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What We Can Learn about Animal Cruelty Cases from Rhode Island: Research and Perspective

By Ronald C. Desnoyers

Editor's Note: Ronald Desnoyers is a 1L at the Michigan State University College of Law. This is a rigorous statistical analysis of how the legal system deals with animal cruelty cases. There are several insights of note within the article that have implications beyond Rhode Island.

Introduction

Animal cruelty has been a longstanding societal problem and the general public has expressed growing concern over the issue. In a survey of 1,004 people conducted by the Associated Press in 1995, two-thirds of the respondents agreed that an animal's right to live free of suffering should be just as important as a human's right to live free of suffering (Agnew, 1998). Similarly, a December 1996 survey of 1,008 American households, conducted by Penn and Schoen for the Humane Society of the United States, revealed that 42 percent of the respondents believed animal cruelty to be a moderately to extremely serious problem in this country (Ascione & Lockwood, 2001). Of those surveyed, 71 percent supported making animal cruelty a felony offense, and 81 percent believed that the enforcement of animal cruelty laws should be strengthened (Ascione & Lockwood, 2001). Reasons provided were equally divided among respondents, with approximately one-third expressing a growing concern over the issue, both for its effects on animals and its implications for human safety, and one-third stating that the intentional harm to animals was simply wrong (Ascione & Lockwood, 2001).

Societal concern for the pain and suffering inflicted upon animals can be measured by the number of laws that have been enacted in response to the problem (Ascione & Lockwood, 2001). As of December 2004, 41 states and the District of Columbia have enacted laws making certain types of animal cruelty a felony offense. This is in addition to the 48 states that treat dog fighting as a felony and 31 states in which cockfighting is a felony (Pacelle, 2005). Such provisions reflect a societal pressure to respond to the problem and a legislative willingness to accommodate this demand (Ascione & Lockwood, 2001) and illustrate how the relationship between humans and animals is changing and how opposition to animal cruelty is emerging as a universal value in American culture (Pacelle, 2005).

Nevertheless, animal cruelty continues to be an under-studied phenomenon (Cazaux, 1999; Vollum, et al., 2004; Tallichet & Hensley, 2005), and comprehensive statistics describing deliberate cases of animal cruelty resulting in prosecution on a national basis do

Upcoming Event
Friday, September 18
1:30 p.m. to 4:00 p.m.

Annual Animal Law Section meeting at the State Bar of Michigan Annual Meeting at the Hyatt Regency in Dearborn.

Chair's Corner

By Rose Stern

I would like to thank everyone in the section for their donations of time and financial resources. In the last year our members worked to rescue companion animals from abandoned homes, defend dogs on death row, author a successful amicus brief that was quoted in a recent Court of Appeals decision; and tirelessly worked towards the passage of the updated Michigan criminal statute clarifying the burden and increasing the penalties for the maiming, torture, and killing of animals. As we look ahead for 2009, we plan to continue our work in public education through our symposium, and we are adding a class on Animal Law for Michigan legislators. We are already advocating for the passage of a state

statute that will ban euthanasia of companion animals by gas chamber. The practice area of animal law is in its infancy, and new areas emerge on a daily basis. For example, with the advent of the development of renewable energy and the expected installation of wind farms, it will be important for animal advocates to work closely with developers to protect migratory birds, raptors, and bat species. Without your continued support, our important work would not be possible. I am proud to be the chair of your Animal Law Section. 🐾



Editor's Note

This newsletter has much color printing and many photographs. These images allow readers to visualize section activities and events. We are pleased to feature three main articles for this issue.

We have much coverage of our recent symposium, including the talks of speakers Richard Angelo and Professor Joseph Vining, photographs of all speakers, and a symposium summary. This year's symposium had the largest attendance ever.

Ronald Desnoyers' article is a statistical analysis of animal cruelty cases in Rhode Island, which is a valuable analytical approach.

There are several other articles, including coverage of the Wanda Nash Award ceremonies, 2008 FY and 2009 FYTD treasurer's reports, and News and Notes.

I am going to change the publication strategy of the newsletter. Getting a lead article has always been the most difficult task for writer and editor. At the same time, I want to record section events and history so they are not forgotten. This includes photographs and awardees, for instance. As a result, an occasional issue will feature news, notes, and section activities without a major article.

This will get the newsletter caught up on the publication schedule and allow you to see and read about many section activities. I have many News and Notes-type articles in hand or close to completion, including the annual meeting, the 2008 Brandi and Sadie awards, and the 2008 legislative luncheon.

The next newsletter should arrive in August and will include section council nominees. This will save us mailing expense as well as paper and is the approach we used last year.

This is the first newsletter of 2009. My goal has always been to publish three newsletters a year. My goal and reality have differed over the years. However, consider this a double issue, as it is the largest issue that we have ever published.

This is your newsletter, too. Helpful articles are always needed. In fact, if I can get one good main article for each issue, I can do the rest. Please consider writing an article that will be of interest to your fellow section members.

—Donald Garlit, Newsletter Editor
donaldgarlit@yahoo.com

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not exist (Donley, et al., 1999; Frasch, 2000). However, a study conducted by Arnold Arluke and Carter Luke provides comprehensive statistics on a regional basis. Their study assessed the prevalence of animal cruelty and the response of the judicial system in the state of Massachusetts by examining records of the Massachusetts Society for the Prevention of Cruelty to Animals (MSPCA), where prosecution was the chosen course of action, between 1975 and 1996. Over the 21-year period examined, the MSPCA investigated approximately 80,000 cases of animal abuse and neglect, resulting in the prosecution of 268 defendants. Of the 268 defendants prosecuted, 259 were male (96.6 percent), and 9 were female (3.4 percent). Ages ranged from 9 to 83, although most defendants were relatively young, having an average age of 30 years. The majority of cases involved companion animals (84.7 percent), and dogs were most commonly victimized (57.8 percent), followed by cats (26.9 percent).

Of the 268 defendants prosecuted, approximately half were found either guilty (44.4 percent) or not guilty (5.2 percent). Fines were the most common punishment imposed on defendants convicted of animal cruelty and were ordered in 91 cases (33 percent) with an average fine of \$132. Probation was ordered in 59 cases (21 percent), with an average term to serve of 5.5 months. Restitution was ordered in 56 cases (20 percent) and was used to reimburse caretakers for the costs of veterinary care and did not serve to financially punish defendants or award punitive damages to an animal's caretaker. Only 28 defendants (10 percent) were incarcerated with an average term to serve of 4.5 months. Twenty-seven defendants (10 percent) were ordered to attend counseling, and 19 defendants (7 percent) were ordered to perform community service, with an average term of 50 hours consisting of work in an animal shelter. Based on these statistics, Arluke and Luke (1997) concluded that the criminal justice system does not take animal cruelty very seriously.

Frasch (2000), contributing to the understanding of offender and victim demography, reported similar statistics based on records maintained by the Anti-Cruelty Division of the Animal Legal Defense Fund (ALDF). In 1999, the ALDF received over 10,000 complaints from 41 states, reporting some type of animal abuse or neglect, and pursued 246 cases, involving over 4,000 animals (Frasch, 2000). The 246 cases involved 339 defendants, of which 85 percent were male and 15 percent were female. Over half of the cases involved companion animals (59 percent), and dogs were most commonly victimized (43 percent) followed by cats (16 percent). Of the 246 cases prosecuted, 20 percent were found guilty, and 5 percent were acquitted or had their cases dismissed.

The remaining 75 percent were still pending at the time of publication (Frasch, 2000).

The above statistics, although not sufficient to form an exhaustive picture of the depth and scope of animal cruelty in the United States, show that the problem is widespread and affects significant numbers of animals (Frasch, 2000). In an effort to extend the findings of Arluke and Luke (1997) and contribute to the understanding of offender and victim demography, this study was designed to assess the prevalence of animal cruelty and the response of the judicial system in the state of Rhode Island using a similar method and design. Studies examining the frequency of animal cruelty and the response of the judicial system are necessary to understand the phenomenon and eventually reduce its occurrence. The findings revealed in this study are expected to provide opportunities for additional perspectives on the issue (Arluke & Lockwood, 1997), offer new insights and possible solutions to the problem (Arluke & Lockwood, 1997), and stimulate and support an emerging content area in the social and behavioral sciences (Gerbasi, 2003). Furthermore, the findings in this study are expected to create a baseline in which cases of animal cruelty can be compared with other populations or examined over time.

Research Methodology

To assess the prevalence of animal cruelty and response of the judicial system in the state of Rhode Island, a descriptive analysis of all animal cruelty cases adjudicated in Rhode Island Superior Court between 1980 and 2004, in violation of Rhode Island General Law §4-1-5, was performed. Rhode Island General Law §4-1-5, entitled "Malicious injury to or killing of animals," prohibits any person from "cutting out the tongue or otherwise dismembering any animal, maliciously, or maliciously killing or wounding any animal, or maliciously administering poison to or exposing any poisonous substance with the intent that the poison shall be taken or swallowed by any wild animal." Any person convicted of animal cruelty in violation of this statute "shall be imprisoned not exceeding two years or be fined not exceeding \$1,000 and is required to complete 10 hours of community service, which cannot be suspended or deferred and shall be mandatory." Rhode Island General Law §4-1-5 does not apply to "licensed deer hunters during hunting season or a licensed business killing animals for human consumption."

Data for this study came from three sources: the Rhode Island Judicial Technology Center, the Rhode Island Judicial Records Center, and the Rhode Island Superior Court

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Clerk's Office. These agencies are believed to be the best available and most accurate for data pertaining to animal cruelty within the state of Rhode Island for several reasons. First, the agencies come under the direction of the Administrative Offices of State Courts. Therefore, records are kept in a standardized manner across agencies. Second, the agencies make court records accessible to members of the general public who require them for research purposes. Third, although the agents of the Rhode Island Society for the Prevention of Cruelty to Animals (RISPCA) are empowered to enforce the animal protection laws codified in Chapter 4 of Rhode Island's General Laws and do initiate some investigations, their primary role is to support and assist cities and towns throughout the state with their investigations. Therefore, the RISPCA may be unaware of all complaints brought to the attention of law enforcement, limiting any information or data obtained.

Research Findings

Between 1980 and 2004, 89 defendants were charged with 102 counts of animal cruelty in Rhode Island Superior Court in violation of Rhode Island General Law §4-1-5. Although the number of charges remained relatively consistent over the 25-year period examined, a dramatic increase was noted between 1985 and 1989. The number of charges filed during this five-year period totaled 39, representing a dramatic 254 percent increase from the initial five-year period, in which the number of charges totaled 11. This increase can be partly attributed to the fact that four defendants were charged with multiple counts of animal cruelty, involving 16 animals. Between 1990 and 1994, the number of charges filed decreased from a high of 39 to 19, representing a 51 percent decrease from the prior five-year period. The number of charges filed between 1995 and 1999 remained unchanged again, totaling 19. A slight decrease was noted between 2000 and 2004. During this final five-year period, the number of charges dropped from 19 to 14, representing a 26 percent decrease from the prior five-year period.

Of the 102 animal cruelty charges filed in Rhode Island Superior Court, 56 charges (54 percent) were filed in Providence County Superior Court, 24 charges (24 percent) were filed in Washington County Superior Court, 16 charges (16 percent) were filed in Kent County Superior Court, and 6 charges (6 percent) were filed in Newport County Superior Court. The number of animal cruelty charges filed in each county is relatively consistent with the size and population of that county. Providence County, the largest county, consisting of 19 municipalities, 64 percent of the state's population

and encompassing Bristol County, experienced the greatest number of animal cruelty charges over the 25-year period examined. Washington County, the third largest county, consisting of 9 municipalities and 12 percent of the state's population, experienced the second largest number of animal cruelty charges. Kent County, the second largest county, consisting of 5 municipalities and 16 percent of the state's population, experienced the third largest number of animal cruelty charges. Finally, Newport County, the smallest county, consisting of 6 municipalities and 8 percent of the state's population, experienced the smallest number of animal cruelty charges.

Of the 89 defendants charged with animal cruelty, 83 were male (93.3 percent) and 6 were female (6.7 percent). Ages ranged from 18 to 77 years old, although the majority of defendants charged were relatively young, having an average age of 32.7 years. Approximately 57 percent of the defendants (51) charged were less than 30 years of age, and their ages were distributed as follows: 9 defendants (10.1 percent) were less than 20 years of age, and 42 defendants (47.2 percent) were between 20 and 29 years of age. The ages of the remaining defendants were distributed as follows: 10 defendants (11.2 percent) were between 30 and 39 years of age; 15 defendants (16.9 percent) were between 40 and 49 years of age; 7 defendants (7.9 percent) were between 50 and 59 years of age; and 6 defendants (6.7 percent) were greater than 60 years of age. An attempt was made to document the race of all defendants, but the characteristic was rarely recorded in corresponding case files.

The majority of cases adjudicated before the Rhode Island Superior Court involved companion animals (78.4 percent), and dogs were most commonly victimized (49.0 percent), followed by cats (29.4 percent). The type of animals victimized in the remaining cases included farm animals (8.8 percent), wild animals (3.9 percent), and small animals (2.9 percent). A further analysis revealed that wild animals and small animals were targeted only by males, and the majority of animals commonly victimized by females were dogs and involved neglect and husbandry-related issues rather than deliberate acts of cruelty. The type of animals victimized in the remaining 6 cases (5.8 percent) is unknown given that the corresponding case files were unavailable or missing at the time of request.

Of the 89 defendants charged with animal cruelty, 64 defendants (72 percent) were found guilty, and 4 defendants (4 percent) were found not guilty. The remaining 21 cases (24 percent) were dismissed pursuant to Rule 48 (a) of the Rhode Island Superior Court Rules of Criminal Procedure.

Rule 48 (a), entitled “Dismissal by Attorney for the State,” stipulates that “the attorney for the state may file a dismissal of an indictment, information, or complaint, and the prosecution shall thereupon terminate.” A dismissal under Rule 48 (a) may not be filed during a trial without the defendant’s consent because a dismissal filed without the defendant’s consent once a trial has begun places a defendant in jeopardy under the Fifth Amendment and therefore excludes further proceedings on the same charge.

Probation was the most common punishment imposed on defendants convicted of animal cruelty and was ordered in 55 cases (85.9 percent), with sentences ranging in length from 6 months to 36 months, with an average term to serve of 18.2 months. Nineteen defendants (29.7 percent) were incarcerated, with sentences ranging in length from 10 days to 2 years, with an average term to serve of approximately 7 months or 220 days. Community service was ordered in 18 cases (28.1 percent), with sentences ranging in length from 10 hours to 125 hours, with an average term to serve of 54.5 hours. When community service was ordered, the Court stipulated that it had to be completed at the RISPCA or a similar organization. Restitution was ordered in 11 cases (17.2 percent) and was used to reimburse caretakers for the costs of veterinary care and did not serve to financially punish defendants or award punitive damages to an animal’s caretaker. Nine defendants (14.1 percent) were ordered by the Court to participate in various mental health programs, including anger management and substance abuse counseling. Fines were ordered in five cases (7.8 percent), with amounts ranging from \$100 to \$450, with \$100 being the most frequently imposed fine. The total number of sentences (117) imposed by the Rhode Island Superior Court exceeds the total number of defendants convicted of animal cruelty. The reason for this disparity is that defendants convicted of animal cruelty typically receive more than one form of punishment.

Limitations

Although this study provides the initial step in assessing the prevalence of animal cruelty and the response of the judicial system in the state of Rhode Island, it is not without limitations. First, this study is limited only to animal cruelty cases adjudicated before the Rhode Island Superior Court in violation of Rhode Island General Law §4-1-5. Therefore, it does not include defendants charged with animal cruelty in violation of Rhode Island General Law §4-1-2, entitled “Overwork, Mistreatment or Failure to Feed Animals” or Rhode Island General Law §4-1-3, entitled “Unnecessary Cruelty.” Second, this study is limited only to animal cruelty cases in which charges were filed and does not account for incidents of animal cruelty brought to the attention of the RISPCA, local police departments, animal control officers, or other law enforcement agencies in which no charges were filed, nor does it account for incidents of animal cruelty

brought to the attention of authorities but addressed through some alternative mechanism such as voluntary relinquishment of the animal involved or an education or diversion program.

Discussion

The majority of findings revealed in this study are consistent with the findings available in the literature pertaining to various aspects of animal cruelty. For example, the number of animal cruelty charges filed in each county is relatively consistent with the size and population of that county, which may correlate to demographic and situational factors relating to individual motivations for such behavior. Hensley and Tallichet (2005) found that incarcerated individuals raised in urban areas were more likely than incarcerated individuals raised in rural areas to commit animal cruelty offenses. They speculate that incarcerated individuals raised in rural areas may have been taught a greater respect for animals and may have had more interaction with animals in contrast to incarcerated individuals raised in urban areas (Hensley and Tallichet, 2005). Although it is unknown why the majority of defendants in this study victimized animals, urban and rural differences may offer a potential explanation regarding the prevalence of animal cruelty in large urban areas such as Providence County.

One of the most consistent factors associated with the perpetration of animal cruelty is gender (Flynn, 2001). Previous studies have revealed that an overwhelming majority of defendants charged with animal cruelty offenses are male. The majority of defendants charged with animal cruelty in this study were also male. There has been some speculation regarding differences in gender with the most common argument being that gender influences one’s socialization (Agnew, 1998). Females, for example, are socialized in ways that foster a nurturing and caring orientation, while males are socialized to develop a more domineering orientation (Agnew, 1998).

Another consistent factor associated with the perpetration of animal cruelty is age of the perpetrator (Flynn, 2001). Previous studies have revealed that late adolescence and early adulthood are common times for the perpetration of animal cruelty, and those prosecuted are most likely to be young adults (Flynn, 2001). The majority of defendants charged with animal cruelty in this study were also young adults. Although there has been little speculation regarding animal cruelty charges by age, some individual traits may be more prominent in late adolescence and early adulthood, including impulsivity, sensation-seeking, and irritability; as well as more general traits such as low self-control (Agnew, 1998). This may partially explain or offer some insight into why a majority of defendants charged with animal cruelty are relatively young and serve as a potential starting point for further research.

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Another consistent factor associated with the perpetration of animal cruelty is the frequency in which certain types of animals are victimized. Previous studies have revealed that a majority of animal cruelty cases involve companion animals. The majority of animals victimized in this study were also companion animals. Companion animals can be found in 6 out of every 10 households in the United States and are even more common in households with children (Flynn, 2000). According to the American Veterinary Medical Association, 70 percent of households in the United States with children under six years of age have companion animals, and this number increases to 78 percent in households with children over six years of age (Flynn, 2000). These statistics suggest that a species that is well populated and living in close proximity to people may be more vulnerable to abuse than a species that is not so available to human hands and weapons (Kellert & Felthous, 1998).

Some of the findings revealed in this study are inconsistent with the findings available in the literature and conflict with the provisions outlined within the statute. For example, animal welfare organizations have long criticized the lenient sentences imposed on defendants convicted of animal cruelty, but this study has revealed that 19 defendants were incarcerated, some serving significant sentences. This study has further revealed that although Rhode Island General Law §4-1-5 requires any person convicted under the statute to complete 10 hours of community service, the provision was ordered in only 18 cases. Furthermore, despite the fact that the American Psychiatric Association recognized animal cruelty as a symptom of conduct disorder in the *Diagnostic and Statistical Manual of Mental Disorders* and research has established animal cruelty as an important indicator of mental illness and as a possible factor contributing to violence

against humans (Tallichet, et al., 2005), only 9 defendants were ordered to participate in various mental health programs, including anger management and substance abuse counseling. Additionally, fines were ordered in only five cases, with amounts ranging from \$100 to \$450, significantly less than the \$1,000 maximum fine stipulated within the statute.

Although it is clear that the Rhode Island judicial system does take animal cruelty seriously and will sentence defendants found guilty of animal cruelty accordingly, many inconsistencies emerged during sentencing. What the Rhode Island judicial system should recognize when sentencing defendants is that animal cruelty involves the same actions that constitute other violent crimes (Madeline, 2000), and the intentional acts of the perpetrator cause the same suffering for the victim regardless of its species. Therefore, the mandatory provisions set forth in Rhode Island General Law §4-1-5 should be imposed on every defendant convicted of animal cruelty, and the lesser penalties, such as fines and mental health counseling, should be utilized more frequently.

Recommendations

This study has generated several recommendations pertaining to animal cruelty within the state of Rhode Island. For example, the number of animal cruelty charges filed in Rhode Island Superior Court has remained relatively consistent over the 25-year period examined, indicating that the laws and preventive measures currently in place have failed to reduce the number of crimes perpetrated against animals. Changes are needed, therefore, that will facilitate practical solutions to this ongoing problem. Animal welfare organizations should lobby for harsher penalties imposed on defendants convicted of animal cruelty under Rhode Island General Law §4-1-5, including statutory amendments

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animal/listserv.cfm](http://www.michbar.org/animal/listserv.cfm)



that limit judicial discretion. Such penalties may include a mandatory period of incarceration, a mandatory series of fines that increase with each subsequent offense, mandatory relinquishment of all animals to a society incorporated for the prevention of cruelty to animals or other qualified animal care facility, mandatory psychological counseling, and court mandated prohibitions restricting future ownership of animals. Defendants convicted of animal cruelty should be held financially responsible for all costs associated with the aforementioned penalties, including all costs incurred by the animal care facility treating and housing victimized animals.

This study has further revealed that an overwhelming majority of defendants charged with animal cruelty offenses are young males. Although previous studies suggest that identifying the perpetrators of animal cruelty is not a solution for the elimination of violence against animals, developing a comprehensive criminal profile of perpetrators most likely to victimize animals can serve as an invaluable resource for animal welfare organizations and law enforcement agencies responsible for investigating animal cruelty. A criminal profile that takes gender and age into consideration along with other variables such as socioeconomic background, educational status, and prior criminal history would enable law enforcement agencies, animal welfare organizations, and other social service agencies to identify perpetrators most likely to victimize animals. Having the ability to identify perpetrators likely to victimize animals, law enforcement agencies, animal welfare organizations, and other social service agencies would have the ability to intervene quickly and efficiently, at the earliest possible stage, which is imperative to stopping this form of violence (Tallichet & Hensley, 2005).

Previous studies have also identified a need for a reliable database that provides a statistical analysis of how many animal cruelty cases are criminally charged and prosecuted each year (Arluke & Lockwood, 1997; Arluke & Luke, 1997; Fransch, 2000; Hensley & Tallichet, 2005; Merz-Perez & Heide, 2004; Tischler, 1999). Replicating this study would fulfill that need by enabling law enforcement agencies, animal welfare organizations, and members of the academic community to systematically track animal cruelty cases through the criminal justice system and identify significant trends as they emerge, including the frequency and severity of abuse, the types of animals victimized, and offender demographics within specific geographic areas. Moreover, replicating this study will enable other states to assess the prevalence of animal cruelty and the response of the judicial system within their geographic area. States choosing to replicate this study can combine their findings with other states enabling law enforcement agencies, animal welfare organizations, and the academic community to assess the phenomenon on a regional or national scale.

This study has also provided direction for further research pertaining to animal cruelty within the state of Rhode Island.

As previously mentioned, this study is limited to animal cruelty cases charged in violation of Rhode Island General Law §4-1-5. Future studies should focus on other animal protection laws enforced within the state, particularly Rhode Island General Law §4-1-2 and Rhode Island General Law §4-1-3. Replicating the methods of data collection and analysis applied in this study to other animal protection laws will provide an improved assessment of the prevalence of animal cruelty and response of the judicial system within the state of Rhode Island. Furthermore, it will provide law enforcement agencies, animal welfare organizations, and the academic community with a detailed overview of the phenomenon, which can serve as a point of reference or comparison for future studies.

Conclusions

Animal cruelty is a complex phenomenon that crosses the boundaries of several academic disciplines. To comprehend the dynamics of animal cruelty and generate effective solutions to this social problem, a multidisciplinary approach is required. A sociological approach, examining the demographic backgrounds of individuals convicted of animal cruelty, coupled with a psychological approach, examining the level of socialization and underlying motivations of individuals convicted of animal cruelty, has the potential to identify and explain various causes contributing to the phenomenon. A criminological approach, examining why animal cruelty cases succeed or fail within the criminal justice system and the range of punishments imposed on defendants convicted of animal cruelty, has the potential to identify limitations within the criminal justice system. Taken together, these findings could provide a comprehensive overview of the phenomenon within a specific geographic area, allowing animal welfare organizations to identify specific areas of concern and recommend practical amendments to existing animal protection legislation, particularly at the state level.

Studies examining deliberate cases of animal cruelty resulting in prosecution also have the potential to provide law enforcement agencies, animal welfare organizations, and members of the academic community with significant insights into phenomenon, and can serve as valuable tools in the campaign seeking to reduce incidents of animal cruelty within the community. Such studies can provide a platform for program initiatives designed to address specific problems within the community and benchmarks to measure the effectiveness of such programs. Notwithstanding these practical applications, the academic study of animal cruelty and the willingness of the agencies involved to review the findings of such studies indicates that animal cruelty is a serious social problem, and those involved are committed to improving the lives of animals in some way. 🐾

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Animal Law Section Symposium—March 2009

By Donald Garlit

The section's 2009 symposium was held on March 20 in the Castle Boardroom of the Michigan State University College of Law. Ninety-five people registered for the symposium, which was the largest number of registrants in the history of the event. This year we reached out to non-attorneys and attendees, including many in the animal advocacy community, as well as attorneys and law students.

Speakers and topics were:

- State Representative John Espinoza spoke on "Legislators' Perspective on Animal Law." He has introduced HB No. 4663 to amend existing law and basically ban pound seizure in Michigan.
- Section council member Allie Phillips of American Humane spoke about "Pound Seizure and Euthanasia by Gas Chamber."
- Board of Commissioners' liaison Julie Fershtman spoke about "Update on Torts Related to Animal Law."
- Section member Mary Chartier spoke about "Update on Activities of Animal Law Section Litigation Committee."
- Section member Richard Angelo spoke about "Saving a Dog on Death Row; The Cola Case." His talk is included in the article titled "Cola's Rescue" elsewhere in this newsletter.
- Wayne County assistant prosecuting attorneys Rajesh Prasad and Amy Slameka (also a section council member) spoke on "Prosecuting Dog Fighting Cases."
- Professor Joseph Vining of the University of Michigan Law School and Professor David Favre of the Michigan State University College of Law spoke separately on the general topic, "Animal Law—Where We Have Been and Where We Are Going." Professor Vining's talk, titled "Beyond Genetics and Environment," is included elsewhere in this newsletter.

We owe the speakers a huge debt of gratitude for their time and speaking skills. Pictures of the speakers are included throughout the newsletter.

The Animal Law Section owes a big thank you to the symposium organizers, who included Anna Scott, Rose Stern, and MaryAnn Kozlowski. Additionally, MaryAnn Kozlowski and Sharon Smith made telephone calls to about 180 people who are members, former members, and others affiliated with aspects of section activities to inform them about the symposium. This marketing effort was a major contribution to achieving the largest symposium attendance ever. 🐾



University of Michigan Law Professor Joseph Vining (L) and Michigan State University Law Professor David Favre (C) receive speaker's recognition awards from Chair Elect Anna Scott



Section member and Board of Commissioners Liaison Julie Fershtman (L) receives speaker's recognition award from Section Chair Rose Stern (Anna Scott in the background)



Wayne County Assistant Prosecuting Attorneys Rajesh Prasad and Amy Slameka (also a Section Council member) receive speaker's recognition award from Chair Elect Anna Scott

Annise McGuire Earns Wanda Nash Award for 2008

By Donald Garlit

Annise McGuire (3L at the University of Michigan Law School) earned the 2008 Wanda Nash Award, which recognizes a law student at one of the state's law schools who has done the most for animal law. Animal law professors at each of the schools nominate a student.

The ceremony was held in the faculty dining room of the Lawyer's Club on November 20, 2008 to honor Annise and present the University of Michigan Law School with the annual school award. Annise was presented with her award at the annual meeting of the section in September. Attendees included Professor Joseph Vining, Dean of Students David Baum, members of the Student Animal Legal Defense Fund (SALDF), and many friends of Annise. Several members attended on behalf of the Animal Law Section. Prior to the meeting, Bee Friedlander spoke to the SALDF chapter members about Animal Law.



Bee Friedlander speaks at Wanda Nash Award ceremony.

Here are Professor Vining's words to nominate Annise McGuire for the award:

Annise is an incoming 3L at the University of Michigan Law School. Last year she was an outstanding student in my animal law class. I had known her before this. We first met at a national conference on animal law at Harvard Law School, where she was a representative from Tulane Law School's Student Animal Legal Defense Fund. Subsequently she transferred from Tulane to Michigan for her second year, and took my course.

Annise positively sparked class sessions. She participated in discussions in the best way. She was engaged, moved, perceptive, technically astute—a wonderful student to have. During the term, I had all members of the class write a series of short papers, and, at the end, a long essay on a set topic. Annise's papers were always first-class pieces of work, and I came to admire the way she approached problems in both law and policy.

Annise's commitment to animals and the development of animal law extends beyond the classroom. In New Orleans, she became involved with dog rescue before Katrina, and during and after Katrina she was part of a legal team working on a suit against city officials to prevent and redress the needless killing of companion animals whom evacuees had left in the care of city officials. I can imagine this work fed into and was part of the reason for the improvement, both legal and administrative, in the treatment of companion animals during disasters since Katrina.

I predict that Annise McGuire will continue to work in animal law as a practicing attorney, even if she makes another area of law her specialty also. She will seek changes both basic and technical in the way the legal system treats animals, of a kind that Wanda Nash hoped for and worked for. She deserves your serious consideration for this award.



Professor Vining speaks at Wanda Nash Award ceremony.

Wanda passed away in May 2008. She would have been proud of the work of Annise McGuire. 🐾



Professor Vining, Bee Friedlander, Dean of Students David Baum, and Wanda Nash Awardee Annise McGuire.

Beyond Genetics and Environment: Recognition in Animal Law of the Third Factor

By Professor Joseph Vining, The University of Michigan Law School

Editor's Note: Professor Vining gave the following talk at the Animal Law Section symposium in March 2009. He addressed the legal and historical context of Animal Law and discussed a major question for Animal Law: What will happen next?

It is a privilege to be here with you, practitioners public and private, legislators, organizations and administrators, all of you who say and do the things that are the subject of academic reflection—what we academics think and talk about, which is you.

I want to use my few minutes looking with you at why your work in animal law is not just a particular specialty in law, but centrally important to the basic purpose of law, which, it doesn't go too far to say, is to keep us human.

You are working, we are all here working on one of the great unfolding and unresolved legal questions of our time, which is how the human relationship with other sentient beings on earth is to be brought into the world of human law— informed by law's rationality and consistency, and law's concern also for something beyond systems and processes, something—sometimes we call it “value” or the “valuable”—that can be served by but cannot be reduced to systems and processes.

I want to emphasize how large and important this question is, this legal question. You will each have your own view of what the great issues of the nineteenth and twentieth centuries were. I might say the great issue of the nineteenth century was human slavery, and the great issues of the twentieth century were whether human individuality was going to continue to be recognized and whether humanity would destroy itself or the earth in war. These were questions for everyone, but questions for lawyers especially, who couldn't escape them.

The big issues of the twenty-first century? Human poverty, perhaps; disease; environmental degradation; global warming; maybe even the future of market capitalism, all of which have their legal aspects. But I do not think there is an issue confronting law and lawyers today more important than the human treatment of animals. As the kinship of human and animal becomes established more and more deeply in human thought generally, if only through the wider and wider teaching of evolutionary biology, and as animal suffering is more and more recognized as true suffering, the way we allow ourselves to treat animals may point us both consciously and unconsciously to the way human beings may treat other human beings. Our response to the suffering of animals is connected more closely than we think to the prevention of human suffering at human hands. Even if we think only in a humanly self-regarding way, animal law is an indicator of the way we will allow ourselves to treat each other as the future unfolds.

Remember the grand nineteenth century history of animal law, which so few know, that concern in law for animals predates, is the precursor of, and was a foundation, politically and socially, of legal protection of children. The women's organizations in Britain formed all over the country in the nineteenth century to press for humane treatment of animals eventually came together in a political



Section member Richard Angelo receives speaker's recognition award from Treasurer Bee Friedlander



Section Council member Allie Phillips (L) of American Humane who spoke at the Symposium, with Bee Friedlander



Section member and Chair of Litigation Committee Mary Chartier (L) receives speaker's recognition award from MaryAnn Kozlowski (Section Council member)

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Cola's Rescue

By Richard Angelo

Editor's Note: You will find this a most interesting example of a single attorney helping a single animal. Richard is a very persistent and creative advocate. This is the talk he gave at the March 2009 symposium.

Every day across this country, Cola's story is repeated without much fanfare or attention. Usually, the ending is not as happy as the one here. Fortunately for one lucky dog, there are a few exceptions. Cola is a pit bull mix who was abandoned by his previous owner in a house in Carrollton Township in Saginaw County. From approximately April 2007 to April 2008, Cola lived alone in this home, eating furniture, feces, woodwork, and whatever else he could to stay alive and having no contact with people other than what he heard through the walls. Neighbors in the area reportedly would bring food and water at times and slide it under the door of the home for Cola in an attempt to keep him alive. Animal control officials were under constant criticism from the neighbors in the area for their failure to remove Cola from the home. Numerous complaints were lodged with the Saginaw Animal Care Center, but the officials' hands were tied, because Cola's condition did not deteriorate to the point where the officials were legally able to rescue him. Finally in April 2008, his condition became such that Animal Control officials were able to remove Cola from the home. At the time, Cola was skin and bones, weighing approximately 40-45 pounds. After Cola was removed from the home, his owner was charged with various animal cruelty counts.

Saginaw County has had, and still has, a real problem with dog fighting, and usually the breed of choice is the pit bull. In order to help combat the problem, the Saginaw Animal Care Center has an unwritten policy of



Cola and animal control

photo courtesy: Colorado Pitbull Rescue



Cola and the author

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Elizabeth Livorine Receives First Wanda Nash Award

Editor's Note: This is based on a Wayne State University Law School press release of October 24, 2007, which announced the upcoming event. The award was noted in the last ALS Newsletter issue. This adds more information about Elizabeth Livorine and the award.

Wayne State University Law School 3L student Elizabeth Livorine received the first-ever Wanda Nash Award, an award created by the Animal Law Section in 2006 to recognize a Michigan law student dedicated to animal law. The award was presented to Liz at the annual meeting of the Animal Law Section in September 2007 in Lansing. Wanda Nash and her family were present at the meeting.



Elizabeth Livorine

photo courtesy: Wayne State University

According to Wayne Law Professor Noah Hall's recommendation letter, Livorine has "dedicated herself to animal law since deciding that the law and legislation was her best avenue by which to fulfill her deep commitment to animals."

Livorine took tremendous initiative in starting a Student Animal Legal Defense Fund (SALDF) Chapter at Wayne Law, and attended a number of animal law conferences in an effort to gain knowledge to bring back to Wayne Law and the southeastern Michigan community. In addition to her animal law efforts, Livorine committed personally to the protection of animals and their rights by raising funds for the SALDF's Mega March for Animals team, volunteering and fostering at the Animal Welfare Society of Southeastern Michigan, and educating elementary school students about the value of animals and the humane treatment they deserve.

In addition to the award received by the student, a school award was presented on October 30, 2007, to Wayne State University Law School in recognition of Livorine.

The meeting, which was open to all section members, alumni, students, faculty, and staff, featured attorney Deborah D. Lynett, an estate/family law attorney, and guardian of a certified therapy dog, who spoke about animal law. Several members represented the Animal Law Section.

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Beyond Genetics . . .

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network. Concern for the legal status of children followed. It wasn't "animals are like children," spoken in a positive way. It was "children are like animals," spoken in a positive way. In the United States, in fact, the abuse of children was initially (and dramatically) reached in 1874 in New York under its then new 1867 law governing the welfare of animals. Back in Britain, this network of associations, so largely consisting of politically active women who began with concern for animals, turned to the link between poverty and adulterated food, to what we call "pure food and drug" regulation. And then, for all this had been done through allies in Parliament, their organizational and political experience was put to the service of the drive for women's suffrage, political rights for themselves. It is an extraordinary tale, this history of concern for animals first and then expansion of concern beyond animals. We are at the point now where the reverse will hold too, where we will not be able to ignore animal suffering which we can see is suffering akin to ours, without lessening the claims of suffering in human beings on our feelings and thought and action.

This connection, for good or ill, between legal treatment of animals and legal treatment of humans, will, I think, be progressively stronger as we more and more openly and explicitly see more and more animals as individuals. I emphasize the "openly" and the "explicitly." We implicitly do recognize individuality in animals in many legal contexts, see them not as statistical units, instances of a species, and not as merely unique units either, like any pebble you might pick up, but as something the loss of which—the loss of that individual—is a real loss to the world, as we imagine the loss of any of us is a loss not just to those who love us but a loss to the world because we are not fungible units. You and I are individuals each with a value that we only pretend to quantify.

You can't escape individuation in animal law. It underlies developments in tort damages. It is explicitly there now in divorce law and the law of trusts and estates. It is explicit in aesthetic standing in administrative law. It has been legislated into the three R's in the law of animal experimentation—reduction, refinement, replacement—which are all about minimizing the pain of individual animal subjects of medical or scientific experimentation. Individuation is behind all criminal penalties in animal law, behind constitutional extensions of particular cruelty protections to individual farm animals, behind even the recognized overarching public policy of avoiding cruelty that affects all law now, as in the important *Lyng* case that found a federal administrative decision on branding methods, which paid no attention to the suffering in the branded animal it would produce, to be "arbitrary" and illegal under the federal

Administrative Procedure Act itself [*Humane Society v. Lyng*, 633 F.Supp. 480 (W.D.N.Y. 1986)].

It should not be surprising that a developing recognition of individuality in animals should be led by law, legal thought, legal practice, the briefs and arguments of prosecutors, and the language of legislation. The organized observation of open-minded scientific investigation is steadily contributing now to this recognition, but it is exactly this, the importance of the individual, openness to the non-reductive, that law distinctively introduces into thought. It did with slavery, with the treatment of women and children, with torture, of animals first, once again, and then of human beings. The individual, as legal thought conceives the individual, does not really have a place in scientific thought. And recognition of the individual goes beyond utilitarian or policy analysis of the kind in which we are always engaged, weighing aggregated costs or risks of costs against expected benefits. If there were true utilitarian reasoning in medical research on either humans or animals, for example, the "amount" of suffering of one or a few would be put against the "amount" of suffering that could be prevented or alleviated for others alive or to be born. But in any supposed calculus of suffering, the suffering of one or a few would be a drop in the ocean of the world's present suffering, and not even a drop but barely an atom when placed against the eons of suffering that might be alleviated or prevented in the future. Any death of one, any suffering of one, human or animal, would be justified—except for recognition of the individual. What holds us back is not a weighing of costs and benefits, but the same recognition of something, *the* something, that is involved in our present prohibitions of human torture or human slavery, however useful it might be.

In legal thought it is natural to recognize this something, and legal thought, I will note again, is very different from scientific thought. In science, for scientific purposes, an organism animal or human is known as a "phenotype," the unique and changing product of two and only two factors interacting, internal system and external system, the genetic and its environment, nature and nurture. In environmental or conservation law and policy this has proved a useful way of viewing an instance of a species and working with it. But that is not what an individual is, either in your or my presence as individuals to one another here in this room, or in law when the question is suffering or death. There is a third factor present, which does not have a name in scientific discussion. But it is there, in all our minds.

This is the real radicality in the development of animal law—its reflection back into our sense of what it is to be hu-

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man. Quite the opposite of anthropomorphizing the animal, the development of animal law has been a way of recognizing the human in the human. There is always an *a fortiori* quality to our view of animals, as Ghandi and many others have noticed. It shows when anyone says, “You wouldn’t do that to a dog.” Raising the bar for our treatment of animals raises the bar for our treatment of each other. See animals as individuals, as more than systems, not reducible to systems, and we see ourselves as each more than a system, not reducible. Animal law from its very beginning two centuries ago and throughout its development has ultimately focused on the individual animal, in contrast to the animal as a fungible part or cog in the working of natural and ecological systems; and as a consequence, animal law focuses us in a very special

way, this *a fortiori* way, on the “third factor” in our being, beyond the first factor, the genetic, and the second factor, the environmental—on this that makes each of us human and because human so valuable that there are some things that are just not to be done to any of us.

And actually, when you reflect on it, the connection between what protects animals and what protects us against merely utilitarian calculation, against being seen as just one more replaceable instance of a kind, has been implicit all along in our common use of the words “humane” and “inhumane” in referring not just to our treatment of each other but also, always, to our treatment of the sentient beings on earth with us. 🐾

©Joseph Vining

Cola’s Rescue

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not adopting out any pit bulls or pit mixes, seeking in part to keep the “weapons” out of the hands of the criminals taking part in that activity. This policy is generally applied regardless of the temperament and condition of the dog. Based upon this policy, Cola would likely be killed once the cruelty case against his owner was completed.

Luckily for him, there were many people looking out for him during that time and taking an interest in his well-being. While numerous people played a part in letting county officials know their feelings on what should be done with Cola, one person was more vocal than the rest. That person is Jill Van Sickle, who is a resident of Saginaw County, and who, along with her daughter, Melissa, took it upon them-

selves to make saving Cola their personal mission. Unfortunately, most of their pleas to county officials fell on deaf ears, due to the policy in place in the county. The Animal Care Center was not willing to make an exception in Cola’s case out of concern that they would be opening a Pandora’s box... if they made an exception here, how could they not make exceptions in the future? At the time, it appeared that Cola’s fate was likely sealed.

At some time in July 2008, Jill spoke to an attorney friend of hers in Florida by the name of Seema Kella. Seema is a former resident of Mid-Michigan and sought to help Jill in her fight. Seema contacted the Animal Law Section, and a

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Elizabeth Livorine

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The press release noted the following:

Wanda Nash was the spark behind the Animal Law Section, having gathered together Michigan attorneys interested in animal law in the early 1990s. The section was formed in 1995, and is considered to be the first statewide animal law section in the U.S. Wanda served as the first chair, and was an active section council member until her passing. Wanda devoted most of her adult life to work on behalf of animals. She was one of the few law students in the 1980s who went to law

school specifically to use the legal system to better the lives of animals.

Wanda was honored that the award was named after her. Wanda always believed that a next generation of attorneys with an interest in animal law needed to be developed. Of course, the Wanda Nash Award recognizes Wanda’s belief.

Elizabeth graduated from law school in 2008. She now lives in California and worked with the Los Angeles City Attorney’s Office animal cruelty unit. 🐾

Cola's Rescue

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message for assistance was placed on the listserv seeking a Saginaw lawyer to assist. I am a resident of a neighboring county and felt that if no other attorney was able to assist, I would give it a shot. Seema was instrumental in the beginning in getting in contact with various county officials, including many extremely helpful people in the Saginaw County Prosecutor's Office. Every interaction with that office while handling this matter was positive, and everyone there is to be commended for their professionalism and willingness to help.

After gathering some initial information relative to the criminal matter against Cola's owner, we decided that it would be best to contact Mr. Mark Wachner, the soon-to-be retired, but still acting animal control officer in Saginaw County. Mr. Wachner was and still is very well known and respected in animal control circles due to his extensive previous experience with dog fighting, and therefore pit bull, matters. When I spoke with Mr. Wachner, I could tell from his tone that he had fielded numerous calls regarding Cola. He was adamant that Cola was not going to be adopted to any individual in Michigan. At the time, I decided it would more fruitful to discuss possible options with Mr. Wachner, rather than argue the efficacy of the current policy in Saginaw. My focus was to help this dog at this time, and it was apparent to me that being adversarial would do no good in this situation.

After discussing the reasoning for the policy regarding pit bulls, his concerns regarding letting Cola be adopted or placed with a rescue, and various other issues, it became apparent to me that Mr. Wachner might be open to the possibility that Cola might be placed with a rescue. There was a catch, though. He was concerned about any §501(c)(3) organization coming in to take Cola. He claimed to have had too many experiences where the §501(c)(3) was not legitimate. His concerns were based upon his dealings with hoarders, and the possibility of people involved in fighting setting up a §501(c)(3) just to rescue pit bulls from the shelters. Whether these were valid concerns on his part was not my concern at the time, because I saw a possible opening to allow Cola to live. Mr. Wachner repeatedly referred to what he called "regulated states." While, even after his explanation, I was ignorant of what a regulated state was, I was optimistic that he was open to the possibility of letting Cola live. In fact, he stated more than once in our conversation that Cola was a great dog, and that he really did not want to see him killed. Further on in our conversation, I got the distinct impression that if I could find a reputable rescue in Michigan to take Cola, and not adopt him out, Mr. Wachner might consider letting him go there as well.

Subsequent to our conversation, Seema and I began trying to determine which states Wachner was referring to

as "regulated" and develop a list of shelters to contact, both within Michigan and out of state. We decided to include Michigan rescues in the recommendation to Mr. Wachner on the possibility that he would consider a reputable, established rescue here. We were under a time crunch to get this done, as the sentencing hearing for Cola's owner was approaching in less than two weeks, at which time, we understood, the court could order a disposition for Cola. During the course of our hurried research, we discovered that there were very few "regulated states." Mr. Wachner talked of regular state inspections of facilities, care standard, and so forth. We discovered that the Pet Animal Care Facilities Act was adopted in a number of states which fit this description and imposed requirements far beyond what most other states required and included regular state inspections and oversight. The states we narrowed our search down to were Illinois, Wisconsin, Missouri, and Colorado.

My focus was to help this dog at this time, and it was apparent to me that being adversarial would do no good in this situation.

We simply began making a list of rescues from a very good listing on Pit Bull Rescue Central's website, which was an extremely useful website. We contacted between 20 and 30 rescues in various states and Michigan. Most of the rescues we contacted were dedicated solely to pit bulls or other bully breeds. However, we did contact a few general rescue organizations. Unfortunately, we were fighting against numerous factors, including the deteriorating economy, lack of space, and the lack of ability to care long-term for Cola.

Numerous responses were received, however, from organizations wanting to help. I was surprised at how many people had heard Cola's story around the country. From the responses received, we narrowed down the choices to the Colorado Pit Bull Rescue in Longmont, Colorado; the Buster Foundation; and Second Chances Rescue, the latter two being in Michigan. Both Michigan rescues had agreed not to adopt out Cola and to allow him to live out his days in their rescue, if necessary. The Buster Foundation appeared to be the ideal location because they had a very large facility and extensive experience with both care and training of pit bulls, and one of the owners was an animal control officer in Michigan. I drafted and personally delivered a letter with detailed information regarding each rescue and attaching information regarding each to Mr. Wachner and Ms. Valerie McCullough,

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Cola's Rescue

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who is now the animal control director in Saginaw. Personally, I was hoping for Cola to be placed at the Buster Foundation due to geography, ease of transport, and the experience of the people running the rescue.

I did not speak with Mr. Wachner prior to the sentencing hearing and after he had received these materials; he was out of town for most of that week. I planned to attend the sentencing hearing and pleading Cola's case, if allowed by the judge. I was not sure the judge would listen to me, as I had not been involved up to this point. I had been in many courtrooms over the 10 years I have been in practice, so appearing in court is never remarkable to me. However, I can say I was never more nervous walking into a court room than that morning. The stakes were never this high in my mind.

When I went into the courtroom, I told the court officer who I was and what case I was there on. I then located the defendant's attorney and introduced myself. I let him know what I was planning on asking the judge, so as not to surprise him or his client once the hearing started. He was adamant, however, that he did not want me to address the court, although he did not give me a real concrete reason as to why. We agreed to disagree, and I began discussing with Jill Van Sickle, who appeared in court, what would likely take place once the judge took the bench. While speaking with Jill, I noticed the defendant's attorney make his way back into the judge's chambers. My guess is that he was trying to head off any attempt by me to address the court.

The judge, Christopher Boyd, took the bench and started the docket for the morning, which was short. Cola's was the last case called, and surprisingly, Mr. Wachner was not even there yet. The judge read the sentence, asked if there were questions from the defendant, and possibly noticed that I was getting up to request permission to address the court. He then stated very clearly that he was not going to address "disposition of the dog" at that hearing, while looking directly at me. It did not appear that the judge was angry, but it was clear that he was not going to hear anything further on the record.

As Judge Boyd left the bench, the court officer immediately approached me and told me that the judge wanted to see me in chambers. I did not think I had done anything to aggravate the judge, but I certainly did not think being called to chambers was going to be a good thing. It turned out, however, that the judge was very receptive to listening to why I was there. I advised him of my conversations and correspondence with Mr. Wachner. He let me know of some procedural issues that still needed to be taken care of, such as forfeiture of the dog from his previous owner. Judge Boyd

was very generous with his time and listened to everything I had to say. He also stated that he was open to allowing Cola to go to rescue, but it would have to come on the recommendation of Mr. Wachner. When I left chambers, Mr. Wachner and Valerie McCullough had walked into the courtroom. I explained to them what had transpired, and they were both then called into chambers by the judge as well.

After dealing with numerous people and organizations in arranging Cola's transport, I will say now that I have a tremendous amount of respect for rescues, shelters, and other people working to transport rescued animals every day.

When they came out, Mr. Wachner told me that he would recommend that Cola be placed with the Buster Foundation. This was great news, because the Buster Foundation was not far away, and Cola could live out a good life at this rescue. Wachner let me know that the prosecutor's office would be filing the paperwork for the forfeiture, which was likely going to be contested by the previous owner, and as soon as that was finalized, Ms. McCullough would contact me to arrange transport to the Buster Foundation. Mr. Wachner was finally retired and would be moving shortly, so Ms. McCullough would handle it from here.

About three weeks after the hearing, on a Friday night, I received a telephone call. It was the head of the Buster Foundation, and she was audibly upset. Apparently, she had lost her job that day and would no longer be able to take on Cola, as she already had numerous dogs in the rescue and adoptions were very slow, due in part to the economy. I was stunned. I immediately contacted Colorado Pit Bull Rescue ("CPBR") and asked if they would still be willing to take Cola. I had to wait over the weekend to receive a response, but finally CPBR let me know that they would still be able to take him. I would have to arrange a transport to get him to one of their transport hubs in Missouri, though. I figured this would not be a problem and called Valerie McCullough to let her know of the change in plans.

At long last, in early November, Ms. McCullough contacted and let me know that Cola was now free to leave the shelter, as his forfeiture hearing was over. I thought it was hard work up to this point. Little did I know what goes into transporting a dog across the country. After dealing with numerous people and organizations in arranging Cola's transport, I will say now that I have a tremendous amount of respect for rescues, shelters, and other people working

to transport rescued animals every day. I never realized everything that went into it. I was absolutely amazed at the willingness of people to help absolute strangers. After numerous setbacks, I was finally able to arrange a transport over Thanksgiving weekend. I was put in touch with a wonderful lady from Missouri who was visiting family for the holidays, and she used to transport for a local rescue group. She agreed to take Cola with her back to Missouri and meet up with the CPBR transport there. She also happened to be travelling with her husband and two full-grown Rhodesian Ridgeback rescues in her car as well. I could not believe she was willing to take Cola under these circumstances. Little did I know at the time the extent of this woman's kindness.

I arranged to meet her on Monday morning where she was staying in Lansing to drop off Cola. I had previously arranged with Valerie McCullough to meet her on-duty animal control officer on Sunday to pick up Cola, and he would stay at my home overnight. On that Sunday, it was snowing hard. We were supposed to get six to eight inches before all was said and done. My wife and I met up with Jill Van Sickle and her daughter at the Animal Care Center in Saginaw, because they wanted to finally see Cola out of the shelter. We filled out some paperwork, and finally I got to meet Cola. I had never met him before this day, and I am sorry that I did not. He was a great dog—wagging his tail, giving kisses to everyone in the room, and generally just happy to have some attention. When we got him outside, Jill got to spend some time with him before we took him for the ride back to my house. On the half-hour drive, my wife and I became more concerned about the weather because it was snowing hard. We decided that it would be better if I would take Cola and spend the night in a Lansing hotel so that we would not have to make the hour drive in the morning and risk driving in rush hour in bad weather.

I have to say that Cola did not make one peep in the car, never whined or cried. We got to the hotel much more quickly than I anticipated. I checked in and went to the room. I set up Cola's crate and brought him into the room, where he immediately hopped onto the bed and lay down. All I could do was smile. I spent most of that night feeding him treats from the smorgasbord provided by Jill, taking him for numerous walks throughout the night, and just letting him play and be a dog. He was very playful throughout most of the night. He continually flopped next to me on the bed wanting his belly rubbed. I did not sleep very much that night because I did not have the heart to put him back in his crate. I consider myself very lucky to have spent that time with him.

When I met Joan, the lady who was taking him to Missouri, the next morning, I knew Cola was in good hands. She was a wonderful lady and had her car all set up to keep

all the dogs separate to minimize any incidents. Cola had his own travel crate with him, so he could be separate from the others. Cola and I said our goodbyes, and he was on his way to his new life. It turns out that once Joan got to Missouri, without incident I might add, that Cola spent the night with her as well. He was spoiled and was treated to a bath and lots of treats.

I spent most of that night feeding him treats from the smorgasbord provided by Jill, taking him for numerous walks throughout the night, and just letting him play and be a dog.

Cola finally made it to Colorado on December 4, 2008, and made many more friends along the way. Everyone who came into contact with him loved him. I received message after message throughout his trip, from people on the transport who just loved Cola. He is being pampered as we speak by some really great people in Colorado, awaiting a forever home. He has received extensive medical treatment, training, and lots of love.

He has undergone some extensive medical treatment, including being neutered, having many teeth removed from being rotten and broken from eating what he did to survive in that house, he had to have part of his tail removed because he wagged it so much in his crate at the shelter that it was raw and likely beyond healing, and received all of his vaccinations. Through all that he has been through, his foster mom in Colorado tells us that he is not food aggressive in any way, gets along very well with her other animals, although he is very interested in the cat, and his favorite activity, according to her, is just sitting in the grass listening to the neighborhood. Last I spoke with CPBR in mid-March 2009, he had a family interested in adopting him. CPBR is looking for the perfect home for him. In retrospect, going to CPBR because they can take time to find him a great home. He would not have to live out his days in the rescue as he might have in Michigan. He deserves whatever joy he can get after what he has been through.

A lot of work went into saving Cola, but believe me, for all involved, he was more than worth it. To follow Cola's progress, go to www.coloradopitbullrescue.com, and if possible, donate some money for his care. This is a great organization.

Editor's Note: As of mid-May 2009, Cola is still waiting to be adopted. He looks great and is well-behaved. The pictures at the website noted above are both before and after ones. He was in very bad shape when he left the abandoned house. Cola has a real will to live. 🐾

Treasurer's Report for 2008 Fiscal Year (FY)— Ended September 30, 2008

This summary will provide a 2008 FY final financial report for the section through September 30, 2008. The Animal Law Section is very viable with a healthy financial status, and your section dues are being spent responsibly. The following is a fair and accurate summary of the section.

Membership dues received were \$4,075, an increase of 7 percent from the prior fiscal year, so membership increased from the prior year.

Seminar revenue was \$1,810, and related expenses were \$1,317. As a result, the seminar resulted in a "profit" of \$493. This was a pleasant outcome as the seminar is considered to be an educational activity, not a profit-generating activity.

All other expenses were \$3,391, primarily for the listserv (\$540); newsletter (\$657); communication, which consists

of ALS Council and committee teleconference calls and the Animal Legal Lifeline (\$304); the legislative luncheon (\$228); recognition plaques (including the Brandi, Sadie, and Wanda Nash awards for \$1,047); annual meeting room rental (\$284); and various other costs (\$331).

We had a surplus of \$1,177 for FY 2008. Overall, we began the 2008 FY with a section balance of \$10,164, and on September 30, 2008 had a balance of \$11,341.

If you have any questions, you can contact me at beefriedlander@yahoo.com.

Respectfully submitted,

Bee Friedlander
April 2009

Treasurer's Summary Report for 2009 Fiscal Year (FY)—Through February 2009

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

The following will provide highlights of the financial status of the section through February 28, 2009 (five months of the FY):

- Membership dues are down by about 4 percent this year. This is a reflection of the state of the Michigan economy.
- Expenses have been reasonable and have averaged about \$200 per month and are primarily for meeting expenses related to the Brandi Awards ceremony in October and the Legislative Aides Lunch in November. We continue to have the monthly listserv charge, so please use the listserv as a means of contacting other section members.

- The section fund balance was \$14,857 at the end of February—an improvement of about \$3,500 from the beginning of the fiscal year on October 1, 2008.
- Remember that major expenses such as those for the Symposium, the newsletter, and the Wanda Nash Award presentation at the University of Michigan Law School will be recognized in the April and May financial results.

Respectfully submitted,

Bee Friedlander
April 2009

News and Notes

By Donald Garlit

Hon. Kaye Tertzag Passes Away

Retired Wayne County Circuit Court Judge Kaye Tertzag passed away on February 4, 2009. He was surrounded by family and friends and will be missed dearly. He had turned 70 on January 1.

Judge Tertzag received the Animal Law Section's first Brandi Award and was a member of the section council for several years at the beginning of the decade. The Brandi Award was named after a deceased dog that was the subject of a ruling by Judge Tertzag.

Judge Tertzag said in his opinion in the Brandi case (*Murray v Bill Wells Kennels, Ltd.*, Wayne County Case, No. 95-536479-NO) that the relationship existing between a pet and its owner is special, unique, and far different from the relationship (if that is what you want to call it) which an individual might have with inanimate objects like a piece of furniture, a car, or other types of personal property. He further stated that you do not have to be a pet lover to appreciate that there is really something special about the way humans deal with and react to their pet animals. He rejected the very old case law that treats animals as chattel. For that reason, he allowed the jury to consider non-economic damages in the death of Brandi.

Judge Tertzag received the award in September 2000. I do not think anyone who heard him speak at our annual meetings will ever forget his skill with the yo-yo. He was able to talk legal concepts and do yo-yo tricks at the same time.

Remember him when the Brandi Award is made in the future.

A more detailed obituary from *The News-Herald* can be found at www.thenewsherald.com.

Companion animals worth at least as much as your vet bills, says Illinois Appellate Court. This was submitted by noted animal law attorney Amy Breyer to <http://animallawonline.blogspot.com> earlier this year.

Leith v. Frost involved a plaintiff couple who sued their neighbor after the neighbor's Siberian Husky got out of his yard and mauled their Dachshund. The trial court found Frost liable, but limited the Leiths' damages, which totaled more than \$4,700 in vet bills, to \$200. The trial court cited traditional common law limiting the cost of repairs for inanimate property to market value.

On appeal, the Fourth District reversed. It noted:

Even if it were true that anyone would pay \$200 for a 7 1/2-year-old dachshund that is not a show dog, the reality is that Molly had merely nominal value at the time of the injury. A reasonable person in defendant's position should have reasonably foreseen that if his dogs escaped from their enclosure and injured plaintiff's family pet, plaintiffs would feel compelled to pay considerably more than a nominal amount for veterinary care. It is common knowledge that people are prepared to make great sacrifices for the well-being and continued existence of their household pets, to which they have become deeply attached. They feel a moral obligation toward these animals. Emotionally, they have no choice but to lay out great expenditures when these animals suffer a serious physical injury.

The court found that Molly must have been worth to the Leiths at least what they paid in veterinary bills, and modified the trial court's judgment to \$4,784 so as to prevent the award from being nominal. 🐾

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State Representative John Espinoza receives speaker's recognition award from Chair Elect Anna Scott (More pictures from the Symposium inside the newsletter.)