



STATE BAR OF MICHIGAN

Animal Law Section

Fall 2003



Words from the News Room

The ALS plans to offer a one-day symposium for Michigan attorneys on the subject of representing non profit organizations, particularly those benefiting animals. It is scheduled for Friday afternoon, March 12, 2004; plans are to have it at Detroit College of Law at Michigan State University, where the past two conferences have been held. Details will be sent to you in the near future.

Also, don't forget the annual ALS Retreat, which will take place on the weekend of May 14-16, with the meeting on Saturday the 15th. Chairperson Bee Friedlander is working on its location. One possibility is the Howell Nature Center. Details regarding the Retreat will be sent to you as soon as possible. All members are welcome to attend the meeting and, as space allows, related activities.

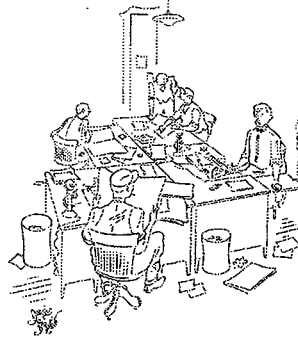
There is much interest in the Dove Bill, which may be resolved by the time you read this. ALS would like to hear from you on your position concerning this or any other animal-related legislation. The plan is to print differing opinions in the next Newsletter. Elsewhere in this Newsletter are charts outlining bills currently before the Michigan and U.S. legislatures. Both state and federal websites are included for additional information.

The ALS Council is to meet on Saturday, December 6, 2003 at 10 a.m. at the State Bar Building in Lansing.

Finally, ALS encourages members to contact the council by email with any of their ALS questions or concerns. We are always looking for a good article, so please let us know if you have one or will write one for the Newsletter.

Thanks,

The Animal Law Council



Words from the Chair

Bee Friedlander

This article reports on recent developments in Michigan law of potential interest to Animal Law Section members from the judicial and administrative arenas, as well as updates on Section activities and developments in the growing field of animal law.

A recent Livingston County "pet custody" Arbitration Opinion and Award provides guidance to analyze what is becoming an increasingly important issue in many divorces. The arbitrator,

Brighton attorney Richard Trost had to decide which of the divorcing parties would keep Sidney, one of three cats acquired during the marriage and the only one whose placement was at issue. Defendant husband testified that Sidney was "his" cat. Plaintiff wife claimed that he was one of the "family cats" and it would be in his interest to remain in familiar surroundings with the other two cats. Both testified to the importance of the cat to them.

Noting at the outset that there are no Michigan precedents for applying a "best interest of the animal" standard, the arbitrator could have used a property analysis and determined that the cat would go to the party whose claim to ownership was superior. He took a different approach and based his decision on an analysis of each party's motives in wanting to keep the cat. After hearing over four hours of testimony, including the parties themselves, a veterinarian expert, and a rebuttal witness, Trost concluded that Plaintiff's motivation in seeking custody of Sidney "is to secure the best interests of Sidney and, of course, to avoid losing a cat to which she has become emotionally attached." Compared with husband's motives, which were to punish his wife, the arbitrator concluded that "I cannot, in good conscience, award Sidney to the Defendant."

Continued on page 6

STATE BAR OF MICHIGAN ANIMAL LAW SECTION

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Legislative Committee Update

By Tom Boven

The legislative committee of the Council has maintained a dialogue with John Stewart, a legislator from Plymouth, and with other animal issue advocates. The committee has commented on both proposed federal and state legislation, as deemed advisable by the Council. From a state law perspective, we believe there is a need to improve upon the language in the animal cruelty statutes, and to promote animal interests. One avenue is to encourage the adoption of a special vehicle license plate, which is aimed at promoting animal awareness. The secretary of state may take the position that the plate is a good idea, but to introduce the plate there will have to be an underwriter of the initial costs, which typically are in the range of \$18,000. Many so called vanity plates have been financial losers for the state, and understandably, the plates should pay for themselves. Other legislative areas of interest include attempting to deal in an appropriate manner with the sale of dogs and cats from pounds for research, as opposed to an initial effort to adopt the animals to caring people who desire a wonderful animal companion. The Council has conditionally approved support for a seven-day effort to adopt animals, subject to local animal control agencies input. A controversial issue that has been addressed is whether to oppose dove hunting.

Over the years a vocal minority in the state has attempted to make the dove a game bird. The legal issues deal with whether the legislature should enact legislation to create a dove-hunting season, or if the determination of whether a hunting season is adopted is to be delegated to a committee of the DNR. Interestingly enough, some hunters have objected to a dove hunting season on the basis that a dove is not really a game bird, and the dove exists in the same category as songbirds. One of the things the legislative committee of the Council would like to encourage is open and fair discussions among the Section members of the merits, or lack thereof, of pending legislation. Legislation to enhance animal welfare, and rights, is one of the stated purposes of the Section. We have had many section members volunteer to be involved in the legislative committee work. One of the legislative issues that has an impact far beyond the obvious are the pending "Racino" bills, which have been introduced to provide other wagering opportunities at horse racing tracks. The revenue from horse racing helps support youth 4-H programs, and educational programs about animals. If race tracks diminish their financial impact, then the opportunity for youth to become knowledgeable about animals and animal matters might also be lessened. So, whether you are for it, or against it, legislation is what lawyers deal with daily, and our Section needs to be involved in addressing the legislative process.

See the legislation tables on pages 7 & 8.

Defining the Horse: Companion Animal or Livestock?

By M. Jean Ligon

"There is nothing so good for the inside of a man as the outside of a horse."
Wayne Newton



Horse owners are currently eligible for emergency relief under the Consolidated Farm and Rural Development Act in case of disasters, just like owners of other livestock animals. Any action that removes the livestock

Apparently, a lot of people agree with that statement, since the horse population in the United States (6.9 million¹) and in Michigan (at least 130,000²) has not appreciably diminished from the time when "horse power" was a very literal description of what powered the country's transportation and commerce. The difference between then and now, however, is that horses used to be necessary to day-to-day activities. People own horses today because they choose to, because they derive pleasure from having horses in their lives.

There is afoot a love affair with the horse that continues unabated even by increasing urbanization. Today, one in every 35 Americans is involved with horses.³ Some 250 magazines, newspapers and newsletters are devoted to them. Twenty-seven universities have equine veterinary schools, and some—including Michigan State University—continue to breed horses as part of their program. At last count, almost two million people owned horses, and who-knows-how-many-more wish they did.

Certainly, many a horse owner considers his/her horse a close companion. Such owners enjoy a relationship with their horses that is as close and rewarding as any shared with the family dog or cat. But this shared camaraderie does not necessarily lead to the conclusion that the horse's legal status should be changed from livestock to companion animal. Before taking that leap, one must consider the potential ramifications of such a change.

Redefining horses out of their federal and state classifications as livestock would rob them of the protection afforded by the regulatory framework that currently underpins equine welfare in the United States and of the network of federal, state and local authorities that enforces these laws and regulations. Welfare protection would fall to local animal control authorities that are already significantly overburdened. Furthermore, horses would no longer benefit from the federal and state monies spent on research for equine disease prevention and assistance to state and local research and regulatory programs. Such research is dependent upon the continued classification of horses as livestock animals.

designation of horses would jeopardize this much-needed disaster relief now and in the future.

The international market provides a price floor within the equine industry that ensures every horse a baseline economic value at every stage of its life cycle. This is important because it prevents serious welfare problems such as overpopulation and it deters neglect, which could become a significant problem if horses were no longer of any value.

Michigan's Right to Farm Act protects the ability of horse owners to own and keep horses only so long as they remain a livestock animal. Without the protection of this and similar legislation, there will be fewer and fewer places that accommodate horses, increasing the numbers of excess horses and, thus, the likelihood of neglect and abuse. The ultimate result of zoning out horses could eventually be to reduce access to them to the extent that most people would see real live horses only in petting farms, circuses, zoos and the like. Clearly, defining horses as companion animals does nothing to improve that prospect, and might actually remove even those havens from them.

The horse has long been considered livestock. This has not prevented horse owners from enjoying their horses as companions. Changing the legal definition of horses to companion animals under state law, however, could adversely affect not only horse owners and breeders but also the horses themselves in a number of important ways without any assurance that they will be better protected.

Endnotes

- ¹ American Horse Council
- ² Michigan Department of Agriculture
- ³ According to a 1996 study commissioned by the American Horse Council Foundation, from which these statistics were drawn, 7.1 million people in the United States are involved in the horse industry as owners, grooms, trainers, veterinarians, farriers, judges, stewards, manufacturers and suppliers of horse products, etc.

Treasurer's Report for 2003 Fiscal Year (FY) — 11 Months ended August 31, 2003

The purpose of this report is to assure the members that the Animal Law Section is very viable with a healthy financial status and your section dues are being spent responsibly. The information is based on the first eleven months of the fiscal year as the final year-end figures will not be available for several weeks. We expect to have some September expenses yet nothing major. The following is a fair and accurate financial picture of the Section.

The expenses related to the general categories below have been consistent with the amounts budgeted for the activities during the year. For instance, we estimate an issue of the newsletter to cost \$400 to \$500 and the issue published this year cost \$433. I have found no "surprise" expenses during the Fiscal year.

Therefore, I would like to provide you with a brief summary of the following:

- Section's dues and expenses for the 2003 FY
- Section's overall financial condition at the end of 2003 FY

Dues and expenses were as follows:

- Income from dues was \$3,565 for the fiscal year representing about 150 members and affiliate members.
- Net expenses of about \$2,143 were in three general categories:
 1. Seminar net expenses totaled about \$1,290 (comprised of total expense of \$2,250 partially offset by seminar revenue of \$960). Our main seminar expenses were travel for the speakers, mailings, and advertisements. Our section members paid a lower rate for the seminar. We were not trying to "make money" with the seminar as we consider it an essential section function related to education.
 2. The single issue of the newsletter including printing and mailing cost \$433. We plan two issues of the newsletter in the upcoming fiscal year and will have two issues in this calendar year.
 3. We had other expenses of \$420, which were primarily related to several Section Council teleconference calls, plaques for the Brandi Award recipients, and other communications and mailings expenses. (Note that the teleconference calls

were made with very favorable rates arranged by the State Bar of 7 cents per minute per caller – a very low rate compared to other telephone companies that charge 15 to 50 cents per minute per caller.)

Our overall financial condition at the end of the first eleven months of the 2003 FY was sound with a Section balance of \$9,678 – an improvement of \$1,422 over the end of the 2002 FY.

I have reviewed all expenses and consider them to be reasonable and appropriate and have paid special attention to relating expenses to Section actions. The entire Council is very concerned that any costs incurred be reasonable and appropriate and will continue to act accordingly.

I want to mention the Annual Section Council Retreat held in May – this year's meeting was on a Saturday and during the day only. This is an opportunity for the Council members to have a regular meeting as well as to discuss future direction and plans for the section. **I want to assure you that no section funds are spent for the retreat and all related expenses are paid by the Council members themselves.**

Finally, I will no longer be the Treasurer after September 30, 2003 after a two-year term. I can look back and state that:

- The financial status of the section is sound.
- We understand our revenue and expenses in detail.
- We have made every effort to identify the revenue and expenses by category so that the Section Council understands any financial impact of their decisions.

Wanda Nash is the new Section Treasurer and I will assist in the transition of records and information to her. We are aided in accounting by the State Bar of Michigan Financial Group (as are all sections), which does an excellent job of providing timely and accurate financial information to us.

If you have any questions, please write me at donalddgarlit@yahoo.com.

Respectfully submitted,

Donald Garlit
October 22, 2003

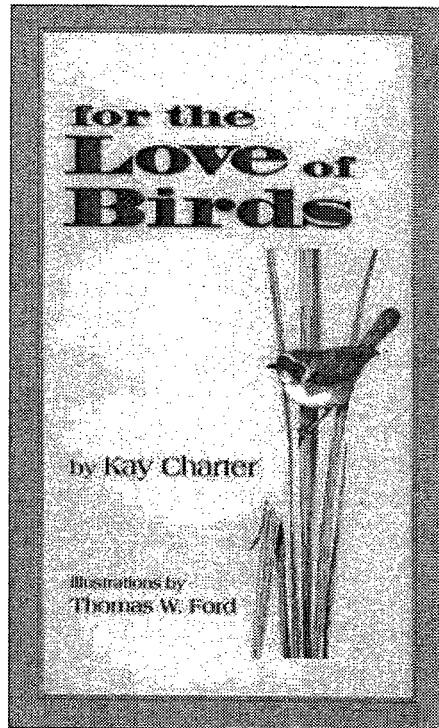
Book Review

For The Love of Birds - by Kay Charter

Reviewed by Suzanne Stephan

Songbirds migrating through Michigan's Leelanau peninsula — and those who are lucky enough to live in the neighborhood — will find themselves in an avian habitat their feathered friends can only dream of. Thanks to a passionate commitment developed by Kay Charter more than 20 years ago - which led to the creation of Charter Sanctuary, a 47-acre preserve that includes a creek running through wet woodland, a broad cattail pond, rolling meadows and a hardwood forest area — songbirds enjoy an environment tailored to their needs. Ms. Charter and her husband spent nearly all of their financial resources, and considerable time and energy, in order to preserve and maintain a native habitat for the vast variety of songbirds that have become their life's work.

The detailed descriptions of many of these birds, as well as the excellent illustrations by Thomas W. Ford, are not only informative, but make it easy for a reader to visualize both the property and its inhabitants. But it becomes clear that the intended inhabitants are songbirds and not other birds — nor other animals who are native to the area but are predators. Ms. Charter's discussions of how she manages predation in the sanctuary are somewhat disconcerting, but exemplify a common dilemma faced by most persons who love and care for animals, i.e., how to balance the needs of competing species in an environment. For the author, there is no question that buying a new gun so that she can kill all of the squirrels she finds on the property is perfectly acceptable, and necessary in order to protect the songbirds. Similarly, raccoons should be eliminated to save the piping plover, and a pellet gun is the appropriate response to starlings who had found the nest box of a pair of flickers and removed their eggs. Starlings also invaded the nest box of some great crested fly catchers. This prompted the author to use her garden hose to flood the nest box in which the starlings had laid their eggs; later she saw that the starlings had hatched and that their parents were bringing insects to them in the nest box. She



Published by Crofton Creek Press
in 2000, 206 pages

thought that she had drowned the baby starlings and was unhappy to see their parents bring more insects to the box the following morning. By the afternoon, the young had fledged.

Similarly, pheasants found in the sanctuary had to be killed because they were exotic birds who took space intended for native birds; grouse, however, were welcome. These examples are jarring to read; they do, however, almost demand that the reader consider his own favorite animals and contemplate which should take priority in the scheme of wildlife protection. Don't many people enjoy watching the antics of squirrels as they leap from telephone line to branch and back again? Should pheasants be shot because somehow they have discovered the Charters' spectacular preserve? Even if starlings are not the favorites of bird-watchers, do the babies need to be drowned in order for the starling population to be

controlled? An interesting, and possibly unintended, aspect of Ms. Charter's book is the fact that this compelling issue of which species take priority over others is raised so frequently.

The book's appendices include a very good list of wildlife and conservation agencies and organizations, with their addresses and brief summaries of their missions and work. In addition, the author provides some useful tips for those who wish to make their backyards friendly for songbirds; for example, she advises that cats be kept inside, that bird feeders be squirrelproofed and that dead trees should not be cut down because many birds use them as nest sites. Among those who do are owls, nuthatches, chickadees and several varieties of duck. This information is what many readers will probably have expected to be the book's focus. While provocative in certain respects, *For The Love of Birds* reflects the tremendous range of knowledge of its author regarding songbirds, and her dedication to an impressive endeavor.

Words from the Chair

continued from page 1

This decision is notable. First, the arbitrator treated the matter with the seriousness it deserved: although there were other issues between parties, the placement of Sidney loomed largest. Second, he did not base his decision on standards applied to awards of personal property.

The case is *Wray v Brenoel*, 44th Circuit Court, Family Division, Case No. 02-1793-DO. Bonnie Miller, Howell attorney who represented Plaintiff wife, forwarded the decision. Her legal argument was based upon an amicus curie brief prepared by the Animal Legal Defense Fund.

"The presence of a particular breed of dog does not make a person ineligible for home insurance" according to the State's Insurance Commissioner in Bulletin No. 2003-07-INS, released September 5, 2003. Rottweilers, German Shepherds, Doberman Pinschers, chows and bull terriers are among the breeds that have caused a denial or exclusion of coverage, or cancellation of home insurance. At issue is the Essential Insurance Act, MCLA 500.2102 et seq. (the Act), which covers both "eligible persons" and group insurance. The analysis is different depending upon whether the insurance is being provided to an "eligible person" or to a group.

A recent amendment to the Act, Public Act 492 of 2002, excludes from the definition of "eligible person," one who seeks to insure a dwelling that has "physical conditions that clearly present an extreme likelihood of a significant loss under a home insurance policy," MCLA 500.2103(2)(i). According to the Commissioner, some insurers are using this provision to deny coverage to people with certain breeds of dog. This rule of eligibility, however, amounts to an underwriting rule and thus must be filed with the Insurance Commissioner pursuant to MCLA 500.2119. Because the eligibility rule has not been filed, the denial of coverage to an eligible person based on an "unfiled underwriting standard" violates the Act.

The decision notes that existing law sets forth permissible criteria under which insurers may refuse to issue or to renew insurance policies, MCLA 500.2117(2)(c)(i) and (ii). Thus "an insurer may nonrenew a policy or deny coverage if the dog on the premises has bitten a person or attacked another animal and has caused a liability claim to be paid under the policy. The coverage should not be conditioned on the breed of dog present, but only its bite history related to paid claims and after written notice to the policyholder."

The effect of the decision on group policies as opposed to "eligible persons," is more straightforward. According to the Commissioner: "A rule that only addresses a specific breed would not be allowed."

The Section has continued work on its "pro bono project," which would recognize animal law cases as part of the State Bar's pro bono program. On November 14, the Bar's Representative Assembly will consider a proposal to expand the definition of "pro bono" to more closely follow the ABA rule.

If adopted, attorneys would be able to provide pro bono services to charitable, religious, civic, community, governmental and educational organizations, as well as direct legal services to persons of limited means, and be able to take advantage of the benefits offered by the State Bar pro bono program. This recommendation was made by several groups and individuals, including the Pro Bono Involvement Committee and Access to Justice Task Force. The Section Council voted to support their recommendation, and sent a letter to the Representative Assembly urging its adoption.

Did you know?

- 33 law schools are offering animal law classes this academic year, including Detroit College of Law at Michigan State University. The University of Michigan Law School has an animal law seminar for first year students every other year.
- 41 states have now enacted felony animal cruelty statutes, including 5 states in the year 2003 alone. Compare with 10 years ago, when only 7 states had such a provision.
- Michigan sentencing guidelines categorize animal cruelty offenses as "crimes against society" (the other categories are crimes against a person, against property, involving a controlled substance, against public safety and against public trust.). More information is available at:
<http://courts.michigan.gov/scao/resources/publications/manuals/>, click on "Sentencing Guidelines Manual."
- Alice Phillips, recently elected Section Council member, has accepted a new job with the National District Attorneys Association/American Prosecutors Research Institute in Alexandria, VA, as Senior Attorney in Child Abuse Training.
- *Michigan Lawyers Weekly* featured an article on the Section's Prosecutors Committee in its August 25, 2003 issue, Vol. 17, No. 42, page 1. The story outlined the goals of the Committee: to educate prosecutors and act as a resource in the prosecution of animal cruelty cases, as well as to develop a trial manual. Reporter Sonny N. Sheth also interviewed several national experts on the linkage between animal cruelty and violence to humans.
- The topic of the third Animal Law Section Conference is representing non profit clients, with an emphasis on the particular issues of animal organizations. Save the afternoon of Friday, March 12, 2004.

Federal Legislative Update

Adapted from Library of Congress Internet Legislative Information website, <http://thomas.loc.gov/>, as of 10/22/2003

Bill Title/#	Purpose	Sponsor, Date Introduced, # Cop-sponsors, MI co-sponsors	Status
The American Horse Slaughter Prevention Act H.R. 857	To prevent the slaughter of horses in and from the United States for human consumption by prohibiting the slaughter of horses for human consumption and by prohibiting the trade and transport of horse-flesh and live horses intended for human consumption, and for other purposes.	Rep. Sweeney, John E. [NY] 2/13/2003 Cosponsors: 100, including Rep. Kildee - 3/18/2003	Latest Major Action: 3/3/2003 Referred to House subcommittees on Livestock and Horticulture and on Trade.
Antifreeze Safety Act H.R. 1563	To require engine coolant and antifreeze to contain a bittering agent so as to render it unpalatable.	Rep. Ackerman, Gary L. [NY] 4/2/2003 Cosponsors: 34, including Rep. Kildee - 4/2/2003	Latest Major Action: 4/10/2003 Referred to House subcommittee. Status: Referred to the Subcommittee on Commerce, Trade and Consumer Protection.
Animal Fighting Prohibition Enforcement Act S 736 H.R. 1532	A bill to amend the Animal Welfare Act to strengthen enforcement of provisions relating to animal fighting, and for other purposes.	Sen. Ensign, John E. [NV] 3/27/2003 Cosponsors: 36 including Sen. Levin - 3/27/2003, Sen. Stabenow - 7/23/2003 Rep. Bartlett, Roscoe G. [MD] 4/1/2003 Cosponsors: 112 including Rep. Kilpatrick - 6/4/2003, Rep. Kildee - 10/1/2003	Latest Major Action: 3/27/2003 Referred to Senate committee. Status: Read twice and referred to the Committee on Agriculture, Nutrition, and Forestry 4/7/2003 Referred to House subcommittee. Status: Referred to the Subcommittee on Livestock and Horticulture.
Downed Animal Protection Act S 1298 H.R. 2519	To amend the Farm Security and Rural Investment Act of 2002 to ensure the humane slaughter of nonambulatory livestock, and for other purposes.	Sen. Akaka, Daniel K. [HI] 6/19/2003 Cosponsors: 18, including Sen. Stabenow - 8/1/2003, Sen. Levin - 9/2/2003 Rep. Ackerman, Gary L. [NY] 6/19/2003 Cosponsors: 122 including Reps. Conyers, Kilpatrick, Kildee (all 6/19/2003)	6/19/2003 Referred to Senate committee. Status: Read twice and referred to the Committee on Agriculture, Nutrition, and Forestry. 6/24/2003 Referred to House subcommittee. Status: Referred to the Subcommittee on Livestock and Horticulture.
Antibiotics Overuse on Factory Farms S 1460 H.R. 2932	To amend the Federal Food, Drug, and Cosmetic Act to preserve the effectiveness of medically important antibiotics used in the treatment of human and animal diseases.	Sen. Kennedy, Edward M. [MA] 7/25/2003 Cosponsors: 4, none from MI Rep. Brown, Sherrod [OH] 7/25/2003 Cosponsors: 32 including Rep. Levin - 9/30/2003, Reps. Kilpatrick and Kildee (10/1/2003)	7/25/2003 Referred to Senate committee. Status: Read twice and referred to the Committee on Health, Education, Labor, and Pensions. 8/8/2003 Referred to House subcommittee. Status: Referred to the Subcommittee on Health.
Truth in Tuna Labeling Act S 130	To amend the labeling requirements of the Dolphin Protection Consumer Information Act, and for other purposes.	Sen. Boxer, Barbara [CA] 1/9/2003 Cosponsors: 5, none from MI	1/9/2003 Referred to Senate committee. Status: Read twice and referred to the Committee on Commerce, Science, and Transportation.
Steel-jaw Leghold Traps H.R. 1800	To end the use of conventional steel-jawed leghold traps on animals in the United States.	Rep. Lowey, Nita M. [NY] 4/11/2003 Cosponsors: 66, including Reps. Kildee, Conyers, Levin (all 4/11/2003)	5/5/2003 Referred to House subcommittee. Status: Referred to the Subcommittee on Crime, Terrorism, and Homeland Security.
"Don't Feed the Bears Act H.R. 1472	To require the adoption and enforcement of regulations to prohibit the intentional feeding of bears on Federal public lands in order to end the hunting practice known as 'bear baiting' and reduce the number of dangerous interactions between people and bears.	Rep. Gallegly, Elton [CA] 3/27/2003 Cosponsors: 161, including Rep. Levin - 4/8/2003, Rep. Kilpatrick - 6/11/2003	6/12/2003 House committee/subcommittee actions. Status: Subcommittee Hearings Held

Captive Wildlife Safety Act S 269 H.R. 1006 RH	A bill to amend the Lacey Act Amendments of 1981 to further the conservation of certain wildlife species.	Sen. Jeffords, James M. [VT] 1/30/2003 Cosponsors: 15, including Sen. Levin - 1/30/2003 Rep. McKeon, Howard P. (Buck) [CA] 2/27/2003 Cosponsors: 60, including Rep. Kildee - 5/13/2003, Rep. Kilpatrick - 6/3/2003	7/30/2003 Senate committee/subcommittee actions. Status: Committee on Environment and Public Works. Ordered to be reported with amendments favorably. 9/11/2003 Reported amended by Committee on Resources, placed on Union Calendar.
Whaling Resolution S Con Res 55 H Con Res 216	Expressing the sense of the Congress regarding the policy of the United States at the 55th Annual Meeting of the International Whaling Commission... to remain firmly opposed to commercial whaling, et al.	Sen. Snowe, Olympia J. [ME] 6/12/2003 Cosponsors: 19, including Sen Levin - 6/12/2003 Rep. Delahunt, William D. [MA] 6/12/2003 Cosponsors: 7, none from MI	6/12/2003 Referred to Senate committee. Status: Referred to the Committee on Foreign Relations. 6/12/2003 Referred to House committee. Status: Referred to the House Committee on International Relations.
Mourning Doves H. Con Res 90	Expressing the sense of the Congress that hunting seasons for migratory mourning doves should be modified so that individuals have a fair and equitable opportunity to hunt such birds.	Rep. Otter, C.L. (Butch) [ID] 3/11/2003 Cosponsors: (none)	3/14/2003 Referred to House subcommittee. Status: Referred to the Subcommittee on Fisheries Conservation, Wildlife and Oceans.

Michigan Legislative Update

All Information Adapted from Michigan Legislative Website <http://michiganlegislature.gov/>, as of 10/22/2003

Pound Release S.B. 542 and 543	S.B. 542 and 543 set a minimum holding period of seven days for animals at shelters, and prohibits research facilities and dealers from obtaining dogs or cats from a municipal shelter; municipal shelters must dispose of dogs and cats by (a) Returning the animal to its owner; (b) Adoption. (c) Transfer to a law enforcement agency. (d) Transfer for training as seeing eye, hearing or service dogs (e) Humane euthanasia	Sponsors: Sens. Valde Garcia (primary) Laura Toy, Tony Stamas	6/4/2003 Referred to Committee on Local, Urban and State Affairs
PAW Bill H.B. 4892	Creates specialty plate (Pets Are Wonderful) to provide funds for programs to increase the adoption of homeless companion animals, to promote spay/neuter programs, and to improve enforcement and pay for costs of animal cruelty prosecutions. Grants to be awarded to animal shelters (public and private) and other non profit animal welfare organizations by committee consisting of Dept. of Agriculture Companion Animal Veterinarian, and representatives of Michigan Association of Animal Control Officers, Michigan Humane Society, an animal protection shelter, and other organizations with an interest in companion animal issues.	Sponsors: Reps. John C. Stewart (primary), Glenn Anderson	6/25/2003 Referred to Committee on Transportation
Dove Hunting H.B. 5029	Adds mourning dove as game species Repeals MCLA 324.40110, which provides that only the legislature may designate a species as game	Sponsor: Rep. Susan Tabor	8/13/2003 Referred to Committee on Conservation and Outdoor Recreation
Anti Bear Baiting Resolution (H.R. 82 of 2003)	A resolution to memorialize the Congress of the United States not to enact any legislation that would ban bear baiting on federal lands. [NOTE: See (federal) H.R. 1472, "Don't Feed the Bears Act"]	Sponsors: Reps. Dale Sheltrown (primary), Susan Tabor, Joseph L. Rivet, Rich Brown, Jennifer Elkins, Matthew Gillard, Alexander C. Lipsey, Stephen F. Adamini, Gene DeRossett	7/15/2003 Adopted
Licensing of Pet Shops (S.B. 361)	Beginning October 1, 2003 through September 30, 2007, pet shop fees will be \$200 for initial application for license and \$100 for renewal, for facilities regulated by Department of Agriculture.	Sponsor: Sen. Jim Barcia	7/23/2003, Signed into law P.A. 83 of 2003; amends section 4 of MCL 287.334.

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STATE BAR OF MICHIGAN

Animal Law Section

Spring 2003



Words from the Chair *Back to Basics and Beyond*

This is being written from sunny Northern California. I am interning at the Animal Legal Defense Fund, having returned to school at Wayne State in non-profit management. ALDF seemed the perfect fit for my interest in animal law and new career goals.

Last fall I thought about what I want to accomplish as Chair. The first step was a review of minutes from past meetings, questionnaires from years ago, and newsletters. I also studied the Section's bylaws, and they were such an invaluable guide that I will reprint a part of them:

Our purpose is "to promote the particular interests of lawyers practicing in the field of animal law, to plan and carry out programs, publications and activities of interest to lawyers practicing in the field of animal law and to coordinate programs for such lawyers with national and local bar associates."

Our six goals are to:

- ❖ Educate members of the State Bar and of the public about laws relating to the protection of animals and animal rights, including the development and modification of existing law.
- ❖ Promote legislation to advance animal protection and animal rights.
- ❖ Maintain and operate a referral service for and among attorneys practicing in the area of animal protection and animal rights.
- ❖ Promote animal protection and animal rights in Michigan through use of the legal system.
- ❖ Coordinate programs for lawyers practicing in the area of animal law with national and local bar associations.
- ❖ Cooperate and share information with other groups within the State Bar which have an interest in legal issues of interest to lawyers practicing in the area of animal law related topics.

The second step was to prioritize. The Section's goals are so broad, and there are so many worthy projects, that it is crucial to focus on a few activities, and do them well. We are,

after all, what is called in the nonprofit world an "all volunteer organization".

The Section Council decided on the following priorities at the December 2002 meeting:

- ❖ *Legislative Committee* more active in proposing, monitoring and commenting on legislation, both state and federal.
- ❖ *Prosecutors' Committee* formation.
- ❖ *Pro bono Program* development, using the existing State Bar framework; and continued development of referrals via the Section list-serve.
- ❖ *Seminars* on an annual basis.
- ❖ *Law Day Program*, directed toward young people.
- ❖ *Newsletter* publication on regular basis providing useful information for the practicing attorney.

We are working with a state representative to introduce legislation and for the first time have commented on a proposed federal regulation; the first meeting of the new prosecutors' committee will have taken place by the time you read this, in furtherance of the crucial goal of preventing animal cruelty; the State Bar pro bono committee has expressed interest in including animal cases, and wants our input in determining standards for assisting both low income individuals and certain non-profit animal organizations; the March seminar features outstanding nationally recognized speakers; a Law Day program to demonstrate the linkage between animal cruelty and violence to humans is being formulated; and you are reading what the editors worked hard to make a useful and informative publication.

Elsewhere in this Newsletter you will read more details of these activities. If any of these interest you, please consider getting involved.

The third step is, of course, to accomplish the goals and take on others. Animal issues are becoming increasingly topical and important in our society and as such, lawyers have a

Continued on page 6

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COMMISSIONER LIAISON

STEPHEN J. MURPHY, III, DETROIT

The Animal Law Section of the
State Bar of Michigan

Animal Law in Michigan Symposium

Friday, March 14, 2003

1:00 pm - 5:00 pm

Agenda

- I. 1:00 - 1:10 p.m. Welcome**
co-chairs Wanda Nash and Suzanne Stephan
- II. 1:15 - 3:30 p.m. Parallel Sessions**
Signs and escorts will lead you to your choice:
 - A. CRUELTY: FIXING THE LINK BETWEEN ANIMALS AND CHILDREN -- *Dr. Mary Lou Randour, Doris Day Animal Foundation*
 - B. ANIMAL CONCERNS ARE LEGAL ISSUES -- *Dr. Peggy Larson, DVM, MS, JD*
- III. 3:45 - 4:30 p.m. Plenary Session**
A NEW TORT FOR ANIMALS
Professor David Favre, MSU/DCL
Executive Officer, Animal Legal and Historical Center
- IV. 4:30 - 5:00 p.m. Reception**

Please Note:

You will find various materials for your future use in research, in networking with speakers and colleagues alike, and in current literature on the many facets of animals' legal circumstances placed for easy access on the display tables.

March 14 2003 Symposium

Animal Law in Michigan

The second annual Animal Law Symposium will begin at 1:00 pm Friday, March 14, 2003 in the Law Building at MSU/Detroit College of Law. Speakers this year include a lawyer-vet, a psychologist, and the executive director of the Animal Legal and Historical Center at MSU/DCL.

DR. MARY LOU RANDOUR, Director of Education for the Doris Day Animal Foundation, is a psychologist, and a practicing clinician for seventeen years, who received post-graduate training at the Cambridge Hospital at Harvard Medical School and the Washington Psychoanalytic Institute. She presents seminars and workshops nationally on the topic of animal abuse and human violence for audiences which include police departments, domestic violence councils, educators, child service workers, attorneys, judges, animal control officers, and counselors. Dr. Randour also lobbies at the state and federal levels for legislation and administrative policies that would extend protection to animals, e.g., enacting felony provisions in state animal cruelty statutes and adding a category for animal cruelty in the collection of state and federal crime statistics.

Dr. Randour has conducted training workshops for mental health professionals on the assessment and treatment of juvenile and adult animal abusers. She is the first author of "AniCare Child: An Assessment and Treatment Approach for Childhood Animal Abuse" and co-author of "The AniCare Model of Treatment for Animal Abuse". Dr. Randour also is author of three books, the latest titled *Animal Grace: Entering a Spiritual Relationship with Our Fellow Creatures*.

DR. PEGGY LARSON is a veterinarian, a lawyer, and has a Masters in Science degree. She is the founder of the National Spay and Neuter Coalition, whose goal is to stop pet overpopulation through sterilization, and consists of 350 veterinary and shelter members. The Coalition provides training and internships for spay/neuter veterinarians, and is the clearinghouse of spay/neuter information. She and her husband are partners in the local (Williston VT) spay/neuter clinic

Dr. Larson has served as consultant to *Hard Copy* for their two-part series on rodeo animal abuse; with *Inside Edition* on the horse urine farms story, with the BBC on their documentary on inhumane treatment of rodeo animals, with a French TV station (ARTE) on their rodeo documentary. She writes policy for various organizations, and provided expert testimony on rodeo to the Animal Welfare Committee of the AVMA.

She has also been employed by the USDA as Veterinary Medical Officer on issues of federal livestock disease control programs, a TB outbreak in Vermont and avian influenza out-

break in Pennsylvania, and on animal welfare inspections. She was Vermont State Veterinarian and Chief of Livestock and Meat Inspection in 1984 and as such, overhauled and updated meat and poultry inspection programs and re-wrote Vermont's inspection regulations.

Dr. Larson was raised on a mixed grain and cattle facility in the Midwest; rode bareback bucking horses in rodeo and participated in other rodeo-related activities, was a large-animal vet for 8 years, had a small-animal practice in California from 1967-68, had a general vet practice in North Dakota from 1968-78 before her 1979-85 term with the USDA. She has an extensive history of research concerning animals and has published and presented on many aspects of animal health, and has spoken at many seminars and conferences on the issues of pet overpopulation and rodeo throughout the United States. She was an Associate professor at Vermont Technical College in 1990/91 as Director of the Veterinary Technology Program.

Besides all the past and present veterinary practice, Dr. Larson also clerked with the Franklin County State's Attorney's Office in Vermont following her graduation from Vermont Law School in 1988 and also served as legal intern to the Consumer Assistance Program, Office of the Vermont Attorney General in 1987.

PROFESSOR DAVID FAVRE is a Professor of Law at Detroit College of Law at MSU, and has recently established the Animal Legal and Historical Center based at DCL/MSU. He is a prolific author of books on state animal law, national wildlife law, and the international treaty protection for endangered species. His most recent book *Animal Law and Dog Behavior*, was published in 1999. He has taught a course on wildlife law for more than fifteen years. He has been an active member of the Board of the Animal Legal Defense Fund since its creation over twenty years ago. Dr. Favre has read and accumulated literally hundreds of animal court opinions and has a manuscript of a book on the federal Animal Welfare Act available for web publication.

Professor Favre spoke on the topic "Equitable Self-ownership for Animals" at the first Symposium (2002) and will conduct the plenary session at this year's Symposium. His remarks will be based on his presentation to Harvard University School of Law, and is entitled "A New Tort for Animals."

Animal Law Section of State Bar of Michigan

Treasurer's Report for 2002 Fiscal Year (FY) ended September 30, 2002

The purpose of this report is to assure the members that the Animal Law Section is very viable with a healthy financial status and your section dues are being spent responsibly.

Therefore, I would like to provide you with a brief summary of the following:

- ❖ Section's dues and expenses for the 2002 FY.
- ❖ Section's overall financial condition at the end of 2002 FY.
- ❖ Some basic Section summary financial information about our status as of January 31, 2003.

Dues and expenses were as follows:

- ❖ Dues were \$3,910 for the fiscal year representing about 150 members and affiliate members.
- ❖ Net expenses of about \$1,935 were in three general categories:
 1. Seminar net expenses totaled about \$1,170 (comprised of total expense of \$2,405 partially offset by seminar revenue of \$1,235). Our main seminar expenses were mailings and advertisements. We plan a more focused advertising campaign this year. Our section members paid a lower rate for the seminar. We were not trying to "make money" with the seminar as we consider it an essential section function related to education.
 2. The single issue of the newsletter with all printing and mailing cost \$480. We plan two issues of the newsletter this year.

3. We had other expenses of \$285 which were primarily related to various mailings and notifications especially for the Annual Meeting.

Our overall financial condition at the end of 2002 FY was sound with a Section balance of \$8,255.

Our Section balance at the end of January, 2003 is \$11,655 reflecting dues receipts in October and November and minor expenses to date for the fiscal year.

I have reviewed all expenses and consider them to be reasonable and appropriate and have paid special attention to relating expenses to Section actions. The entire Council is very concerned that any costs incurred be reasonable and appropriate and will continue to act accordingly.

Finally, I want to mention the Annual Section Council Retreat held in May. This is an opportunity for the Council members to have a regular meeting as well as to discuss future direction and plans for the section. It is usually held over a weekend – last year it was in Nunica at the home of one of the Council members. I want to assure you that no section funds are spent for the retreat and all related expenses are paid by the Council members themselves.

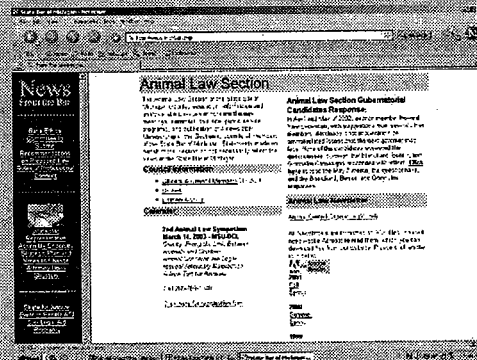
If you have any questions, please write me at donaIdgarlit@yahoo.com.

Respectfully submitted,

Donald Garlit

February 24, 2003

Check out our website at www.michbar.org/sections/animal



Drawing the Line by Dr. Steven M. Wise

Reviewed by Deborah Ness

We often find ourselves asking the question, "If humans are entitled to fundamental rights, then why are animals not entitled to similar basic fundamental rights?"

Professor Wise's book, *Drawing the Line*, is about the question on where to "draw the line" in deciding which non-human animals deserve basic liberty, equality and dignity rights. Among many of Professor Wise's beliefs regarding animal rights, is that a "being" which possesses "practical autonomy" should be given liberty and equality rights. And, some beings that do not possess practical autonomy should, at the very least, be given dignity rights. He defines practical autonomy as that which a being has if: 1) he/she can desire, 2) he/she can intentionally try to fulfill the desire and 3) he/she possesses a sense of self sufficiency to allow him/her to understand that it is he/she who wants something and it is he/she who is trying to get it. Dr. Wise devised a category system to be utilized to determine whether practical autonomy exists in his son, eight non-human beings and a honeybee.

The system is comprised of four categories of autonomy values, which are:

Category 1- Non-human animals who clearly possess sufficient autonomy for basic liberty rights. An autonomy value of .90 is the cut-off for basic legal rights using a narrow reading of the precautionary principle. The precautionary principle dictates how scientists are to respond when there is some evidence of autonomy, but not absolute proof.

Category 2- Non-human animals who, according to increasing evidence, possess sufficient autonomy for basic liberty rights. An autonomy value of .70 is the cut-off for the basic liberty rights using a moderate reading of the precautionary principle.

Category 3- Non-human animals about whom we do not know enough to reasonably determine whether they possess sufficient autonomy for basic liberty rights. This category probably includes most species.

Category 4- Non-human animals who, according to increasing evidence, lack sufficient autonomy for basic liberty rights.

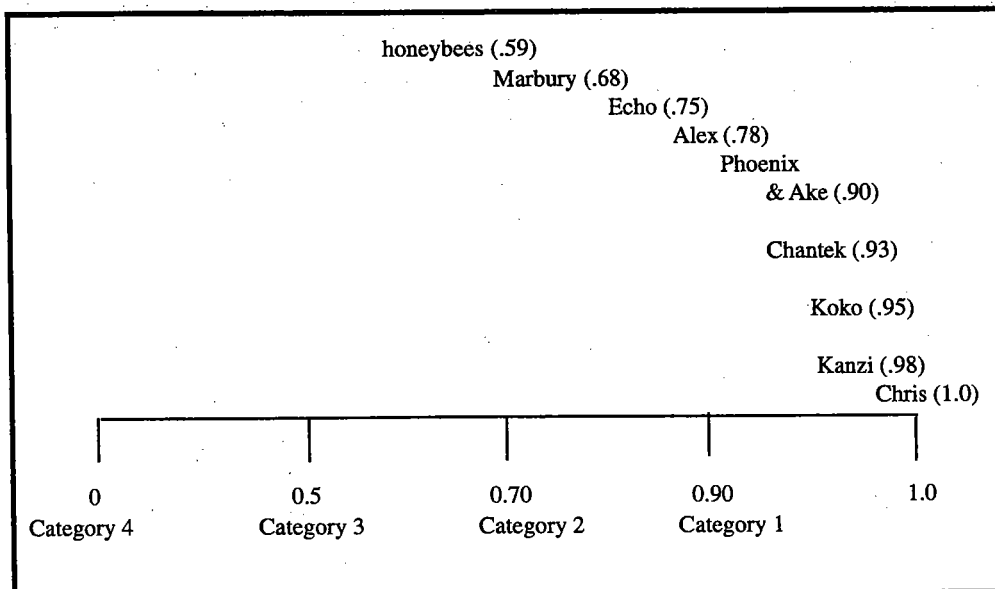
Dr. Wise applied the categories, in assessing the cognitive abilities, and evidence of practical autonomy to his four year old son (Christopher), his dog (Marbury), a bonobo (Kanzi), an African Grey parrot (Alex), 2 Atlantic Bottle-Nosed dolphins (Phoenix and Ake), an African elephant (Echo), an orangutan (Chantek), and a gorilla (Koko). He assigned autonomy values based on his judgment of evidence of practical autonomy in the above mentioned non humans and his son. Professor Wise's evidence was obtained from his own observations and from information and data received from renowned scientists in the field of animal study. The results of Dr. Wise's assessment can be viewed in the chart below.

Professor Wise concluded that Category 1 animals (dolphins, orangutan, gorilla, bonobo), and some in Category 2 animals (parrot, elephant and dog), measure well in human standard tests (for example, IQ scores, mirror self-recognition-MSR- tests and social relationship tests) and possess degrees of practical autonomy. Chimpanzees and bonobos, who are closely related genetically to humans, easily fit within Category 1 and are entitled to basic liberty, equality and dignity rights. Wise argues, too, that animals who fall into Categories three and four, and some in Category two, may not be entitled to basic liberty rights only because we humans do not value their kind of intelligence, learning style and sense of self.

In summation, Wise states that basic liberty rights should

be given in proportion to the degree of the animal's ownership of practical autonomy. If an animal has practical autonomy, then it deserves full liberty rights. If an animal does not possess it, then the degree to which an animal approaches autonomy might make one eligible to receive some proportion of liberty rights, such as dignity rights.

In closing, it must be stated that it is difficult to adequately review such an information intense book in only a few pages, therefore, reading this important book is highly recommended.



Animal Legal and Historical Center

February 2003

Professor David Favre
Michigan State University - DCL College of Law

Beginning in March of 2002, Professor Favre, along with a staff of two part-time employees and about one dozen students, have both created the initial structure of the Animal Legal Center website and posted into this structure the first wave of content. Everyone can now visit the website at www.animallaw.info and take a personal tour of what is available and what is contemplated. An electronic bookstore has been constructed, with animal posters and a few books being offered for sale. Because of a recent controversy with the Sportsman Alliance, which sought to shut down the site, visits to the site have increased to over 400 visits per day.

Student Involvement

Most of the law students performed admirably in their research and editing for the site, and their efforts now populate the ANIMAL LEGAL CENTER website.

Some of the topics tackled by students include:

- ❖ Creation of a reference set of pleading and briefs from animal cases.
- ❖ Creation of a 50 state table summarizing laws created by referendum or initiative.
- ❖ An explanation of the Texas cruelty laws.
- ❖ A discussion about the legal issues surrounding dolphins.
- ❖ An overview of the United Kingdom laws dealing with Pet Sales and Anti-cruelty.
- ❖ An explanation of the topic *Animal Rights*.
- ❖ A comparative chart for the 50 states about their Endangered Species Acts.

Words from the Chair

Continued from page 1

crucial role to play in both the dialogue and the solution. Few would argue the abiding bond that exists between many humans and their companion animals. Cruelty to animals is outlawed in all 50 states and the District of Columbia, and the linkage between these acts and violence toward humans is now widely accepted and is used, for example, by the F.B.I. in its profiling. Environmental and human health issues have led to an increased focus on factory farming. Wildlife habitats are being engulfed by human developments.

What is our vision for the site over the next year?

1. To build upon the public library function by adding both primary legal materials and related articles.
2. To develop an educational program, both for those within the legal profession and for the general public. The courses and materials within this program will be for general non-credit education, for certificate programs, and for college and law school credit.
3. To provide for comparative analysis of national, local, and international law as relevant.
4. To publish original materials evaluating existing laws, cases, and regulations concerning animals; to re-publish relevant articles from around the world; to provide a space for original short opinion pieces that will deal with policy questions from multiple perspectives.
5. To enhance the content of the bookstore to the point where the cash flow from sales becomes a substantial portion of the funds needed to support the Web Center.

We seek support from all interested individuals. Support can be in the form of financial support, the providing of materials, or by becoming an editor to write about a topic that will appear on the Animal Legal & Historical Web Center. Please help provide the world with an efficient and much needed legal-based educational center for animal issues

In my estimation, the third step can be accomplished by cooperation and coordination with other bar associations and sections, both in this state and throughout the country. Why reinvent the wheel when we can work collaboratively?

So our work, both now and "beyond" is to better serve our members and other attorneys; the public; and, of course, the animals whose lives we seek to improve by our efforts on their behalf within the legal system.

Bee Friedlander, Chair

Legislative Committee Update

State Legislation

State Representative John Stewart (R., 20th District) met with Committee Members Thomas Boven and Barbara Goldman, Section Chair Bee Friedlander and Eileen Liska, Michigan Humane Society lobbyist, in November 2002, to discuss the upcoming legislative session. Possible legislation included amendments to the cruelty statute; cross-reporting of animal cruelty and child abuse; and non-economic damages for injury or death to a companion animal. After an earlier meeting with Rep. Stewart, he introduced H.B. 5580, for a special license plate with proceeds to benefit spay/neuter programs. It did not pass, but plans are to re-introduce in the current legislative session.

In December 2002, the Section Council took positions regarding two bills, neither of which passed: in support of the Pet Shop Bill, H.B. 6289, which would have given the Agriculture Department increased authority to regulate animal control and animal protection shelters as well as pet shops; and in opposition to H.B. 5478, which would have given the Natural Resources Commission authority to designate those species which are considered "game" and thus eligible to be hunted, an authority currently resting with the legislature.

Also in the last session, S. 1379 was introduced. It would have amended the Revised Judicature Act, MCL 600.101 et seq., to allow an owner to sue for non-economic damages of up to \$250,000 for loss of a companion animal due to another's gross negligence or willful and wanton misconduct. The Section Council did not take a position on this bill. It did not pass. Currently the Legislative Committee is monitoring the progress of license plate legislation, which has a working title of "PAW" (Promote Animal Welfare), to devise a mechanism by which money from the sale of these special plates can be most effectively distributed to public and private animal welfare organizations for use in programs to promote spay/neuter and to enforce anti-cruelty laws. It has not yet been re-introduced. Economic conditions in Michigan and the deficit may affect the ability to get animal-friendly legislation introduced, brought to a hearing and ultimately passed.

Federal Legislation

In January 2003, the Section Council submitted a comment, drafted by Deb Niehuus, on the amendment to 14 CFR part 119, regulating the transportation of animals by the airlines. Specifically, the Comment addressed the proposed FAA Rule, Docket #: FAA-2002-13378, "Reports by Carriers on Incidents Involving Animals During Air Transport." In its comment, the Section Council noted the importance of safe conditions during transport for all animals, not just "domestic pets", suggesting that the regulation apply to all vertebrates. The Section Council further urged the FAA to make the incident reports available as soon as possible, and in a format that

would readily and easily allow the traveling public to compare the safety records of various airlines before deciding which one, if any, to entrust with the safety of their companion animals.

In February 2003, the Section Council wrote U.S. Senator Carl Levin thanking him for co-sponsoring S 269, the Captive Wildlife Safety Act, which would prohibit foreign and interstate commerce of certain exotic animals to prevent them from becoming "pets", although it would not ban all private ownership of these animals.

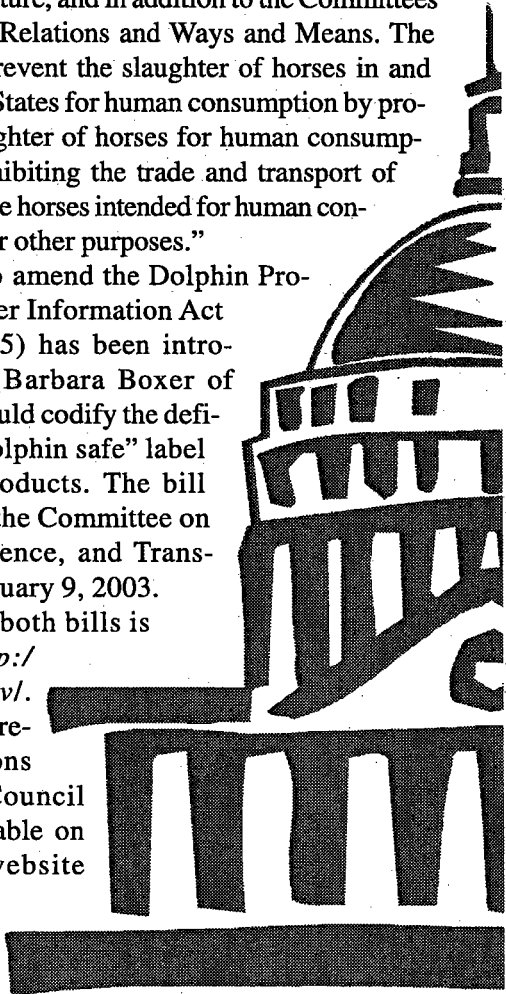
Other issues of potential interest to the Section are a proposal, not yet introduced, to ban bear baiting on federal lands in states that allow bear hunting. Michigan is one of 27 states allowing bear hunting, and one of 9 of those states that allow baiting, according to the Humane Society of the United States. These statistics are available at that organization's website, www.hsus.org.

Other recent proposed legislation includes HR 857, "The American Horse Slaughter Prevention Act," which was introduced on February 13, 2003, sponsored by U.S. Reps. John Sweeney (R-NY) and John Spratt, Jr. (D-SC). There were no Michigan co-sponsors. It was referred to the Committee on Agriculture, and in addition to the Committees on International Relations and Ways and Means. The purpose is "to prevent the slaughter of horses in and from the United States for human consumption by prohibiting the slaughter of horses for human consumption and by prohibiting the trade and transport of horseflesh and live horses intended for human consumption, and for other purposes."

A bill, S 130, to amend the Dolphin Protection Consumer Information Act (16 U.S.C. 1385) has been introduced by Sen. Barbara Boxer of California. It would codify the definition of the "dolphin safe" label on tuna fish products. The bill was referred to the Committee on Commerce, Science, and Transportation on January 9, 2003.

The text of both bills is available at <http://thomas.loc.gov/>.

All documents reflecting positions taken by the Council should be available on the Section website within a month.



Grant Money Available

Attorneys for Animals (Afa), a 501(c)(3) organization, has grants available of up to \$1,000 to any attorney pursuing an animal-protection case in Michigan. The grant may not be used for attorney fees, but may be used to defray costs such as filing fees, depositions, transcripts, records-requests, motion fees, etc. Interested attorneys should contact Beatrice Friedlander at (734) 483-4612.

Letters, Articles, Etc. for Future Newsletters are Welcome

Please make submissions to the editor in (PC) MSWord or (PC) WordPerfect,
ASCII Text format—kindly include hardcopy printout.

Contact the Editor for Deadline Dates

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