urban, and she served in the legislature in Connecticut for a long time.

And her advice to me on this issue was, "Jessica, this is a practical compromise that we need to make in order to get the bill passed in the more narrow form, you know, applying to cat and dog cases only. And then down the line we can seek to expand it to all animals."

But that was a very hard compromise to make because so often in animal law, we focus on companion animals when the vast majority of animal cruelty is committed against other animals.

And so it was a really hard compromise, but my hope is that the good that's been generated by Desmond's Law will carry over and allow other states to enact similar laws and also allow us in Connecticut to expand it in the near future.

Mariann: Yeah. And I mean, and it's a compromise that anybody doing any legislation on behalf of animals generally has passed, The Farm Bureau steps in and all of a sudden farm animals are, and other animals too, but farm animals are excluded.

And I wanna talk a little bit more about that later in the interview, when we talk maybe about the future and other things that can be done in this area. But I wanna talk about the clinic. I don't think it was immediate, but pretty soon after the law was passed, you developed a clinic that would be working on cases developed through Desmond's Law.

And can just kind of tell us what the clinic is like? Maybe from the perspective of a student, what could they expect to learn and do in this clinic?

Jessica: Sure. I'll give you first a little bit of a historical perspective of the clinic. So the law went into effect at the end of 2016, and I remember sitting with my Dean and he said, how many cases do you think this is gonna generate, this new program?

And I said, maybe one or two per year? I really don't know. And so we thought that we would start with just student volunteers and that's, in fact, how we started. So the first few months that Desmond's Law was in effect, I worked with two student volunteers and the cases started very soon and then they kept coming quickly.

And so then we converted it from volunteer to individual projects where students received credit. And then pretty quickly after one semester of that, I realized I needed a classroom component to teach students how to serve as advocates. So it wasn't just the courtroom work, but they needed to study pre-trial criminal procedure in Connecticut and some relevant animal law issues. And so a year after passage, we created an animal law clinic at UCON, and we typically have five students per semester, and students are assigned a few cases on which they're expected to do research and writing and oral presentations in court.

And in a typical semester, a student will attend court probably five times, five to six times. Not every time is a substantive presentation. You know, often it's introducing yourself on the record, agreeing to a particular date, but we are able to provide each clinic student with a substantive presentation opportunity per semester.

So, you know, each student gets to make a substantive presentation to a court on one of their cases in the semester. So that's sort of what the workload looks like. Students do a lot of research on their cases plus associated legal issues that are uncertain in Connecticut. We moot all the student presentations, we go through them first in a classroom setting and we spend the semester really studying the issues that relate to our cases.

So we give them a basic introduction to Connecticut pretrial criminal procedure. And then we talk about various legal issues that occur in cruelty cases. So things like civil forfeiture, family violence, sentencing considerations. And I should say that I run this clinic now with the benefit of a teaching fellow.

So we have Tara Cooley, who is entering her second year as a teaching fellow in our clinic. So the two of us co-teach the class and take students to court together.

Mariann: It just sounds like the best course ever. I wish this course had been... don't you wish it had been in law school when you were in law school?

I mean, there really wasn't a lot of clinical work because I went to law school so long ago. But this is...I mean, the fact that it's animal cases, I think means not only that you can care so much about the outcome, but you can get more hands on probably because it is so underserved. Is that right?

Jessica: Exactly. And I don't think many people appreciate the amount of lawyering that happens, not just in the courtroom, but in the hallways. And these cases really lend themselves to that because we have conversations with prosecution and defense. We have conversations with the defendant, with their lawyer and a lot of what students learn is how to navigate court personnel, how to navigate that process before they even get to the official court presentation.

And so we're developing yes, court room advocacy skills, but we're also developing judgment and, you know, associated interpersonal skills for students.

Mariann: Yeah. So important and nothing that you generally learn in law school, how to have those conversations...or at least I...I shouldn't say that because maybe everybody learns them in law school now, but I sure didn't learn them in law school.

I understand students also do some policy work, not necessarily in support of individual clients. Is that right?

Jessica: That is right. So students are asked to do a research paper on a topic of their choice. So students have written about the link between family violence and animal cruelty. Students have written white papers on suggested revisions to Connecticut's cruelty laws. Students have written papers on topics of their choice and those really supplement their case work.

I did want to just return to make one point, which I think holds true for all clinical teaching, but the way that we run the supervision in our work with students is that, we may play a larger role in supervising students at the start of each semester, and it's really a privilege to be able to back off gradually as the students can find their legs.

And it's really gratifying to me, as a teacher, to see that by the end of each semester, the students are comfortable and it shows itself physically because at the beginning of the semester, we stand right next to them when they speak in court so we can write notes to them and intervene if necessary. And as the semester goes, I find myself actually physically stepping back and to the side. So I'm letting them operate a little more independently by the end of the semester.

Mariann: Yeah. As a teacher, that must just be so exciting to see that happen. And so much of it has to do with building confidence.

I wanted to talk to you about sentencing too, because I know that...I don't wanna go into the details of Desmond...why this is called Desmond's law, but everybody knows that usually when an animal law is named after a particular animal, something dreadful happened to them. But a lot of the outrage involving Desmond was mostly focused on this sentence that the perpetrator received.

And that was not just you and with your efforts to start this clinic, there was a real outrage within the state, within the animal community in the state, about what happened here. And I'm just wondering, is sentencing a really important part of what the advocates do? Do they make sentence recommendations?

Jessica: We do make sentencing recommendations and that...I see our recommendations regarding sentencing and also diversionary programs, which are programs that allow defendants to avoid a record conviction if they fulfill certain terms of a program. So when we make recommendations regarding diversionary programs and eventual sentences, we're able to really create nuanced terms that address things like restitution, right?

Did somebody pay a lot of money to rehabilitate an animal? That address things like therapy, is this a defendant who has problems managing their emotions or their relationships? Is this a defendant who would benefit from kind of therapeutic intervention? So yes, we are able to make very tailored recommendations in terms of appropriate outcomes for the animal, but also the defendant.

Again, it's our recommendation, it's our opinion. And it's just neat that there is a third perspective being presented in the courtroom, not the defense counsel, not the prosecutor, but actually someone speaking on behalf of the animal.

Mariann: Yeah. We mentioned some of the difficulties of prosecuting animal cruelty, but I also think one of the really under-appreciated difficulties is animal

cruelty offenses...there are kind of narrow range of criminal level, but they run this unbelievably wide range from kind of intentional horrific violence, which is very difficult to address, to kind of negligent neglect. And maybe that negligent neglect was by somebody who became overwhelmed by life, who's living in poverty, whatever, that is very addressable and not terribly culpable. And yet because there's such a narrow range of prosecution available they tend to be fairly...they're all lumped into, I mean, not exactly the same offense, but close and yet they're very, very different types of crimes and very, very different types of consideration.

Do you find that this is one of the challenges in your students' dealing with different cases? That they have to be handled in very different way depending on the type of facts that we're dealing with, rather than just the level of crime.

Jessica: I have two points to make in response to that excellent question. One is I think the complexity of animal cruelty crimes and the wide range of complexity is what makes these cases excellent cases for clinical teaching. Because we, in our clinic, we don't have a uniform approach, right? We don't say to courts, we oppose diversionary programs in every case.

And one great thing about having an advocate is that it is somebody who takes a detailed look at the facts and the circumstances of each case in order to inform the court. And so yes, part of our work is disentangling that clump to say, "This case is really troubling and serious and violent, and this case is not."

So that's my first point. My second point is some of our work in the clinic is to develop some very exciting programming that will help courts disentangle animal cruelty cases. And we are gonna offer two programs that will try to address the less serious, less violent cases. So that defendants, like you said, who didn't know better or didn't have resources or were overwhelmed by life, but did not commit violent criminal...serious offenses can avail themselves of programming rather than having their case prosecuted to a sentence.

Mariann: Yeah. And I know that, um, I mean, I think it's okay with you that we talk about this. There's been criticism of the program from Justice Marceau, who wrote that book on criminal prosecution and animal cruelty, and others who oppose incarceration for animal cruelty offenses, kind of in general.

And that talk about, that we're over criminalizing animal cruelty cases. I don't really have a specific question here, but can you just kind of address your reactions to those kinds of criticisms?

Jessica: I don't think that we are over criminalizing animal cruelty offenses. I mean, I acknowledge that there are problems throughout the criminal justice system, but in my opinion, that does not mean that we stop prosecuting a category of offenses simply because those victims are voiceless.

Right? We have not backed off of prosecuting other types of offenses, right? With human victims. So I don't see the rationale for saying this category, animal cruelty crimes, should not be prosecuted. And so to me, having an advocate does not over criminalize, but it increases the visibility of an otherwise invisible and silent victim in a case.

And it allows the court to have a more fulsome consideration of the facts of the case, the interests and adjust outcome. And so in every other case where we have a visible and vocal human victim, we continue to prosecute, even though we have systemic problems. So I don't agree that animal cruelty crimes are over criminalized and should not benefit from having an advocate.

Mariann: I certainly wouldn't want anybody to think that just because you don't think animal cruelty should be singled out as a crime that we should prosecute less, that one is in favor of mass incarceration. It's an enormous problem. It's not particularly my area of expertise, but it's something I find very troubling. But they're not totally combinable, I think, in every way.

And certainly when we have innocent victims who can't speak, we have to do something I think, and I have a few more questions on that. But before we get to that, I feel like I've been talking in the abstract for this interview. And I'm just wondering if you could give us an example, or a few examples, of cases that have been handled by the clinic and the type of work the students were able to do.

Jessica: I'll give you a couple of cases where I feel like the advocate made a real difference. We had a very early case in which, at the time of the defendant's arrest, eight pit bulls were seized. Those animals were then in the possession of the town who had seized them because they were in conditions that endangered them.

But possession, as your listeners all know, does not equal ownership. So though the town possessed them, the town did not "own" them. So the town could not re-home or euthanize them, whatever the most humane and appropriate outcome would be. And the town was unable to serve the defendant with the proper process to acquire ownership of them.

And so the advocate was appointed in the case, we came in and took a look at the facts and the needs of the animals, and also the relevant law and presented a few arguments to the court. That, number one, these animals had been in the municipal pound for five months, without any check in by the alleged owner and so that they should be considered abandoned property. Because in Connecticut, if a tenant moves out of an apartment and leaves furniture behind, after 30 days, that property is deemed abandoned and the landlord can do what they want with it. So we made the argument and the court agreed that the dogs were abandoned property and therefore title vested in the town and the dogs could proceed with their lives.

So with title vested in the town, the town could then go on and make decisions about the future of the dogs that were in the best interest of the dogs. Six of them were able to be re-homed, two of them needed to be humanely euthanized because they were too aggressive. So in that case, I feel that the advocate's involvement presenting those legal arguments to the court brought some value to the table and allowed the case to proceed in a better way for the animals.

In that same case, later on the defendant applied to use, what I explained earlier, was a diversionary program. Rather than going to trial and sentencing, a diversionary program allows the defendant to have the charges dismissed after a certain amount of time passes with no further arrests. In support of the defendant's application for that diversionary program, the defendant presented the court with letters from animal charities thanking the defendant for his contributions.

The advocate, my students, tracked down those charities to verify those letters. And it turns out those letters were fabricated. And so we presented that information to the court and together with the seriousness of the case, that information convinced the court that the diversionary program should not be granted.

So those are two examples, in that case. A third example I'll give, related to a case in which there was a long term pattern of low level neglect, right? A backyard breeder who was not caring for animals properly. And the local animal control officers in the town had conducted investigations over two decades. And the state animal control officers had also conducted investigations over a similar period of time. The problem was that nobody coordinated the reports, right? The town reports were literally handwritten on paper, right? They were not computerized. And the volume of records was so great, but nobody had synthesized them or put them together.

So the advocate came in and one of my students digested the entire file, hundreds of pages of records and incident reports and prepared and submitted to the court a timeline. A very neat timeline of events that really made clear that it was a longstanding pattern of neglect, sufficient to convince the court to proceed with the cruelty charges and also to...let me just rephrase that. That were sufficient to convince the state to proceed with cruelty charges and eventually the court to proceed with the sentence of this defendant. So in that case, I feel that the advocate contributed a lot of effort and time in just synthesizing information and presenting it in a meaningful way to all parties.

Mariann: Those are such interesting examples because they do kind of typify what lawyers do when there's enough lawyers on a case and there's enough money in a case to do everything. And enough time to be able to spend to do everything properly. Organizing information is so much of what lawyers do, organizing information for other people so they don't have to spend a lot of time, like the judge.

And the other thing is in the first case that the argument about...I think it was the abandonment of furniture for 30 days, it was a case in which, I'm almost sure from the way you're telling it, that the judge wanted to come up with a way to hang their hat on, just a legal hook. Sometimes that's so much of what lawyers do, find that legal hook that a judge can legitimately find in favor of what seems to be the right outcome. And it sounds like that's exactly what happened in both of these cases.

You know, another subject I wanted to get to because I promised in the beginning we would, we briefly mentioned the fact that the law is limited to cats and dogs, and that's something that you were very not thrilled with but compromised in order to get something done.

I mean, there's just been criticism of this, and other laws that just focus on cats and dogs. I mean, another example I would say is New York's State's felony cruelty law only applies to companion animals. I mean, it's the same story in a number of different legal contexts, but your program has been criticized that by focusing on individual cruelty cases just against cats and dogs, and most people think that cats and dogs are the only animals that exist, that it helps to hide the fact that institutionalized cruelty is everywhere and horrifying. You know, it gives people the idea that the system is working for animals.

And I think people do tend to get that impression, it's a problem that we always face. But at the same time, it would hardly seem appropriate to ignore what we can accomplish for cats and dogs, who are out there suffering, as some kind of

learning experience so that people will be more aware, because people seem to remain unaware, whatever...

All right, I'm going on and on about this, but I'm just curious, what has been your experience on this? Do you feel that that people react to the presence of this clinic by feeling "Yes. The law works for animals" or are there opportunities to explain the law is working a little better for some animals?

Jessica: I don't believe that our clinic's work or Desmond's Law makes anybody think that other animal cruelty is not happening or otherwise hidden. In fact, our clinic has handled litigation involving elephants, involving beluga, so we do other work. The fact that Desmond's Law focuses on companion animals, dogs and cats specifically, I see as a beginning. I don't think anything that we do hides other forms of cruelty.

And, in fact, it provides opportunities, almost like a wedge or a foot in the door, to start talking about and looking at those other forms of cruelty. I mean, I feel like we need to start somewhere. This, for me, has been an opportune place to start. And I am hopeful that in the future other animals will be brought into court advocate laws and programs.

I see Desmond's Law and CAPS as a start and if we have to start with dog and cat cases, that's a foot in the door and hopefully it will allow us to open it for all animals.

Mariann: Yeah. I totally agree with you. I do think it prevents challenges. It means it's a challenge for every one of us who cares about all animals to constantly remember that people have to be reminded that this is a start, not an end.

But yeah, I mean, otherwise you wouldn't be starting at all. Do your students...I ask this because I find it fascinating every year how many of my students arrive in class, and they have chosen to take a class in animal law, and they know nothing about institutionalized cruelty. Do you find that to be the case? Or are your students starting out a little bit more sophisticated about animal issues?

Not that I'm saying my students aren't sophisticated, I don't wanna say that!

Jessica: For the past five years of teaching animal law and animal law clinic, I have not encountered students who are unfamiliar with institutionalized forms of animal cruelty. I think a combination of the internet and our food supply

coming into sharper focus have really opened people's eyes to institutional cruelty.

Just returning to the point of whether CAPS and Desmond's Law hide other institutional forms of cruelty. I actually think the opposite is true. It's been a very practical starting point. So for example, some of the programming that we have offered under Desmond's Law to the legal and animal protection community has started with Desmond's Law. But the programming that we offer, like in a day long conference include all sorts of animal cruelty, right? Forensic investigation of animal cruelty scenes, all animal cruelty scenes, not just dog and cat scenes. Link issues for all animal cruelty. And so I really see it again as a foot in the door. It brings in the community, animal control officers and people who care about these cases, not just for companion animals, but for all animals.

And so it's a starting point. And if it gets people talking and thinking, and they're talking and thinking about broader cruelty issues, for me, that's a success.

Mariann: Yes, exactly. I mean, I think that's what I was referring to. Like as long as we don't shut up about institutionalized cruelty and tell people that this is a first step, I think that's the important point.

The point wouldn't be to not do it at all, because that would not help at all. So what improvements would you like to see in the law? I mean, I assume it's not perfect.

Jessica: Sure. I'd like to see, as we've talked about, the law extended to cover all animals. Eventually I would love to see some required qualification for advocates and some systemic way of assigning advocates to cases. And I would love the appointment of an advocate to be required, not just optional for courts.

Mariann: Yeah. And that brings up an issue, which I don't think we really addressed, that advocates don't have to be students. They can be supervised students or lawyers could just volunteer and I assume you have people doing that.

And so what you're saying is you'd like there to be more oversight of that process is that right?

Jessica: Of the appointment, the assignments and allocation of them. So in Connecticut, we have about 15 lawyers who are registered with our state Department of Agriculture to serve as volunteer advocates.

And we meet as a group periodically just to share information and talk about strategies for cases. So that's been a really nice way for students to engage with the bar and form some connections with practicing lawyers.

Mariann: I know you've also developed model legislation, and I believe similar programs, or related programs, have been adopted in other jurisdictions.

Can you just tell us about that?

Jessica: So Maine, a couple of years ago, enacted its own version called Frankie's Law. And it was enacted right before COVID hit so they have not had a chance to implement it. So, it has not gotten started yet in Maine, but they are ready to go and very well positioned to start their program.

New Jersey has introduced it and I think will try again in the coming legislative session and I'm optimistic that it'll pass there. And several other states are at different points of the process considering or ready to introduce legislation modeled on Desmond's Law.

Mariann: It's really turned into a movement.

Well, I'm really glad we had this chance to talk about it because I've been hearing about it for a long time and I really wanted to know the details. So thanks so much for joining us today, Jessica, it's really been interesting.

Jessica: I really appreciate your interest and the interest of your listeners. And I appreciate the opportunity to chat. Thank you.