



STATE BAR OF MICHIGAN

Animal Law Section

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The Animal Law Section: An Advocate for Michigan's Animal Population

By Ginny K. Mikita

[The] day may come, when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. The French have already discovered that the blackness of the skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor. It may come one day to be recognized, that the number of legs, villosity of the skin. . . are reasons equally insufficient for abandoning a sensitive being to the same fate[.]

Jeremy Bentham

INTRODUCTION

Your German shepherd bit the dog next door and is in danger of being declared a "vicious" dog. Your children are heartbroken by the death of their companion animal after being mistreated by a veterinarian. You're afraid of a suit over a scratch by your cat. You're concerned about a local pound or kennel. These issues, and more, are among the interests of members of the State Bar of Michigan's Animal Law Section. This article provides an introduction to the Section, along with a brief analysis of so-called "harassment" statutes—laws designed to thwart the efforts of those who seek to protect animals from human predators.

THE ANIMAL LAW SECTION

America has the distinction of being the first country to acknowledge the right of some animals to be free from cruel treatment. In 1641, the Puritans of the Massachusetts Bay Colony enacted their first legal code, "The Body of Liberties."¹ Liberty



In 1996, the DNR obtained a federal permit to kill geese and donate the meat to the poor.

92 provides "No man shall exercise any Tyranny or Cruelty towards any brute Creature which are usuallie kept for man's use." Until recently, this mandate and most anticruelty statutes provided some protection for animals but only because human interests, namely, property rights, were at stake. Although the view of animals as property continues to dominate the political and legal systems, many state anticruelty statutes have been redrafted to apply even to animals who are not owned by humans. Society has at last begun to recognize the rights of animals as sentient beings and our corresponding obligation not to subject them to cruelty and unnecessary suffering.

In 1991, a small group of attorneys from around the state interested in furthering animal protection and rights through the legal system met in Lansing and formed a non-profit organization, Attorneys for Animals. Members of the organization subsequently petitioned the State Bar of Michigan to create the Animal Law Section. In 1995, the State Bar approved the petition—notwithstanding strong opposition by the Michigan United Conservation Club—and the

Animal Law Section, the first of its type in the country, was organized.

The goals of the section, as specifically outlined in its bylaws, are as follows:

- Educate members of the State Bar and of the public about laws relating to the protection of animals and animal rights, including the development and modification of existing law;
- Promote legislation to advance animal protection and animal rights;
- Maintain and operate a referral service for and among attorneys practicing in the area of animal protection and animal rights; and
- Promote animal protection and animal rights in Michigan through the use of the legal system.

The section's membership, which currently stands at 137, includes law students and paralegals, most² of whom are interested in securing fundamental rights for animals—most importantly, the right to be free from cruel treatment and unnecessary suffering.

The section's attorney members perform

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PRESS RELEASE

“The Animal Law Section of the State Bar of Michigan joins with Attorneys For Animals in endorsing the principles implicit in World Animal Awareness Week. We urge our state and nation to recognize that animals have moral rights, and we urge our federal, state, and local legislative bodies to enact laws which recognize and protect these rights. We recognize that the rights of animals are not identical to the rights of humans, but that certain rights, including the right of every sentient creature, human or animal, to be treated humanely, are deserving of legal protection. We, therefore, commend the purpose and activities of World Animal Awareness Week to the citizens of Michigan, and particularly to fellow members of our state’s legal profession.”

The above press release was authorized by the Animal Law Section Council on June 8, 1996 and subsequently released to major newspapers and other media outlets throughout Michigan.

PROFILE OF MICHIGAN ATTORNEY ACTIVISTS WORKING TO HELP ANIMALS

WANDA A. NASH, B.A., Western Michigan University; J.D. Thomas M. Cooley Law School (1986). Elected first chairperson of the Animal Law Section (1995); founder and first president of Michigan Attorneys For Animals (AFA). Editor *Michigan Animal Law Handbook*. Served as legislative assistant to Rep. Bill Martin (R-Battle Creek). Presently in private practice in Marshall, Michigan.

GINNY K. MIKITA, B.S., University of Florida; J.D., Notre Dame Law School (1991). Current chairperson of Animal Law Section, State Bar of Michigan. Previously served as Staff Attorney with People For the Ethical Treatment of Animals (PETA), and Animal Legal Defense Fund. Presently an associate attorney with Grand Rapids firm of *Smith, Haughey, Rice, and Roegge*.

BEATRICE M. FRIEDLANDER, B.A., Ohio State University; J.D., Ohio State University (1977). Chairperson-Elect of Animal Law Section (became Section Chairperson in Sept., 1996). Founding member and current president of Michigan Attorneys For Animals (AFA). Presently staff attorney for *UAW Legal Services Plan, Inc.*

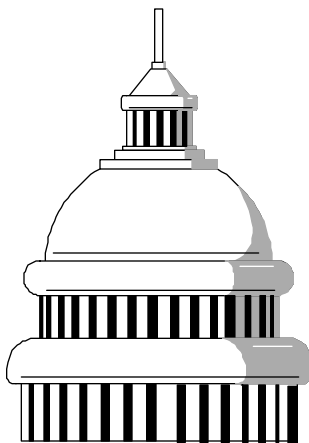
DONALD N. PERKINS, B.A., Brigham Young University; M.S., University of Utah; J.D., Wayne State University Law School (1993). Editor, Animal Law Section Newsletter. Previously served as chairperson of the Animal Law Section Public Service and Information Committee. Presently in private practice, Mt. Clemens.

BARBARA H. GOLDMAN, B.A., Boston University; M.A., Ph.D., S.U.N.Y. (Buffalo); J.D. Detroit College of Law (1992). Organized the establishment of Animal Law Section, State Bar of Michigan. Previously served as clerk to Judge Maura D. Corrigan, Michigan Court of Appeals; presently research attorney for *Collins, Einhorn, Farrell, & Ulanoff* in Southfield.



CAPITOL REPORT

By Jeanee Frazee with assistance from Eileen Liska



WRAP-UP OF 1996-97 MICHIGAN LEGISLATIVE SESSION

Anti-Bear Hounding and Baiting Referendum Defeated by Counter Proposal G

Despite the passage of state Senate Bill 1033 which put the competing Proposal G on the November '96 ballot to defeat the anti-bear hounding/baiting Proposal D, many of our legislative goals were met! Proposal D's defeat was in large part based on the fact that Michigan has more licensed hunters than any other state, and they greatly outspent Proposal D supporters. One of the consequences of this defeat, however, is that the Michigan United Conservation Clubs (MUCC) and other hunting interest groups are now more organized than before and will be pushing harder than ever in the 1997-98 session to pass a dove hunting bill. In fact, in the final days of the 1995-96 legislative session, the MUCC did try to get the dormant Senate Bill 529 voted out of the House Conservation Committee and onto the House floor for a vote. To his credit, Committee Chairman, Rep. Mich Middaugh maintained his opposition to this publicly unpopular bill and refused to release it.

Cruelty Laws Dramatically Strengthened

Anticruelty laws in Michigan are now some of the strictest in our nation as a result of the passage of the new felony and misdemeanor statutes in 1994 followed by the passage of three more bills in 1995-96. House Bill 4655 closed all the loopholes in Michigan's old anti-animal fighting statute by clarifying that birds are "animals" under Michigan law and by making it a felony to not just fight dogs and fowl but to also own, breed, train, import, or export them and their offspring for fighting purposes. Additionally, it's now a felony for individuals or companies to import/export equipment used for animal fighting.

Companion House Bill 4656 amended the State Forfeiture Act so that law enforcers can confiscate the money, weapons, vehicles and other possessions of convicted dog and cock fighters.

House Bill 5561 was passed into law in the final week of the 1995-96 session and further strengthened the current misdemeanor anticruelty law by making a second or subsequent conviction a felony, allowing judges discretion to penalize the convicted by removing their privilege to ever own an animal again (previously they could only revoke this privilege for the maximum term of two years), and by requiring the owner of an animal confiscated because of neglect or cruelty to pay the court up front for all reasonable costs of caring for and housing the animal while the trial is ongoing (previously shelters could only try and be reimbursed for these costs after the owner was convicted).

Shelter Pet Sterilization Bill To Be Reintroduced

After being passed by the Legislature, HB 4654, which requires the sterilization of all shelter pets, died in December of 1995 when Governor John Engler vetoed it. It was then reintroduced in 1996 as HB 5926, after the Governor's support was obtained. We are disappointed to report that HB 5926 unexpectedly died on the House floor in the early morning hours of December 13. It had passed the House on a 95-5 vote, then passed the Senate unanimously. However, it was among the lengthy list of House bills sent back to the House from the Senate for concurrence votes and, after working all night and into the morning, House members started leaving until there was no longer a quorum and House leadership had to adjourn the session.

HB 5926's sponsor, Rep. Gerry Law, will be immediately reintroducing this legislation when the 1997-98 session begins in January. Since all but the new legislators are well acquainted with this bill, Rep. Law and the Michigan Humane Society (MHS) expect to have it passed into law by March. It has now passed both Houses of the Legislature and is awaiting the Governor's signature.

Bills to Prohibit Dog Racing and Banning Ownership of Animals by Breed Die

Senate Bill 578, which would have prohibited dog racing, and House Bill 4298, which would have prohibited local governments from banning ownership of animals by breed, died on the House floor, on December 13 when session had to be suddenly adjourned for lack of a quorum. Accordingly Eileen Liska, however, will be reintroducing it next session. SB 578 did not have widespread support in the house, particularly since a gubernatorial veto was expected. HB 4298 also did not have support in the House, unless it was amended to change "animals" to "dogs," as requested by the Michigan Humane Society and others.

Looking forward to 1997-98 Session

The MHS's long-awaited bills to ban the private ownership of certain dangerous exotic animals as pets will be introduced by Representatives Gerry Law (R-Plymouth) and Michael Hanley (D-Saginaw). People who now own such animals would be "grandfathered in" (*i.e.*, allowed to keep them), as long as they meet the bill's animal care and housing standards. There will be strong opposition to these bills. On May 19, 1997 MHS will introduce a three-bill package to prohibit ownership of wolf hybrids, exotic cats, bears, and primates.

Editor's Note: *Jeanee Frazee is a Southfield attorney serving as Chairperson of Animal Law Section Legislation Committee. She was assisted in the report by Eileen Liska, Michigan Humane Society's legislative lobbyist in Lansing. Ms. Liska was awarded the 1996 Legislative Achievement Award from the Humane Society of the United States, making her the only person in the U.S. to have received the award for two consecutive years.*

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a wide range of legal work: Defense of clients whose animals violate local ordinances (allegedly "vicious" dogs and overzealous barkers); contract negotiations and dispute resolutions; custody battles; veterinarian malpractice suits; representation of humane societies and other animal protection organizations; state and federal agency action challenges; and assistance to prosecutors, judges and local governments regarding animal-related issues.

The animal law field, as a whole, remains relatively uncharted territory. It however, is evolving at a record pace. During the course of the last two years, several section members have been embroiled in cutting-edge work in this area.

The Canada Geese Case

The Michigan Department of Natural Resources (DNR) routinely uses lethal forms of control to manage the state's Canada geese population, claiming that they are the only effective techniques. In 1996, the DNR obtained a federal permit to kill geese and donate the meat to the poor. A member of the Animal Law Section was involved in a suit filed to prevent both the slaughter of the geese and the use of the chemically-contaminated meat as food. *Friends of Ducks & Geese v Fish and Wildlife Service and Michigan Dept of Natural Resources* (ED Mich, SD, docket no 96CV72769-DT). The plaintiffs obtained a temporary restraining order, issued by Judge Denise Page Hood, however, the judge denied further injunction relief. The case settled after the defendant agencies agreed to procedural concessions.

The controversy attracted interest from such diverse organizations as the New York Times, the Disney Corporation (in connection with the release of its movie, "Fly Away Home"), and the Humane Society of the United States, which is planning to use Michigan as a test site for nonlethal population management techniques. It served a valuable function in focusing attention on the compassionate side of the issue. *Friends* highlighted the evidence of alternative nonlethal methods of managing geese, methods that treat the birds as living creatures rather than simply as disposable commodities.

The case also brought to public attention the DNR's persistence in giving the birds to charities despite evidence that they are contaminated with chemicals. The geese targeted for slaughter are those that congregate on waterfront lawns and golf courses, areas especially attractive to grass-eating geese. The grass in those areas is typically treated with pesticides and chemical fertilizers. The geese ingest the chemicals, and there is evidence that they become contaminated and can pose a health hazard if eaten. While the DNR's intent to feed the hungry may be noble, its plan is flawed and potentially dangerous. Instead of benefitting the hungry, the DNR plan may actually be poisoning them.

The Ottawa Shores Humane Society Case

In 1995, the Ottawa Shores Humane Society in West Olive, Michigan rescued more than 100 animals pursuant to Michigan's anticruelty statute. Volunteers, responding to a citizen's complaint, were confronted with a scene reminiscent of a death camp. Animal corpses were scattered throughout a landscape of mud and manure, while the emaciated survivors foraged for food. The surviving animals—72 goats, 20 horses, eight rabbits, four cows and two dogs—were removed, and the owners charged with animal cruelty. *People v Postma*, G95-640(1)-SM (58th Dist Ct Mich 1995). In the midst of the crimi-

nal proceedings, the animals' owners brought a replevin action seeking the return of their "property" and unspecified damages in excess of \$10,000. *Postma v Ottawa Shores Humane Society*, 95-22623-CZ (20th Cir Ct Mich 1995). The case was successfully defended by one of the Section's members.

At the outset of the civil lawsuit, the judge entered a standard, *ex parte* order, applicable to replevin of private property, that the Humane Society "refrain from damaging, destroying, concealing, disposing of or using so as to substantially impair the value, the above described property [the animals], until further Order of the Court."

The court's order had far-reaching implications. The order forced the Humane Society to care for the animals during the pendency of the criminal matter at a total cost of approximately \$56,000 by the time the case was resolved. Further, the order forced the Humane Society to turn to the accuseds for permission to treat their victims. For example, one goat had two broken forelegs and could not walk. The Humane Society was forced to seek the owners' permission to euthanize the goat, lest he languish in pain pursuant to the court's order. The owners' permission was also needed, but denied, in order for the male goats to be neutered and dehorned, thereby increasing their chances of finding new homes.

Following the owners' plea of no contest to the criminal charges, the civil and criminal courts refused to determine the animals' ultimate fate. The courts' inaction left open the possibility that the animals could be returned to their abusive owners.

As a direct result of the *Ottawa Shores* case, the Michigan Legislature, late last year, amended the misdemeanor anticruelty statute. The amendment, proposed and drafted by the section member who defended the *Ottawa Shores* case, strengthens the anticruelty statute as follows:

- by requiring the owner of an animal confiscated because of alleged cruelty or neglect to forfeit the animal or, in the alternative to pay the court up front all reasonable costs associated with caring for the animal during the pendency of the case (previously shelters could only attempt to seek reimbursement for such costs post-conviction);
- by making a second or subsequent conviction a felony; and
- by allowing a court to order temporary or permanent relinquishment of animal ownership as a condition of probation for a second or subsequent animal cruelty violation (previously a court could only revoke this privilege for a maximum of two years).

Molly's Case

Molly was a dog who died an unnecessary death. According to allegations in the Complaint: her human companion took her to a veterinarian for a Caesarean section; the veterinarian asked for permission to spay her during the operation, but her companion said no; the vet spayed her anyway, then told her companion that there were "complications" and Molly was losing blood from a blood disorder; Molly's companion wanted to leave her with the vet, but he refused and carried her out to her companion's van; Molly died the next day; and a necropsy (equivalent of a human autopsy) revealed the cause of death as internal bleeding, a result of the veterinarian's failure to suture the internal incision site properly. A member of the Animal Law Section represented Molly's companion in a malpractice suit against the veterinarian.

The defendant brought a motion for summary disposition with re-

Animal Law Section *(Continued from page 4)*

spect to the plaintiff's alleged damages for pain and suffering associated with the loss of Molly. Oakland County Circuit Court Judge Alice L. Gilbert granted defendant's motion, but, in a landmark ruling, *sua sponte*, denied summary disposition with respect to Molly's pain and suffering. *Little v Pet Practice & Huff*, 95-509334-NM (6th Cir Ct Mich 1996). The case was later settled.

The section is involved in a number of other activities. The Public Service and Information Committee publicly recognizes local policemen, prosecutors, judges and other individuals for their efforts on behalf of animals. A referral network is being organized. The Legislation Committee works actively with state legislators to promote the passage of legislation for the benefit of Michigan's animal population. The section's Statute and Ordinance Handbook Committee is currently compiling animal ordinances from local municipalities throughout the state as a follow-up volume to the already-existing Animal Law Handbook, first published by Attorneys for Animals. The Resource and Data Bank Committee will compile a brief and opinion bank. Finally, the section is planning a forum or debate, to be held in conjunction with the 1997 Annual Meeting of the State Bar of Michigan.

HARASSMENT LEGISLATION

Just as there has been remarkable progress in the passage of laws that protect animals in recent years, there have also been significant efforts by those who exploit animals to pass legislation that will benefit them. A majority of state legislatures, including Michigan's, have passed "hunter harassment statutes." All are intended to deter active opposition to hunting.

The Hunter Harassment Amendment³ to the Michigan Wildlife Conservation Act provides "[A] person shall not obstruct or interfere in the lawful taking of animals by another person with the intent to prevent that lawful taking." A person violates this section when the person intentionally or knowingly does any of the following:

- Drives or disturbs animals for the purpose of disrupting a lawful taking;
- Blocks, impedes, or harasses another person who is engaged in the process of lawfully taking an animal;
- Uses a natural or artificial visual, aural, olfactory, gustatory, or physical stimulus to affect animal behavior in order to hinder or prevent the lawful taking of an animal;
- Erects barriers with the intent to deny ingress or egress to areas where the lawful taking of animals may occur;
- Intentionally interjects himself or herself into the line of fire of a person lawfully taking wildlife;
- Affects the condition or placement of personal or public property intended for use in the lawful taking of an animal in order to impair the usefulness of the property or prevent the use of the property; and
- Enters or remains upon private lands without the permission of the owner or the owner's agent, with intent to violate this section.

There is no requirement that a hunter be in sight.

The logic of the Hunter Harassment Amendment is faulty for several reasons. First, and most significantly, it appears to be unconstitutional. It is clearly designed to protect hunters from speech—whether verbal or nonverbal—by those opposed to hunting. It is, therefore, a content-based regulation. The United States Supreme Court has held

that a state may enforce a content-based exclusion only if it can show that the regulation is necessary to serve a compelling state interest. Further, the regulation must be narrowly drawn to achieve that end. Protecting hunters, merely seven percent of Michigan's population, from those opposing hunting is not a compelling state interest. The statute is also facially invalid because it is unconstitutionally vague and overbroad. It implicates the communicative aspects of the conduct it proscribes.

Second, the Wildlife Conservation Act⁴ provides "All animals found in this state, whether resident or migratory and whether native or introduced, are the property of the people of the state. . .", not just the hunters of the state. As stated previously, the Hunter Harassment Amendment provides that a person is in violation of the law if he or she intentionally drives away, disturbs, or uses natural or artificial stimuli to protect animals from being killed. A hunter, on the other hand, is allowed to—as expressly provided for by statute—kill, chase, follow, harass, harm, pursue, shoot, rob, trap, capture, or collect animals. Non-hunters in the state of Michigan have as much right to protect animals as hunters do to hunt them.

Hunters aren't alone in their efforts to curb other people's First Amendment rights. Last year, in response to an animal rights organization's press release stating its intention to target fishing tournaments to protect fish, state legislatures, including Michigan's, responded with the introduction of "fisherman harassment statutes," again, to provide an effective deterrent against persons who actively oppose fishing.

In 1996, the Michigan Legislature passed its own fisherman harassment statute⁵, ironically described in its preface as an act "to protect the environment and natural resources of the state." The law provides that a person who engages in any of a number of activities, including wading or swimming, "in order to hinder or prevent the lawful taking of an aquatic species" is guilty of a misdemeanor. The law further infringes upon the First Amendment rights of the people of the state of Michigan.

CONCLUSION

If you are interested in joining or have questions about the Animal Law Section or you would like a copy of the Animal Law Handbook, please contact Ginny Mikita at (616) 458-4256.

Editors Note: The above article was prepared by Ginny Mikita, 1996-97 Chair of the Animal Law Section. It was published in the May issue of the Michigan Bar Journal.

¹ Laws of New Hampshire, Vol 1, Province Period, Appendix D, Complete text. 1904.

² A small number of members, who represent organizations that exploit animals, clearly do not aspire to further the Section's goals.

³ MCL 324.40112; MSA 13A.40112.

⁴ MCL 324.40105; MSA 13A.40105.

⁵ MCL 324.47301a; MSA 13A.47301a.

EFFECTIVE *VOIR DIRE* IN ANIMAL CASES

By
Larry Weiss

How to pick a jury in animal cases is a subject that has not been explored extensively. Most civil cases involving animals are settled; criminal cases are usually negotiated. However, if a case goes to trial, you will have an extensive examination of the jury panel, and I want to suggest some ideas you can use in selecting the jury.

Picking a jury begins with a process called *voir dire*, which means “to speak the truth;” however, that is hardly an accurate appraisal of what goes on in a jury selection process. Both attorneys—the attorney for the state and the attorney for the defense if it is a criminal case (or the attorneys of the plaintiff and the defendant if it is a civil case)—are allowed to participate in the selection of a jury by using challenges. Challenges are of two kinds. First, there is a challenge for cause. You may lodge a challenge for cause to a prospective juror if that juror indicates that he or she is prejudiced against your client, prejudiced against a class of people to which your client belongs, or knows somebody in the case. A challenge for cause requires the judge’s concurrence; if the judge agrees, the challenge for cause is granted, and the prospective juror is out. Generally there are few successful challenges for cause because most prospective jurors, unless they want to get out of the case, will say the obvious thing: “No, I am not prejudiced; I will give this person an objective ear.” So, you have to use “peremptory” challenges, the number of which varies from state to state and jurisdiction to jurisdiction.

The questions that you can ask potential jurors are those aimed at determining whether to challenge for cause. That is what the codes all say; you are trying to find out if this person is prejudiced. However, what you are *really* doing is trying to find out if you like this prospective juror, and whether the prospective juror is going to be sympathetic to your client. In my case, I want to find out if the prospective juror has any animal sympathies or not.

I will address the subject of *voir dire* in two parts. First is the issue of what kinds of questions you should ask the panel or prospective jurors to find out if they are sympathetic to your cause. Second is how to present your questions procedurally so the judge will not quash them.



Photo by
Nancy O'Brien

Courtesy of
ALDS Defense Fund

The first issue is: What kind of questions should you ask? You can ask the usual set of questions concerning the potential juror’s employment. This is often a veritable gold mine because animal exploitative employment is rampant, and you will want to find out the prospective juror’s occupation. Is this a person in livestock? Is he or she a rancher? Is he or she a ranch hand? Does he or she work in a meat market or a rodeo? Does this person sell pharmaceuticals that are tested on animals? You can ask, very innocently, about the person’s occupation and receive important information. If you uncover no animal—related occupations, you should ask: What was your previous occupation? The person may have only been working in the present position a year; perhaps before he or she was selling tickets to the rodeo. So, you want to go back a few years and find out if this person has ever done anything that constitutes animal exploitation.

To understand the answers of prospective jurors, you have to understand what animal exploitation is; you have to do your homework. You have to know the products that are tested on animals. If the judge gives you a little leeway, you can get into what kind of products are sold at the store where the prospective juror works, whether he or she knows those products are tested on animals, and how he or she feels about these issues. Sometimes the judge will say that these types of questions are not relevant, but you ask them until the judge stops you. However, you cannot ask pertinent questions if you do not know what you are asking for. What I am suggesting is that in picking a jury, you have to know the various

fields that are exploitative of animals, including product testing, medical testing, and the ethics surrounding livestock and agribusiness. What if the prospective juror is not a rancher or a cowhand, but is working somewhere in the feed business? Does this mean that he or she agrees that animal exploitation is okay? The answer usually is yes. The reason that employment is important is because people go voluntarily into employment. It is not like race or place of birth. One decides to be a rancher, and this says something about who one is because people decide to do things that are compatible with their own belief systems.

You may also want to ask whether a prospective juror has any connection with the business or institution that was the subject of an animal rights demonstration. Take a hypothetical case involving a sit-in at a university. Assume that twelve people were arrested, but there was no property damage. You should determine from the panel of prospective jurors if anyone has any connection with the university. If some are students, you want to ask what their majors are. If a person is a science major, this may not be good because he or she is probably, statistically speaking, not an animal activist. If the person is going into science, he or she probably believes in the "scientific method" and supports animal testing. So, if this demonstration was against the testing of animals, you have a problem. After you ask about the persons' major, you should ask if he or she believes that testing on animals is essential for human health. Get your big questions in first before the judge calls you to the bench and asks you what you are doing. Practicing attorneys understand that.

What if the person is not a student, but a professor? This could be okay depending on what the professor teaches. If he or she is a professor of philosophy, alternative women's studies, Chicano studies, Black studies or something like this, it is a good sign because a person in that field has often taken on an alternative lifestyle, or at least has considered an alternative lifestyle to be acceptable. You may want to ask that person a little about her beliefs, if you can. I would say that somebody who is a professor at the university should not automatically be disqualified. You want to find out what he or she does at the university, and what her feelings about the university are.

If the person is an alumnus, in my experience that is usually not good, and I have questioned a lot of prospective jurors. What alums usually have is a very rose-colored picture of what the college was like when they went to it. They do not like anybody criticizing their college. And you are criticizing their college, make no mistake, when you sit-in and refuse to get up. I usually challenge alums. The same holds true with employees of the college. Employees are in a bad position because if they are on a jury that acquits your client, and then have to go back and be a clerk the next day at the registration office, they're going to take some flak. So I would say that employees of the college should usually be challenged. This reasoning process may apply to any institution. I used the university as an example because sit-ins at colleges are my most common kind of case.

If there is property damage—for example, say all the animals are let out of the lab—the case becomes much more difficult. You are now going to have to seek people with alternative lifestyles and beliefs. What you want to find is somebody who is not necessarily conversant with animal issues, but has endorsed protests in the past. For instance, if somebody has supported or sat in on a Vietnam

demonstration, in a civil rights demonstration, or something similar in the past, he or she may be able to relate to your client. If you can ask these questions, if the judge will allow you this kind of latitude, you may have something. You might find a juror who will be sympathetic to your client's actions.

Ask the prospective jurors where they went to college, even if they are not connected with your college. Ask them because going to college represents a lifestyle choice. Somebody who went to The Citadel is different from someone who went to Berkeley. They have made a choice; people want to associate with compatible people. If they went to college at a military school, they are going to have a certain set of beliefs, as opposed to places like UC-Berkeley or UC-Santa Cruz, where there are different sets of rules. So you want to find that out, and then you draw your own conclusions. If you know the significance of a college choice, you have a leg up on the opposition. The attorney on the other side might not see the significance. Then you have better information than the other side does.

Get food information on prospective jurors in order to exercise your peremptory challenges. Even better, if you get that information without the other side knowing it, you may be able to empanel a sympathetic juror without the other side knowing it. You can accomplish this by asking prospective jurors the kinds of questions that correlate to beliefs in animals or beliefs in a protest mentality, but are not the direct questions about beliefs. The kinds of questions you ask include: Do you have any "companion animals?" Do you know what a companion animal is? If he or she says, "Yes, I have two cats," as to whether or not the cats are spayed or neutered? he or she may answer, "No, I would never do a thing like that." There is your information. he or she may say, "Yes, of course I have a spayed animal; there are too many animals." There is your information. The other side may not know the implication of having a spayed or an unspayed animal because they are not sensitive to animal rights issues. You can also ask, "Where did you buy your dog?" If he or she bought it from a breeder, that is different from buying from a shelter. This is the kind of information you can get if you know what you are doing, and the other side does not. They may not know that you are getting important information.

Another area you want to pursue (although this is hard because judges often declare these questions irrelevant) is information about the diet of the prospective juror. If this person is a vegetarian, this is essential information. If the judge will not let you ask that question, you might just throw out a question about diet or about the meat industry. If a prospective juror makes any comment about being a vegetarian or even just uses the word "vegetarian," you have your information.

Another important piece of information has to do with possession of weapons. If you simply ask, "Are you a hunter?" everyone will know what you are doing. However, if you can find out that the prospective juror owns weapons, you know there is a statistical correlation between owning weapons, being a hunter, and being unsympathetic to animals. If you can find out whether this person owns weapons, you have a lot of information about how that person is likely to view your case. Most people that own weapons are not going to like your clients.

The second issue concerning peremptory challenges is how to proceed procedurally so that you will be allowed to ask prospective jurors the kinds of questions that are useful to you. The most impor-

tant classes you take in law school are classes such as Civil Procedure and Criminal Procedure. They might seem to be the least interesting classes, but they are the ones you are going to use the most. You need to know how to do a demurrer and a summary judgment, and you must know how to do a pleading. The other stuff you can look up in the library. One bit of wisdom I want to pass along is, listen in your procedure classes. It will save you again and again.

How do you get your questions before the jury? The way that I have done it most successfully is to make a motion well in advance presenting to the judge all the *voir dire* questions. Know your *voir dire* questions and submit them to the judge. This will get the judge thinking about your issues, and you may get more latitude when you finally get your chance to question the panel. Procedurally what happens is that the judge questions the jurors first and asks questions designed to discover if prospective jurors are prejudiced, if they know anybody in the case, or is it going to destroy their business to sit through the case. These are automatic questions and few people are challenged for cause on the basis of these questions because all the prospective jurors know the right answers to give if they want to sit on the jury. Then you get your turn to ask questions. Depending on the judge and the case, you may have five minutes to ask questions per prospective juror or ten minutes per prospective juror. In one case that I did, the *San Quentin Six*, we were given up to half an hour per juror, but that was an unusual case involving five counts of murder. You want the most time you can get to question each juror because then you can engage in a dialogue and ask open-ended questions. Do not ask closed questions such as “do you hate animals?” or “do you like Michigan State University?” Ask questions that are open-ended like “what do you think about animal testing?” Let the prospective jurors talk, because you will get to know a little bit about them.

How do you get your questions to the jurors? You make a motion in advance and you submit pages of *voir dire* questions. You ask the judge’s permission either to ask those questions yourself or for the judge to ask those questions. Ask in your motion, “your honor, would you ask these questions of the jurors?” At the pretrial conference the judge usually says, “counsel, I am not going to ask all the questions.” At that time, you explain the importance of your questions, and why the views of the individual jurors on animal issues are essential to picking a fair jury. You should use analogies that you can find in the casebooks concerning other cognizable classes of people. You explain to the judge that there exists substantial prejudice against animal rights activists as a class.

The judge may ask only one or two of your questions, perhaps what prospective jurors think about animal rights. However, the rest of the submitted questions may serve the purpose of having the judge go to the law library, look them up, and think about them in advance so when you get up and start asking your *voir dire* questions, the judge will not quash you. However, if you spring a big surprise on the judge, he or she is not going to be happy and might call you up to the bench, embarrass you, and then you are off on the wrong foot. So you want to give plenty of warning, advising the judge that you are going to want to ask these types of questions. If you do that, the judge will appreciate it, and you might get more latitude in questioning. So put your questions in a motion. *Voir dire* is not the time to spring surprises; surprises are for later in the trial.

Suppose the judge does not allow you to ask any questions.

Suppose the judge says, “Well, sorry counsel, this is all irrelevant, you are not going to ask prospective jurors what they think about this, the only issue at hand was whether this person was sitting down on state university property.” You then at least have a paper trail in case you decide to appeal.

There are many ways to approach a prospective juror, but what you want to do is to sincerely talk to them the way that I am now talking to you. You do not want to stand up and read off some list. They do not want to hear that. You should talk to them, and you should get a feeling for who a prospective juror is as a person. This is the most important part of your case. You could have the greatest case in the world, but if the jury is looking at you like you are from Mars, you have had it. This has happened to me several times when I have had to argue to a jury the premise that animals are not property.

Because you are arguing premises that may be unfamiliar to the jury, another purpose of *voir dire* is to set forth premises early. For example, the idea that it is wrong to use animals for medical testing may not exist in a prospective juror’s universe. Suppose a prospective juror has been using medications tested on animals for years and thinks they are great. Now you are telling him or her that testing is wrong. You must say so early in your *voir dire*; if you put the idea out there early, then later when you argue it in your closing statement, the jury will at least be familiar with your premise. In your closing statement, you can then draw analogies to other social movements that were ahead of their times, such as the movements against slavery, child cruelty, and child employment.

The last time I had to argue an animal issue, I had to do it in a very rural county in northern California. It was hard. It always is hard when you get blank stares, but that is why you are doing this kind of work. I assume you are here because you are not trying to make more money for corporate America; if so, you would not be here. So, you are going to have to argue alternative viewpoints, and you are going to have to know your audience. You need to believe in your clients in order to stand up there and speak for them because these people are not criminals; they were acting out of conscience. Say that to the jury. The system does not differentiate between people who sit in as an act of conscience and people who are out there stealing things. *You* do that; this is *your* job. You should be very proud of what you do. It is a great thing; it is a privilege.

Editor’s Note: *J.D. 1996, University of California, Berkeley; B.A. 1963, University of Chicago. Mr. Weiss has practiced animal law since 1985. Reprinted with permission from Animal Law, Volume 2, Spring 1996, Northwestern School of Law of Lewis & Clark College, funded by Animal Legal Defense Fund.*

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BYLAWS OF THE ANIMAL LAW SECTION OF THE STATE BAR OF MICHIGAN

ARTICLE I

Purpose

SECTION 1. SECTION NAME: This Section shall be known as the ANIMAL LAW SECTION (hereinafter the Section) of the State Bar of Michigan.

SECTION 2. PURPOSE: The purpose of this Section shall be to promote the particular interests of lawyers practicing in the field of animal law, to plan and carry out programs, publications and activities of interest to lawyers practicing in the field of animal law and to coordinate programs for such lawyers with national and local bar associations

SECTION 3. GOALS: The goals of the Section shall be to:

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

ARTICLE II

Membership

SECTION 1. CLASSIFICATION OF MEMBERSHIP: The membership of the Section shall consist of Active Members, Affiliate Members, and Law Student Members as described below. Dues shall be payable in advance at the beginning of each fiscal year of the State Bar of Michigan. Any member of the Section whose annual dues shall be more than six months past due shall cease to be a member of the Section. Members enrolled and whose dues are timely paid shall constitute the membership of the Section.

SECTION 2. MEMBERS

- 2.1 ACTIVE MEMBERS of the State Bar of Michigan may join the Section by paying annual dues to the State Bar of Michigan in the amount of Twenty-five Dollars (\$25.00), or an amount as determined by the Section Council.

SECTION 3. AFFILIATE MEMBERS of the State Bar may join the Section by paying annual dues to the State Bar of Michigan in the amount of Fifteen Dollars (\$15.00), or an amount as determined by the Section Council. Affiliate members shall not be eligible to vote or hold office.

SECTION 4. LAW STUDENT SECTION MEMBERS of the State Bar of Michigan may join the Section by paying annual dues to the State Bar of Michigan in the amount of Five Dollars (\$5.00). Law Student members shall be entitled to receive Section publications and attend meetings of the Section. Law Student members shall not be eligible to vote or hold office.

ARTICLE III

Council and Officers

SECTION 1. OFFICERS: The Officers of the Section shall be a Chair, a Chair-Elect, a Secretary, a Treasurer, and the Immediate Past Chair of the Section. All officers must be Active Members of the Section.

SECTION 2. COUNCIL: There shall be a council of the Section consisting of the Chair, Chair-Elect, Secretary and Treasurer, together with ten (10) at-large members to be elected as provided within this Article. The Immediate Past Chair shall remain as a member of the Council the year following his/her service as Chair of the Section. The Immediate Past Chair shall be included in determining whether a quorum is present at any meeting and shall have the right to vote on matters brought before the Council. All Council Members must be Active Members of the Section.

SECTION 3. SELECTION OF OFFICERS: The Chair-Elect, Secretary and Treasurer shall be nominated and elected at each annual meeting of the Section, to hold office for a term beginning at the close of the annual meeting at which they have been elected, and ending at the close of the next succeeding annual meeting of the Section, when their successors shall have been qualified and elected.

SECTION 4. TERMS OF OFFICE: At the organizational meeting in 1995, ten (10) at-large members of the Council shall be nominated and elected to serve as four (4) members for three (3) years; three (3) members for two (2) years; and three (3) members for one (1) year. Members of the Council shall be elected to fulfill expired terms at each subsequent annual meeting of the Section following the expiration of any terms. All subsequent terms shall be for a period of three (3) years. ("Years" defined as a term beginning at the close of the annual meeting at which the Council members shall have been elected and ending at the close of the succeeding annual meeting of the Section.)

Editor's Note: *The Bylaws were proposed and adopted at the very first annual meeting of the Animal Law Section in September 1996. The primary purposes of the Section are cogently set forth in paragraphs 3.1, 3.2, and 3.4.*

SECTION 5. TERM LIMITATIONS

5.1 No Council member shall be eligible for re-election to the Council (other than as an officer) if she/he has served without interruption for two (2) consecutive terms preceding the term for which the election is held.

5.2 No person who has served as Treasurer or Secretary without interruption for two (2) consecutive terms shall be eligible for re-election to that office.

SECTION 6. VACANCIES: The council may appoint any member of the Section as an officer of council member to act until the next election in the event of death, disability, removal or resignation of any officer or Council member.

ARTICLE IV

Elections

SECTION 1. NOMINATIONS: At the last scheduled meeting of the Council prior to the annual meeting, or at such other time as shall be convenient, but not later than six (6) months prior to the annual meeting, the Chair shall appoint a Nominating Committee consisting of three (3) members of the Section, at least two (2) of whom are appointed from the Council.

SECTION 2. ELECTIONS: All elections shall be by voice vote unless otherwise ordered by resolution duly adopted by the Section at the Annual Meeting at which the Election is held.

ARTICLE V

Duties of Officers

SECTION 1. CHAIR: The Chair shall preside at all meetings of the Section and of the Council. The Chair shall formulate and present at each annual meeting to the State Bar of Michigan a report of the work of the Section for the current year. The Chair shall perform such other duties and acts that pertain to the office.

SECTION 2. CHAIR-ELECT: In the absence of the Chair, the Chair-Elect shall perform the duties of the Chair. The Chair-Elect shall automatically succeed to the office of the Chair the year following his/her election to Chair-Elect. The Chair-Elect shall be responsible for the public relations activities of the Section, including acting as a liaison with the State Bar of Michigan's Communications Committee, and for such other duties as the Chair may designate.

SECTION 3. SECRETARY: The Secretary shall cause to be kept all books, papers, documents, and other property of the Section except money. The Secretary shall keep a true record of the proceedings of all meetings of the Section and of the Council. With the Chair, the Secretary shall prepare a summary or digest of the proceedings of the Section for presentation at the annual meeting and for publication in the *Michigan Bar Journal*. In conjunction with the Chair, the Secretary as authorized by the Council, shall attend generally to the business of the Section.

SECTION 4. TREASURER: The Treasurer of the Section shall:

4.1 Cause to be kept a record of all monies received and disbursed;

4.2 Submit regular financial reports to the Council;

4.3 Annually provide for the presentation of a financial report to the membership of the Section and to the Board of Commissioners; and

4.4 Sign any application for and execute any bond as may be requested by any officer of the section or pursuant to a resolution duly adopted by the Council for the purpose of protecting the monies of the Section. Any cost or premium for such bond shall be an expense of the Section and be paid from the funds of the Section.

ARTICLE VI

Duties and Powers of the Council

SECTION 1. GENERAL: The Council shall have general supervision and control of the affairs of the Section, subject to the Supreme Court Rules Concerning the State Bar of Michigan and the Bylaws of the State Bar of Michigan and the Bylaws of the Section. It shall especially authorize all commitments or contracts which entail the payment of money, and shall authorize the expenditure of all monies appropriated for the use or benefit of the Section. It shall not, however, authorize commitments or contracts which entail the payment of more money during any fiscal year than the amount which has been appropriated to the Section for that fiscal year.

SECTION 2. COMMITTEE APPOINTMENT: The Chair will appoint committees and their Chairs from section members, to perform such duties and exercise such powers as the Council may direct. The Council shall remove any committee chair or committee member for cause, and fill vacancies created by such removal or resignation.

SECTION 3. VACANCIES: The Council shall, between annual meetings of the Section, fill vacancies in its own membership or in the offices of the Secretary or Treasurer. In the event of a vacancy in both the office of Chair and Chair-Elect, the Council shall fill the office of Chair. Of officers and members of the Council so selected shall serve until the close of the next annual meeting of the Section, at which time the vacancies shall be filled for the remainder of their respective terms by a special election conducted concurrently with the regular elections as provided in Article IV.

SECTION 4. QUORUM: A quorum of the Council shall consist of a majority of the officers and elected members. A quorum being present, the Council shall act on the affirmative vote of a majority of those present at any meeting.

SECTION 5. MEETINGS: The council shall designate the time and place of its regular meetings, but shall schedule no fewer than four (4) meetings per fiscal year. Special meetings may be called upon notice by the Chair or upon written request to the Secretary of any five (5) members of the Council. Council members shall receive

three (3) days notice of a Special meeting. Notice of Special meetings shall include the topic for which the meeting was called.

SECTION 6. ABSENCES: Any member of the Council who shall be absent from three (3) consecutive regular meetings of the Council shall be deemed to have resigned and the vacancy created shall be filled by the Council.

ARTICLE VII

Committees

SECTION 1. STANDING COMMITTEES: The Standing Committees of the Section shall be Nominating, Clearinghouse, Ordinance Handbook and Legislation.

SECTION 2. NOMINATING: The Nominating Committee shall recommend nominees to the Section for the offices of Chair, Chair-Elect, Secretary, Treasurer, and members of the Council on an annual basis. This report shall be submitted in writing to the Chair no later than two months prior to the annual meeting of the Section; nominations shall be published to Section members no later than 30 days prior to the annual meeting of the Section. Other nominations may be made from the floor. The Nominating Committee shall consider the diversity of Council membership, including race, gender, and geographic diversity.

SECTION 3. CLEARINGHOUSE. The Clearinghouse Committee shall maintain and coordinate a referral service, the purpose of which shall be to make available to members of the State Bar and members of the public the names of Section members who are available to provide advice and/or representation in areas of the law relating to animal protection and animal rights.

SECTION 4. ORDINANCE HANDBOOK. The Ordinance Handbook Committee shall compile, maintain and publish a collection of all local ordinances that relate to animals.

SECTION 5. LEGISLATIVE: The Legislative Committee shall review legislative and agency activity of concern to lawyers practicing or with an interest in the area of animal law, make periodic recommendations to the Section Council which request the Section adopt a legislative position, disseminate information to Section members, and advocate in legislative and other public forums on matters of interest to lawyers practicing or with an interest in the area of animal law.

SECTION 6. COMMITTEE MEETINGS: Committee meetings will be called as necessary by the Section or Committee Chairs. Meetings may be held in person or via telephone conference.

SECTION 7. REPORTS: The Chair of each committee shall submit a written report of Committee activities during the preceding year to the Council. This report is due two months prior to the annual meeting of the Section.

ARTICLE VIII

Section Meetings

SECTION 1. ANNUAL MEETING: The annual meeting of the Section shall be held during the annual meeting of the State Bar of Michigan, in the same city or place, with such programs and order of business as may be arranged by the Council.

SECTION 2. SPECIAL MEETINGS: Special meetings of the Section may be called by the Chair upon approval of the Council, at such time and place as the Council may determine.

SECTION 3. QUORUM: Fifteen (15) members of the Section present at any meeting shall constitute a quorum for the transaction of business.

ARTICLE IX

Miscellaneous Provisions

SECTION 1. FISCAL YEAR: The fiscal year of the Section shall be the same as that of the State Bar of Michigan.

SECTION 2. DISBURSEMENTS: Any bills incurred by the Section to be forwarded to the State Bar Fiscal Officer for payment shall first be approved by the Chair, Chair-Elect, Treasurer, or otherwise as the Council shall direct.

SECTION 3. COMPENSATION: No salary or compensation shall be paid to any Officer, Council, or Committee member; however, officer, council and Committee members may be reimbursed for actual expenses for Section business.

SECTION 4. EFFECTIVE DATE: These Bylaws shall become effective upon approval by the Board of Commissioners of the State Bar of Michigan, and by the membership at the organizational meeting.

ARTICLE X

Amendments

SECTION 1. VOTE: These Bylaws may be amended at any meeting of the Section at which a quorum is present, by a two-thirds (2/3) vote of the members of the Section present and voting, provided such proposed amendment shall first have been submitted to the Council for its recommendation. No amendment so adopted shall become effective until approved by the Board of Commissioners.

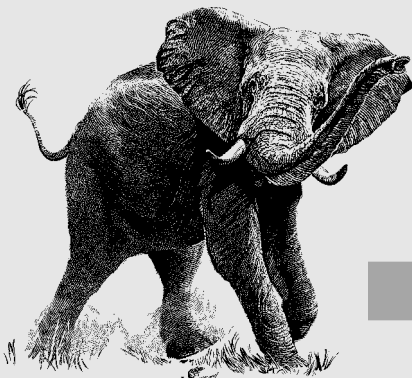
SECTION 2. AMENDMENT FORM: Any proposed amendment shall be submitted in writing to the Council in the form of a petition by at least ten (10) members of the Section. The Council shall consider the proposed amendment, prepare recommendations, and publish a complete and accurate text of the proposed amendment in the *Michigan Bar Journal* at least thirty (30) days prior to the meeting of the Section at which it is to be considered.



State Bar of Michigan
Animal Law Section
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Letters and articles for future newsletters from members of the Animal Law Section are welcome. Please make submissions to the editor.
ATTN: Donald N. Perkins, 2 Crocker Blvd., Suite #301, Mt. Clemens, MI 48043. Tel (810) 465-6000

A DATE TO REMEMBER



ANIMAL LAW ANNUAL SECTION CONFERENCE AND ELECTION OF OFFICERS

In conjunction with the State Bar
of Michigan Annual Convention

FRIDAY, SEPTEMBER 19, 1997

**COBO HALL
Detroit, Michigan**

Room Number in Cobo Hall to be Announced

