



Table of Contents

Legal Re-Classification of Animals is Long Overdue.....1

Co-Editor’s Note2

Law Student Honored with Wanda Nash Award from SBM Animal Law Section.....12

Ginny Mikita Earns Brandi Award.13

Recent Animal Law News14

Michigan Wolves Continue to Generate Interest, Controversy: Updated Wolf Management Plan and Wolf Management Advisory Council.....18

NhRP Update – NY High Court Rules Happy the Elephant Is Not A Legal Person.....19

Treasurer’s Report20

Legal Re-Classification of Animals is Long Overdue[©]

By Catherine L. Wolfe, attorney and wildlife biologist

***Note:** Our lead article is on animals as property and presents a proposed alternative to the property classification. The article was previously published in the Mid-Atlantic Journal of Law and Public Policy, an online journal. Ms. Wolfe graciously offered the article for publication in the Animal Law Section Newsletter. We are honored to publish it.*

I urge you to read the article for several reasons. It is a nice mix of legal theory, history, and actual animal law cases.

First, the article proposes an elegant and simple approach to solving the dilemma of animals as property that has existed since English common law was developed hundreds of years ago. That classification has bedeviled attorneys who work on animal issues as well as animal activists for a very long time.

Second, the article discusses in some detail the Brandi case. Brandi the dog was killed in tragic circumstances. Her name is remembered in the name of the Section’s Brandi Award which is awarded to someone in the legal or legislative profession who does something remarkable for animals. If you do not know Brandi’s story and the naming origin of the Section’s Award, please read on in the article. Note Brandi’s story is very sad.

Third, although the article was written several years ago, it really shows how difficult it is to change the “animals as property” paradigm. Hopefully, we will be able to break through that barrier in the future. What was true at the time of the article’s first publication is, unfortunately, still true.

Our legal system classifies everything into two categories – “human” or “property.” Currently animals are classified as “property” – or, to be more precise, the sub-category of “personal property” or “chattel.” As such, animals are treated the same as inanimate objects.

“The greatness of a nation and its moral progress can be judged by the way its animals are treated.”

- Gandhi

That classification is unrealistic and no longer accurately reflects our society’s view towards animals and the roles animals play in our lives. A new, third category should be created for animals so that their special qualities may be recognized and more appropriately addressed. That category should be entitled “animals.”

The Evolving and Increasingly Important Roles Animals Play in Our Lives

Animals are profound, and treasured elements of many people’s lives. Winston Churchill was one of those people. Churchill was a devout animal lover and shared that love with his



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Co-Editor's Note

Welcome to the second issue of the Newsletter for 2022. We are now in our 28th year as a section. The Section had its initial official meeting at the 1995 State Bar of Michigan Annual Meeting. Our Section is the first state-wide animal law section in the United States; something that we can all take pride in.

Attorney and wildlife biologist Catherine Wolfe graciously provided this issue's lead article on the issue of animals as property. Ms. Wolfe has worked for years on animal issues and is well known for her book *Get the Edge in Fighting Animal Cruelty Cases* and related speaking about the book's subject matter across the country. She also wrote *Pets Rule!* which is a children's book that teaches how to be responsible and loving guardians of animals. We welcome her contribution to the issue.

Other articles include Recent Animal Law News from Michigan, the USA, and around the world. In this issue, we have an update of the legal events impacting Happy the elephant, the Section's financial reports for the 2021-22 fiscal year, an article about Heather Silcott who earned this year's Wanda Nash Award, an article about wolves in Michigan with information about the State of Michigan's Wolf Management Advisory Council, and a story about Ginny Mikita who earned this year's Brandi Award (we had a brief announcement in the last issue about the ceremony for Ginny earlier this year).

We continue to print the issue in all color including photographs and graphics. We are using lighter weight paper with this issue although print quality is unchanged. The heavier paper of prior issues was creating some logistics and printing issues. Some of our photos this issue come from public access photos from the Smithsonian and provide a more varied look to the Newsletter.

I recently counted the pages and issues published by the Section since we were founded in 1995. Our first Newsletter was in 1997. Since that time, we have published 46 issues of the Newsletter and have been the featured section in two issues of the SBM's *Michigan Bar Journal*. We have published 600+ pages of content over the years!

We still have a major article for an upcoming Newsletter and I believe that you will find it most interesting. The article discusses dogs in court rooms.

As always I will make my standard request, please remember that this is your newsletter, too. Helpful articles are always needed. In fact, if we can get one good main article for each issue, we can do the rest.

Co-Editor Maggie Sadoff and I welcome new authors and articles. Please consider writing an article that will be of interest to your fellow Section members. We only ask that you talk with us first so that we can discuss general article parameters and publication timing.

Donald Garlit

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Legal Reclassification

Continued from page 1

grandson when he said:

“A cat will look down on man;
A dog will look up to man;
But a pig will look you in the eye and see his equal.”¹

Churchill held pigs in especially high esteem based upon their intelligence. Hence, his statement was not a denigration of people, but rather a compliment to them.

Today animals are such an integral part of our society that it is difficult to conceive of life without them. They are no longer just “pets”² or “livestock,” or “game species.” Instead animals play a broad spectrum of roles in our lives and the lines between those roles are now often blurred.

For example, service-animals who assist people with physical or mental challenges (e.g. “seeing-eye dogs” for people who are visually impaired, or hearing-aid dogs who assist people who are hearing impaired) are also companions and social vectors for the people they assist. They are much, much more than mere tools. As service animals they comfort, love, guide, and protect the people they assist.

Also, the species of animals used as service animals grows constantly day by day as we discover talents and capabilities in animals that we never knew existed. Just the other day the author received a request for legal assistance for a visually impaired gentleman in connection with his “service parrot.” Miniature horses, pot-bellied pigs, monkeys, and other species have also been recruited into the ranks of service animals.



The author’s toy poodle, Vivien, and her friend, Mary Hellen.³

Animals also guard property, and serve in law enforcement (i.e. “police dogs,” drug detection dogs, horses in mounted units, border patrol dogs and horses, etc). Therapy and “emotional support” animals provide love and comfort to vast numbers of people suffering from innumerable conditions and afflictions, all the way from depression, autism, and epilepsy, to cancer. Search and rescue dogs save people whose lives are in peril and dogs and pigeons have served in the military for centuries. Both dogs and pigeons have carried messages in combat, and dogs have also been used to detect land mines or the presence of “the enemy.” And of course, they have loved and comforted military troopers from time immemorial.

Dogs are also being used to locate cancers not yet detectable by even the most sophisticated and advanced medical

equipment. And they are trained as service animals for people who suffer from epilepsy because they can actually sense when a person is about to suffer a seizure – before the person him or herself is aware that a seizure is imminent. Consequently the dog can alert the person that he or she is about to suffer a seizure, and they can then assist the person in getting to a safe location and position before the onset of the seizure. During the seizure the dog remains with the person, and as the seizure subsides, the dog is there to comfort the person as he or she recovers.

The Problem: Our Legal System’s Failure to Change to Accommodate the Evolving and Increasingly Important Roles Animals Play in Our Society

Legally animals are categorized as “property” for purposes of determining cause of actions, liability, and damages. As discussed below, this is unfortunate for both the animals and the people who love them.

“To say [a dog] is a piece of personal property and no more is a repudiation of our humaneness.”

- *Corso v Crawford Dog and Cat Hospital*,
97 Misc. 2d 530;
415 N.Y.S.2d 182 (1979)

As “property” animals are legally subjected to “ownership” by people, and “ownership” laws. When property owners sustain damage to their property (including animals) they are legally obligated to minimize (“mitigate”) the damage. That means, for example, if someone damages a chair that you own, and you choose to repair it, but the repair cost exceeds the fair market value of the chair (what people would have paid for it on the open market before it was damaged), then you are only entitled to recover the monetary difference between fair market value of the chair *before* the damage, and its fair market value *after* the damage (referred to as economic damages). You are not entitled to any repair costs that exceed the fair market value *before* the damage, nor are you entitled to any compensation for emotional distress (referred to as non-economic damages) if the chair was a cherished family heirloom and its damage was emotionally upsetting to you.

As “property,” animals are treated the same way under the law. If your pet is injured by another person you are only entitled to the economic difference between the fair market value of your companion animal *before* its injury and *after* its injury. You are limited to recovery of your economic damages only. You are legally barred from recovering the cost of veterinary treatment to restore your pet’s health if it would be less expensive just to get a new pet. As an example, if you own a dog or cat that is a mixed-breed or over the age of 1

year, its fair market value is probably \$0 because so many of them are available for free on the open market (i.e. out of the newspaper classified advertisements, bulletin boards at many businesses, outside of stores where people literally give away whole litters, free).

Since your companion animal is worth \$0, you are not entitled to recover any costs for veterinary treatment since, under the law, it would be more cost-effective to let your companion animal die and get a new one for free. Stated another way, after your companion animal (“property”) is injured (“damaged”) it is a financial liability – it has a negative value because it will cost more to restore its health (often thousands of dollars) than it will cost you to simply replace it with a free companion animal.

Although a growing number of courts have broken with this tradition and allowed for recovery of veterinary treatment and costs, they are in the minority. Such decisions are still the rare exception rather than the rule. And still allow for only economic damages – the same as if the animal was an inanimate object.

Our current legal system fails to account for the unique relationship animals play in our lives. Be it a “wild animal” that one befriends or observes, “livestock” that one realizes has intelligence and feelings of love, pain, happiness, and playfulness, or our companion animals who give us unconditional love, companionship, and devotion (to say nothing of entertainment), they are all treated by the law as if they lacked the foregoing qualities, and are nothing more than inanimate objects. It is long past time for us to make radical changes in our laws to keep pace with the changing times and the flood of new knowledge that is emerging at a staggering rate about the extraordinary characteristics and abilities of animals.

When most laypeople learn that legally their companion animals or other animals are “property,” they are aghast. The state of the law in this regard is difficult, at best, to explain and nearly impossible to justify because it simply does not reflect reality or even common sense. It fails to account for the nature of animals as living creatures rather than as inanimate objects. By perpetuating this nonsensical rule of law, we as lawyers fail the people who care about the welfare of animals as well as the animals themselves. There simply is no good reason to continue this rule of law and if we do so we jeopardize the public’s faith in us as well as the entire legal system.

The founders of our great nation designed a government that is flexible so that it could change with the times and the needs of our society. Their design was so wonderful that it has held for over 200 years. Its flexibility has been magnificent and allowed it to remain sturdy through its ability to change. For the most part, the government they created has stood our country in good stead and produced astonishingly fair and just laws. However, animals are one area where our government and laws have failed to keep pace with the changes in our society, and the time is long overdue for significant changes -

changes that are imperative to achieve “justice,” both for the people who “own” or are guardians/stewards⁴ of animals, and for the animals themselves.

The Solution: Animals Should be Legally Classified as “Animals”

“[T]he view equating a living, breathing animal to chattel is archaic and does not withstand the test of critical analysis. Slavish adherence to a worn-out doctrine without serious, critical analysis does the law no good and, indeed, engenders public disrespect for the law.”

- *Murray v Bill Wells Kennels, Ltd.*, Wayne County Circuit Court No. 95- 536479-NO (Mich 1997)

“Animals” would be a better classification for animals than “property.” If animals are given their own legal category, they will not be treated the same as inanimate objects. Instead, they will be subject to laws specifically designed for them as living, feeling, sentient, beings. Increasingly (albeit slowly) courts have been

recognizing the injustice of the law and treating animals as more than mere “property,” and even allowing recovery of non-economic damages.

In *Murray v Bill Wells Kennels, Ltd.*, Wayne County Circuit Court No. 95-536479-NO (Michigan, 1997), a dog named Brandi, died an agonizing death after being deprived of her diabetes medication while being boarded. The young lady who owned Brandi returned from out of town just as Brandi expired. In fact, she testified that she believed that Brandi had struggled to stay alive as long as she did in order to see her beloved mistress one last time – to say goodbye.

Brandi’s owner was devastated by Brandi’s death.

She sued the boarding facility to recover her “damages,” including her own emotional pain and suffering. Legal precedent mandated that Brandi be treated as “property” and that such damages be denied.

However, the judge in that case, the Honorable Kaye Tertzag, realized that the law is not always just and refused to be bound by a rule of law he recognized as unfair. In holding that the issue of the owner’s emotional pain and suffering would go to the jury, he stated:

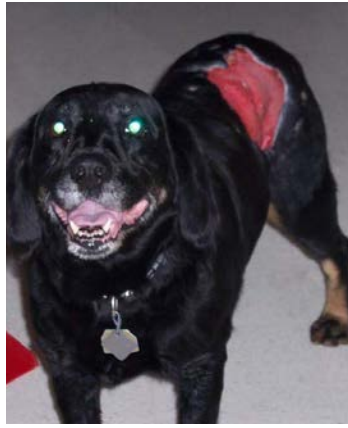
“[T]he view equating a living, breathing animal to chattel is archaic and does not withstand the test of critical analysis. Slavish adherence to a worn-out doctrine without serious, critical analysis does the law no good and, indeed, engenders public disrespect for the law.”

Judge Tertzag was correct – blindly adhering to the rule of law that treats animals as “property” is a disservice to the public and promotes public scorn.

Several years ago the author had a wonderful black lab as a client. His name was Squirt. He was viciously attacked by another dog, and critically wounded. Because Squirt was about



© Squirt (right) with some of his “family,” by Penny McBride



© Squirt after the attack, by Penny McBride

7 years old his fair market value was \$0. Seven-year old labs are abundant, to say the least, and readily available for free. Furthermore, as with all older dogs, they are financial liabilities because they are prone to health issues that require (or will require) monetary expenditure to treat.

The fact that Squirt’s family viewed him as a family member, rather than a piece of “property,” and spent approximately \$4,000 in veterinary costs to save him, was irrelevant. As far as most state laws are concerned, it would have been less expensive for his family just to let him die, and get another 7-year-old lab for free, than to spend the money they did to give him a full recovery.

Squirt died recently. Although he did recover from his injuries, his family believes that the trauma shortened his life by a couple of years – years they would dearly have loved to have spent with him.

One of the first cases in the United States to recognize and accept the uniqueness of animals was in New York, *Corso v Crawford Dog and Cat Hospital, Inc*, 415 NYS2d 182, 183 (NY Civ Ct, 1979). Even today, 30 years later, it remains a profound proclamation of reality and a sterling example of the judiciary’s flexibility.

“This court now overrules prior precedent and holds that a pet is not just a thing but occupies a special place somewhere in between a person and a piece of personal property.”

- *Corso v Crawford Dog and Cat Hospital*, 415 N.Y.S.2d 182 (NY Civ Ct, 1979)

In *Corso, id.* the Plaintiff had her dearly beloved 15 year old poodle euthanized by Defendant- veterinary hospital. Plaintiff arranged for Defendant to give her poodle’s body to an organization through which she had arranged an “elaborate funeral...including a head stone, an epitaph, and attendance by Plaintiff’s two sisters and a friend.” Plaintiff planned to visit her pet’s grave in the future.

Much to Plaintiff’s distress, she discovered not her beloved pet’s body in the casket that was delivered to the funeral, but the body of a dead cat. During the bench trial Plaintiff testified as to her “mental distress and anguish, in detail, and indicated that she still feels distress and anguish.”

In its decision the Court stated:

“This court now overrules prior precedent and holds that a pet is not just a thing, but occupies a special place somewhere in between a person and a piece of personal property.”

* * *

“In ruling that a pet such as a dog is not just a thing I believe the Plaintiff is entitled to damages beyond the market value of the dog. A pet is not an inanimate thing that just receives affection, it also returns it. I find that Plaintiff Ms. Corso did suffer shock, mental anguish and despondency due to the wrongful destruction and loss of the dog’s body.”

* * *

“This decision is not to be construed to include an award for the loss of a family heirloom which would also cause great mental anguish. An heirloom while it might be the source of good feelings is merely an inanimate object and is not capable of returning love and affection. It does not respond to human stimulation; it has no brain capable of displaying emotion which in turn causes a human response. Losing the right to memorialize a pet rock, or a pet tree or losing a family picture album is not actionable. But a dog, that is something else.

To say it is a piece of personal property and no more is a repudiation of our humaneness. This I cannot accept.”

By rejecting as inhumane the established legal premise that animals are “personal property,” the Corso Court all but said that there must be another category to account for the uniqueness of animals. The most realistic and simple category would be “animals.” “Animals” would then be subject to their own set of laws – independent of those that apply to “property” or to “humans.”

It has been suggested that a sub-category of “property” be created – something called “living property.” That, in the author’s opinion is an oxymoron and would do much more harm than good. As discussed above, the “property” category is entirely inappropriate for animals.

Creating a *sub*-category of “property” will only compound the problem by further in-graining the idea of animals as “property.”

No Flood of Litigation or Outrageous Verdicts have Resulted in the Few States that Have Allowed Non-Economic Recovery for Injury or Death to Companion Animals

Some people oppose the idea of re-categorizing animals. They argue that if animals are not treated as “property” then they will be treated as “humans.” That, they maintain, would open the floodgates of litigation and the courts would be inundated with lawsuits seeking to recover millions of dollars for injured or killed animals.

First, just because animals are reclassified as something other than “property” does not mean that they will be treated as “humans.” To the contrary, they are not “humans” which is precisely why they should have their own category, with laws specifically tailored to them.

Second, in the handful of states that have formally recognized the special characteristics of animals, and allowed for the recovery of veterinary costs (economic damages) and/or pain and suffering (non-economic damages) by the animals’ owners, multitudes of lawsuits have not materialized, nor have any million dollar verdicts been awarded.

One of the landmark cases in awarding non-economic damages was *Rodrigues v State*, 472 P2d 509 (Haw 1970). The *Rodrigues* Court awarded emotional/mental distress damages to a family whose companion animal allegedly died as the result of the defendant’s negligence. Eleven years later in *Campbell v Animal Quarantine Station*, 632 P2d 1066, 1071 (Ha. 1981) the Supreme Court of Hawaii observed:

“Since our holding in *Rodrigues* there has been no ‘plethora of similar cases’: the fears of unlimited liability have not proved true. Rather, other states have begun to allow damages for mental distress suffered under similar circumstances.”

Third, there are some situations in which a jury may actually feel that a million-dollar verdict, or more, is appropriate for injuring or killing an animal. Consider a case involving a 12-year-old boy who was born paralyzed and was confined to a wheelchair for life. For 6 years he had a wonderful service dog who not only served as his personal aide but as his social secretary, a social vector through which he interacted with other people.

Consider further the fact that a person intentionally shot and killed his dog, in front of him, and the dog died in his arms. The author personally would have no problem awarding a million dollars (or more, depending upon the circumstances) to him to compensate for the unfathomable pain and suffering that he would have experienced. Under those or equally compelling circumstances, the author believes juries would render large verdicts – and they should. That, after all, is the role of a jury – to determine the amount to

which a plaintiff is entitled. If circumstances warrant it, a jury should be free to make such an award.

The heinous case above is a hypothetical example, but cases like it do arise. A number of years ago a fire chief in my community shot a cat that belonged to a young girl who was in fact disabled and confined to a wheelchair (*People of the State of Michigan v John Edward Hanmer*, File No. 02-256-SM; 85th District Court, Benzie County, Mich 2002). Her cat meant the world to her. At the defendant’s sentencing, the girl’s mother had this to say:

“I cannot begin to describe to you the horror on my child’s face to find her pet limping and covered with blood when he came to our home.”

Fortunately, the young girl’s cat lived. However, the defendant was not charged with animal cruelty and was allowed to plead to a misdemeanor (discharge of a firearm). No civil lawsuit could be filed against him to recover for the emotional distress the young girl suffered because her cat was merely “property” for which there could be no such recovery.

It is worth noting that in the criminal case, the judge did order restitution that included the veterinary expenses the family incurred to restore the cat to health. However, in these lean economic times, with governmental agencies and their budgets being downsized or eliminated, animal cruelty prosecutions are the exception rather than the rule. Therefore, creating an “animal” category with laws tailored to animals, could allow for the recovery of a guardian’s emotional distress, such as the young girl experienced, as well as the cost of veterinary treatment, and even punitive damages. Proponents of punitive damages argue that not only will such damages be additional redress for the animal owners, but will also constitute a significant deterrent to potential animal abusers that is currently absent or only minimally present because of the low number of animal cruelty prosecutions.

“The doctrine that damages are limited to the value of the dog (the chattel) has worn out its welcome in many states where it was once recognized. It is an outmoded doctrine deserving neither respect nor devotion.

Blind adherence to such a doctrine is unbecoming for an enlightened people.”

- *Murray v Bill Wells Kennels, Ltd*,
Wayne County Circuit Court No. 95-
536479-NO (Mich 1997)

In *Murray, supra*, Judge Tertzag expressly recognized the artificiality of limiting damages to the market value of an animal and rejected it as unrealistic. In ruling that “damages should be left to the jury to decide” Judge Tertzag stated:

“Arguing that the Plaintiff’s damages are limited to the value of the animal, the Defendants seek this Court’s stamp of approval on the doctrine that

a dog is equated to chattel for purposes of determining and limiting damages. This Court refuses to do that.

Why should a jury be deprived of making the decision on this type of important case? After all, are not the jurors best positioned to determine damages? Why adhere to an arbitrary and outdated doctrine to limit damages under [the] circumstances in this case? Why limit damages to the value of the dog? Why not permit the fact finders to actually determine whether an owner suffered additional damages? Isn't that what the jury system is all about? Isn't that what jurors are supposed to do?

* * * *

The doctrine that damages are limited to the value of the dog (the chattel) has worn out its welcome in many states where it was once recognized. It is an outmoded doctrine deserving neither respect nor devotion. Blind adherence to such a doctrine is unbecoming for an enlightened people.

The common sense of jurors should hold sway on this issue. Referral to the innate wisdom of the community is preferable [to] fidelity to a doctrine which no longer mirrors reality and unfortunately provides sanctuary to the negligent.

Owners of kennels and veterinarians can be negligent just like anyone else. Just as other professionals have to face the full measure of responsibility for their negligent acts, so should kennel owners and veterinarians. The defendant suggests the existence of an arbitrary, artificial cap, i.e., the value of the chattel, as the full measure of damages. This view just does not recognize the hurt one undergoes as the result of losing a pet through the negligent acts of another." (Emphasis added)

Judge Tertzag's opinion is remarkable not only for its compassion, and eloquence, but for its inordinate wisdom as well. Judge Tertzag succinctly identified the issue – an artificial cap on non-economic damages – and rendered the solution which is the very essence of our justice system – the jury. As he so aptly held, the issue of damages is one for the jury.⁵

Economic Versus Non-Economic Value of Animals

Some people oppose classification of animals outside the "property" category arguing that people value what they "own." They assert that if people "own" animals as "property" they will be more inclined to protect and care for their animals.

In preparing this article the author asked one of the biggest lovers of companion animals that she knows, the Honorable

Brent Danielson,⁶ to play the devil's advocate to her position. His argument is so clever that it bears quotation verbatim:

"If my puggle is not my property, I will have less incentive to defend her. At her current state of evolutionary development she needs me to champion her cause. She is getting the hang of catching the Frisbee, but I have [had] no success in teaching her to draft civil complaints."

His point is well-made and well-taken. However, the author respectfully disagrees that treating animals as "property" will increase the likelihood that their "owners" will take good care of them.

Realistically, relating the monetary value of an animal to the care, love, and protection that one gives it is a non-sequitur. As an example, it never ceases to amaze me how people will pay hundreds or thousands of dollars for a "pure bred" animal, and then fail to care for, much less love it. And frequently the purchase price is well more than they can afford. Yet, despite their financial investment, they do not really value the animal. The fact that the "property" is alive (an animal), and needs food, water, love, and attention in order to live, often transforms it from a status symbol or valued piece of "property," to an inconvenience, and then a burden. Too often the animal is then neglected. This point is illustrated by the following photographs.

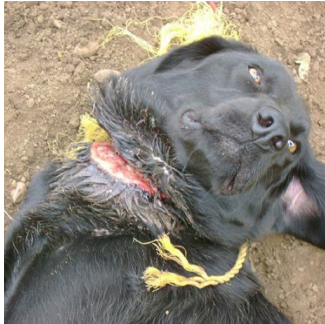
Below is a "pure bred" Basset Hound who probably had a market value of hundreds of dollars – in a normal state of health. Nevertheless, the dog was nearly starved to death because his "owner" lost interest in him.



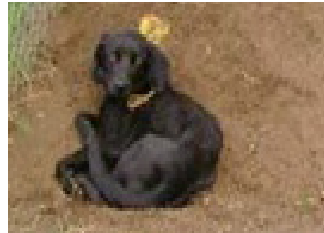
© Photographs by
Teresa Morton

Photographs on the next page show another dog, "Ladybug," whose owner lost interest in her. He chained her to a fence and failed to loosen the rope around her neck, causing the rope to become embedded in her neck. In such cases, the animal's body actually grows around the collar, chain, or rope and in severe cases the animal dies a slow, agonizing death by strangulation. Unfortunately, these "embedded collar" cases are extremely common.

Fortunately, Ladybug made a full recovery and was adopted to a loving family. Unfortunately, too many of these cases go unrecognized because the animals are kept out of sight or



Ladybug survived abuse.
© Photographs of Ladybug by Tracy Heape.



their injuries are concealed by their fur. Below is the initial photograph taken of Ladybug as her rescuer approached.

As you can see, from a distance this does not appear to be a serious situation – just a poor dog subjected to the insensitivity of an “owner” who did not care enough about her to keep her indoors or at least find her a good home. Had it not been for the neighbor who reported the situation to animal control, Ladybug’s fate would inevitably been a slow, agonizing death from strangulation, infection, or both.

Continuing to classify animals as property will only perpetuate this problem of neglected and abused animals, as illustrated by the foregoing cases. Elevating animals to their own category with more stringent laws than apply to inanimate “property” will more likely discourage people from simply discarding animals that no longer interest them.

The ultimate example of the irrelevance of economic value to the love and protection we bestow on other living beings, is our children. Our children are not our “property” – they have no monetary or fair market value. To the contrary, they are enormous financial liabilities. The cost of their care, feeding, housing, education, etc. is staggering. And yet, we love them despite the costs, and even enjoy spending money on them (often vast amounts). The fact that they have no fair market value is entirely irrelevant to our love for them. We provide them with all of life’s necessities, and lavish them with all of the luxuries we can afford because we love them with all our hearts, in spite of their negative economic value.

Many people feel the same about animals – they love them *despite* their lack of monetary value or even a negative monetary value since they, like children, require monetary expenditures to feed them, shelter them, maintain their health, etc. To many people the value of an animal does not lie in its fair market value, but rather in its love, companionship, and devotion. All qualities that you cannot put a price on - they are quite literally, priceless.

The Intrinsic Value of Some Animals can be Extraordinary and Should Be Legally Recognized – A Case Study

The Minnesota case *Moshe Bukrinsky v Cedar Trails Condominium Association, Inc.*, Case No: CT 98-003074, Hennepin County District Court, 4th Judicial District, 2000 is one of the most dramatic and heart-wrenching illustrations of the intrinsic value of an animal.⁷

The Plaintiff in that case was Moshe Bukrinsky. Mr. Bukrinsky was a single father, devoted to raising his son Gil (pictured below).

For his 16th birthday, Mr. Bukrinsky gave Gil a Rottweiler named Alec. Several months before his 21st birthday, Gil was murdered.



© Photograph of Gil by Moshe Bukrinsky

During the following year, a friend of Gil’s cared for Alec as Mr. Bukrinsky struggled emotionally to deal with Gil’s untimely death. During that year, Mr. Bukrinsky descended into a severe depression, causing him to withdraw from the outside world – even forsaking his job and social contacts. As his attorney (Gerald Laurie) put it, the day Gil was shot and killed, “[Mr.] Bukrinsky stopped functioning.” A psychiatrist diagnosed him as suffering from post-traumatic syndrome.



© Photograph of Moshe, Gil, and Alec, by Moshe Bukrinsky

After Gil died, Mr. Bukrinsky (pictured left with Gil and Alec) moved from the family home into a condominium. A year after Gil’s murder, his friend who had been caring for Alec gave Alec to Mr. Bukrinsky. Mr. Bukrinsky was initially reticent to take Alec. However, Alec soon became his reason for living. According to Mr. Bukrinsky “[Alec] saved my life.”

Mr. Bukrinsky was unable to sleep so he began walking Alec at night as well as during the day. In fact, he would walk Alec “for hours every night.” When the weather grew cold, Mr. Bukrinsky put olive oil on Alec’s nose, boots on his feet, and a coat on his body to keep him warm during their walks.

Alec's love, comfort, and companionship enabled Mr. Bukrinsky to slowly begin recovering from his depression.

The responsibility of caring for Alec forced Mr. Bukrinsky to get out and engage in life again.

Unfortunately, the condominium association where they lived had a no-pets policy. The condominium association was inflexible and refused to allow Mr. Bukrinsky to keep Alec, despite the heart-breaking circumstances. The condominium association even imposed a \$200 per month fine on Mr. Bukrinsky and finally went so far as to commence eviction/foreclosure proceedings against him.

For a year and 3 months Mr. Bukrinsky attempted to reason with the condominium association. To demonstrate his emotional need for Alec, Mr. Bukrinsky submitted a psychologist's report stating that Alec "was essential to helping him overcome his depression." The condominium association was unmoved.



© Photograph of Alec by Moshe Bukrinsky

Mr. Bukrinsky then submitted a detailed psychiatric statement attesting to "the importance of [Alec] in helping him deal with his 'major depression.'" According to his attorney, when Mr. Bukrinsky attempted to read the psychiatrist's statement at a Board meeting, the Board "summarily cut him off," denied his request to keep Alec, and commenced the eviction/foreclosure proceedings on his condominium unit.

Thereafter, Mr. Bukrinsky sued the condominium association under the federal Fair Housing Amendments Act which mandates that landlords and condominium associations provide "reasonable accommodations" for people with physical or mental disabilities. He also filed a state claim under the Minnesota Human Rights Act.

At trial Mr. Bukrinsky testified how the condominium association's conduct aggravated the pain and suffering he experienced because of his son's murder. As an example he stated that when the sheriff's deputy came to serve him eviction/foreclosure documents, it painfully reminded him of the official who notified him of his son's murder.

The federal Fair Housing Amendments Act claim was tried before a jury and resulted in a verdict for Mr. Bukrinsky of \$110,000.00. The jury concluded that the condominium's failure to make reasonable accommodations for Mr. Bukrinsky caused him emotional distress.

Subsequently, a judge awarded Bukrinsky almost \$88,000.00 in attorney fees, costs, and interest on his claim under the Minnesota Human Rights Act. All totaled, after 3 years in litigation, Mr. Bukrinsky was awarded nearly \$198,000.00.

As can be seen from this case, judges and juries do understand and value the special relationship/bond that can develop between people and their animals. Judges and juries do comprehend the critical, and often times therapeutic, role animals play in their lives, and judges and juries are willing to award significant verdicts for interference or destruction of that relationship.

Categorizing animals as "property" unrealistically minimizes and sometimes even obliterates their intrinsic value. In the case of Mr. Bukrinsky and Alec, Alec's economic value was completely irrelevant to Mr. Bukrinsky's recovery. What mattered was the intrinsic (non-economic) value Alec had for Mr. Bukrinsky, in the form of unconditional love and companionship.

"[Alec] saved my life."

- Mr. Bukrinsky speaking about the importance of Alec to his recovery from severe depression after his son's murder

It had absolutely nothing to do with economic value and everything to do with emotion – Alec's intrinsic, non-economic, value to Mr. Bukrinsky. Had Mr. Bukrinsky placed no emotional/intrinsic value on Alec, he could easily have "gotten rid" of Alec, in one form or another. And, Mr. Bukrinsky would have suffered for it. He would have deprived himself of the only "thing" that brought him true solace and comfort in the wake of his unfathomable loss and grief; the only "thing" that relieved his depression. No medicine, no therapy could do what Alec did for Mr. Bukrinsky, and Mr. Bukrinsky is the first to say that.⁸

In fact, by the time Alec died 3 years ago, he had shepherded Mr. Bukrinsky back to mental health. So much so, that when Mr. Bukrinsky called his attorney to tell him that Alec had died,⁹ his attorney thought to himself "Oh, no! Now Moshe will crash [emotionally] again."¹⁰ So, with great apprehension, his attorney asked him how he felt about that. To his attorney's utter amazement and relief, Mr. Bukrinsky said "I feel fine because now I know he is with Gil."

This is just one of the many instances in which an animal's love and devotion heals in a way that nothing else could.

The Legal Bond Between Animals and their Owners May Be Strengthened By Legal Reclassification of Animals¹¹

In response to the author's proposal of re-classification of animals, the question has been raised whether the proposed re-classification would dilute or even eliminate the "property rights" owners currently have in their companion animals. The concern expressed was that re-classification could give owners less control over the welfare of their companion animals.

The beauty of creating a new legal category called "animals" is that It would allow us to actually strengthen the legal bonds between owners and their companion animals by changing the

owners' rights from "property rights" to rights more akin to custody rights in our children.

Custody rights of such a nature are much stronger, and more difficult to break, than "property rights."

Such a change will likely have a profoundly positive effect on how society views, and treats animals. It will promote the view of animals as the living, loving, beings that they are, and simultaneously discourage the archaic view that animals are comparable to inanimate objects.

Creating a new legal category called "animals" will give us a "clean slate." It will allow us to implement laws similar to child custody laws for companion animals and write stronger protection laws for non-companion animals, if we so choose (and, as discussed below, the author certainly hopes that we would so choose).

Non-Companion Animals Should Be Included in the New "Animal" Category Along With Companion Animals

"Non-companion" animals are animals such as "livestock," "exotics," and the proverbial "wild" animals. Protection should be extended to non-companion animals for several reasons.

"Non-violence leads to the highest ethics, which is the goal of all evolution. Until we stop harming all other living beings, we are still savages."

- Thomas Edison

First, non-companion animals are targeted by animal abusers, as much, if not more, than companion animals.

Second, many people derive great pleasure from observing, photographing, drawing, and interacting with them.

As an example, the author used to live in a busy suburb of Detroit. For many years a mother duck would nest at a car repair business across the street from a lake. Every year when her ducklings hatched the mechanics would stop four lanes of busy traffic to personally escort them all safely to the lake. Those ducks were non-companion animals but gave much pleasure and enjoyment to the mechanics.

As another example, years ago the author recalls hearing a remarkable story about a man's parrot. His wife had died and the parrot retained her voice and her remarks. The man said that the comfort he received from that bird was beyond measure.

In the last decade or so, with such wonderful developments as the television channel Animal Planet, YouTube, and the internet, the appreciation of animals and recognition of their abilities, has become more mainstream.¹² Those mediums have enabled people to capture incredible animal behavior and intelligence and share them with millions of people around the world. Suddenly it seems our knowledge of animals is growing exponentially and there seems to be no end in sight.

When studied closely every animal is a microcosm of interest unto itself. How they function, interact, problem-solve, and live is all riveting if one just takes the time to observe them.

"The day should come when all of the forms of life...will stand before the Court – the pileated woodpecker as well as the coyote and bear, the lemmings as well as the trout in the streams."

- Former Supreme Court Justice William O. Douglas

The author does believe, unequivocally, that the category of "animals" should include non-companion animals, as well as companion animals. The author does not claim to have all the answers and leaves it to wiser people to define exactly where the line should be drawn.

Conclusion

In the past, our society has been reluctant to acknowledge the emotional attachment that people develop to animals (and vice versa) and the non-economic rewards that are derived from such relationships. Instead of changing to accommodate the explosion of knowledge concerning animals, our typically flexible legal system has yielded little. For the most part it still retains the traditional "property" classification of animals which merely perpetuates the artificial and unrealistic treatment of animals as objects rather than treating them as the living, breathing, loving creatures that they are.

Currently, all 50 states have different legal schemes governing, and even defining animals. Some states define animals as "vertebrates" (animals with backbones), and others limit them to specific species such as cats, dogs, horses, birds (other than "poultry"), etc. The time has come for a uniform code to govern animals as a separate, and distinct category. The legal system favors uniformity and has achieved it across the country in a number of areas, such as commercial transactions with the UCC (Uniform Commercial Code), and the Uniform Child Support Act. I propose that a nationwide code/act be developed and adopted by all 50 states to implement a uniform legal categorization of animals as "animals" for purposes of determining cause of actions, liability, and damages.

Categorizing animals as "animals" rather than "property" will not only result in the allowance of non-economic damages for their owners, but hopefully

"I am in favor of animal rights as well as human rights. That is the way of a whole human being."

- Abraham Lincoln

promote more respect for animals as living creatures. Hopefully, that in turn would engender kinder, more compassionate treatment for animals of all kinds. 🐾

About the Author

Catherine Wolfe is an attorney as well as a wildlife biologist. Ms. Wolfe was a founding member of the Animal Law Section of the State Bar of Michigan (the first such section in the nation) and subsequently served as Chairperson.

Ms. Wolfe founded Wolfe Pack Press (www.wolfepackpress.org), a 501(c)(3) public charity, to develop and distribute educational materials to fight animal cruelty. She wrote the book, *Get the Edge in Fighting Animal Cruelty Cases*, and is a national speaker, having given presentations at the 2005, 2006, and 2007 national conferences of NACA (National Animal Control Association). Ms. Wolfe has also taught the Level II course for animal cruelty investigation certification for ACCI (the Association of Certified Animal Cruelty Investigators) and been a presenter for numerous organizations including the Michigan Humane Society, the Michigan Association of Animal Control Officers, the Colorado Association of Animal Control Officers, the Humane Society of Southern New Mexico and the Loudoun County Animal Care & Control in Virginia.

Ms. Wolfe has also written a children's book, *Pets Rule! to teach children how to be responsible owners of companion animals*.

Endnotes

- 1 This according to an account by Winston Churchill's grandson, Winston Churchill, in *The Churchills*, a documentary produced by WGBH for Public Television in 1996.
- 2 The term "companion animals" has begun to replace the term "pets" in the vernacular of those of us who consider animals as "companions" rather than property. For that reason, the author will use the term "companion animals" in this paper, rather than the term "pets."
- 3 The photograph is of the author's toy poodle, Vivien, and her friend, Mary Hellen. This photograph was taken after Mary Hellen recovered from open heart surgery. Her recovery was rocky, with many set-backs, and at one point seemed hopeless. However, a number of other people, including some of the intensive care staff, believe that Mary Hellen's love of Vivien made her recovery possible. You can read their amazing story at www.wolfepackpress.org.
- 4 As "property" animals are subject to "ownership." However, there is an increasing trend towards viewing the relationship between animals and their care-givers as one of "guardianship" or "stewardship." The author prefers this newer view because it comports with re-classification of animals as "animals" and recognition that they are more than just "property." Nevertheless, for purposes of this article, the author uses the terms of ownership because that is the current state of the law.
- 5 Judge Tertzag died on February 4, 2009. As can be seen from his Opinion in *Murray*, we lost an extraordinary jurist. He inspired the Animal Law Section of the State Bar of Michigan to create an award named after the dog in that case – the Brandi Award. I had the honor of presenting Judge Tertzag with the first Brandi Award for outstanding achievement in the area of animal law.
- 6 At that time I asked Judge Tertzag why he devoted so much time and thought to writing an opinion in an animal case – especially since he sat in the City of Detroit where dockets are overflowing with cases - many of the most grievous and heinous nature. He said that years before, when he was a young lawyer, new to the practice of law, a couple consulted him about the wrongful death of their beloved pet dog. He felt deep sadness for the couple's loss and was appalled when his research revealed that they had no legal recourse because their beloved pet was merely "personal property." He detested having to inform them of the unjust state of the law and he felt powerless to do anything to change the law. He was haunted by the case for years because he felt that he should have done something to at least try to change the law because it was so unrealistic and hurtful to those who love their animals.
- 7 When the *Murray* case came along Judge Tertzag saw it as his opportunity to right an old wrong. He hoped that it would help change the unfair laws governing animals. Although he was ahead of his time, his effort was not wasted. His words and their wisdom live on and I hope they inspire others as they have inspired me.
- 8 Judge Tertzag is a sterling example of Winston Churchill's belief that there is no such thing as "history," – only "biography." One person *can* make a difference and Judge Tertzag was one such person.
- 9 Judge Danielson previously presided as the 85th District Court Judge in Manistee County, Michigan.
- 10 "Condo Must Waive No-Dogs Rule for Grieving Man," 2000 LWUSA 754 (August 21, 2000); Minnesota Law & Politics, December-January 2001, No. 123
- 11 The author interviewed Mr. Bukrinsky on January 29, 2010, for this article and he could not stress this point enough.
- 12 Alec died of old age. He was 15 years old which is incredibly old for a Rottweiler. They generally die much younger. However, Mr. Bukrinsky told the author that during the entire time he had Alec, "he never drank tap water" – Mr. Bukrinsky always gave him bottled water and he also cooked for Alec. Both of those factors as well as all the exercise he got walking with Mr. Bukrinsky, surely contributed to Alec's longevity, as well as Mr. Bukrinsky's own love and devotion.
- 13 The author also interviewed Mr. Bukrinsky's attorney, Gerald Laurie, on January 29, 2010 for this article, and he vouched for the importance of Alec in Mr. Bukrinsky's recovery from depression.
- 14 This paper, in a slightly modified form, was presented at the Mid-Atlantic Animal Law Symposium on April 9, 2010. The modification is italicized and underlined. It was added in response to a comment made following the presentation.
- 15 Of course the pre-cursors to the Animal Planet television channel were the National Geographic "specials" on Jane Goodall's studies of chimpanzees, and Jacques Cousteau's "undersea

world.” Although those television programs stimulated interest in the animal world (and even inspired people like myself to study animals seriously) I believe they were too infrequent to convince people that animals are possessed of genuine intelligence.

Those programs were viewed at the time more as matters of curiosity than as the wonderful insights into the fascinating world of animal behavior that they were. Most of their viewers considered the animal behavior depicted to be the exception rather than the rule. They discounted much of the animals’ behavior as interesting aberrations of nature, rather than recognizing it as intelligence.

Interestingly, at the time the programs on Jane Goodall’s studies of chimpanzees aired, one of the “scientific” criteria that distinguished “humans” from other “animals” was our ability to make tools. Jane Goodall’s studies dispelled that notion in a powerful way. While studying chimpanzees, she documented on film chimpanzees eating termites that they extracted from the termites’ mounds using branches as tools of extraction. In fact, not only did she document *using* tools, she showed them actually *making* the tools. Specifically she showed the chimpanzees stripping leaves off of slim branches, and then inserting them into termite mounds to extract the termites that clung to them.

Law Student Honored with Wanda Nash Award from SBM Animal Law Section

By Sheila Pursglove, Legal News

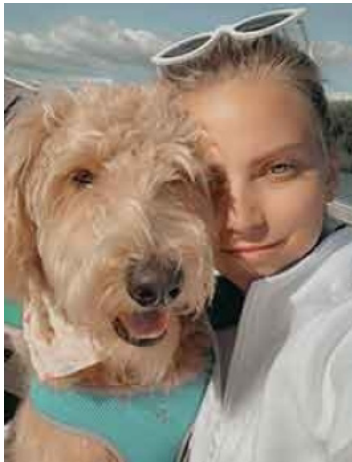
This article originally appeared in the April 12, 2022 online edition of the Oakland Legal News. We thank reporter Sheila Pursglove and the Legal News for permission to republish the following article. Sheila is a true friend of the Section and is always interested in our work.

Western Michigan University Cooley Law School student Heather Silcott knew from the moment she rescued a labradoodle named Bruno from an auction that animals needed lawyers.

“This is when I decided to look for an animal law course because I needed to know more about how the law treats animals,” she says. “The animal law course at Cooley taught me so much that it inspired me to devote my pro bono work after I graduate to helping be a voice for animals.”

A 3L student, Silcott is this year’s recipient of the State Bar of Michigan’s Wanda A. Nash Award, named after the founder of the SBM Animal Law Section. The annual award recognizes a 3L law student at a Michigan law school for substantial contributions to animal law. Dean Amy Timmer nominated Silcott, as an outstanding law student, committed to animal rights. The award ceremony was held April 4 via Zoom and Facebook Live.

After seeing an animal control post about Bruno’s availability for adoption, Silcott contacted them to be told that



WMU-Cooley Law School 3L student Heather Silcott, pictured with her rescue dog Bruno, is this year’s recipient of the Wanda Nash Award, awarded by the SBM Animal Law Section

since multiple people were interested in the dog, per city policy, an auction would be held.

“I was shocked by this and decided I had to go to the auction and see how it works,” she says.

She showed up on the date and time, only to find out the date and time had been rescheduled to accommodate bidders flying in from out of state.

“At that moment, I knew I had to save the dog,” Silcott says. “He was unfixed, and I knew people would be interested in him to use him to stud him out and make money off of him. I wanted him to live a life as a dog and not just be used for breeding.”

On the new date and time, the lot was packed. The animal control office explained how the auction would work, and bidders stood in a circle.

“We all had our hands up, and the animal control officer started to call out dollar amounts. When it became too high of a price, you would put your arm down,” Silcott explains.

The bidders finally came down to Silcott and another family.

“The price kept rising and rising, and it got so high I was confused as to why someone would pay this high price when you can get a new puppy labradoodle for cheaper,” she says.

The other family eventually stopped bidding.

“After I won, I was finally able to meet and pet my new dog,” Silcott says. “He was scared and shaking, which is not typical for a labradoodle. He didn’t want to get in my car and leave. I sat on the ground with him in the parking lot until he was ready to get in the car and trust me. After about 30 minutes, he decided he was ready.”

“When I got home, he was so scared he wouldn’t step foot in the house, but he would go into the backyard. He hid under the porch and wouldn’t come out. I could tell he had been through trauma or some life-changing event.”



Heather Silcott’s two dogs, Bruno and Sasha, enjoy a boat ride on a summer day.

But when Silcott’s other dog, a Goldendoodle named Sasha, stepped into the house, Bruno followed her—and they immediately became fast friends, in a household that includes three cats.

“It didn’t take long for Bruno and Sasha to become the bosses of the house,” Silcott says with a smile. “This year will be two years with Bruno and it’s been the best two years of my life. Sasha has taught Bruno how to really be a dog. He now loves to put his head out the window in the car and let his ears flop in the wind.”

Silcott earned her undergrad degree in criminal justice from Wayne State University, interning with the Drug Enforcement Administration in Detroit and working as a police cadet in Farmington.

But a couple of jobs as a legal administrative assistant turned her sights instead to pursuing a law degree; and she also is working as a legal assistant for Progressive Insurance while attending law school.

She relaxes by playing ice hockey competitively for Belle Tire, and her team won a national championship in Tampa. This background gave her a goal of becoming a sports and entertainment contract lawyer.

As Miss Michigan U.S. International 2021, with the honor of representing Michigan at the Miss U.S. International Pageant in Orlando, Silcott notes pageantry built her confidence to help prepare for walking into a courtroom and being able to talk in law classes.

Juggling full time work and leisure pursuits while attending law school, Silcott is enjoying her experience.

“I enjoy how much each professor really cares about your success—Cooley Law School wants to see you succeed,” she says. 🐾

Article photos courtesy of Heather Silcott.

Ginny Mikita Earns Brandi Award

Co-Editor’s Note: We reported on the Brandi Award with a brief update in the last issue (#45, Page 2). This article provides more details.

Ginny Mikita, a founding member of the Section, was honored with the Brandi Award on March 18, 2022 in a ceremony at the Humane Society of Huron Valley in Ann Arbor. The award recognizes someone in the legal or judicial profession who does something remarkable for animals.

A Section member nominated Ginny. The recommendation for the award included the following words:

“Ginny is amazing. Since 1991, she has dedicated her life to advocating for animals. In her own words, ‘I attended Notre Dame Law School with the specific intention of using legal skills to protect all animals. Animal advocacy -- on behalf of individual animals and their caretakers and animal protection organizations including humane societies, rescues and veterinarians (particularly those engaged in in-home hospice and palliative care) -- continues to be a significant part of my legal practice.’ She has served as a hospital night chaplain and volunteers with Hospice

of Michigan as a past life recorder. During my time interviewing her, I got the strong sense that she is a gentle, dedicated, and genuine human being.”

Ginny designated the Huron Society of Huron Valley to receive the Award’s related honorarium to support their farmed animal programs. Ginny did not receive the Award for a single act. She earned the Award for her long-term and tireless effort on behalf of animals.

Ginny is an animal law attorney, but her advocacy extends to other areas. Read more about her work at her website, Animal Blessings, <https://www.animalblessings.love/>. 🐾



Ginny Mikita presented with the Brandi Award by Section Council Secretary Donald Garlit

Recent Animal Law News

By Donald Garlit

Co-Editor's Note: *The news below includes brief summaries of important and newsworthy items of interest. We chose these as being of most interest to our members. Many items are now appearing in the legal and national press and not all can be included.*

You will see that some items cover situations in countries other than the United States. Improving conditions for animals is achieving worldwide interest.

Normally we only cover cases that have been fully adjudicated or legislation that has been signed into law. We are not always following those approaches in all updates as there are several situations in the early stages that present interesting legal or legislative approaches that may be discussed below.

Additionally, we will continue to discuss recent cases which have involved dog attacks and animal cruelty which have resulted in serious charges against the owner/guardian. It appears that prosecutors are taking these situations much more seriously especially when there is a past pattern of dog aggression or animal cruelty.

Fourth Attempted Iowa “Ag Gag” Law Fails with Summary Judgement Ruling that Law is Unconstitutional



The fourth “Ag Gag” law passed in Iowa has failed with a summary judgment against the State of Iowa in US District Court in September 2022. Three of the four “Ag Gag” laws passed by the Iowa legislature in recent years have been ruled unconstitutional in US District Court. The latest failed as it criminalized the gathering of evidence primarily by videos of animal abuse which are considered predicates to publishing which is considered a 1st Amendment right. Note that some of the four laws are still on appeal after initial judgements which overruled them.

The situation is in some flux as noted above. More details can be found in the articles listed below.

Sources are Animals 24-7 at: <https://www.animals24-7.org/2022/09/29/fourth-attempted-iowa-ag-gag-law-fails-on-first-glance-by-a-judge/>

and

Yahoo! at: <https://www.yahoo.com/now/judge-strikes-down-4th-iowa-220228252.html>

Greyhound Racing Ends in Iowa as Subsidies End

Greyhound racing in Iowa ended with the last race at the Iowa Greyhound Park on May 15, 2022. A phase-out of subsidies from gambling revenue to the “industry” (both breeders and tracks) began in 2015 and ended in 2022.

It appears that greyhound racing is still legal in Iowa although not financially viable without government subsidies. The industry appears to not be able to support itself without help as track attendance and revenue has plunged in recent years.

This leaves greyhound racing in only two states: Arkansas where it is being phased-out and West Virginia. Track attendance has been impacted by Covid, too.

Source is Grey 2K USA at: <https://grey2kusa.org/about/states/ia.php#:~:text=There%20are%20no%20greyhound%20racetracks%20remaining%20in%20Iowa.,The%20Iowa%20Greyhound%20Park%20kennel%20compound.%20%28Telegraph%20Herald%29>

and

<https://www.grey2kusa.org/about/states.php>

California Bans the Testing of Chemicals and Pesticides on Dogs and Cats

The Prohibiting Extraneous Testing (PET) Act was signed into law by Governor Newsom in September 2022 and will take effect on January 1, 2023. California effectively becomes the first state to enact such a ban which covers pesticides, chemical substances, and food additives.

Source is MSN at: <https://www.msn.com/en-us/news/us/california-bans-unnecessary-pesticide-chemical-testing-on-dogs-and-cats/ar-AA12jOGY>



Palma de Mallorca Bans Horse Drawn Carriages



The Spanish city of Palma de Mallorca (capital of the Balearic Islands) will ban horse-drawn carriages beginning in 2024. The plan is to replace the horse-drawn carriages with some sort of electric carriage.

We have reported on these bans over the years. Disputes and protests about horse-drawn

carriages are occurring all over the world. Obviously, some of the biggest disputes and scenes of poor horse treatment have occurred repeatedly in New York City. Major US cities which have instituted a ban include Chicago and Salt Lake City.

Source is People for the Ethical Treatment (PETA) at: <https://www.peta.org/features/horse-drawn-carriage-bans/#:~:text=It%E2%80%99s%20a%20whinny%20for%20horses%20in%20Palma%20de,carriages%20in%20the%20city%20center%20with%20electric%20carriages.>

Arguments are Presented at US Supreme Court Regarding Validity of California Proposition 12 which Bans Sale of Food from Certain Animals unless Raised in Conformity with California Standards - Even if Raised Outside California

Arguments were heard in October in the case of National Pork Producers Council vs. Ross. Basically, the issue is whether California can set standards for food production that apply to other states if the product is sold in California. We can expect a decision later in the term and some are stating that remanding back to the trial court is possible.

The proposition passed by voter initiative in 2018. The trial and appellate courts ruled in favor of the California proposition. Obviously, the case raises many Constitutional issues.

Note that California has separate auto emissions standards from other states although this is permitted by US Federal law.

Sources discussing various issues are Foodprint.org at: <https://foodprint.org/blog/proposition-12/> and

Vox.com at: <https://www.vox.com/policy-and-politics/2022/10/11/23398875/supreme-court-pigs-national-pork-producers-ross-california-dormant-commerce-clause>

Ecuador's High Court Rules Wild Animals Have Legal Rights. (Yes, the Law Can Change from Long-Settled Concepts! – Part 1)



From CritterFacts

Estrellita, a woolly monkey, was taken from the wild at a young age. She lived with a family for 18 years and grew acclimated to their life and ways. Authorities seized her in 2019 as keeping a wild animal is illegal. She died about one month later in a zoo.

Ana Beatriz Burbano Proaño was Estrellita's guardian and filed a writ of habeas corpus for return of the monkey before learning of her death. Later she asked for a ruling that Estrellita's rights had been violated.

Ecuador has rights of nature laws. The court decided in early 2022 by a vote of 7-2 that Estrellita's rights had been violated. First, when Burbano removed her from the wild and, second, when the government did not consider her situation when she was seized.

Ecuador had established rights of nature in 2008 although until now it was unclear if that included wild animals. The court stated that the Ministry of the Environment should develop new rules to ensure that the rights of wild animals are protected.

Details can be found from Smithsonian Magazine at: <https://www.smithsonianmag.com/smart-news/ecuadors-high-court-recognizes-that-wild-animals-have-legal-rights-180979862/>

and

Brooks McCormick, Jr. Animal Law and Policy Program at Harvard Law School website at: <https://animal.law.harvard.edu/news-article/landmark-ruling/>

Spain Grants Personhood to Salt Water Lagoon (Yes, the Law Can Change from Long-Settled Concepts! – Part 2)

Note: While not an animal law issue, the following shows how the law can change over time and is very applicable to the ancient "animals as property" paradigm.

Spain's Senate granted personhood to Europe's largest saltwater lagoon in September 2022. This was after a citizen's petition gathered over 600,000 signatures to request better environmental protection for the lagoon.



From the US News & World Report article: The law codifies the lagoon's right "to exist as an ecosystem and to evolve naturally" and recognizes its right to protection, conservation and restoration.

This should improve the ability of a group of caretakers to prevent ecological harm to the salt water lagoon which is Europe's largest.

Source is US News & World Report at: <https://www.us-news.com/news/world/articles/2022-09-21/spain-grants-personhood-status-to-mar-menor-lagoon>

US Supreme Court Declines to Review Permanent Injunction Against Enforcement of Kansas "Ag Gag" Law

The US Supreme Court declined to review a permanent injunction by the 10th Circuit Court of Appeals stopping enforcement of the Kansas "Ag Gag" statute. The injunction was issued on 1st Amendment grounds.

Source is the Brooks Institute for Animal Rights Law and Policy at: <https://thebrooksinstitute.org/us/animal-law-digest/2022-04-25/us-supreme-court-declines-review-decision-overturning-kansas-ag-gag>

Arizona Bans the Sale and Production of Eggs from Caged Hens



The requirement was passed by regulation of the Arizona Department of Agriculture in April 2022. Comments in favor of the regulation outnumbered those against it by 17 to 1. Implementation is to be complete by 2025.

Nine other states have a similar ban although phase-in

periods are common.

Source is Animal Equality at: <https://animalequality.org/news/arizona-joins-the-movement-to-ban-cages-for-hens/>

California Court Rules that Bees Can be Considered “Fish” for the Purposes of the California Endangered Species Act

Environmental groups have wanted California Endangered Species Act (CA ESA) protection for bees. They brought a lawsuit to bring bees under the purview of the

CA ESA. The trial court ruled against the inclusion based on apparent wording in the enabling statute as bees are not explicitly included.

California’s Third District Court of Appeal overturned the ruling in May 2022. The CA ESA does identify invertebrates as subject to protection although included in the definition of various marine species. The court ruled that bees are included in the invertebrate definition and eligible for possible protection.

The environmental groups are seeking protection for four types of bees: Crotch bumblebee, Franklin bumblebee, Suckley cuckoo bumblebee, and Western bumblebee.

Source is CNN at: <https://www.cnn.com/2022/06/06/us/california-bees-fish-court-ruling-scn-trnd/index.html>



US District Court Issues Permanent Injunction against Arkansas Meat Labeling Censorship Law

Enforcement was brought against Tofurkey which used the terms “sausage” and “burger” although included wording that described the products as vegan or plant-based.



Moving? Changing Your Name?

In order to safeguard your member information, changes to your member record must be provided in one of the following ways:

- **Login to SBM Member Area** with your login name and password and make the changes online.
- **Complete contact information change form** and return by email, fax, or mail. Be sure to include your full name and P-number when submitting correspondence.
- **Name Change Request Form**—Supporting documentation is required

Forms can be found at https://www.michbar.org/programs/address_change



Legislatures have often passed these meat label censorship laws under the guise of preventing consumer confusion. The Court noted that other words and aspects of the packaging should dispel any consumer confusion.

The October 2022 ruling was essentially based on violations of the 1st Amendment and 14th Amendment due process right to truthful commercial speech of Tofurkey.

Source is MarketWatch at: <https://www.marketwatch.com/press-release/arkansas-court-blocks-unconstitutional-meat-label-censorship-law-2022-10-11>

Michigan News: Woman Brings Federal Lawsuit Against Grand Rapids Police for Killing Her Dog – Settles for \$50K



Billie Barrone’s dog, Jay Jay, was shot by a Grand Rapids police officer after a loose dog complaint in late 2021. Statements in the case were conflicting. Did the dog attack anyone? Was the dog being contained after being loose? In any event, the responding police officer shot and killed Jay Jay. He was Barrone’s emotional support animal.

Barrone brought suit in Federal district court alleging 4th Amendment violations for seizing and destroying her property without a warrant or probable cause. It does not appear that a trial ever began for the case.

The City of Grand Rapids eventually agreed to settle the case for \$50,000 in October 2022.

Source is MLive at: <https://www.mlive.com/news/grand-rapids/2022/10/grand-rapids-will-pay-50k-to-woman-after-officer-killed-her-dog.html>

Michigan News: Animal Abuse Evidence Excluded over Warrant Deficiencies in Court of Appeals Ruling



There were many local complaints about conditions involving animals at Defendant’s property including loose animals. An animal control officer inspected the property noting issues of animal care. He returned the next day with a search warrant and seized approximately 35 animals of various types including seizures from two barns located on the property. Defendant was charged with cruelty/abandonment of 25 or more animals.

Source is MLive at: <https://www.mlive.com/news/grand-rapids/2022/10/grand-rapids-will-pay-50k-to-woman-after-officer-killed-her-dog.html>

At an evidentiary hearing, defendant challenged using the animals found in barns as evidence since the warrant clearly said a search of a “single-family dwelling” only. The trial court agreed. This was affirmed by a 2-1 vote in the Michigan Court of Appeals after the prosecutor appealed.

Source is WLNS, Channel 6 at: <https://www.wlns.com/news/local-news/jackson-co-animal-abuse-evidence-thrown-out-over-warrant-issue/>

Texas Man Sentenced to 25 Years for Animal Abuse and Cruelty – Buddy the Dog Survived and Has Been Adopted – Said to be One of the Longest Sentences in Texas History for Animal Cruelty

The perpetrator was filmed beating Buddy the Rottweiler who was five months old at the time. His justification was that Buddy had left the yard. He beat Buddy with his fist and a piece of wood.



A rottweiler (not Buddy)

The perpetrator was sentenced to 25 years in prison based also on numerous felony convictions over the years including crimes such as drug possession and crimes of retaliation.

Source is MySanAntonio at: <https://www.mysanantonio.com/news/local/article/San-Antonio-man-animal-abuse-sentence-17346201.php>



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Michigan Wolves Continue to Generate Interest, Controversy: Updated Wolf Management Plan and Wolf Management Advisory Council

The Michigan Department of Natural Resources (DNR) released its long-awaited draft updated wolf management plan in October. By the time you read this, it is expected to be finalized.

About 700 wolves live in Michigan's Upper Peninsula. They were first protected under the federal Endangered Species Act ("ESA")¹ in 1974, at a time when wolves had been nearly extirpated from the state and elsewhere in the country. They have continued under ESA protection for most of that period, with several exceptions when they have been turned over to state management. Since 2003, the U.S. Fish & Wildlife Service ("FWS") has made a series of attempts to remove them from ESA protections. Each attempt has been followed by a lawsuit challenging the de-listing and a court decision finding that the agency's action was illegal. The agency then engages in another attempt at de-listing. The most recent de-listing period was from January 2021 to February 2022, when a federal court overturned the FWS decision to remove ESA protection.²

Michigan is one of three states (with Minnesota and Wisconsin) where the Western Great Lakes gray wolf is found. Michigan's wolf management plan dates from 2008 and was updated in 2015. The current update process occurred in 2021-22.

This update involved the Wolf Management Advisory Council (WMAC), created by a 2012 statute.³ The WMAC is tasked with providing non-binding recommendations to the Natural Resources Commission and the legislature on proper wolf management. It consists of the Department of Natural Resources director/designee; an organization promoting conservation; organizations promoting hunting and fishing; a tribal government; agricultural interests; and an animal advocacy organization. The WMAC met monthly from August 2021 through May 2022 to review the 2015 Plan and make recommendations to update it.

Note that during the 10 months of WMAC meetings, the wolves' status changed from state management to protected under the ESA (after the February 2022 court decision). As



a result, the state currently is limited in its ability to "take" a wolf. The updated plan would fully come into effect upon a future de-listing.

The most contentious issue is whether to have wolf hunting and trapping. As with the two earlier plans, WMAC members could not agree. However, there was agreement among the Council members that the DNR should engage a wider range of partners representing more viewpoints, provide information on the positive aspects of wolves, regularly update the science, take proactive steps

to decrease wolf conflict situations, and enhance communication with the public. The updated Plan largely adopts these latter consensus-based recommendations.

The 2022 Plan⁴ also includes input from a state-wide public attitude survey, an updated literature review, Michigan tribal government consultation, and two rounds of public comments generating over 8,000 responses.

The draft Plan takes a "wait-and-see" approach to a recreational hunting and trapping season. Wolf advocates are dissatisfied because the Plan doesn't rule out a public hunt to resolve wolf conflict situations and does not take into account two statewide ballot initiatives in 2014 in which a solid majority of voters rejected a wolf hunt. Wolf hunting advocates are dissatisfied that it does not directly call for developing a UP-wide hunting and trapping season.

It is safe to predict that the 2022 Plan will not resolve the deeply held conflicts between wolf advocates and those who want to see a hunt. 🐾

Note: This summary was written by Section member Bee Friedlander who was the animal advocacy member of the Wolf Management Advisory Council, representing Attorneys for Animals.

Endnotes

- 1 16 U.S.C. §1531 et seq.
- 2 The case is now on appeal, DEFENDERS OF WILDLIFE, et al., Plaintiffs, vs. U.S. FISH AND WILDLIFE SERVICE,

et al., Defendants, Case No. 4:21-cv-344-JSW 4:21-cv-349-JSW 4:21-cv-561-JSW. A timeline of gray wolves and the ESA through September 2021 is available at <https://blog.humanesociety.org/wp-content/uploads/2021/09/Wolf-timeline-9-22-21.pdf>. As noted, the most recent court challenge was successful in Feb. 2022,

3 MCL §324.43540e

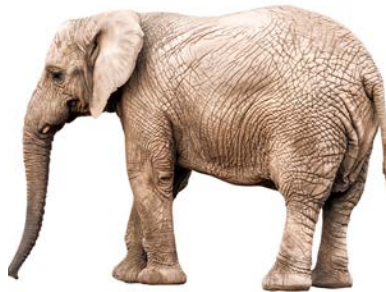
4 DRAFT MICHIGAN WOLF MANAGEMENT PLAN UPDATED 2022, Michigan Department of Natural Resources Wildlife Division Report No. 3703, July 2022 is available at https://www.michigan.gov/dnr/-/media/Project/Websites/dnr/Documents/WLD/Mgt/draft_mi_wolf_plan_2022_update.pdf

NhRP Update – NY High Court Rules Happy the Elephant Is Not A Legal Person

By Maggie Sadoff

In a 5-2 decision, the New York Court of Appeals affirmed a lower court’s dismissal of NhRP’s petition for writ of habeas corpus on behalf of Happy. The court reasoned that the writ of habeas corpus is limited to human beings: “Habeas corpus is a procedural vehicle intended to secure the liberty rights of human beings who are unlawfully restrained, not nonhuman animals.” (*In the Matter of Nonhuman Rights Project, Inc. v. James J. Breheny, et al.*, 2022 NY Slip Op 03859 at p. 6, decided June 14, 2022). The Court opined that habeas relief was incompatible in the nonhuman context as Happy would simply be transferred from one confinement (the zoo) to another (a sanctuary), and under New York law, “the writ may be sustained only when a person is entitled to immediate release from an unlawful restraint” (*Ibid.* at p. 10). The Court further opined that “courts have consistently determined that rights and responsibilities associated with legal personhood cannot be bestowed on nonhuman animals” (*Ibid.*) and ruling otherwise would “have an enormous destabilizing impact on modern society” (*Ibid.* at p. 12). The Court did acknowledge that nonhuman animals are sentient beings afforded many protections under the law; it was just not willing to extend the right to liberty through habeas corpus relief.

Although the case was a disappointing setback in the battle for nonhuman rights, the dissenting opinions in the case provide a glimmer of hope for future cases and make for an interesting read. In a lengthy dissenting opinion, Justice Wilson posited that the real legal question at issue was not whether Happy was a legal “person” but whether “the detention of an



elephant can ever be so cruel, so antithetical to the essence of an elephant, that the writ of habeas corpus should be made available under the common law” (J. Wilson dissenting opinion at p. 4). Justice Wilson cited the historical use of habeas corpus to challenge the detention of slaves (deemed chattel by law) as one example where the writ was expanded. Justice Wilson also provided examples of a habeas case in which a child’s custody was transferred from one guardian to another, challenging the majority notion that habeas would not apply, regardless, unless Happy

could be set completely free from any custodial environment. Justice Wilson would have held that Happy had a prima facie case which entitled her to a hearing. Justice Rivera, who also dissented, saw Happy’s case as “an opportunity to affirm our own humanity” noting that “novel questions merely present opportunities to develop the law” (J. Rivera dissenting opinion at p. 4-5). Justice Rivera concluded that Happy’s captivity was “inherently unjust and inhumane” and “an affront to a civilized society” (*Ibid.* at p.21). “Every day she remains a captive—a spectacle for humans—we, too, are diminished.” (*Ibid.*)

The NhRP filed a motion for re-argument on July 14, 2022, which was opposed by the Bronx Zoo and The Wildlife Conservation Society. For now, Happy remains at the Bronx Zoo.

You can find the majority and dissenting opinions here https://nycourts.gov/reporter/3dseries/2022/2022_03859.htm

or at NhRP’s website <https://www.nonhumanrights.org/client-happy/> 🐘



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Treasurer's Report – 2021-2022 FY

(12 Months through September 30, 2022)

This is a summary of the Animal Law Section's financial status as of September 30, 2022 (12 months of the FY).

Paid membership is about 243 and has increased about 14% over the same period of the prior Fiscal Year.

Revenue for the year was \$3,515. This is the first year of the attorney dues reduction to \$15 from \$25 where dues had been since the Section was formed in 1995.

Expenses for the year were \$1,810 which include one issue of the Newsletter (\$1,044), awards and honorariums related to the Brandi and Wanda Nash Awards (\$600), credit card processing charges (\$60), teleconference calls (\$31), and miscellaneous expenses (\$75 – postage and other award ceremony expenses).

Net income was \$1,705.

The funds balance at the end of September 2022 is \$19,725; an increase of \$1,705 compared with the prior FY year-end balance of \$18,020 on September 30, 2021. The expenses for the latest issue of the Newsletter will be recognized in the financial results for the next FY 2022-2023.

Respectfully submitted,

Steven Bieda (Treasurer) and Donald Garlit
November 2022

