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# HEAR ME ROAR: SHOULD UNIVERSITIES USE LIVE ANIMALS AS MASCOTS?

JESSICA BARANKO<sup>\*</sup>

## I. INTRODUCTION

A university's mascot is more than just a mascot; it is a symbol of the university and something that students can identify with even after graduation. Whether people call themselves a badger, golden eagle, terrapin, or buckeye, they affiliate themselves not only with the university but also with the mascot. But who decides if a university can use a particular mascot or if there are any restrictions on the uses and types of mascots? Universities have dealt with public dissatisfaction concerning the use of Native American mascots and should be prepared to deal with a new public scrutiny. In an age where animal laws are receiving increased attention, universities should prepare themselves for public scrutiny of the use of live, nonhuman animals as mascots.

This article will argue that the recent regulation of universities' use of Native American mascots has paved the way for criticism of universities' use of live animals as mascots. Part II will examine the federal law governing the treatment of nonhuman animals, the Animal Welfare Act (AWA), and examples of cases based on the AWA. Part III will examine the state laws and provide examples of state animal anti-cruelty statutes and cases. Part IV will explain why both the AWA and the state anti-cruelty laws apply to universities. Then, Part V will argue why universities should be proactive and create guidelines and restrictions on the use of live, nonhuman animals as mascots in light of animal rights activists protesting the use of nonhuman animals for entertainment, including in circuses, shows, and movies.

## II. THE FEDERAL LEVEL: THE ANIMAL WELFARE ACT

The federal government has recognized that treatment and care for animals is important. By enacting the AWA, the government has imposed guidelines and regulations for the care and treatment of animals. This section provides an overview of the history of the AWA and then explains which persons and

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organizations this law applies to.

### *A. History of the Animal Welfare Act*

The AWA is the federal law that deals with the care and living conditions of certain animals.<sup>1</sup> Congress first passed the Laboratory Animal Welfare Act in 1966.<sup>2</sup> This regulatory scheme “set minimum standards for the care, housing, sale and transport of dogs, cats, primates, rabbits, hamsters, guinea pigs, and other animals held on the premises of animal dealers or laboratories.”<sup>3</sup> The Laboratory Animal Welfare Act was amended in 1970 and was renamed the Animal Welfare Act.<sup>4</sup> The AWA has been amended four additional times in 1976, 1985, 1990, and 2002, which is where the Act finally stands.<sup>5</sup> The 1976 amendment included a prohibition against most animal fighting ventures and also imposed regulations on the commercial transportation of animals.<sup>6</sup> The 1985 amendment strengthened the standards for the care of animals in laboratories, increased AWA enforcement, created committees at each institution that used regulated animals, and required training for people who handle such animals.<sup>7</sup> Then, the 1990 amendment required more rigorous recordkeeping requirements for dealers who get animals from “random sources.”<sup>8</sup> Each of these amendments added extra protection for animals and, altogether, expanded the application of the AWA.

### *B. Applicability of the Animal Welfare Act*

Although people traditionally associate the AWA with animals used in research facilities, the AWA actually applies to a variety of issues. These issues include, but are not limited to, the following: (1) “[t]he thief of pet dogs and cats that were being sold to research and testing facilities;” (2) “[a]nimals in zoos [and] exhibitions;” (3) “[a]nimal fighting (dogs and bird cocks primarily);” (4) “[t]he breeding and wholesale distribution of some mammals;” (5) “[a]uctions of animals;” (6) “[a]nimals in research labs (universities and private industry);” and (7) “[t]he transportation of listed animals by other than

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1. Animal Welfare Act, 7 U.S.C. §§ 2131–2159 (2011).

2. SONIA S. WAISMAN ET AL., ANIMAL LAW: CASES AND MATERIALS 374 (3d ed. 2006).

3. *Id.*

4. 7 U.S.C. § 2131.

5. *U.S. Animal Welfare Act Legislative History*, ANIMAL LEGAL & HISTORICAL CENTER, [http://www.animallaw.info/topic\\_subcat/tsusawa.htm](http://www.animallaw.info/topic_subcat/tsusawa.htm) (last visited Feb. 26, 2010).

6. WAISMAN, *supra* note 2, at 375.

7. *Id.* at 375–76.

8. *Id.*

common carriers.”<sup>9</sup> There are also a variety of topics that are not covered by the AWA; for example: (1) “[v]eterinary care of animals outside licensed institutions;” (2) “[u]se of animals in K-12 education;” (3) “[h]unting [and] fishing [and] trapping issues;” (4) “[s]laughter of animals;” (5) “[a]nimals in agriculture production;” (6) “[r]etail pet stores;” and (7) “[i]njuries by animals or inflicted upon animals.”<sup>10</sup>

Section 2.1 of Subpart A of the AWA details which persons are required to have a license. Sections 2.1(a)(1) and (2) provide a general application for dealers, exhibitors, or operators who are subject to the AWA, but this is limited by those who are exempted under (a)(3).<sup>11</sup> Examples of parties that are exempted under the statute include the following:

(i) Retail pet stores which sell nondangerous, pet-type animals, such as dogs, cats, birds, rabbits, hamsters, guinea pigs, gophers, domestic ferrets, chinchilla, rats, and mice, for pets, at retail only: Provided, That, Anyone wholesaling any animals, selling any animals for research or exhibition, or selling any wild, exotic, or nonpet animals retail, must have a license;

(ii) Any person who sells or negotiates the sale or purchase of any animal except wild or exotic animals, dogs, or cats, and who derives no more than \$500 gross income from the sale of such animals to a research facility, an exhibitor, a dealer, or a pet store during any calendar year and is not otherwise required to obtain a license; . . .

(v) Any person who arranges for transportation or transports animals solely for the purpose of breeding, exhibiting in purebred shows, boarding (not in association with commercial transportation), grooming, or medical treatment, and is not otherwise required to obtain a license;

(vi) Any person who buys, sells, transports, or negotiates the sale, purchase, or transportation of any animals used only for

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9. David Favre, *Quick Overview of the US Animal Welfare Act*, ANIMAL LEGAL & HISTORICAL CENTER (2002) <http://www.animallaw.info/articles/qvusawa.htm>.

10. *Id.*

11. 9 C.F.R. §§ 2.1(a)(1), (2) (2010).

the purposes of food or fiber (including fur);

(vii) Any person who breeds and raises domestic pet animals for direct retail sales to another person for the buyer's own use and who buys no animals for resale and who sells no animals to a research facility, an exhibitor, a dealer, or a pet store (e.g., a purebred dog or cat fancier) and is not otherwise required to obtain a license . . . .<sup>12</sup>

These exemptions demonstrate that the AWA's primary focus is on larger organizations that work with animals, such as research facilities and animal exhibitors, and the people who try to sell such animals to these organizations. The exemptions also show that the AWA will not apply to smaller organizations such as pet stores or breeders.

Although the AWA provides these exemptions, case law provides examples of claims brought under the AWA. For instance, the AWA was used to ensure that a chimpanzee in a roadside zoo received the appropriate care.<sup>13</sup> But, the AWA may also be used for procedural violations even when no harm is done to the animals.<sup>14</sup> The following two cases demonstrate how AWA claims can be brought in the interest of animals and how the AWA interacts with state animal anti-cruelty statutes.

In *Toney v. Glickman*, a husband and wife were found to have violated the AWA on multiple occasions.<sup>15</sup> The couple was selling animals to research facilities and failed to meet the standards of the AWA in a number of instances, thereby affecting over 190 dogs.<sup>16</sup> The couple had made false claims about how they acquired most of their dogs and "provided unsafe and unsanitary housing and contaminated food to the dogs."<sup>17</sup> The Eighth Circuit of the Court of Appeals upheld the decision to fine the couple \$200,000 and to permanently revoke their license to sell animals to research facilities.<sup>18</sup> The court also stated "[t]he [AWA] does not penalize only those who steal dogs or who purchase stolen dogs. It also penalizes those who violate the regulations that are designed to make dog stealing more difficult."<sup>19</sup> This case

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12. 9 C.F.R. § 2.1(a)(3) (emphasis removed).

13. *See generally* Animal Legal Defense Fund, Inc. v. Glickman, 154 F.3d 426 (D.C. Cir. 1998).

14. *See, e.g.*, *Toney v. Glickman*, 101 F.3d 1236, 1238 (8th Cir. 1996).

15. *Id.* at 1238.

16. *Id.* at 1238-39.

17. *Id.* at 1239.

18. *Id.* at 1242.

19. *Id.* at 1243.

demonstrates that the AWA not only affects research facilities or licensed facilities such as zoos, but the AWA also affects the average person who is mistreating animals in violation of the standards outlined by the AWA.

In *DeHart v. Town of Austin*, DeHart was the owner of a business specializing in breeding, raising, buying, and selling exotic animals.<sup>20</sup> DeHart brought a claim against the Town of Austin, stating that an ordinance prohibiting the possession of “wild animals” within the town was preempted by the AWA.<sup>21</sup> The Seventh Circuit of the Court of Appeals held that the ordinance was not preempted.<sup>22</sup> The court also stated “the purpose of the [AWA] is to foster humane treatment and care of animals and to protect the owners of animals from the theft of their animals.”<sup>23</sup> Therefore, *DeHart* demonstrates that state statutes can regulate the treatment of animals without conflicting with the AWA; such state statutes are discussed in the next section.

### III. STATE ANIMAL ANTI-CRUELTY STATUTES

In addition to the AWA, there are state statutes that protect the care and treatment of animals. These statutes often deal with areas of animal cruelty that are not within the AWA’s scope. These statutes are vital to the protection of animals on a smaller scale, such as from an abusive owner, hoarder, or other treatment by a non-licensed animal caregiver.

#### A. Examples of State Statutes

States have recognized the importance of protecting animals and, thus, have enacted laws that apply to people who mistreat an animal within its borders. For example, Wisconsin Chapter 951 of the Criminal Code applies to crimes against animals. It states that “[n]o person may treat any animal, whether belonging to the person or another, in a cruel manner. This section does not prohibit bona fide experiments carried on for scientific research or normal and accepted veterinary practices.”<sup>24</sup> However, the statute does prohibit certain actions against animals and sets guidelines for the treatment of animals.<sup>25</sup> The following is a sample of the subsection headings in the Wisconsin statute, establishing that the statute expressly prohibits:

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20. See *DeHart v. Town of Austin*, 39 F.3d 718, 720 (7th Cir. 1994).

21. *Id.* at 720.

22. *Id.* at 722.

23. *Id.*

24. WIS. STAT. § 951.02 (2011).

25. *Id.*

“[d]ecompression,”<sup>26</sup> “[d]ognapping and catnapping,”<sup>27</sup> “[l]eading [an] animal from a motor vehicle,”<sup>28</sup> certain “[t]ransportation of animals,”<sup>29</sup> “[u]se of poisonous and controlled substances,”<sup>30</sup> “[u]se of certain devices,”<sup>31</sup> “[i]nstigating fights between animals,”<sup>32</sup> “[s]hooting at caged or staked animals,”<sup>33</sup> “[s]ale of baby rabbits, chicks and other fowl,”<sup>34</sup> and “[a]rtificially colored animals [for] sale.”<sup>35</sup> In addition to these prohibitions, Wisconsin also requires the provision of proper food and drink to confined animals,<sup>36</sup> provision of proper shelter,<sup>37</sup> and does not permit animals to be abandoned.<sup>38</sup> In short, these laws specifically protect animals from people who hurt, steal, or do not feed them and those who do not provide adequate shelter.

Another example of a comprehensive state statute protecting animals is from Louisiana, which has an extensive animal anti-cruelty statute covering a variety of acts by animal owners as well as establishing associations and funds to support the care of animals. For example, Chapter 17 of the Louisiana Revised Statutes explains that

[t]he Louisiana Animal Welfare Commission is hereby created within the office of the governor for the purpose of assisting the governor’s Office of Community Programs to ensure and promote the proper treatment and well-being of animals. The commission shall receive no direct funding from the state, but may receive incidental services from state agencies in order to carry out its purpose.<sup>39</sup>

Like the Wisconsin statute, the Louisiana statute includes many sections on animal care including, but not limited to, the Louisiana Animal Welfare

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26. § 951.025.

27. § 951.03.

28. § 951.04.

29. § 951.05.

30. § 951.06.

31. § 951.07.

32. § 951.08.

33. § 951.09.

34. § 951.10.

35. § 951.11.

36. § 951.13.

37. § 951.14.

38. § 951.15.

39. LA. REV. STAT. ANN. § 3:2364(B) (2011).

Commission,<sup>40</sup> Louisiana Pet Registry,<sup>41</sup> “[m]unicipalities to provide punishment for cruelty to animals,”<sup>42</sup> humane societies to arrange for the care of animals,<sup>43</sup> “[c]ourt review of humane societ[ies]’ treatment of animal[s]” with “damages limited to costs,”<sup>44</sup> “[a]bandoned animals,”<sup>45</sup> “[s]ale or disposal of animal[s]” with the “disposition of sale proceeds,”<sup>46</sup> and “[g]eneral shelter standards.”<sup>47</sup> The fact that this is only a part of the comprehensive statute establishes that the state has an interest in the care and treatment of animals.

### *B. Anti-Cruelty State Statutes Generally*

The Wisconsin and Louisiana animal anti-cruelty statutes are just two examples of the state laws enacted to protect animals from cruel and abusive treatment. Forty-four other states have similar statutes, as well as the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.<sup>48</sup> These statutes

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40. § 3:2364.

41. § 3:2365.

42. § 3:2392.

43. § 3:2431.

44. § 3:2439.

45. § 3:2452.

46. § 3:2454.

47. § 3:2463.

48. ALA. CODE §§ 13A-11-241, 13A-11-14 (2011); ALASKA STAT. § 11.61.140 (2011); ARIZ. REV. STAT. ANN. §§ 13-2910, 11-1029 (2011); ARK. CODE ANN. §§ 5-62-103, 5-62-104, 5-62-106 (2011); CAL. PENAL CODE §§ 597, 11199 (West 2011); COLO. REV. STAT. ANN. §§ 18-9-202, 18-9-202.5 (West 2010); CONN. GEN. STAT. §§ 53-247, 22-329a, 53a-30 (2010); DEL. CODE ANN. tit., 11 § 1325, tit., 3 § 7905 (2011); FLA. STAT. §§ 828.12, 828.073 (2011); GA. CODE ANN. § 16-12-4 (2011); HAW. REV. STAT. §§ 711-1108.5, 711-1109, 711-1109.2 (2011); IDAHO CODE ANN. § 25-3504 (2011); 510 ILL. COMP. STAT. §§ 70/3.01, 70/3.02, 70/3.03, 70/3.04, 70/3.05 (2011); IND. CODE §§ 35-46-3-12, 35-46-3-6 (2011); IOWA CODE §§ 717B.3A, 717B.1, 717B.2, 717B.3 (2010); KAN. STAT. ANN. §§ 21-4310, 23-4311, 23-4313, 23-4317 (2010); KY. REV. STAT. ANN. §§ 525.135, 525.130 (LexisNexis 2011); ME. REV. STAT. ANN. tit. 17 § 1031, ME. REV. STAT. ANN. tit. 7 § 4011 (2011); MD. CODE ANN. [CRIM. LAW] §§ 10-606, 10-604 (LexisNexis 2010); MASS. ANN. LAWS ch. 272, §§ 77, 104, ch. 266 § 112 (LexisNexis 2010); MICH. COMP. LAWS SERV. § 750.50 (LexisNexis 2011); MINN. STAT. §§ 343.21, 343.235 (2010); MISS. CODE ANN. §§ 97-41-2, 97-41-15, 97-41-16 (2010); MO. ANN. STAT. §§ 578.012, 578.018 (West 2011); MONT. CODE ANN. §§ 45-8-211, 45-8-217, 27-1-434 (2010) NEB. REV. STAT. ANN. §§ 28-1009, 28-1011, 28-1019 (LexisNexis 2010); NEV. REV. STAT. ANN. §§ 574.100, 574.055, 62E.680 (LexisNexis 2011); N.H. REV. STAT. ANN. § 644:8 (West 2010); N.J. STAT. ANN. § 4:22-17 (West 2011); N.M. STAT. ANN. § 30-18-1 (LexisNexis 2010); N.Y. AGRIC. & MKTS. LAW §§ 353, 353-a, 373 (Consol. 2011); N.C. GEN. STAT. § 14-360 (2010); N.D. CENT. CODE § 36-21.1-02 (2011); OHIO REV. CODE ANN. §§ 959.02, 959.12, 959.99 (LexisNexis 2011); OKLA. STAT. ANN. tit. 21 §§ 1685, 1681, 1680.4 (West 2011); OR. REV. STAT. §§ 167.315, 167.320, 167.322, 167.332 (2009); 18 PA. CONS. STAT. § 5511 (2010); R.I. GEN. LAWS §§ 4-1-2, 4-1-3, 4-1-5, 4-1-36 (2011); S.C. CODE ANN. §§ 47-1-40, 47-1-70, 47-1-140 (2010); S.D. CODIFIED LAWS §§ 40-1-5, 40-1-20, 40-1-27 (2011); TENN. CODE ANN. §§ 39-14-202, 39-14-210 (2011); TEX.

cover various animal owners and caretakers within the state or territory. The maximum fines range from \$500 to \$500,000, while the maximum jail time ranges from sixty days to fifteen years.<sup>49</sup> The number of states with animal protection laws with substantial fines and jail time establishes that the states take the laws very seriously.

For example, an anti-cruelty statute was used to convict a zookeeper at the Oregon Zoo in Portland.<sup>50</sup> Evidence was introduced at his trial that the zookeeper “used a sharpened ankus (commonly known as a ‘bull hook’) to inflict 176 documented puncture wounds on Rose-Tu.”<sup>51</sup> Rose-Tu was an elephant, and fortunately, a majority of the wounds were found to be merely surface wounds.<sup>52</sup> But, because the state statute at the time required a minimum showing of “physical injury,” defined as “impairment of physical condition or substantial pain,”<sup>53</sup> the prosecution used experts to testify that Rose-Tu suffered pain and that the pain was substantial.<sup>54</sup> Therefore, the Oregon state statute was used to protect an animal that was being exhibited at a zoo from mistreatment, just as the state statute can protect animals exhibited by other organizations from mistreatment. The next section will discuss how both the federal and state laws apply to universities.

#### IV. UNIVERSITIES

There are a number of universities that use live, nonhuman animals as mascots to represent their university. This section will provide numerous examples of the universities that use such animals and the history of such use, as well as examples of how these mascots have been treated over the years. Then, based on the use of these animals as mascots, this section will show how the university can be held directly responsible for the care of these animals and analyze what animal laws apply to the universities.

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PENAL CODE ANN. § 42.092 (Vernon 2010), TEX. HEALTH & SAFETY CODE ANN. § 821.023 (Vernon 2010), TEX. FAM. CODE ANN. § 54.0407 (Vernon 2010); UTAH CODE ANN. § 76-9-301 (2011); VT. STAT. ANN. tit. 13, §§ 352, 353, 354 (2010); VA. CODE ANN. §§ 3.1-796.122, 3.2-6569 (2010); WASH. REV. CODE ANN. §§ 16.52.205, 16.52.207, 16.52.200 (West 2010); W. VA. CODE ANN. §§ 61-8-19, 7-10-4 (LexisNexis 2011); WYO. STAT. ANN. §§ 6-3-203, 11-29-114 (2011); D.C. CODE §§ 22-1001, 22-1004 (2010); GUAM CODE ANN. tit. 9 §§ 70.10, 80.12 (2010); P.R. LAWS ANN. tit. 5, §§ 1652, 1653 (2010); and V.I. CODE ANN. tit. 14, § 181 (2010).

49. *See, e.g.*, COLO. REV. STAT. ANN. §§18-9-202, 18-9-202.5; GUAM CODE ANN. tit. 9 §§ 70.10, 80.12; P.R. LAWS ANN. tit. 5, §§ 1652, 1653.

50. WAISMAN, *supra* note 2, at 417.

51. *Id.* There was also evidence that Rose-Tu was sodomized with the ankus. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

*A. Lions and Tigers and Bears, Oh My*

Universities have various types of mascots. Some have mascots that are people dressed in an animal costume,<sup>55</sup> others have people dressed to portray a certain person,<sup>56</sup> and then there are those that use live animals.<sup>57</sup> The following universities are examples of the schools that use live, nonhuman animals as mascots.

Tusk II was, until recently, a wild hog, also known as a razorback, and he represented the University of Arkansas.<sup>58</sup> He passed away of natural causes in January 2010, and his brother will now represent the school as Tusk III.<sup>59</sup> A family took care of Tusk II and will now care for Tusk III; there is even a Tusk Fund run by the Razorback Foundation that allows fans to contribute to the support and care of the mascot.<sup>60</sup> The University of Arkansas' tradition started with a series of hogs in the 1960s, and although the University cites to the support from fans as a reason to continue the tradition, there are also reports of the animals' fierce behavior.<sup>61</sup> An example is the story of Big Red III, who escaped his exhibit and ravaged the countryside until a farmer gunned him down in 1977.<sup>62</sup> Ragnar, another mascot who died in 1978, went on a spree killing a coyote, a 450-pound pig, and seven rattlesnakes.<sup>63</sup>

Since 1956, Uga, an English Bulldog, has represented the University of Georgia.<sup>64</sup> Uga has also been owned and cared for by a family in Savannah, the same family has cared for the Uga line since 1956.<sup>65</sup> However, before Uga, there were other live, nonhuman mascots that represented the

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55. Bucky the Badger from the University of Wisconsin is an example. *Bucky Badger Bio*, UWBADGERS.COM, <http://www.uwbadgers.com/spiritsquad/bucky-badger.html> (last visited Apr. 10, 2010).

56. The Leprechaun represents the University of Notre Dame. *Traditions: The Leprechaun*, UND.COM, <http://www.und.com/trads/nd-m-fb-mas.html> (last visited Apr. 10, 2010).

57. Uga, an English bulldog, is the mascot at the University of Georgia. *The History of Uga*, GEORGIA DOGS MEDIA.COM, <http://georgiadogsmedia.com/projects/Uga/uga-index.html> (last visited Apr. 11, 2011).

58. *Tusk: The Razorback Live Mascot*, ARKANSAS RAZORBACKS.COM, [http://www.arkansasrazorbacks.com/ViewArticle.dbml?DB\\_OEM\\_ID=6100&ATCLID=1514556](http://www.arkansasrazorbacks.com/ViewArticle.dbml?DB_OEM_ID=6100&ATCLID=1514556) (last visited Mar. 8, 2010).

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *The History of Uga*, *supra* note 57.

65. *Id.*

University.<sup>66</sup> In 1892, a goat represented the University.<sup>67</sup> Then, in 1894, a student donated her Bull Terrier as a campus pet and mascot to a fraternity.<sup>68</sup> The bulldog tradition began in 1944 with Mr. Angel, who represented the team until 1946, followed by Butch from 1947 to 1950, Mike from 1951 to 1955, and then the Uga tradition began.<sup>69</sup> Uga VII was the mascot for the 2008–09 season.<sup>70</sup>

The University of Colorado also has its own history and tradition of live, nonhuman animal mascots. Currently, two buffaloes, Ralphie IV and Ralphie V, share the task of representing the school.<sup>71</sup> Part of the job involves leading the football team onto the field at the beginning of the game and at the beginning of the second half.<sup>72</sup> The school itself states, “[i]t is truly one of the special sights that exist anywhere in college or professional sports, especially for opposing teams, who often stop in their tracks watching the massive buffalo round the end zone and head directly at their sideline.”<sup>73</sup> The University held a contest in 1934 to select the school nickname and started the buffalo tradition.<sup>74</sup> During the 1934 season, the students rented a buffalo calf and his keeper for the final game of the season, during which four students were required to keep the calf under control.<sup>75</sup> The school then began using live buffaloes from time-to-time, and the buffaloes were either kept in pens on the field or driven around the field in a cage.<sup>76</sup> The original Ralphie was donated in 1966, and Ralphie would normally run around the field, led by five sophomore students.<sup>77</sup> Similar to the University of Arkansas, the University of Colorado offers a way for fans to donate to the Ralphie Mascot Program, but Colorado also offers a “Here Comes Ralphie” DVD and the chance to become the “Ralphie Handler.”<sup>78</sup>

Mike, a Siberian Bengal tiger, represents Louisiana State University

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66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *The Greatest College Mascot Tradition: Ralphie*, CUBUFFS.COM, [http://www.cubuffs.com/ViewArticle.dbml?DB\\_OEM\\_ID=600&ATCLID=24639](http://www.cubuffs.com/ViewArticle.dbml?DB_OEM_ID=600&ATCLID=24639) (last visited Mar. 8, 2010).

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

(LSU).<sup>79</sup> The LSU student body bought the first Mike for \$750 from the Little Rock Zoo.<sup>80</sup> In 2005, the University built a habitat for the tiger between Tiger Stadium and the Pete Maravich Assembly Center.<sup>81</sup> The 15,000-square foot habitat includes plants, a live oak tree, a waterfall, and a stream.<sup>82</sup> There is also a backdrop of an Italian tower.<sup>83</sup> Before each home game, Mike is parked in his cage next to the opponents' locker room so that the opposing team must pass him.<sup>84</sup> The tradition also includes Mike being brought out in his cage with the LSU cheerleaders on top of the cage before each home game.<sup>85</sup> In the past, people would pound on the cage in order to make Mike roar, but that practice was discontinued after the school received complaints of cruelty.<sup>86</sup> Although Mike used to travel with the team, an incident in 1970 put an end to his travel when his cage overturned on a highway.<sup>87</sup> He has traveled only four times since the accident: to a Mardi Gras parade in 1984, to the 1985 Sugar Bowl, and to two basketball games at the Superdome.<sup>88</sup> Additional incidents have included a kidnapping of Mike I by Tulane students, as well as pranksters in the mid-1980s who freed Mike IV before an LSU game.<sup>89</sup> While roaming free, Mike IV toppled small trees and was tranquilized by police while trapped in the track stadium.<sup>90</sup>

Other animals that have been put in the spotlight include the following: (1) Smokey IX, a Bluetick Coonhound for the University of Tennessee; (2) Butler Blue II, an English Bulldog for Butler University; (3) Bevo XIV, a Texas Longhorn steer for the University of Texas; (4) War Eagle VII, a golden eagle for the University of Auburn; (5) Mach 1, a falcon for the Air Force Academy; (6) Traveler VII, an Andalusian horse for the University of Southern California; (7) Raider, Ranger II, and General Scott, three mules that represented Army Athletics; (8) Whitepaw's Arlut Spirit of Gold Dust (Spirit), an Alaskan Malamute for the University of Washington; (9) Judge Joy and Sue, two black bears for Baylor University; (10) Reveille VIII, a Collie for the

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79. *LSU's Live Tiger Mascot, Mike VI*, LSUSPORTS.NET, July 8, 2007, [http://www.lsusports.net/ViewArticle.dbml?DB\\_OEM\\_ID=5200&ATCLID=177271](http://www.lsusports.net/ViewArticle.dbml?DB_OEM_ID=5200&ATCLID=177271).

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

University of Texas A&M; and (11) Rameses XVIII, a horned Dorset sheep for the University of North Carolina.<sup>91</sup> All of these animals are put in the spotlight in front of tens of thousands of fans and used for entertainment purposes away from their natural habitats.

### *B. Animal Mascots Being Mistreated*

There is evidence that animals used as mascots have been mistreated whether waiting for game day or by being paraded in front of thousands of screaming fans. Since the 1970s, Southern University and A&M College (Southern) has used live jaguars as its mascot.<sup>92</sup> In 2004, jaguar mascot Lacumba II was found dead in her cage.<sup>93</sup> In order to replace her, Southern was looking for someone to donate a jaguar to the school.<sup>94</sup> Southern found a replacement and now advertises that visitors can see the jaguar's home during campus tours.<sup>95</sup>

Mike, LSU's Bengal tiger, is paraded on game day in front of tens of thousands of football fans in a small cage.<sup>96</sup> Cheerleaders have stood on top of the cage as the cage is wheeled around the football field.<sup>97</sup> During a radio broadcast, a LSU-affiliate once said that Mike was "zapped repeatedly with a cattle prod to make him angry so that he will roar," and as mentioned earlier, people used to bang on his cage to get him to roar.<sup>98</sup> The United States Department of Agriculture ordered LSU to improve Mike's enclosure and also stated that bringing a tiger out in front of such large crowds "is an extremely dangerous procedure which leaves the university at great political and legal liability."<sup>99</sup> Yet, LSU continues to ignore such comments and showcases Mike the tiger as LSU's mascot.<sup>100</sup>

Since the 1920s, Baylor University (Baylor) has used live bears as its

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91. Jacob Osterhout, *The 15 Best Live Animal Mascots in College Sports*, EXAMINER.COM, Oct. 16, 2008, <http://www.examiner.com/x-726-College-Sports-Examiner~y2008m10d16-Death-of-a-tiger-Memphis-mascot-dies>.

92. *Live-Animal Mascots Get an 'F'*, PETA.ORG, <http://www.peta.org/campaigns/school-mascot.asp> (last visited Apr. 20, 2010).

93. *Id.*

94. *Id.*

95. *FAQ's About Campus Tours*, SUBR.EDU, <http://web.subr.edu/index.php?id=329> (last visited Apr. 20, 2010).

96. *LSU's Live Tiger Mascot, Mike VI*, *supra* note 79.

97. *Id.*

98. *Live-Animal Mascots Get an 'F'*, *supra* note 92.

99. *Id.*

100. *See LSU's Live Tiger Mascot, Mike VI*, *supra* note 79.

mascot.<sup>101</sup> Since 1932, Baylor has used over fifty live bear cubs as mascots, and the school replaces the bear cubs every two years.<sup>102</sup> The bears live in a campus facility, which the students call “The Pit,” and are taken out to go to football games, basketball games, volleyball games, and various other events.<sup>103</sup> Instead of spending their cub years learning how to forage, fish, and climb trees with their mother, these cubs can be heard crying and exhibiting neurotic behavior typical of caged animals.<sup>104</sup> An expert on captive wildlife has stated that “the conditions experienced by both bears are outdated, cruel, and do nothing at all to satisfy their biological and behavioral requirements.”<sup>105</sup> However, just like LSU, Baylor continues to parade these bears as a symbol for the school.<sup>106</sup>

### *C. Universities and Animal-Related Laws*

As previously mentioned, live animals that act as university mascots can be cared for by the university or by an individual person, but in the end, these animals are used to represent the university on a regular basis. Therefore, the universities, as well as the persons that care for such mascots, are responsible for the animals’ treatment and care. Should these animals be mistreated, the universities could face claims under the AWA and the state animal anti-cruelty statutes.

The AWA can apply to universities for the same reason it applies to exhibitors of animals, such as zoos.<sup>107</sup> In comparing zoos to universities, both organizations care for animals for the purpose of showing the animals in front of crowds. Although the zoos show the animals year-round, the universities mainly show the mascots only at football games or possibly basketball games. However, there are exceptions, such as Mike the Siberian Bengal tiger, who has an enclosed environment on LSU’s campus and is therefore, on display year-round.<sup>108</sup> Southern also advertises its jaguar mascot’s habitat.<sup>109</sup> Therefore, like zoos, universities are showing these animals as exhibits, whether it is in an enclosed environment similar to a zoo or whether it is on

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101. *Live-Animal Mascots Get an ‘F’*, *supra* note 92.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. See *Traditions*, BAYLORBears.COM, <http://www.baylorbears.com/trads/bay-bearname-mascot.html> (last visited Apr. 20, 2010).

107. Animal Welfare Act, 7 U.S.C. § 2132 (2011).

108. *LSU’s Live Tiger Mascot, Mike VI*, *supra* note 79.

109. See *FAQ’s About Campus Tours*, *supra* note 95.

football game day and the animals are paraded around in a cage or on a leash in front of tens of thousands of fans.

The universities may also be subject to state anti-cruelty statutes if any animal mascot is mistreated. As mentioned earlier, persons or organizations that do not properly feed, house, or care for animals or who physically harm, abandon, or kill animals may be convicted of felony or misdemeanor criminal charges under various state statutes. The state statutes differ, so the fine or penalty will vary according to which state the university is located in.

However, should a claim be brought against a university under the AWA or a state anti-cruelty statute, it would probably be a question of fact of who was responsible for the care of the mascot. In fact, People for the Ethical Treatment of Animals (PETA) has brought attention to the use of such animals as mascots, although focusing more on exotic animals, and provides contact information for various university chancellors and presidents so that people who want to submit their protests can do so.<sup>110</sup> Although this implies that the university chancellors and presidents are responsible for the animals used as mascots, it seems highly unlikely that the universities would deny that they are ultimately responsible for the treatment of such mascots. Therefore, a factual determination would need to be made about who at the university is responsible for the animal, and it is in each university's interest to designate the caretaker and prescribe in writing that the mascot must be cared for pursuant to the AWA and state laws. All it takes is one university to be charged with mistreating a live animal mascot before all universities are scrutinized for their treatment of such mascots. Thus, universities must be proactive and establish clear guidelines on the care of the mascots or institute a ban on the use of live animals as mascots. There is simply too much risk to the universities to continue to ignore the risks involved in using animals as mascots.

#### V. PAST, PRESENT, AND FUTURE OUTCRIES

University mascots have received attention in the last few years because of the use of Native American mascots. Although such scrutiny started long ago, it was not until a few years ago that the universities and the National Collegiate Athletic Association (NCAA) took action regulating the use of such mascots. Although the outcry concerning such use started long before, some of the most notable action has occurred within the last five years. During this time, there has also been opposition to the use of animals in entertainment. Increasingly, cases have been brought to the courts concerning the use of

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110. See *Live-Animal Mascots Get an 'F'*, *supra* note 92.

animals in various forms of entertainment. So, the question is when will the two connect, causing a public outcry concerning the use of live, nonhuman animals as mascots for collegiate athletics, or has it already started?

#### A. *Outcry Over Native American Mascots*

Eighteen universities have been affected by public scrutiny concerning the use of Native American mascots.<sup>111</sup> It is difficult to say when the public outcry against Native American mascots really began, but in 2003, the newspaper *Indian Country Today* reported that there were Native Americans who found the images of the mascots disparaging.<sup>112</sup> After the public debate concerning such mascots seemed to be gaining momentum, in 2005, the NCAA enacted a regulation banning the use of Indian images from championship games, thereby affecting the eighteen universities.<sup>113</sup>

Various Native American tribes had joined together in condemning Native American mascots.<sup>114</sup> This includes the Oklahoma Seminole Tribe, which is a member of the National Congress of American Indians.<sup>115</sup> However, not all Native Americans are against such use. For example, Jim Shore, a member of the Seminole Tribe of Florida stated “[t]he Seminoles have no problem with the use of the name or symbols or mascot.”<sup>116</sup>

It is not the intent of this article to go into the details of the debate concerning Native American mascots. What is important is that the NCAA and member schools made the decision to change the regulations of Native American mascots, and one can only speculate the reasons behind the change.

#### B. *Outcry Over Animals Used for Entertainment*

Now that attention has been brought to the type of mascots used in athletics, the use of live animals as mascots will likely be scrutinized. Animal rights groups have already shown concern about animals used for commercial purposes, including circuses and zoos and television and film. The following cases demonstrate the increase in animal law litigation as well as the increased awareness of the treatment of animals for commercial purposes. These cases also demonstrate that they are analogous and can be used as a claim against a

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111. Darryl Fears, *Indian Mascots: Matter of Pride or Prejudice?: Even Tribes are Divided as NCAA Issues Edict*, WASH. POST, Aug. 14, 2005, at A3.

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

university that is using a live, nonhuman animal as a mascot.

### 1. Circuses and Zoos

People often question whether animals really belong in circuses and zoos. On the one hand, there is an argument that zoos are critical for conservation, research, and education.<sup>117</sup> On the other hand is the idea that zoos and circuses are not the animals' natural habitats<sup>118</sup> and the animals are subjected to discipline, training, and cruelty, which is unnecessary and oftentimes unacceptable.

An example of a case against the placement of animals in zoos occurred in *Born Free USA v. Norton*.<sup>119</sup> In this litigation, the plaintiffs were several organizations and two individuals who were interested in the welfare of elephants.<sup>120</sup> The plaintiffs protested the decision of the United States Department of the Interior and the Fish and Wildlife Service, which collectively issued permits to the San Diego Zoo and the Lowry Park Zoo for the importation of eleven elephants from Swaziland.<sup>121</sup> The zoos had made arrangements for the elephants and were issued import permits, and Swaziland had received the necessary export permits; however, the plaintiffs sought to enjoin the issuance of the permits.<sup>122</sup> The plaintiffs' arguments focused on the removal of the elephants from their herd and, specifically, the detriment that such removal would cause to the remaining elephants and their social structure.<sup>123</sup> It was further argued that this removal would also result in the depletion of Swaziland's elephant population by one-third.<sup>124</sup>

In evaluating this case, the court undertook a balancing of the respective harms to the plaintiffs, the defendants, the zoos, and the public.<sup>125</sup> Of particular interest is what the court said about the public harm:

The zoos aver that sustaining a viable population of African

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117. Jennifer Horton, *Are Zoos Good or Bad for Animals?*, HOWSTUFFWORKS.COM, <http://animals.howstuffworks.com/animal-facts/zoos-good-or-bad.htm> (last visited Apr. 25, 2010).

118. Rochelle Regodon, *Wild Animals Don't Belong in Zoos*, THESTAR.COM, Mar. 5, 2010, <http://thestar.com.my/news/story.asp?file=/2010/3/5/focus/5796694&sec=focus>.

119. *Born Free USA v. Norton*, 278 F. Supp. 2d 5 (D.D.C. 2003). Although this decision was later found moot and therefore has no precedential value, it presents unusual legal issues that arise when zoos and exhibitors attempt to import animals. WAISMAN, *supra* note 2, at 418.

120. *Born Free USA*, 278 F. Supp. 2d at 8.

121. *Id.*

122. *Id.* at 9.

123. *Id.* at 13.

124. *Id.*

125. *Id.* at 24-27.

elephants in North America will serve the public interest because the public will be able to view the elephants and because such viewing will promote and encourage conservation of the world's resources. But however sensible that may seem, it may be that the public (or a substantial portion thereof) sympathizes with plaintiffs' view that zoos are improper places to keep wild animals and that the elephants are even better off culled than at these zoos.<sup>126</sup>

This simple statement by the court explicitly contrasts the competing interests of animals used for commercial purposes, such as zoos. However, these interests also come into play with circuses or other exhibitors that use live animals in their acts.

In *Hagan v. Feld Entertainment, Inc.*, Hagan was hired to work for the circus as a lion handler.<sup>127</sup> In 2004, the circus train left Phoenix, Arizona on its way to Fresno, California and traveled through the Mojave Desert, where temperatures can reach over 100 degrees.<sup>128</sup> At 8:30 a.m., Hagan watered down the lions, but at around 9:30 a.m., Hagan contacted the Train Master to stop the train so he could water down the lions again due to the temperatures.<sup>129</sup> Hagan's request was ignored, and the Train Master told Hagan that the train would not stop because it was behind schedule.<sup>130</sup> "Between 8:30 a.m. and 2:45 p.m. the lions had no drinking water and they were not watered down."<sup>131</sup> When the train was stopped and Hagan was able to reach the lions, he found a two-year-old lion named Clyde unresponsive and lying in the fetal position with his tongue hanging out.<sup>132</sup> As Hagan attempted to help Clyde, the lion died.<sup>133</sup> After he contacted the appropriate people, he was told to move the lion into the meat truck and not to say a word to anyone.<sup>134</sup> Hagan was later terminated after discussing the circumstances of the lion's death.<sup>135</sup>

Although the case primarily deals with the question of wrongful discharge,

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126. *Id.* at 26-27.

127. *Hagan v. Feld Entm't, Inc.*, 365 F. Supp. 2d 700, 704 (E.D. Va. 2005).

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.* at 704-05.

135. *Id.* at 705.

the case is based on the circus' violation of the AWA for the lack of proper care for the animals.<sup>136</sup> Hagan alleged that the circus failed to abide by the AWA, in particular the "failure to observe animals at regular intervals, failure to water animals properly, failure to maintain proper handling temperatures, and failure to prevent physical distress . . . ."<sup>137</sup> The court found that Hagan presented a prima facie case for wrongful discharge and denied the defendant's motion to dismiss.<sup>138</sup> The case demonstrates the risks involved in handling live, nonhuman animals in a business. The circus explicitly decided to forgo the well-being of the animals for the sake of the train arriving at its destination on time. Although this case was brought to court, one may wonder how many times the welfare of animals is pushed aside for the sake of business and how many animals are injured or die as a result.

## 2. Television and Film

Circuses and zoos are not the only instances where animals are treated improperly in violation of state and federal law. Television and film often use live, nonhuman animals; some of those animals are more famous than the actors. Lassie is just one example of an animal used for such forms of entertainment. But, as mentioned with the cases for circuses and zoos, there is significant concern by animal advocates about the training of animals used for television and film and what exactly happens behind closed doors.

The Film and Television Unit of the American Humane Association is the entity responsible for monitoring how animals are treated in movies, television, commercials, and music shows.<sup>139</sup> The group was granted the sole authority for this in 1980 in a contract between the Screen Actors Guild (SAG) and producers.<sup>140</sup> But documents revealed in 2001 stated that the group "lacks any meaningful enforcement power under the SAG contract, depends on major studios to pay for its operations and is rife with conflicts of interest."<sup>141</sup>

One case involved the Animal Legal Defense Fund and the Chimpanzee Collaboratory, who, along with two individuals, sued an animal trainer in the entertainment industry.<sup>142</sup> The suit alleged that the animal trainer beat,

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136. *Id.* at 708.

137. *Id.* at 709.

138. *Id.*

139. Ralph Frammolino & James Bates, *Questions Raised About Group that Watches Out for Animals in Movies*, L.A. TIMES, Feb. 9, 2001, at A1.

140. *Id.*

141. *Id.*

142. See generally Complaint, Animal Legal Def. Fund v. Yost, No. ED CV 05-01066 RGK (E.D. Cal. Nov. 18, 2005), available at [http://www.animallaw.info/pleadings/pb\\_pdf/pbuscayost\\_](http://www.animallaw.info/pleadings/pb_pdf/pbuscayost_)

punched, and continuously abused animals under his control, such as chimpanzees and other exotic animals.<sup>143</sup> The complaint alleged that “[c]himpanzees suffer emotional and physical pain ‘just as we do and often for the same reasons’ . . . . When faced with abuse, they respond like humans subjected to abuse. They cry and scream, and utter sounds with distinct meanings.”<sup>144</sup> This is a common theme, particularly behind complaints involving chimpanzees: the animals can feel pain similar to humans. This case follows the cases involving circuses and zoos, where on the outside the animals are questionably treated fine, but behind closed doors they are not provided food or water or are mistreated.

#### *D. Outcry Over Live Animals as Mascots*

These cases demonstrate the public awareness over the mistreatment of animals and that some groups have become active to stop it. This section will discuss how the recent regulations of Native American mascots have paved the way for regulations of live animal mascots. This section will demonstrate that there is already a public outcry over the use and mistreatment of such animals as mascots, and then, it will propose how the NCAA and universities should be proactive in creating regulations banning or at least restricting the use of such animals.

There are also other examples of public interest groups protesting the mistreatment of animals. For instance, PETA has suggested that the Pennsylvania’s Groundhog Day festival should replace Punxsutawney Phil, the groundhog, with a robotic stand-in.<sup>145</sup> Although the president of the Inner Circle of the Punxsutawney Groundhog Club says that the animal is “treated better than the average child in Pennsylvania,” PETA alleges that it is unfair to the animal to keep it in captivity and then once a year subject it to large crowds and bright lights.<sup>146</sup> With this kind of attention on a groundhog that is famous only once a year on Groundhog’s Day, one has to wonder when there will be similar protest of live animal mascots, particularly since there are significantly more animals affected in college athletics.

Due to the recent attention to Native American mascots, mascots in general are receiving more attention. Between the cases involving animal

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complaint.pdf.

143. WAISMAN, *supra* note 2, at 446.

144. *Id.*

145. *PETA Proposes Robotic Groundhog for Pa. Festival*, NBC4I.COM, Jan. 29, 2010, [http://ffn.nbc4i.com/cmh/news/national/article/peta\\_proposes\\_robotic\\_groundhog\\_for\\_pa\\_festival/30917/](http://ffn.nbc4i.com/cmh/news/national/article/peta_proposes_robotic_groundhog_for_pa_festival/30917/).

146. *Id.*

treatment, the increase in state animal anti-cruelty statutes, and the changes to the use of Native American mascots, universities should be proactive. Universities should either propose a total ban on the use of live, nonhuman animals as mascots or impose strict policies governing the use of live, nonhuman animals as mascots. At minimum, when the protests do reach the universities, they will be able to show that they, through the NCAA, care about the mascots' well-being. The ideal would be to propose a total ban to the NCAA so that it can be voted on and finalized into a policy that is binding on all member schools. Although universities that have such mascots will probably not support such an initiative, it is important to remember that, at first, universities did not support the new regulations for Native American mascots and yet there are now regulations. Therefore, the controversy over the Native American mascots shows that it is possible to change decades of tradition.

In order to convince the universities or the NCAA to make such changes and to institute regulations over the use of animals as mascots, animal rights groups will probably use the same arguments used in the cases mentioned above concerning the use of animals for entertainment. For instance, a tiger does not belong in a stadium in front of tens of thousands of fans at a football game, in a cage, with cheerleaders jumping on top of the cage. The Colorado buffalo should also not be led out onto a field in front of screaming fans because it could create a dangerous situation. One can also question the use of an eagle or black bears and wonder whether these animals really belong in such environments.

A place to start would be to eliminate only exotic animals as mascots, but then, it would be difficult to draw a line between domesticated animals, such as dogs and other animals. Animals such as pigs and birds can be pets, but the animals in question are wild hogs and eagles. One can also argue that there is nothing wrong with a person in a costume being a mascot. Many universities have such mascots, and they can perform the same, if not more, functions as an animal in front of screaming fans. It is also unlikely that the fans would care whether the mascot is an animal or a costumed person. The goal of watching a football game and participating in school spirit can be achieved by a costumed person, without the need to use an animal as the mascot. There is no reason for universities to continue to put animals in these conditions, especially when most of the animal mascots are not domestic animals.

#### IV. CONCLUSION

An important part of the college experience is tradition. It allows generations of alumni to relate their common experiences to the school.

However, there comes a point when tradition needs to respond to changing environments. It is only a matter of time before opposition to live animal mascots occurs, and universities need to be ready. At minimum, the universities need to ensure that their animal mascots are properly cared for. This means appointing a person to oversee their care and having a written policy on the ethical treatment of the animals pursuant to AWA and all state laws.

A better alternative would be to retire Uga and others like him and substitute human mascots in animal suits. Are Brutus the Buckeye or Bucky the Badger any less effective in creating crowd spirit or school tradition than the University of Colorado's buffalo? Of course they are not. Universities should be proactive and pass an NCAA policy that would prohibit or restrict the use of nonhuman animals before the opposition escalates as it did concerning Native American mascots. Currently, universities that use live, nonhuman animal mascots are a minority, but the few animals that are affected are a few too many. Moreover, those universities can continue with their traditional mascot, except now, for example, Mike the tiger would be a student in a tiger suit instead of a real tiger. Tradition must change and evolve with the times.