

# STATE BAR OF MICHIGAN Animal Law Section

Winter 2002



## Words from the News Room

*ALS Newsletter Co-Editors*

*Sharon Noll Smith & Deb Ness*



As usual, we have been busy gathering information to give to you in another ALS Newsletter. We want to hear from you with your suggestions and/or article contributions for the Newsletter, therefore, contact Deb Ness at: [dness7@aol.com](mailto:dness7@aol.com).

We hope you will come to the ALS symposium next month. You will find details about the symposium on page 3 of this Newsletter. Also, State Representative, John Stewart, asked that you come to his "Friends of Pets" get-together at the Plymouth Historical Museum on Saturday, March 16, 2002 at 9 a.m. for a free breakfast and a legislative update on animal law related issues in Lansing. Finally, all ALS members are invited to attend the ALS Retreat which takes place every year in May. It is tentatively scheduled for May 17, 18 and 19 in Grand Haven. For more information about the retreat, you can contact Deb Ness for details.

## Words from the Chair

Greetings to all the members of the Animal Law Section. I should emphasize the word "all" since it is apparent that we have a very diverse and somewhat divided attitude toward the subject of animals in general and the law as it relates to animals. Over the past several months a spirited dialogue has been carried on among the section members through our listserv capacity at the State Bar. We have sometimes been able to identify issues of importance in animal law, and also identified philosophical issues where our members differ greatly in their beliefs concerning animal matters. Hopefully a better understanding is developing among our members as to the real issues that appear to be shaping the future of cases and statutes that will impact animals and their well being and humans interaction and responsibility for an animals well being.

Animal Rights issues are sometimes very different than Animal Welfare issues. In some areas of the law, such as dealing with care and protection of a companion animal after the death of a human companion, there now may be a statutory right to enforce the right of an animal to receive the standard of care provided for in the estate plan provided for by the human companion before death. Animal Welfare advocates are concerned, and rightfully so, with the treatment of animals intended to be slaughtered for food. Some in the Animal Rights arena would say that animals should not be raised for slaughter. Each group has an interest in the legal process

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## Journal Review

The Northwestern School of Law of Lewis & Clark College publishes an Animal Law Journal and the following is from the website. For more information visit: [www.lclark.edu](http://www.lclark.edu).

"The Nation's First and Only Law Journal Devoted Solely to Animal Issues Animal Law is a student-run law journal based at Northwestern School of Law of Lewis & Clark College in Portland, Oregon. Animal Law offers a unique forum for the scholarly discussion of legal issues related to animals. The journal's objective is to educate the legal community and other interested groups or individuals about the current status of animal-related issues. For example, we recently published articles on the connection between animal abuse and domestic violence, an overview of state animal anti-cruelty statutes, and an essay regarding animal custody disputes. We strive to provide a balanced approach to animal issues and attempt to cover all sides of animal-related topics."

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## The Legal Value of Pets

For many years, courts have struggled with awarding damages for the death or injury of pets. The difficulty arises from the unique place that pets occupy in our society. Specifically, owners treat pets as family members and depend on their pets for loyalty and society that often have no substitute in their lives. See generally, Annot. *Damages for Killing or Injuring Dog*, 61 A.L.R. 5th 635 (1998); Annot. *Measure and Elements of Damages for Killing or Injuring Dog* 1 A.L.R. 3d 997 (1965)

Moreover, this unique status has recognized economic impacts. Billions of dollars are spent each year for food, toys, training, treatment and care of pets. In fact, most owners spend many times the market value of their pet each year. See e.g., *Ramey v. Collins*, 2000 WL 76932 (Ohio App June 5, 2000)(noting that worth of family pet falls into that category of property that has little or no market value as dog ownership, for most people, is a liability rather than an asset).

Millions of dollars are generated by the entertainment industry from films based on pets. Certainly, "Lassie, Come Home", "Old Yeller", "Lady and the Tramp I and II", "101 and 102 Dalmatians" "Beethoven I-IV" and "My Dog Skip" would have had far less commercial success if based on the family furniture. See e.g., *Gluckman v. American Airlines, Inc.*, 844 F. Supp. 151 (SDNY 1994)(also noting that worth of pet falls into that category of property that has little or no market value because pets occupy a special place somewhere between a person and a piece of property).

Recently, the Michigan Court of Appeals reluctantly followed established precedent and held that pets are personal property in Michigan Jurisprudence. *Koester v. VCA Animal Hospital*, 244 Mich. App. 173 (2001). Pending legislative action, which was deferred to by the court, emotional damages, including sentimental value for the loss of a pet, generally are not recoverable. See e.g. *Dake Corp, In re Edward J Jeffries homes Housing Project, Detroit*, 306 Mich 638 (1943). The sole exception is the recovery of exemplary damages for the willful and malicious destruction of a pet. *Tenhopen v. Walker*, 96 Mich 236 (1893).

The general measure of damages for injury to or destruction of personal property is the diminution in market value of the property injured or the market value of the property destroyed. See, e.g. *Strzlecki v. Blaser's Lakeside Industries of Rice Lake, Inc.*, 133 Mich App 191 (1984). Where there is no market value, however, the loss is the actual value of the personal property to the owner. *Id.*; See note to SJI2d 51.01(stating that general rule is not applicable to unique chattel). That standard has been repeatedly used by courts across the country to value pets See e.g. *Mitchell v. Heinrichs*, 27 P.3d 309 (Ala 2001)(holding that value to owner is proper standard and may be based on cost of replacement, out-of-pocket expenditures or cost of reproduction); *State of Minnesota v. Weber*, 1995 WL 238940 (Minn App

1995)(holding that value of pet to owner may be measured by purchase price, cost to feed and cost of time invested in training); *Buekner v. Hamel*, 886 SW2d 368 (Tex App 1994)(holding that value of deceased dogs for purposes of assessing actual damages was either market value, if the dogs had any, or the special or pecuniary value to the owner, that may be ascertained by reference to the usefulness and services of the dog); *Animal Hospital of Elmont, Inc. v. Gianfrancisco*, 418 NYS2d 292 (1979)(holding that value of dog may be determined from age of animal, pedigree, training and last, but not least, the length of time that the dog had been living with the owner); *Wertman v. Tipping*, 166 So.2d 666 (Fla App 1964)(holding that value of dog may be either the market value, if the dog has any, or the special or pecuniary value to the owner, ascertainable by reference to the usefulness or services of the dog). It is also consistent with the standard cited by the authors of Michigan Law of Damages § 16A.16 (quoting G Douthwaite, Jury Instruction on Damages in Tort Actions 456 (2d ed 1988) which provides as follows:

10-6. Measure where no market value ascertainable.

Ordinarily, when damages are to be awarded for injuries to or destruction of personal property, you should be guided by testimony as to the market value of the property involved.

In the nature of the situation in this action, there is no way in which the property can be valued by

such criterion. The items are not bought and sold in the ordinary course of commerce.

If your verdict is against the defendant on the question of liability, it then becomes your duty as jurors to evaluate the loss to the plaintiff in terms of the [actual value to the plaintiff] [actual diminution in value]. For this purpose, you should consider any evidence that has been given relating to such matters as [the initial cost to plaintiff] [the length of time the item has been in use] [the practicality, if any, of its replacement] [the length of time and amount of effort and skill that would be involved in reproducing it] [the particular purpose for which the plaintiff required it].

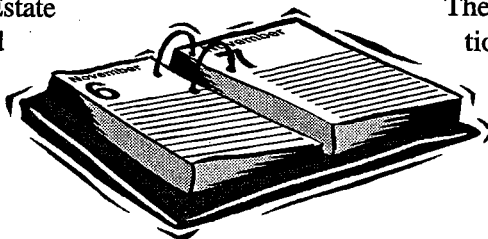
The use of the alternative standard also corresponds to the available evidence concerning injury to or destruction of pets. Unlike dogs that are used for police work, hunting or entertainment, see e.g. *State of Tennessee v. Lucas*, 2000 WL 19537 (Tenn App 2000)(allowing police chief to testify as to the value of stolen police dog based on his twenty-four years of purchasing dogs for the police force); *Ott v. Pittman*, 320 SC 72 (SC App 1995)(allowing trainer and hunter to testify as to the value of coonhounds); *Hoefling v. Feldntan*, 493 P.2d 35 (Ore 1972)(allowing expert to testify concerning value of coonhound); *Mitchell v. Union Pacific Railroad*

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## First Animal Law Symposium in Michigan

Friday, March 15, 2002 will feature something new in Michigan law: the first-ever seminar on animal law in Michigan, sponsored by the Animal Law Section of the State Bar of Michigan and Michigan State University – Detroit College of Law.

The afternoon event (1:00 – 5:00 p.m.) will open with an overview of animal law, including recent statutory changes, case law and legislation, then divide into two break-out sessions. “Estate Planning for the Care of Companion Animals” will be led by Lauren M. Underwood, an attorney with Beier Howlett, P.C., of Bloomfield Hills and a member of the Section Council of the Probate and Estate Planning Section of the State Bar. David J. Wallace, a training attorney with the Prosecuting Attorneys Association of Michigan, will conduct a session on “Prosecuting Animal Cruelty Cases.” Materials on both sessions will be available for all participants.



Mark Your Calendar! –

The symposium will conclude with a presentation by Prof. David Favre of MSU-DCL titled “The ‘Personhood’ of Animals.” Prof. Favre, whose specialty is property law, is well-known for his work with the Animal Legal Defense Fund. He will discuss the Fund’s long-running efforts to improve federal regulations under the Animal Welfare Act and also describe his newly-developed concept of “equitable self-ownership” for animals.

The program will be followed by a reception at the law school.

The cost is \$20.00 for members of the Section (no charge for judges, law students or paralegals) and \$45.00 for others or the materials alone. A registration form can be found on page 7, or see our ad in the February, 2002 issue of the Michigan Bar Journal.

# Meet Sharon Smith

By Deb Ness

I thought that ALS members might enjoy getting to know some of their fellow members, and so I plan to write about individuals from time to time. For this issue, I chose Sharon Smith, my co-editor.

Sharon is one of the most interesting people I know. Sharon, her husband Bob, AND their cat have lived on four continents, including the United States. Over a span of 16 years, from 1967 to 1983, Bob's job with Chrysler International took the Smiths to England, Australia, and Japan. In each place, Sharon became involved in animal welfare programs. Some of these countries have improved their programs since Sharon lived there, but Sharon recalled for me animal rights activities during her time of residence.

Sharon and Bob lived in Leamington Spa, England, from 1967 to 1973, and Sharon joined the Royal Society for the Prevention of Cruelty to Animals (RSPCA). She was involved primarily in fundraising and volunteer work. Her impression of the English at that time was that they were very committed to their pets, and that the country was fairly involved, even progressive, in work to improve the lives of animals. Sharon fondly recalls reading numerous stories in the *London Times* about Queen Elizabeth's Corgi dogs nipping at the Royal Guardsmen. Another story described a British military regiment's mascot, a Scottish Highland goat, destroying the queen's flower garden while wearing its silver jewelry.

Sharon and Bob left England for Adelaide, Australia, in 1973. Sharon joined the RSPCA of South Australia, and served as president of the Women's Auxiliary. Australians at that time, she recalls, were not as interested in animal welfare as compared to Americans, but the RSPCA worked on several issues. One major concern was the lack of federal regulation for transporting animals to market. Farm animals would be transported on "road trains," which were tractor trailers hauled by semi-trucks. The trucks would travel long distances in the Australian heat without stopping for food, water, or rest for

the animals. Before she left Australia, the RSPCA was successful in getting federal regulations establishing minimal standards for more humane farm animal transportation.

Another issue at the time was the method of sending sheep to the Middle East. While waiting shipment, sheep would be left in open pens for days with no protection from the weather, and often died from the extreme heat. The RSPCA and other animal rights organizations were successful in improving these conditions.

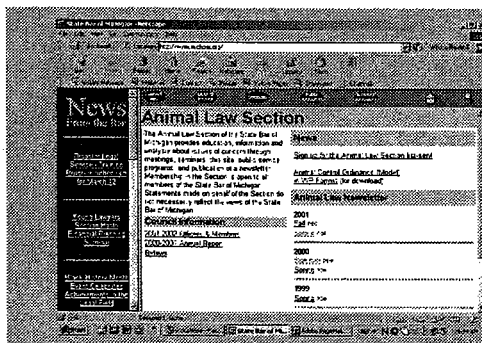
In 1977, the Smiths moved to Tokyo, and Sharon joined the Japan Animal Welfare Society (JAWS). Sharon observed that most Japanese were not concerned with animal rights, and did not seem to have much affection for animals. Few families had pets then, possibly because of the cost and the lack of living space. Sharon was again involved with fundraising for JAWS, but was not able to become a board member and make policy changes.

Sharon and Bob moved back to the United States in 1983. A few years later, Sharon decided to attend law school. She graduated from the University of Detroit Law School in 1992, and is now in private practice. Bob has retired from Chrysler.

Sharon soon became an active member of Attorneys for Animals (AFA).\* This organization was founded by ALS member Wanda Nash in (insert year), and is the precursor to ALS of the Michigan State Bar, which was organized 5 years ago. AFA, like ALS, provides litigators, legal researchers, publishers, and attorneys who work with lawmakers in drafting animal-related legislation.

It is clear that, wherever she lives, Sharon is committed to animal welfare. She is to be commended for her hard work to better the lives of all animals. Thank you, Sharon, for sharing with us.

\*A 501 (c) (3) organization. For information contact Beatrice Friedlander at [beefriedlander@yahoo.com](mailto:beefriedlander@yahoo.com).



Don't forget to check out our website at [www.michbar.org](http://www.michbar.org)!

# News and Notes:

By Beatrice Friedlander

## ***Animal Law Section supports Animal Welfare Act proposed amendment***

The American Bar Association will be considering a recommendation at its February meeting to adopt a resolution urging Congress to amend the Act. The proposed change would provide for citizens' suits, subject to Constitutional standing requirements, thereby permitting access to the courts by plaintiffs who could protect the law's intended beneficiaries. The Act, 7 USC § 2131 et seq., provides minimum standards for food, water, shelter, ventilation and veterinary care for animals in certain industries, namely in pet trade, research, zoos and circuses and for certain animals during transportation in interstate and foreign commerce. The Association of the Bar of the City of New York, which has an active Committee on Legal Issues Pertaining to Animals, is sponsoring the proposal. The Animal Law Section passed a resolution of support at its December meeting. The Section is part of a coalition of attorneys from several other states, including Massachusetts, Texas, New Mexico, California, and Oregon who are working with the New York Bar members.

## ***Michigan Legislative Issues***

The Section weighed in to oppose H.B. 5478, introduced in November 2001, which would have given the Natural Resources Commission authority to designate game animals. Tom Boven wrote the House sponsors expressing concern that the bill if passed would be an improper delegation of authority from the legislature to a non-elective commission. Jean Ligon appeared at the Committee hearing on the bill. It was approved by the House Committee on Conservation and Outdoor Recreation, but was not brought to the House for a vote before the end of the legislative session.

Rep. John Stewart (R Plymouth) is working with the Section on proposed legislation. Rep. Stewart has circulated to the Section a draft bill which would authorize the Secretary of State to issue special license plates with a portion of the proceeds designated for spay/neuter programs.

## ***Federal Legislation***

The Farm Bill (S. 1731) currently being debated, contains provisions regarding Animal Fighting (formerly known as the Cockfighting bill), prohibiting interstate shipment of birds or dogs for the purpose of fighting and Downed Animals, banning the transfer of these animals and mandating humane euthanasia for stockyard animals too ill or injured to stand and

walk unassisted. Various amendments address Puppy Mills, requiring the adoption of standards by which dogs to be sold as pets are socialized, limiting frequency of breeding by commercial operators and increasing penalties for violation of the Animal Welfare Act, including revocation of license; Confined Animal Feedlot Operations, or CAFOs, regulating distribution of federal subsidies to large farms for use in building animal waste structures; and Birds, Rats and Mice, exempting these species from protection under the Animal Welfare Act.

## ***Factory Farming Ballot Initiative***

Florida voters may have the opportunity to vote on a constitutional amendment banning "gestation crates" in which breeding sows are housed for most of their lives unable to turn around. The Florida Supreme Court in a unanimous vote ruled that the proposal is succinct and accurately portrayed, the two criteria necessary to put the issue before voters. Three of seven justices questioned whether it was appropriate to address the issue by amending the state constitution. Backers say the initiative is significant because this is the first time a factory farming practice will have come before voters. Other initiatives across the country have generally involved wild animals.

## ***Animal Law Courses popular***

David Favre's course at DCL at MSU, is one of many such offerings at law schools across the country. According to the Animal Legal Defense Fund, the following have animal law courses:

Benjamin N. Cardozo School of Law (New York); California Western School of Law (San Diego, California); Duke University School of Law; George Washington University Law School; Georgetown School of Law; Golden Gate University; Harvard Law School; Hastings College of the Law (San Francisco, California); Indiana University School of Law (Indianapolis, Indiana); Northwestern School of Law of Lewis & Clark College (Portland, Oregon); Rutgers University School of Law (Newark, New Jersey); San Joaquin College of Law (Fresno, California); University of California Los Angeles School of Law; University of Miami Law School (Miami, Florida) (begins summer 2002); University of New Mexico School of Law; University of Southern California; Vermont Law School.

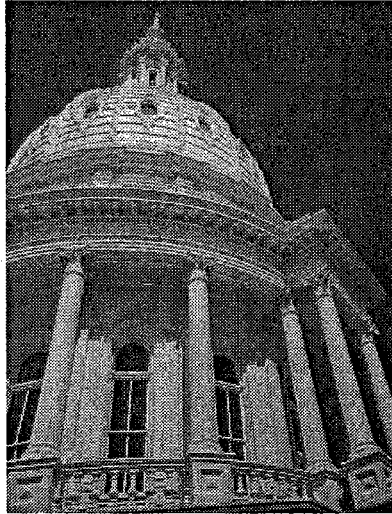


# Legislating in Michigan

The 2001 Annual Meeting of the Animal Law Section of the State Bar of Michigan featured a presentation by two veterans of Michigan politics whose experience with the legislative process should interest anyone with an eye on Lansing. State Senator Leon Stille (R.-Spring Lake) has spent nearly a decade in the Legislature and David Haynes is a Lansing-area political consultant who works with the State Bar.

Sen. Stille emphasized the volume of legislation that is introduced in the Legislature. With literally thousands of bills presented every year, professional assistance is almost essential to passing a law. A lobbyist can explain proposals to likely supporters and counteract opposition from the other side. Lining up co-sponsors for a bill is also very important and lobbyists often know where to look for them.

Haynes suggested approaching legislation the way one would litigation. First, pick a strategy depending on what you want to accomplish. Some bills are "statements of principle," or what he called "flagpole bills," intended to test support for



a concept but without much concern for getting them passed. Another route is to make bold proposal but negotiate downwards, to something more modest. A third alternative is to "set the stage for next year" – build support for an idea that will be introduced again later. Finally, don't overlook the "care and feeding of legislators" – getting them information they need, making friends with them, even carrying coffee onto the floor during a busy session.

Both speakers agreed that, once you have a proposal, you should identify the committee that it will likely be referred to and select a sponsor for it. The right sponsor is critical; without one, a bill won't even get a hearing. Then chose your witnesses and prepare them, just as you would for a trial or deposition. Keep your focus narrow and "go in as a lawyer, not a fanatic." Getting to know legislative staff members is also a good investment.

The moral is – passing laws isn't easy, but if it's worth while, keep trying.

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## Words from the Chair

*Continued from page 1*

to advance the concerns of interest to them. One of my responsibilities as chair of this section is to encourage all members to seek in a lawful way the results that will advance the interests they and their respective clients and constituency have as it relates to animals.

A goal of the Council is to encourage our Section members to be active in legislative, judicial and administrative venues to help provide access to the emerging body of law that will govern each of us in dealing with animal issues. We maintain a brief bank, monitor legislation, and in some cases encourage legislation. We have filed amicus briefs in cases that have issues involving animals, and also provide educational assistance in exploring animal law matters, such as identifying animal abuse. As we begin to see the results of an active section, then more of our members will benefit from the activities of the section. Please attend our Council meetings. We will have a symposium (our first) on March 15, and all members should try to attend. In the future we hope to have a retreat and meeting that can be attended by all members. Keep sharing animal legal issues with all of us.

*Thomas M. Boven*

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## Legal Value of Pets

*Continued from page 3*

Co., 188 F. Supp. 869 (SD Cal 1960), experts are generally unavailable to testify concerning the value of a pet, see e.g. *State of Minnesota v. Weber*, 1995 WL 238940 (Minn. App 1995)(holding that value to owner may be based upon testimony of owner); *Animal Hospital of Elmont, Inc. v. Gianfrancisco*, 418 NYS2d 292 (1979)(holding that value to owner may be based upon testimony of owner). In fact, the Michigan Court of Appeals has upheld a verdict regarding the value of destroyed property that was based solely on the testimony of the plaintiff. See *Akyan. v. Auto Club Ins Ass'n*, 207 Mich App 92, readopted on rehearing in pertinent part, 208. Mich App 271 (1994).

In sum, pets are personal property under Michigan law. Because there generally is no market value for pets, the value of a pet to its owner should be used to award damages for injury to or destruction of a pet. Like many difficult areas of the law, the verdict of a properly instructed jury is available and should be relied upon to establish the legal value of pets.

**The Animal Law Section of the State Bar  
of Michigan  
Presents  
ANIMAL LAW IN MICHIGAN  
Friday, March 15, 2002, 1:00 – 5:00 p.m.  
Michigan State University –  
Detroit College of Law  
Law College Building, East Lansing, Michigan**

**PROGRAM**

- I. Overview of Michigan Animal Law  
Review of relevant statutes, cases and pending legislation
- II. Break-out sessions
  - 1. Estate Planning for the Care of Companion Animals  
Lauren M. Underwood, Beier Howlett, P.C.
  - 2. Prosecuting Animal Cruelty Cases  
David J. Wallace, Prosecuting Attorneys Association of Michigan
- III. The "Personhood" of Animals  
David S. Farve, Michigan State University – Detroit College of Law

*Program will be followed by a reception at  
the law school.*

**REGISTRATION FORM**

Name \_\_\_\_\_ P# \_\_\_\_\_  
 Address \_\_\_\_\_  
 City/State/Zip \_\_\_\_\_  
 Phone \_\_\_\_\_  
 Email \_\_\_\_\_

Break-out session (choose one):  
Estate Planning \_\_\_\_\_ Prosecuting Cruelty Cases \_\_\_\_\_

- Registration Fees**
- Member of Animal Law Section – \$20
  - Attorney (includes 2001-2002 section membership) – \$45
  - Law students and paralegals – no charge
  - Judges – no charge
  - Materials only – \$45

Send to Animal Law Symposium, MSU-DCL, Law College, Shaw Lane, East Lansing, MI 48824-1300.  
 For additional information call 248-213-3800, ext. 256

Payment:  
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### **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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