



Episode Title: Do We Need An Animal Protection Agency? -- A Conversation with Prof. Delcianna J. Winders

Episode Number: 20220901

Publication Date: September 1, 2022

All Things Chemical[®] is a podcast produced by Bergeson & Campbell, P.C. (B&C[®]), a Washington, D.C., law firm focusing on chemical law, business, and litigation matters.

This podcast transcript has been lightly edited for accuracy. It is an approximation of the podcast audio, and the audio recording remains the definitive record.

Let us know about any topics you would like to hear about in future episodes at podcast@lawbc.com.

A full recording of the podcast is available at <https://www.lawbc.com/podcasts/do-we-need-an-animal-protection-agency-a-conversation-with-prof.-delcianna>.

Lynn L. Bergeson (LLB): Hello, and welcome to All Things Chemical, a podcast produced by Bergeson & Campbell, a Washington, D.C., law firm focusing on chemical law, business, and litigation matters. I'm Lynn Bergeson.

This week, I sat down with Professor Delcianna Winders, Professor and Animal Law and Policy Institute Director at the Vermont Law School. Professor Winders is a total rock star in the exploding area of animal law. Prior to joining the Vermont Law School faculty and founding the Animal Law and Policy Institute, Professor Winders was on the faculty of Lewis and Clark Law School. She previously served as Vice President and Deputy General Counsel at PETA [People for the Ethical Treatment of Animals] Foundation [also known as the Foundation to Support Animal Protection] and was the first Academic Fellow of the Harvard Animal Law and Policy Program and a visiting scholar at the Elisabeth Haub School of Law at Pace University. We touch on just a few of the many, many fascinating issues included under the broad umbrella of animal law, including Professor Winders' judicial successes challenging the Animal Welfare Act (AWA), her thoughts on alternatives to animal testing, how the concept of One Law intersects with animal law, the role of restorative justice in animal and chemical law, and much, much more. Now, here is my conversation with Professor Winders.

Professor Winders, I am totally thrilled that we're having this opportunity to chat. I've been a fan of yours and, in preparing for this podcast, familiarizing myself with your extensive body of work in the area of animal law. So welcome.

Delcianna J. Winders (DJW): Thank you. I'm really, really excited to be here. And it's always exciting to meet students' parents at graduation, but it's especially exciting when you can make connections that go even further.

LLB: Well, exactly right. Exactly right. To us chemical law practitioners, animal law is largely about the use of vertebrate animals in testing. Since making your acquaintance this past May and doing a lot of research on you and your extensive body of work, I understand now that

the area of animal law is so much more. I'm wondering if you could tell our listeners what you, as Director and Founder of the Animal Law and Policy Institute at Vermont Law School are doing right now.

DJW: Yes, we're doing so much. You're right. Animal law is incredibly broad because, whether we actually realize it or not, we are interacting with non-human animals all of the time in a wide range of contexts, whether they're on our plates, whether they're out in the wild or in a laboratory, in a shelter, companions in our household. At the Animal Law and Policy Institute, we are really trying to support students who want to work in this area, to train the future animal advocates, to train future leaders, no matter what area they want to focus on. We have students who come and they want to tackle factory farming, industrial animal agriculture, and we have things to support them in that really important work. We have students who are -- I have a current student who used to work with mice in a laboratory, and so she is interested in that area. We have students interested in oceans and marine mammals. No matter what it is, our primary goal is to support students on their journeys to advocate for animals in whatever arena they want to focus on, and to help them decide what they want to focus on. Because oftentimes they come and they know they care deeply about animals. And I've had students tell me that their work in my class is the first time that they've felt legitimized, that that's a concern that is valuable and an area that they can work on, and they want to figure out what -- how to channel their energies and what type of law to do or what issues to focus on. So we're helping them figure that out also.

LLB: Fabulous. Well, they're lucky to have you there in Vermont.

DJW: Thank you.

LLB: How did you get involved in animal law? I know I've been a lifelong sucker for any furry anything. Save them, rescue them, love them. I have a bajillion pets at home. But what started your interest in this journey with regard to animal law?

DJW: Yes. So I, like you and like so many people, loved animals for as long as I can remember. And I really had a bit of a wake-up call when two pigs who I had raised from babies, bottle fed and had in my bedroom and then in my backyard as companions, were unexpectedly slaughtered when I was about 14 years old. Yes, it was certainly a traumatic experience, but one that really expedited my journey. I started checking out all of the books I could find from the library about factory farming, animal rights, and I became vegan pretty quickly thereafter and an animal advocate. And so that's really been a calling for me for a very long time.

And law school, I decided, was a good way for me to do animal advocacy because I like arguing, I like researching, and I like writing. So I went to law school specifically to do animal law, which even my mentors told me was not a real thing, wasn't a career I could do, but I was determined to do it and now really hope that students, this generation of students, has it a little bit easier. There's still trailblazing to do, for sure, but hopefully the path is a bit trod for them.

LLB: Your contributions to the area, both defining the diversity of the specific legal issues that are involved and just familiarizing the public with all of the issues that you are advocating on behalf of, has been a huge impetus in that area. Since you began your journey in this space, have the goals that you are fighting for changed at all? I'm sure as the legal field has become more sensitive to these issues, I can only imagine that your goals and advocacy targets have evolved.

DJW: Absolutely. I mean, we're all -- individual advocates are always evolving. The way we treat animals is evolving pretty quickly because, as the public becomes more aware of what happens to animals behind closed doors, they don't want to support it. And they're speaking up either with their pocketbook, or at the ballot box, or both. So I've seen a lot of changes. My initial draw was factory farming and the unimaginable scope of billions and billions of animals being intensively confined, mutilated, and slaughtered, in the United States alone. It's just so hard to wrap your head around. And that's an area where we've certainly made progress, but there's more work to be done.

But other areas that I've worked in, captive wildlife, for example, we've seen incredible changes. I spent a lot of time working on behalf of elephants used by Ringling Brothers and other circuses. And Ringling is no longer using *any* animals, and many other circuses have also stopped doing so as well. And so I definitely think we're on a positive trajectory. It's a lot of work to do, but things are changing, and I encounter a lot less hostility now than I used to. People are -- generally share the concerns about animals and the interrelated concerns for the environment, so I'm optimistic.

LLB: I share your optimism and note with interest, I read as recently as last weekend a book review of Corban Addison's new book, *Wastelands*, the tale of how some North Carolinian residents stood up to a meat-packing company.

DJW: Yes. Yes.

LLB: And it reminded me of your essay in the *Lewis & Clark Law Review* of just last year, "Accelerating Catastrophe: Slaughter Line Speeds and the Environment." Just a fascinating, very long article on an issue that I had never even thought about: how slaughter line speeds can have a catastrophic influence and impact on the environment. You want to just spend a minute letting our listeners know what that is all about?

DJW: Oh, yes, yes. A lot of my advocacy for the last several years has been around high-speed slaughter. For about 25 years now, industry and the federal government have been pushing to increase the rate at which we're slaughtering animals, which is already incredibly fast and in a way that is resulting in workers suffering a high rate of injuries, animals oftentimes not being rendered unconscious before their throats are slit, and sometimes even before they enter scald tanks. This is an area where even the current Administration, which is doing -- the current presidential Administration, which is doing better in a lot of areas -- they're still trying to deregulate slaughter. And the main reason is to increase the overall number of animals who are killed. And that also has tremendous environmental impacts. So that's been an area that I've been working on quite a bit, and there are a lot of intersections with environmental justice because the communities that live around, not only the slaughterhouses but the intensive industrial farms that supply them, are suffering from environmental harms: discharges into their drinking water, into the air that they breathe. There's more attention -- there's some incredible activists like the ones in North Carolina whom you mentioned. But we have an Administration who, despite its claims to be working on environmental justice, is still pushing forward policies that are incredibly harmful to animals, and the environment, and humans.

LLB: In that regard, another area that you have been very, very active in and have quite a lot of celebrity in is the litigation victories relating to your actions involving USDA's unilateral decision to black out information in otherwise publicly available documents that are required to be submitted under the AWA. Maybe you can provide our listeners with a little

background on what the AWA is, and what your client and other non-government organizations did when they sued the government, and what is the status of that litigation?

DJW: Yes. You may need to cut me off because you get me talking about the AWA and I can just go on for a day. So I'll try to keep it short.

LLB: I want as many of our listeners to understand exactly how -- why this act is so important and what's going on under it. I was shocked when I read about this.

DJW: Yes. The AWA is a federal law that is our primary federal animal protection law. It regulates certain types of animal use, specifically animals who are exhibited, so at circuses, zoos, and things like that; animals who are used for experimentation, testing, research; and the wholesale pet trade. So not retail pet stores, but breeding to supply retail pet stores as well as Internet sales now -- which is a relatively recent development -- and then anyone who's breeding to supply research or exhibition as well. So it's an incredibly important statute, and it covers a large number of animals, although it excludes an even larger number of animals, including all cold-blooded animals; rats, mice, and birds used for experiments; all animals raised for food. A lot of folks don't realize that we have no federal law regulating on-farm conditions raised for food. But it does cover a lot of animals.

And USDA is responsible for implementation of this law. It did not want responsibility for it, but responsibility was foisted on it by Congress, and it has never been adequately enforced. There has been audit after audit after audit by the USDA's own Office of Inspector General (OIG) condemning its inadequate enforcement. There have also been reports by the Government Accountability Office. And so transparency around this statute -- transparency is always important with government activities, but it's especially important in arenas where government is not doing its job, where an agency is not doing what Congress has tasked it with doing. And so inspections that are done under the AWA, enforcement actions that are taken, for many, many years were routinely posted online. And then shortly after Trump took office, they were taken down. And this was devastating to animal advocates because it was a way that we were able to monitor whether the government was doing its job and also to get help to animals who were being failed by the government. We had a sense of at least where violations of really minimal welfare laws were happening, and we could try to bring other legal challenges on our own, try to work directly with facilities to improve conditions or remove animals they weren't able to care for.

It was also important for my scholarship because I was at that point doing an analysis of enforcement and subsequent compliance behaviors by regulated entities, and that became impossible once the information was taken down. So I sued USDA many, many, many times. But that was the first time that I was actually personally a plaintiff suing the agency because I needed the information for my scholarship. And I joined a coalition of animal protection organizations. And ultimately, thanks to that and other advocacy efforts, including at the Congressional level, other litigation, we were able to get the information restored. So we're sort of back to where we were, where you can log on and access inspection reports for facilities, enforcement actions that have been taken, and sort of monitor whether the USDA is or is not doing its job. So back to status quo, basically.

LLB: You've highlighted already that enforcement of the AWA has not seemingly been a priority, certainly of the last Administration, and you also mentioned that perhaps the current Administration has been a little dilatory in that regard. What is the Biden Administration up to with regard to both enhancing enforcement and in addressing some of the issues that encouraged the litigation that you brought a number of years ago?

DJW: The Administration is at least committed to continuing to make the information available. That is important, but that's sort of a baseline.

LLB: Right. That's what the law requires.

DJW: Right, exactly. Exactly. Truly minimal. And we did see an unprecedented decline in enforcement under the Trump Administration. But it's really important to bear in mind that this is a law that, in its more than half century since it's been on the books, that has *never* been adequately enforced, regardless of administration. And so, yes, we're seeing more enforcement actions now under the Biden Administration. That is, of course, good.

However, the vast majority of those so-called enforcement actions are still warnings. And that was actually what my scholarship was focused on, that I was working on at the time the blackout happened, at the time all the information went away. The USDA has insisted on relying on warnings, not monetary penalties, not taking licenses away, not removing animals who are suffering, just sending a letter saying, "Hey, if you keep violating the law, maybe we'll do something more." And that is still what they're relying on, and it has proven ineffective. Folks who have received warnings have continued to violate the law, and when they do, they typically don't face meaningful enforcement action even after that. And sometimes you'll get a second warning. I've even seen a third warning.

In the rare instances where monetary penalties are assessed, they are discounted to just pennies on the dollar. So an OIG audit some years ago looking at research facilities found that, even in cases where there were grave violations, violations that resulted in animal suffering or death, penalties were discounted by 86 percent on average, meaning that for every dollar in the potential penalty phase, facilities were assessed just 14 cents, so there's still a lot of work to be done.

LLB: That's crazy.

DJW: Yes. And the one area that I'm most optimistic about is the Department of Justice (DOJ) has some really amazing folks, and within Justice, both civil and criminal, who are stepping up and bringing animal welfare cases. And that has never happened until recent years. The law allows for that, so there are some really great people, one of whom guest-lectured my summer class just a couple of months ago, and that gives me hope. But they need support from the USDA because the USDA is the one doing the inspections. The USDA has primary responsibility, but there are people who are working incredibly hard within the government. I don't want to paint everybody with a broad-stroke bad light, to mix metaphors. There are also inspectors who are doing really great work that provides the evidence for these cases. But leadership in the USDA is problematic.

LLB: It's nice to know that there are certain aspects of the Administration stepping up at DOJ. But as you note, the USDA needs to enforce the provisions that it is able to. And if the fines are being so heavily discounted, it's not acting as the deterrent that it is supposed to be, which is, of course, why there are penalties in the law from the get-go.

In one of your appearances on the Animal Law podcast, which I highly recommend, I just learn so much from it.

DJW: Amazing podcast.

LLB: Really, and your podcasts in particular are just extraordinarily educational. You expressed some frustration over the absence of what I would have thought would be an obvious inclusion or an obvious provision in the AWA. And that's citizen supervision.

DJW: Mm-hmm.

LLB: Have you considered or are you now advocating for the inclusion of a provision in the law? And how do you think this would affect the AWA and its enforcement? And what would that enforcement look like if citizens, people there -- boots on the ground, as it were -- were able to suggest enforcement actions when USDA or DOJ declined to initiate action?

DJW: Yes. There's actually a bill pending, the Animal Welfare Enforcement Improvement Act, which includes the citizen supervision for the AWA that I helped draft. So it's going to take years, probably, to actually move it forward. But it is something that I've been working on. The citizen supervisions are contained in most of our key federal environmental statutes, and they have proven invaluable in supplementing governmental enforcement. And I've been able to use them on behalf of animals who are supposed to be regulated under the AWA but aren't being so and are suffering and, in some cases, dying as a result.

The Endangered Species Act citizen supervision includes captive animals, and that's proven useful. And so it would be an incredibly invaluable tool because the government would no longer have a monopoly on enforcement. I don't think it's a cure-all because it's incredibly expensive to bring these cases. You still need to show standing. You need to show that there's a person, a human being under current case law and statutory law, who's been harmed, so that the harm to the animal alone is not enough for federal courts to have jurisdiction. So it would be a huge help, and we would be able to get animals out of some really bad situations, and we would hopefully be able to actually start to have some deterrent if facilities knew that they might actually face these actions. But they're for injunctive relief. They're not for monetary penalties. So I really think, bigger picture, we need to be thinking about creating a new agency that is solely focused on animal protection. The USDA has failed, decade after decade, to fulfill its obligations to animals, not only under the AWA, but also under the Humane Methods of Slaughter Act [and] the Twenty-Eight Hour Law, which is a transportation law. And part of it is that they're really focused on promoting American agriculture, which is largely animal agriculture. So they have a conflicted mission. And just like we have an Environmental Protection Agency (EPA), we need to have an animal protection agency.

LLB: Interesting. Have you actually pursued that in any legislative context, or is that a current objective of the animal rights community to have a freestanding federal agency enforcing and defending the rights of animals?

DJW: It's something that's been talked about over the years, and it's something that I'm really trying to bring together people who want to work on this, because I think it's time. It's past time. Honestly, I also am not naive enough to think it's something we can just easily accomplish. It's very rare for a new federal agency to be created, and it's hard enough to get a bill passed of any sort these days. But when you're talking about creating an entirely new federal agency, that's a big undertaking. So I think it's going to be a multi-year strategy. And I think we're really in the discussion stages right now, but I think it's something that needs to happen if we are ever going to make good on the commitments we made to animals in our laws decades ago.

LLB: No, I quite agree. And I take your point regarding the somewhat conflicted agency mind of USDA. Its mission is to support, sustain, and enhance the interest of the agricultural community, so to some extent, there is some confusion there. And that might contribute some of the enforcement concerns and lack of focus when it comes to animal protection, derivative of USDA's mission. If you're looking for help, we're conveniently located here in Washington, D.C.

DJW: Amazing. Okay.

LLB: We would love to help out in that regard. And I'm sure many of our listeners would, because animals, the more we know, the more tragic some of the experiences that you write about, speak about, and are advocating are.

DJW: Yes, and we're learning more about it.

LLB: Well, in our neck of the woods, as it were, I'm a chemical lawyer, but I have many, many interests, like animals. But we were very, very happy in 2016 when Congress passed the Frank R. Lautenberg Chemical Safety for the 21st Century Act. We were thrilled when President Obama made it -- at least paid homage to the notion of animal testing. And while the law did not *ban* animal testing, it expressed a Congressional preference that we move away from animal testing as quickly as we are able to do so. And companies have been moving away from animal testing for years, for lots of reasons. Have you given any thought to viable and useful alternatives to animal testing, and where that whole animal testing initiative is headed?

DJW: Yes, and there's so much to say here. And there are folks -- scientists in particular within the animal protection community -- who've been working so hard on this -- and were working on the 2016 bill for years and years and years when it was in the making. I think some of the folks leading the charge here, the Physicians Committee for Responsible Medicine (PCRM), which I did an internship with when I was in law school --.

LLB: No kidding!

DJW: Yes. And PETA actually has scientists on staff who work on the legislative and regulatory side of things, but also with chemical companies to help support alternatives, which oftentimes can also be more accurate. And ultimately, there are still some startup costs, but ultimately more cost-effective. I think there are a lot of folks working in this area. I think it's evolving very quickly, and I think there are collaborations happening, although the public may not be aware of them. And I think a lot of them are happening quietly behind closed doors to support these tests. And there's also a newer organization called Center for Contemporary Sciences that is headed up by a scientist who used to be in the U.S. military, and they are working on promoting alternatives. So, there are so many -- and I'm not a scientist, and I don't want to pretend to be. I have to defer to the scientific experts, but they are working on a lot of alternatives.

It was really groundbreaking. Of course, there were things that people wanted to go further in the 2016 act, but it was quite significant in just talking about and encouraging alternatives. And the array of alternatives that are available are huge. I mean, there's computational toxicology, bioinformatics. There's the PCRM -- Physicians Committee for Responsible Medicine -- has a huge list of new approach methodologies --.

LLB: NAMs.

DJW: Exactly. And that just goes through all of these specific ones. Specific dermal skin corrosion alternatives, ocular corrosion alternatives, acute toxicity alternatives. I don't want to pretend like I understand how all of these work, but there are a lot of resources out there. And there are organizations that want to support these transitions, rather than just being polarized against chemical companies.

LLB: Oh, no, I agree. Many of our firm's clients are hugely supportive of NAMs and developing alternative testing strategies to achieve the broader goal of the protection of human health and the environment, but certainly not borne on the backs of our animal friends.

DJW: Right.

LLB: We just did a webinar with PCRM on New Approach Methodologies. There's just a lot of exciting scholarship.

DJW: Yes.

LLB: And a lot of animal protection work going on. Many of the senior members of the industrial chemical community are hugely supportive of those initiatives, and we're just thrilled to support them as well.

DJW: Yes.

LLB: I listened to your podcast that you did in May of this year with the Cambridge Center for Animal Rights Law. And you spoke about a concept that I'm not as familiar as I wish I were. And that's One Health, a collaborative, multisectoral, and transdisciplinary approach working at the local, regional, national, and global levels, according to the CDC [Centers for Disease Control and Prevention], with the goal of, and I'm quoting here, "achieving optimal health outcomes recognizing the interconnection between people, animals, plants, and their shared environment." What do you and your institute advocate with regard to the inclusion of the One Health concept in animal law?

DJW: Yes. The main thing at the core of One Health, for me -- and it has been co-opted in some contexts, I think we need to remember that. But at its core, and when practiced consistent with its principles, it is focused on interconnection. It is recognizing that you can't separate out humans from the environment, from the animals that we share the planet and our everyday lives with, that we need to look at things holistically. And I think the pandemic has sort of woken a lot of people up to that, woke up to it.

We are spreading diseases back and forth between animals. A lot of that is happening because of the conditions in which we're keeping them, so if we want to develop policies that are going to improve human health, we also need to be looking at animal health as well.

The Animal Law and Policy Institute of Vermont Law School, one of the things we're really, really committed to is recognizing interconnected interests across animals, the environment, and humans. We're situated within the Environmental Law Center at the Law School, a part of the environmental law program, but we are not sacrificing animals for a larger environmental concern. Occasionally there are disputes between environmentalists and animal rights activists. More often, though, there's common ground. We're really trying to not only support new leaders in animal advocacy, but to ensure that animal interests are being included in discussions about environmental justice, environmental law, human rights, restorative justice. Also, all of these things that -- we're seeing it as part of a holistic

situation. And, you know, zoonoses, zoonotic disease is the obvious pressing area, but it really comes up in every area of our lives.

LLB: In your remarks when we first started off, when we were talking about your article or your essay about slaughter line speeds. The new book out by Corbin Addison, *Wastelands*, on how livestock factories and some CAFOs [concentrated animal feeding operation] are causing catastrophic environmental impacts -- and as you correctly note -- and I'm getting to the point here -- are often located in marginalized communities. We in the environmental chemical community are well aware of the Biden Administration's all-of-government commitment to environmental justice at all government agencies. It's a governmental priority across the Administration. How do you think the Administration could better articulate and crystallize that commitment when it comes to animal law issues? Because the interconnectedness of all of these points is just very, very clear. And yet, I think at the policy level and at a legal level, areas continue to be very compartmentalized and balkanized, much to our detriment. What do you think?

DJW: Yes, I think the number one thing -- the sort of elephant in the room with the current Administration's approach -- is industrial animal agriculture. It is such a massive contributor to the climate crisis and other environmental harms. And those farms are, as you mentioned, disproportionately borne by people of color and people of lower economic status. And so if the Administration is going to take seriously a commitment to environmental justice, it needs to tackle industrial animal agriculture. And there are a lot of ways in which it could do that.

Just to name a few, halting the efforts to speed up slaughter and deregulate slaughter, huge thing that it could do if it really was committed to environmental justice. Regulating methane emissions from industrial animal monoculture. Methane has 25 times more potent effects than carbon dioxide in terms of global warming. But we're not regulating methane from livestock. There's now efforts to regulate it from oil and gas. But livestock is getting a pass. There's sort of this -- traditionally, we talk about agricultural exceptionalism in the law, where regulations and laws that would apply to any other industry or activity are carved out for agriculture. It's even more extreme for industrial animal agriculture. And they've been given a pass from the key environmental laws, and the USDA declared itself exempt from the National Environmental Policy Act (NEPA). And that was years ago. No one's challenged that. And so that's the big thing. And there are a lot of other things, and there are a lot of pieces to it. But we can't ignore industrial animal agriculture because it's a huge contributor to environmental justice harms and climate change.

LLB: Are you working with any of the big Washington-based trades in that regard? Pork, beef, poultry? Because surely, even *I* have seen in the mainstream press a growing number of articles that talk about methane contributions coming from exactly what you're saying. So the fact that the attention is not being focused in those areas legislatively or from a regulatory perspective is not stopping the court of public opinion from expressing concern in this regard.

DJW: Right. Yes. Those industries have been particularly challenging to work with. The National Pork Producers Council will be having a case heard in the U.S. Supreme Court in October challenging, not a greenhouse gas issue directly, but a law that California passed saying that pork couldn't be sold within California if it was made using what are called gestation crates. These are incredibly small crates that female breeding pigs are forced to spend a large portion of their lives in that they cannot even turn around in. The industry has really dug its heels in and is adamant to not make changes.

But there are other things that we're doing. So one project that I've been working on here within the Animal Law and Policy Institute and with some of my colleagues, is we're looking at what policy initiatives might support dairy farmers who want to transition out of the dairy industry, which is incredibly harmful for the environment, necessarily requires discarding male calves for the industry, sometimes in cruel ways, but also is really not financially viable anymore, is propped up by a tremendous amount of tax dollars. And so how can we work with these folks and get them to a situation that's better for them, and the environment, and for animals?

Also -- and I can't take any credit for this -- but our Center for Agriculture and Food Systems here at Vermont Law School, Vermont Law and Graduate School now, recently published a report with -- written by someone in our Environmental Justice Clinic -- called "Rethinking Manure Gas" that is really pushing consideration of factory farm biogas, which folks have been talking about. "Oh, let's track the methane from the factory farm waste," without considering the harms in doing so, including that there are a lot of other environmental harms that aren't being captured just by capturing methane, and that if you're putting pipelines in to capture factory farm biogas, you're entrenching this harmful industrial animal agriculture system, and you're going to make it that much harder to get rid of, which needs to happen for environmental justice, for abating the climate crisis.

We're also working on a petition for rulemaking to get rid of that loophole that I mentioned under NEPA, urging the USDA to start taking into account the environmental impacts of its harms. So those are some of the things that have been going on here at Vermont Law and Graduate school, not so much at the trade industry level, because unlike the chemical companies, for example, they haven't really come to the table in the same way. Yet. We got to force them.

LLB: Yet. Hope springs eternal.

DJW: Yes. I mean, they're going to have to, sooner or later.

LLB: Well, there's an awful lot of background noise out there, expressing very high profile concern with these issues. So it may well be a matter of time.

DJW: Yes.

LLB: One of the areas that I work extensively in is, of course, the Toxic Substances Control Act. And under it, EPA conducts these very elaborate risk evaluations of chemicals, and EPA is required to develop minimum thresholds of toxicity for substances that are deemed acceptable -- acceptable, of course, to humans, not to animals in any way. Is there any discussion out there in the communities in which you operate, Professor, where there is some thought about transitioning to toxicity levels for humans *and* animals?

DJW: Yes, it's such an interesting question. I have not heard any talk of this. That doesn't mean it's not necessarily happening. I don't have my finger on the pulse of everything. A lot of things, but not everything.

LLB: *That* I don't buy, but --

DJW: I think -- my suspicion is that there might be some ambivalence in that there's concern that if you were to impose more thresholds, it might result in more animal testing, and so concern about a cost-benefit analysis for animals. But I do think it's something we should --

it should be part of the discussion about alternatives, paired with the discussion about alternatives, I should say. Because, to go back to the One Health model, we're all interconnected. It's not like we're just limiting the impacts of toxics to humans. They are out there in our environment. They're doing tremendous harm, and so I think it should be part of the discussion, but in a way that is not going to result in more suffering for millions of animals in laboratories or result in more animals being in laboratories.

LLB: I'd like to spend just a second on another really, really important and evolving area: restorative justice. As you know, child number two, Lorentz, just graduated with a law degree and a master's in restorative justice. And thanks to her and Vermont Law School, I know a little bit more about that really extraordinarily interesting area as a result of Lorentz's education there.

But animal law thus far has largely relied upon principles of criminal law to address crimes against animals. Since we're focusing a little bit on restorative justice, what do you think that restorative justice -- whether it has a role at all in the realm of animal law. Do you think that restorative justice has a place at the intersections of animal law and chemical regulatory law, or that's a bridge too far? I just was thinking about it and was wondering what your thoughts are, given your role in animal law and Vermont Law School's really extraordinary scholarship in the area of restorative justice.

DJW: Yes. And there's so much to say here. So we're in the very early days of talking about restorative justice in the animal law context. We're behind the curve as animal advocates. And frankly, it's thanks to students like Lorentz, including Lorentz and others, who have really pushed me to think more about this, and my amazing colleagues at the Center for Justice Reform here at Vermont Law and Graduate School. And there are others, this new generation of law students and recent grads who are thinking about it. I was never comfortable with carceral approaches. That's why I went into civil litigation. I have a brother who's in prison right now. It also just doesn't seem to do a whole lot in terms of actually addressing the underlying harms that we're getting at. But as you said, animal law has had a very carceral approach in its first stage. And I think that is partly because the main -- given the USDA's failings, we're left with state cruelty laws. That's the main law we have to regulate animals. And those are criminal statutes, with -- a few states have civil parallels, but for the most part, they're criminal statutes. And so it was -- I don't want to fault folks who were focusing on that. They were sort of working with what they had. But we're in a new era, and I think there's tremendous potential for restorative justice. And there have been some restorative justice approaches used in animal cruelty cases here in Vermont. We have an alum who worked on one of those.

But the question you asked about the chemical testing is a really good one, and I don't know the answer. We just hosted an event, Animals and Restorative Justice, and a daylong symposium, which is -- the recording's available on our website. And I encourage those who are interested to check that out, to start exploring the intersection between animals and restorative justice. But I think when you're talking about institutionalized uses of animals, it gets trickier when you're talking about corporate harms versus harms inflicted by individuals. It's a different process. There are scholars who are looking at how we might use restorative justice methods in an environmental context that also involves similar harms inflicted by institutions and corporations. So I think there is potential there. What it will look like exactly, I don't know. But I think we need to explore it, and I think it's part -- I think it goes back to recognizing how interconnected we are and everything is. Yes.

LLB: In that regard, can you think of any specific areas where the chemical regulatory community and animal law can work more effectively together? Are there shared interests that can be pursued? Is there anything that you can point to that the listeners of this podcast may be interested in pursuing, as we touch a lot of chemical companies in the industrial and agrochemical sphere. And I think there are a lot of people out there that would like to learn more about what you are up to -- you and the animal law community writ large -- and how we can collaborate in addressing some of the inhumane, in my view illegal, and underserved communities in the animal world.

DJW: Yes, I mean -- where to begin? First of all, if folks are interested, I definitely encourage them to check out the web page for the Animal Law and Policy Institute at the Vermont Graduate School and to reach out if they want to. And one of the things that we're trying to do -- and we're still pretty new; I've been here exactly a year and just created this program -- is to facilitate dialog across communities that maybe wouldn't necessarily talk to each other. And so we're interested in creating forums, creating events where we can work on common ground, because we have so much more in common than -- maybe we disagree at the edges, but we have a lot in common. And if we can get in a room and talk about "What would it look like to have meaningful government oversight of chemical testing?" I think we could do a lot.

I think we have common ground on the transparency piece that we were talking about earlier. An interesting thing that happened when the blackout happened was some institutions, including the Association of Zoos and Aquariums, came out and said, "We want this information to be available. This is our license to operate. The public relies on this information." And so I think if the research community were more vocal about supporting transparency, I think that could be helpful.

There was an interesting bill some years ago that the -- this isn't chemical testing, but the National Association for Biomedical Research (NABR) got introduced that would have required the USDA to publish its enforcement, basically the worksheet it uses to calculate penalties under the AWA, and to update it regularly. And it didn't go anywhere. And the USDA has refused to release that worksheet to me and to NABR. We've both filed Freedom of Information Act appeals, and they said no. But I think that's an area where it behooves both sides to know what the government is up to. So I think there are areas like that where if we talk to each other more, we're going to identify them.

LLB: I couldn't agree more. Just getting the government to, number one, enforce the law and do its job and not unilaterally redact information that the public has a right to know. That's not only minimally required; that's what the law insists upon.

DJW: Yes.

LLB: And similarly, there are lots of opportunities for dialog. I would just love to get you, maybe some of your students on a webinar to focus on some of these topics, because we reach directly into the global, industrial, and academic communities. So much of this is just ensuring that people know what the issues are, understand that there are opportunities. Yes, building the bridges and just doing what we can do to eliminate or lessen unnecessary and likely unlawful suffering of animals. We should all be focusing on that.

DJW: Yes, yes. No. Anything we can do to help with that bridging, we're in.

LLB: Well, Professor, is there any topic that we didn't touch upon that you would like an opportunity to stress here? I am such an admirer of your work, your passion, and your effectiveness in bringing so much more attention to these important issues.

DJW: Well, there are a couple of things I'll mention that are launching imminently and that I've been working on a lot. So the first is we're launching our first animal law clinic. Our first students were fully enrolled, and they'll start next week. So it's a farm animal advocacy clinic, and it lets students work hands-on in real-life matters. And so I'm really excited about that. And I'm honestly hopeful that we'll have other animal law clinics in the future focused on other areas. So that's really exciting, because it means students can come here and not only learn from books and from experienced attorneys and scholars, but actually get to do the work themselves, which is an invaluable --

LLB: It's huge.

DJW: -- way to learn. And then -- this is not officially announced yet, but it will be in September. We're launching a new Master of Animal Protection Policy degree program.

LLB: Wow. That's fantastic. Congratulations.

DJW: Thank you. I'm so excited about that. It's going to be -- it's a one-year program. It can be done residually, or online, or a combination. It can be done along with a J.D. or on its own. And it's really open to a broad range of folks. And we've done policy master's degrees here for many years at Vermont Law School. And so sometimes we have attorneys who have practiced for a long time in one area, but they want to shift gears, so they'll come here and do one of these degrees. So I'm really excited that we're opening up this new pathway for training future animal advocacy leaders. And I hope folks will check that out when it gets officially announced.

LLB: Well, congratulations. That is huge. Vermont Law School has been at the forefront of environmental law for decades. Now, being at the forefront of animal policy and getting at -- the availability of this master's degree is huge. So congratulations.

DJW: Thank you. Thank you.

LLB: Well, Professor, I have taken a lot of your time. I just wanted to share my enthusiasm, respect, and awe of everything that you are doing in this space with our listeners. And I hope to have you back and also pursue a number of other initiatives that we can collaborate on. And you have a standing offer. We have lawyers, government affairs experts, toxicologists, chemists. We have a wide array of professionals here who all share the common goal of sparing animals unnecessary harm and just doing things in a way that can be much more respectful of the animal community. So consider that an open invitation. We'd love to do our part.

DJW: Amazing. Thank you. That -- I can't tell you how happy that makes me, and I loved chatting with you, so thank you for having me.

LLB: Thank you so much. Really, really enjoyed the conversation.

DJW: Until next time.

LLB: My thanks again to Professor Winders for speaking with me today about the fascinating, fast evolving, and -- if you love animals as much as I do -- critically important area of animal law.

All Things Chemical is produced by Jackson Bierfeldt of Bierfeldt Audio LLC.

All materials in this podcast are provided solely for informational and entertainment purposes. The materials are not intended to constitute legal advice or the provision of legal services. All legal questions should be answered directly by a licensed attorney practicing in the applicable area of law.