

ANIMAL LAW SECTION NEWSLETTER



Summer 2008

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Wanda Nash (1943-2008)

By Bee Friedlander

It is with profound sadness that we mark the death of Wanda in May. More than any other person, Wanda is responsible for the formation of the State Bar of Michigan Animal Law Section. She was our first chair in 1995, and had served on the section council since then. The Wanda A. Nash Award was created in 2006 and was awarded for the first time in 2007, recognizing a law student in Michigan who has had the most impact on animal law.

A truly compassionate person and passionate in her devotion to animals, Wanda accomplished much and influenced many in her life. In the early 1970s when her children were young, she began volunteering at the local

animal shelter. The cause of helping animals grew to encompass her life. In the mid 1980s, she attended law school for the sole purpose of using her legal knowledge in advancing the cause of animals. Her compassion and sense of justice led her to champion others who are powerless in our society, children and the elderly, as well as animals.

Wanda received a BA from Western Michigan University and a JD from Cooley Law School. She was the first female bailiff to serve in Kalamazoo County, worked for the Kalamazoo Community Action Agency, was a welfare worker for the Department of Social Services, a clerk and assistant prosecutor for the Calhoun County Prosecutor's Office, served five years as legislative assistant to State Representative Bill Martin, taught at Kellogg Community College, and was in private practice in family and animal law as well as mediation. She was active in animal welfare groups for 40 years, including the Calhoun Area Humane Society, the Michigan Federation of Humane Societies, the Committee to Amend the Dog Law, and the Animals and Society Institute (serving as the first chair of the Board).

She published three books: the *Michigan Animal Law Handbook* (now available at www.animallaw.info), the *Animal Rescue Sourcebook*, and the *Field Guide to Animal Care and Control*, the latter two available through the non-profit organization, Attorneys for Animals. For several years, she wrote a column on animal issues for the *Marshall Chronicle*, with her farewell article published just months before her death.

She was a natural leader and possessed an unswerving vision of what was possible when committed people join together for a cause they strongly believe in: making our world a better place for animals. In 1990, she put out a call for Michigan attorneys interested in animal law. From that, Attorneys for Animals was born, with Wanda as its first president. Under Wanda's leadership, the Animal Law Section of the State Bar of Michigan was formed in 1995, the first such statewide organization of attorneys in the country.

Chair's Corner

By Kieran Patrick Marion



Although summer is here and my time as chair of the Animal Law Section is drawing to a close, I am truly excited about the development and the energy surrounding the section, its membership, and its activities. As we reflect on the 2007-2008 year, there have been great strides taken and new voices raised that will enrich and benefit the section and its mission for years to come.

As we look forward to the bright future and continued success of the ALS, however, we must pause and remember the life and work of a dedicated advocate who fought passionately for the safety, humane treatment, and betterment of animals in Michigan and across the country. On May 8, 2008, we said goodbye to a longtime friend and animal law pioneer with the passing of Wanda Nash. Wanda devoted her career and much of her life to the protection of animals through the legal system, and was the catalyst for the creation of both Attorneys for Animals and the ALS. We will truly miss her passion and energy, but her memory and legacy will live on in the work that we continue to do and in the growing recognition and support for animal issues in both the private and public sectors. Our thoughts and prayers continue to be with her and her family.

In recognition of Wanda's work and her life, the ALS was honored this year to present the first-ever Wanda A. Nash Award to a law student who exhibited outstanding dedication to learning and promoting animal law issues. Several students from Michigan's law schools were nominated by faculty members, and Ms. Elizabeth Livorine of Wayne State University was presented with the award.

The ALS was pleased to host its 2008 Animal Law Symposium in April, once again at the Michigan State University College of Law. The event was very successful, and we are grateful to all of our speakers and to those of you who took time out on a Friday afternoon to participate. The Symposium has been an increasingly successful event over the past several years. We hope to see it continue to attract a larger and more broad-based audience, and serve as a forum for education and the discussion of both old and emerging animal law issues.

The ALS continued its focus on serving as a resource for the state legislature on various issues within our mission. The ALS council has voted to support four legislative initiatives during the current session, including a bill to create an

animal welfare fund, supported by state income tax check-offs, to provide for education and cruelty prevention, and to promote sterilization and adoption; and a carryover bill to require those convicted of animal sodomy to register as sex offenders. (The sponsor of the bill received last year's Brandi Award). Subject to certain amendments, the ALS council also voted to support legislation dealing with the placement of companion animals in divorce proceedings, as well as a bill prohibiting the purchase, sale, or otherwise making available or acquiring "random source" animals for the purpose of research or experimentation. Further, we continued our work with various stakeholders, legislators, and staff on proposed revisions to the state's neglect and cruelty statutes, along with sentencing issues—this is a work in progress, and we hope someday soon to see consensus built for these important amendments. The ALS also held our fourth annual Legislative Staff Luncheon. Members of the section and council met with various legislative staff members to talk about animal law issues and to educate them about the ALS, its mission, and how it can be a legal and technical resource on legislative issues.

All in all, it has been another successful year for the ALS. Our existing committees have become increasingly active and effective, and we are recruiting new and active members into our fold. We are extremely excited about the formation of the new Litigation Committee, chaired by Mary Chartier of Alane & Chartier in Lansing; the committee is very well organized and is already taking on its first amicus project! Your incoming chair, Rose Stern of Loomis, Ewert, Parsley, Davis & Gotting PC in Lansing, has already shouldered significant responsibility, and will continue to guide the section forward in excellent fashion. We are glad to see new and energized members and incoming leadership on all of our committees and on the council, and we are truly appreciative of everyone that has served so diligently and remained active for so long—the ALS and our mission have truly been enriched by all that you have done and will continue to do in the future. So, thank you all for yet another great year, and I look forward to the coming year's work!

Kieran Patrick Marion is legislative counsel at the Uniform Law Commission in Chicago. He is ending his term as Animal Law Section council chair this year.

Wanda Nash

Continued from page 1

The section council voted in 2006 to create the Wanda A. Nash Award, without letting Wanda know. When it was announced at the Section's annual meeting in September of that year, she was, in fact, surprised. The award is a fitting tribute to Wanda. She was always concerned that new, energetic, and talented people join the ranks of those already committed to transforming the way animals are treated in our world. In my final visit with her shortly before her death, she clearly conveyed a sense of urgency that others continue her work, as well as some frustration and sadness that she would not be part of the effort that had become her life's work.

She was, however, at peace and accepting of her fate. Wanda participated in the Episcopal Church's ministry to animals, and as with her other work, was fully engaged. A member of the Episcopal Network for Animal Welfare, Wanda was instrumental in the adoption of a resolution, Stewardship: The Protection of Animals from Cruel Treatment, at the General Convention in 2003.

Wanda was not only a dear friend, but also a transformational figure to many of us. She showed by example how much a single, committed person can accomplish.

It is somehow fitting that Wanda left us during Be Kind to Animals Week. Our sympathies are with her husband Jim, their three children and seven grandchildren, and with Wanda's mother and siblings. She also leaves behind Rolf and SilverBelle, her beloved dog and cat, the last of many companions who shared their lives with her and enriched her life. 🐾

Bee Friedlander is Animal Law Section treasurer and managing director of the Animals and Society Institute in Ann Arbor.

Editor's Note

Wanda Nash's life is the subject of the main article in this issue. Wanda was the founder of the Animal Law Section and will be missed greatly.

I saw her in April, just before she could no longer see visitors, when I visited her with section member Debbie Ness. Her dog, Rolf, and her cat, SilverBelle, remained in the room throughout, watching over her and giving comfort. Her husband, Jim, told me that Rolf hardly ever left her side as her condition worsened. As we got ready to leave after a very nice visit, my final words to Wanda were, "We're going to keep working for those animals." I knew that such a commitment would help her, as she wanted her work to continue. Wanda replied with her most common positive comment: "Fantastic!" I hope that we will all remember Wanda and "keep working for those animals."

Roberta Gubbins of the *Ingham County Legal News* has been very generous and allowed publication in the newsletter of her articles on the symposium. Allie Phillips has written a story about the saga of Frisky the cat. Be sure to look at Frisky's picture. She is a lucky cat. There are a variety of other articles, including the Chair's Corner reporting on events this year, financial reports, a case review, recent changes in the Michigan animal cruelty statute, and information from a student group at one of the state's law schools.

I would like to thank Nicole Quandt for the time that she spends on the Animal Legal Lifeline listening to calls and summarizing the potential cases for the section membership via the listserv. Her work is very important for the section. We get a good response rate to the calls. I plan to have a full summary of the calls and section responses in the next newsletter. The Animal Legal Lifeline is a very valuable service provided by the section.

Please note that the newsletter includes information about section council candidates to be voted on at the annual meeting—now a little over one month away. The notification is required by the bylaws and saves the expense of a separate mailing.

This is the first newsletter of 2008. I am hopeful to publish another one before the end of the year. This issue has the most articles of any ALS Newsletter issue that I can remember.

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

Donald Garlit
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Frisky: The Cat Who Needed Help.

Section Members and Others Mobilize to Help Abandoned Cat.

By Allie Phillips

Editor's Note: I cannot remember an issue that generated so many comments and helpful suggestions on the Animal Law Section listserv as that of Frisky, the cat who remained in a home after an eviction. Everyone's concern and action resulted in a great outcome for Frisky. Read the story—Frisky is a survivor with a strong will to live.

Every day we see stories in newspapers and on television regarding the economic downturn in America. Americans are paying more at the gas pump and for food and energy services. Many are losing their jobs and homes, and now companion pets are caught in the middle. It is anticipated that 2-4 million homes will be foreclosed in the next few years, and an estimated one million companion animals will be directly impacted. Of course, the economic slowdown will also result in evictions.

When both municipal and private nonprofit shelters are already overcrowded and there are not enough homes to relocate pets, the financial crisis adds an additional burden to already struggling shelters. Then add the slow decline of private donations as people put their money toward paying rising costs in all areas of life, and we can understand that animal shelters across the country will need more help than ever. Shelters are already receiving a steady influx of companion animals from families who can barely put food on the table, or may have lost everything. However, people are also abandoning their pets inside of homes or setting companion animals loose in the streets.

Here is one such story of abandonment, unnecessary obstacles, and an eventual happy ending. In late March 2008, the Animal Law Section (ALS) received a request for assistance from a concerned neighbor named Melissa who needed guidance on rescuing an abandoned cat locked in an apartment in Grand Rapids. The occupant had been evicted on March 1 and took three cats with her. However, she left two cats behind, one named Frisky, a long-haired tortoiseshell cat. Concerned neighbors, including Melissa, immediately began to feed the abandoned cats within the apartment and were able to rescue one of the cats after two weeks. That cat was taken to Kent County Animal Control (KCAC), where he was, unfortunately, euthanized.

Frisky, now frightened and confused, was trapped alone in the apartment and was hiding in various places, including in the ceiling. On March 28, the landlord locked the apartment, placed a live trap in the apartment, and refused access to Melissa and others who were feeding Frisky. Melissa knew



Frisky

that Frisky only had a day's supply of food and no apparent water source, but the landlord would not reconsider. Melissa sought help from KCAC and was informed that KCAC had no authority to rescue an abandoned animal for one week and she should call back then. After one week of observing Frisky through a window and attempting to push small amounts of food under the door, she re-contacted KCAC to ask for help. KCAC then informed Melissa that because the landlord placed a live trap within the apartment, they did not have authority to retrieve Frisky.

Knowing that Frisky did not have much time left, Melissa contacted ALS for assistance. The attorneys with ALS quickly mobilized to help Frisky. Although I live and work in Alexandria, VA, I took a personal interest in Frisky's plight and worked with others to coordinate efforts to save Frisky.

First, several attorneys with ALS called KCAC to obtain information on why they did not respond after two requests from Melissa. However, our calls were not returned. Knowing that time was crucial, several attorneys with ALS then contacted the landlord. After discussing the possibility that the landlord was contributing to the abandonment and neglect of Frisky and should allow Melissa entry to save her, he eventually agreed. On April 7, after 11 days of abandonment without known food or water, Melissa was allowed into the apartment and found Frisky cowering behind the stove. While the rescue was occurring, Elaine Sterrett Isley (with ALS) and I sought the assistance of Carol's Ferals, a rescue organization in Grand Rapids, that offered to provide veterinary assistance to Frisky after her rescue, and helped us coordinate with Ruben's Room Cat Rescue in Grand Rapids to take Frisky into their care.

Frisky was quickly transferred to Carol's Ferals and immediately taken to a veterinarian, where two of us from ALS paid for all her veterinary care. In spite of her 11 days without known food or water, the veterinarian pronounced Frisky in good shape. After giving her some fluids, a full examination, and keeping her overnight, Frisky was released to Ruben's Room and went into foster care. Frisky was adopted after a month with Ruben's Room Cat Rescue and is now

living with a retired school teacher and is very loved and happy.

In the meantime, ALS is sending a letter to Kent County officials to educate them that Michigan law does not require a one-week waiting period for abandoned pets, and placing a live trap also does not negate their powers. We are also asking them to investigate Frisky's former owner for abandonment, and the landlord for knowingly locking Frisky in an abandoned apartment for 11 days without food or water. Moreover, ALS is considering a committee on local government and animal control education to prevent confusion regarding abandoned pets.

Frisky may not know how many people came to her rescue, but the actions of a few can truly save lives.

Allie Phillips is the director of public policy for the American Humane Association, a council member of the State Bar of Michigan Animal Law Section, and the vice president of No Paws Left Behind (<http://nopawsleftbehind.org>), a nonprofit dedicated to helping people and pets in the foreclosure crisis. American Humane has created a grant program for shelters struggling with the insurgence of foreclosure-related pets. Also, No Paws Left Behind has created a fund to help shelters and pet owners to keep their pets, including the payment of boarding costs, so that pet owners need not give up their pets.

Pets Caught in the Home Foreclosure Crisis and What is Being Done

By Allie Phillips

Many organizations are setting up special funds to help pets caught in the foreclosure crisis and the shelters that may care for them. Two such organizations are the American Humane Association (www.americanhumane.org) and No Paws Left Behind (<http://nopawsleftbehind.org>), a nonprofit organization specifically formed to find safe placement for pets in the foreclosure crisis and offering funding.

American Humane has three tip sheets on its website to help with foreclosure-related pets issues. One tip sheet advises pet owners what to do if they are in a position of losing their home or having to give up their pet, and cautions against abandoning a pet inside or outside a home. A second tip sheet is for mortgage lenders and investigators to guide them through the process when they find pets abandoned at a foreclosed home, and how to work with animal investigators to properly remove a pet. A third tip sheet is for shelter professionals and explains how to handle the influx of pets from foreclosure situations.

Allie Phillips (ALS council member, American Humane director of public policy, and vice president of No Paws Left Behind) has consulted on numerous cases where companion animals have been abandoned in or outside of a vacant home and caring neighbors asked for animal welfare investigators to help rescue the animals. Surprisingly, many calls to rescue abandoned pets are going unanswered by animal shelters, and neighbors are being forced to take action in order to save these pets. There was one such case in Eaton County earlier in 2008 that received widespread media attention and eventually resulted in the rescue of two dogs and five cats, all abandoned outside.

Many mortgage professionals are now finding deceased animals inside and outside of foreclosed and abandoned homes. Oftentimes, a mortgage inspector cannot inspect a home for 10 days, and that may be too late for many companion animals left behind. Every state, including Michigan, has laws on abandonment and neglect, including provisions for seizing pets from abandoned homes. There is no reason for animals to slowly languish in an abandoned home when laws are sufficient to rescue them and bring them to safety. Please download the American Humane tip sheets at www.americanhumane.org and have them available at your shelter, post them at pet stores and veterinary clinics, provide them to your local mortgage offices, and forward them to your local media to raise awareness of this crisis.

Additionally, American Humane has created a grant program for public and private shelters to receive money to assist with boarding costs at other locations, behavior training for animals frightened or stressed from the loss of their home, veterinary expenses, and foster care expenses. Moreover, No Paws Left Behind has funds available to help pet owners and shelters. Examples of funds already distributed by No Paws include money to pay boarding costs while families find new housing; fees to rescue foreclosure pets from overcrowded shelters and to provide safe placement with a rescue organization; money to provide medical care; and providing food to struggling pet owners.

Animal sheltering professionals already endure significant challenges in caring for abandoned, homeless, and abused animals due to limited housing space and financial resources. The financial crisis will only add to the burden as people tighten their pocketbooks and relinquish their pets. Please consider becoming a foster home for pets at overcrowded shelters, or donate to your local shelter that is struggling to handle the influx of foreclosure pets. We all can make a difference. 🐾

Justice Marilyn J. Kelly speaks at Animal Law Symposium

Record number of attendees at event held at MSU College of Law

By Roberta M. Gubbins, *Ingham County Legal News*

Editor's note: This was the lead article in an issue of the Ingham County Legal News published shortly after the Animal Law Section's April symposium. Roberta M. Gubbins and the Legal News were gracious enough to allow the newsletter publication of three articles about the Animal Law Symposium. All articles are on the section website, along with another article which is an interview with Rose Stern on Animal Law, at <http://www.michbar.org/animal/recentnews.cfm>.

The Honorable Marilyn J. Kelly, accompanied by her award winning West Highland White Terrier, McDuff, aka Duff, opened the 2008 Animal Law Symposium, held at Michigan State University College of Law.

Commenting on the increase of the interest in animal law, Justice Kelly said, "I've been impressed to learn that 92 of the nation's 196 law schools accredited by the American Bar Association now offer courses on animal rights. That's up from nine that were offered in the year 2000 according to a recent newspaper article."

"I have been on the bench now for 20 years and have come across a few cases involving animals. Some years ago, the Bay County Animal Control impounded Keto, a ferret, after the ferret had scratched the knuckles of a man who reached in his cage to pet him while the pet was being shown at a Bay City mall. Under Michigan law, the animal had to be beheaded for it to be determined if it had rabies. The matter went all the way to the Supreme Court, and I want to tell you the vote was five to two, and I was on the losing side of that."

"What was interesting about this was the reaction that the case got. It received a lot of media attention, and I got a letter from a gentleman in California on very nice ferret stationary thanking me for my efforts. The next day I got a card with a ferret on the front with his paws up in the most beseeching position, and in the inside it said, 'Thank you for trying to save my life.' That was sent by my staff."

"A second case in the last year was the case of the *Bloomfield Estates Improvement Society versus City of Birmingham*.



Justice Kelly and McDuff

It involved a dispute between homeowners and the city over the city's installation of a dog park. It was a place to take the dogs off leash. The homeowners didn't appreciate it—too much noise, traffic, and smells. The facts of the case did not seem to bear that (claim) out," said Justice Kelly. "There was a restrictive covenant that ran with the land that required that the land be used for installation of a building. That was overlooked for 75 years. But our court decided the city had to close the dog park—again, I was on the losing side. I found it frustrating, but the case could have gone either way, but certainly it seemed that the covenant provision had been waived."

"I wrote the dissenting opinion," she said. Expressing her feelings about the decision, she wrote, "The majority's decision is a dog gone shame. It has alarming implications for restrictive covenants in Michigan and coming as it does during the dog days of summer, when four legged creatures long to run outdoors unrestrained, it marks a howling defeat for Birmingham's canine residents."

Justice Kelly presented the group with a sample sales contract for the purchase of a purebred dog. She said, "the contract contains the information needed in order for the

animal to be registered with the American Kennel Club.” Justice Kelly recommended that attorneys read the contracts carefully and be aware of the following provisions:

- The animal be taken for a health check within 48 hours with a provision that the dog can be returned if vet check shows health problems that are serious—the remedy can be replacement or return of the sale price.
- If the dog has a communicable disease, the breeder should be contacted. If there is any other problem, the breeder should be notified.
- The dog can't be given to a dog retail center, and if the owner can no longer keep the dog at any time, the breeder must be told and has the option to take the dog back.
- The animal is to be neutered.
- The breeder will register the animal with the AKC.

Referring to rescue dogs, Justice Kelly said, “If your clients want to pick up a rescue dog, they need to understand that the people who are making the dog available feel genuine interest in this animal. They will typically add in their contract that the person who adopts the animal will not dispose of it without notifying the rescue people first.”

It was unanimously recommended by the attendees at the close of her remarks that there should always be at least one animal at each of the Animal Law events. 🐾

The Value of Microchip Identification for Animals

Justice Marilyn Kelly Provides a Personal Example

By Roberta M. Gubbins, *Ingham County Legal News*

Justice Marilyn J. Kelly, speaking at the Animal Law Section Symposium on April 11, 2008, included some information in her materials on pet chips or tiny microchips inserted under the skin of an animal that contain a one of a kind identification number. The chip is inserted with a hypodermic needle. Scanners, available free from the companies selling the chips, can identify the numbers. A call to their nation wide database will reveal the owner and/or the veterinarian. The lost pet is then returned to the owner.

The following experience of Justice Kelly demonstrates the importance of the microchips:

“My breeder,” said Justice Kelly, “inserted a chip under the skin of my puppy before I even took it. One day I took the dog to be groomed. When I got the dog back, it looked beautiful but it wasn't behaving properly. It didn't know its name, it didn't recognize anyone, but it never occurred to me that it wasn't my dog.”

“I took it to the vet the next day,” she continued. “What is wrong with my dog? A thorough exam disclosed no problems what so ever. My vet scanned the dog's chip. She had the chip number as the vet should and put the two up beside one another and they weren't the same. I couldn't believe it.”

“It turns out the brother of the dog had been groomed the same day at the same groomer. It was a slip up. The family that got my dog also noticed strange things, also took the dog to the vet, that vet didn't scan it. We figured out what had happened and exchanged dogs and things got back to normal.”

Without the information stored on the chip, the puzzle might never have been solved. This demonstrates the importance of microchips. 🐾

2008 Animal Law Symposium: Great Attendance and Varied Attendees

By Anna Marie Scott

The 2008 Animal Law Symposium was a very interesting and informative program with a record turnout. A total of 75 individuals were in attendance, of whom 45 were attorneys, including 33 members of the Animal Law Section. There were also five law students and four animal control officers present. The remaining attendees were members of the general public, many of whom are associated with rescue groups, shelters, and kennels. The majority of the attendees came from the lower half of the Lower Peninsula, though four individuals did make the trip from the Upper Peninsula to attend the symposium. The largest number of attendees came from the greater Lansing and the Metropolitan Detroit areas. 🐾

Anna Marie Scott is principal with the Scott Law Firm, PLLC of Eaton Rapids. She was the organizer of this year's symposium. She is Secretary of the Animal Law Section council.

Pound Seizure Bill, Adequate Veterinary Care, and Investigating Animal Cruelty

Additional Topics covered at 2008 Animal Law Symposium

By Roberta M. Gubbins, *Ingham County Legal News*

"I am happy to say that the Ingham County Animal Shelter banned pound seizure in 2003," said Allie Phillips, currently director of public policy, American Humane Association, a member of the Animal Law Section council, and co-founder of Friends of Ingham County Animal Shelter (FICAS). She was speaking to the attendees of the Animal Law Section Symposium held on April 11, 2008.

Pound seizure is the sale or release of cats and dogs from a pound or shelter to a research, testing, or educational facility. Pound seizure was successfully banned at Jackson County Animal Control in July 2006. "We (FICAS) are now working with volunteers in Eaton and Montcalm counties."

Seventeen states prohibit pound seizure, three states (Minnesota, Oklahoma, and Utah) require it, and Michigan has a statute that allows for it but does not require it. "Individual counties can decide on their own if they want to sell or give animals to Class B animal dealers. Class B dealers are 'random source' brokers of animals. These are animals that are not specifically bred for research," said Phillips. Animals which are specifically bred for research are sold by Class A brokers.

"There are two random source dealers that broker live animals in Michigan. There are only 15 in the whole country, and Michigan has two," she added, shaking her head.

Under Michigan law, shelters may sell to dealers for no more than \$10 per animal. In December 2007, the following Michigan counties were giving or selling animals to Class B dealers: Eaton, Gratiot, Mecosta, Montcalm, and Osceola.

"We are lobbying to get a bill passed banning pound seizure," said Phillips. "We have House Bill 5263, filed in September by Representative Coleman Young. It prohibits research facilities from acquiring a random source dog or cat for experimentation. It also prohibits animal shelters from providing or selling pets to dealers or research facilities." Phillips urged shelter groups, individuals, and organizations to help push the bill along.

Professor David Favre, MSU College of Law, the next speaker, has written several articles and books dealing with animal issues. He teaches animal law, wildlife law, and international environmental law. His topic at the symposium was adequate veterinary care. Holding up his newest book

[editor's note: *Animal Law: Welfare, Interests, and Rights (Election Series)*], Favre said, "I am proud of it as an individual, but I am also proud of it as a movement. Aspen Publishers is perhaps the most prestigious of legal publishers, and two to three years ago they would not even have taken my phone calls. It is a sign of the broadly growing social concern about animal issues. The size of the wave that is accumulating over the past five years is stunning."

"The American Bar Association formed an animal law group four years ago," he said. "The Association of Law Professors is just in the midst of forming an animal group as well because finally we have enough professors at the various law schools to form a core group. The awareness of the issues is global, not just national. I have been asked by universities outside the United States to deal with Ph.D. thesis on animal rights. I think we are at the threshold of significant legal change."

"Today," said Favre, "I will address the question: 'To what extent should the owner or keeper of an animal be charged with a duty to provide adequate care in the form of veterinary attention?'"

Michigan's anti-cruelty statute is a criminal law that provides "you must provide adequate veterinary care, whatever the term 'adequate' means." Because it is a criminal law, the punishment for breaking it is fines, costs, and imprisonment.

"I think," said Favre, "that we need to go back to look at what we want to accomplish with the law. I think we want to support the health and well-being of pets to the extent we can. We have to realize that what is practical and reasonable may vary."

"I propose," he concluded, "that we create a civil provision that allows humane societies to perform certain functions before we go to the criminal law. A person should be able to call the humane society to get information about diseases or conditions. The humane society should be able to investigate complaints and offer to provide care and information rather than worrying about seeking a criminal charge. If you have people really not doing the right thing—then we take away the animal after a court hearing."

Deborah MacDonald, humane investigator, Michigan Humane Society, began her discussion noting that "Animal

cruelty cases fall into two general categories: neglect cases or felony cases such as dog fighting cases.”

“Unfortunately,” she said, “many of our cases sat in drawers in the past because of lack of support from the Prosecutor’s Office. This situation has changed due to the greater cooperation between the Prosecutor’s Office and the Humane Society.”

Because dog-fighting cases are so involved, education was needed. “A volunteer organization was created to prosecute all pet care cases,” said Rajesh Prasad, assistant prosecuting attorney, Wayne County Prosecutor’s Office.

“We contacted Debbie and police officers to educate them,” said Prasad. Many times an arrest for drugs or illegal firearms will reveal a dog-fighting ring. After alerting the officers what to look for, arrests increased.

Punishment for animal cruelty is “usually probation and the condition that you can not own a pet for five years,” said Prasad. 🐾

Scenes from the Symposium



Deborah MacDonald and Rajesh Prasad

Justice Kelly and Rose Stern



Anna Marie Scott, Professor David Favre, and Allie Phillips

Nominating Committee Report

The Nominating Committee recommends to the section the following nominees:

Chair: Anna Rose Stern (was chair-elect)

Chair-Elect: Anna Marie Scott (was secretary)

Secretary: Jennifer Pierce (was council member)

Treasurer: Beatrice M. Friedlander

Term Expiring 2011: MaryAnn Kozlowski and Denise Massey

Per the Animal Law Section bylaws, other nominations may be made from the floor, at the Section’s Annual Meeting, Friday, September 19, 1 p.m.-3 p.m, at the Hyatt Regency in Dearborn.

Submitted by the Nominating Committee

Donald R. Garlit
MaryAnn Kozlowski
Anna Marie Scott

Recent Changes in Animal Cruelty Statute

By David Wallace

Over the years, there has been a growth of the studies supporting the conclusion that a link between animal cruelty and violence towards humans exists. In many ways, it is the “gateway drug” to hitting a spouse or a child or even becoming a serial killer. The Federal Bureau of Investigation began to see a connection between cruelty to animals and other violent behavior in the late 1970s and now recognizes animal abuse as one of the indicators of possible violent behavior against humans. Animal cruelty laws have become stricter and are being enforced strongly in part due to this connection. Michigan has taken another step forward in this regard with the passing of 2007 Public Act 152.

Public Act 152 amends MCL 750.50, which is one of the key statutes in animal cruelty prosecutions. That particular statute primarily looks at how owners treat their companion or farm animals, and it has carried with it a punishment of 93 days for a first offense. It did not matter how many animals may have been harmed in the process; the only issue was whether the person had been convicted of a prior offense to increase the charge to a more serious offense. 2007 P.A. 152 changed that. Now, if a person violates section 2 of MCL 750.50, the cruelty or neglect section, we look at the number of animals who have been harmed. Section 4 of MCL 750.50 sets out the penalties, and it states that if the violation involved one animal, then it is a 93-day misdemeanor with a fine of not more than \$1,000. If two or three animals are harmed, or an animal dies due to neglect, then it is a one-year misdemeanor with a fine of not more than \$2,000.

The penalties continue to increase if more animals are harmed. If a person neglects or is cruel to four to nine animals, or has a prior conviction under this statute and harms one animal, then the penalty is a two-year felony with a fine

of up to \$2,000. And finally, if there are 10 or more animals harmed, or if the person has two prior convictions, the penalty increases to a four-year felony with a fine possible of \$5,000.

Another significant change in the law is how the sentence may be “imposed.” The court now has the discretion to order a term of imprisonment to be served consecutively to any other criminal offense, including for violations out of the same transaction. This includes if one offense is a misdemeanor and the other a felony—there are no limitations imposed in the language of the statute.

Finally, there was a “fix-it” in the bill. At times, the local shelter or veterinarians would do their best to help the animal(s) back to health, thus incurring costs for the care, housing, and other medical bills. The previous version of the statute declared that those costs could only be ordered as part of the sentence if forfeiture of the animals was not ordered. That limitation has been deleted. Now, the court can order a defendant to pay for all of the costs of care, whether or not there has been a forfeiture ordered. This will help those shelters and veterinarians that try to do the right thing, and then incur costs.

The bill that passed is definitely an improvement of the animal cruelty laws in this state and recognition that by taking this crime seriously, we may have a reduction in other violent crimes in the future. This law took effect on April 1, 2008. 🐾

David Wallace is director of the National Association of Drug Court Professionals in Alexandria, VA and a member of the Animal Law Section council.

How wonderful it is that nobody need wait a single moment before beginning to improve the world.

—Anne Frank

Review of *Stoll v Stobby*: Summary Disposition for Defendant in Case of Injury Caused by Dogs

By Barbara Goldman

In *Stoll v Stobby*, unpublished opinion per curiam of the Court of Appeals, issued June 12, 2008 (Docket No. 278013), the Court of Appeals (Judges Gleicher, Fitzgerald, and Hoekstra) affirmed summary disposition for the defendant in an unusual dog-injury case. The plaintiff was visiting the defendant, who had two dogs. The plaintiff was standing on the defendant's porch when the dogs "[came] charging up the porch into the house." One of them "ran between his legs and 'spun' him around, causing him to fall from the porch and strike his neck on a parked car." He admitted "that the dogs did not attack, growl at, or bite him, and had never before 'charged into' him or anyone else." He sued the dogs' owner, alleging strict liability under the dog bite statute, MCL 287.351, a common law negligence based on failure to control the dogs. He also alleged premises liability, based on the absence of a railing on the porch. The defendant moved for summary disposition, based on the "open and obviousness" of both the presence of the dogs and the absence of the railing. The trial judge (Jonathan Lauderbach, Midland County) granted the motion.

The Court of Appeals found no evidence to support finding that the defendant knew of any "dangerous propensities" of the dogs. The plaintiff had "some evidence that Stobby's dogs had a 'habit of jumping and making contact with other people' and would become 'rowdy when Stobby entertained guests,'" but the Court held that there was no evidence "that Stobby's dogs had ever before caused an injury or behaved

in an aggressive or dangerous manner." One witness testified that the dogs had "jumped on him a lot" because they "wanted to play"; another said the dog that ran between the plaintiff's legs seemed to want "to get out of the house." "None of the witnesses described defendant's dogs as dangerous or ill-tempered in any fashion, and nothing else in the record demonstrates that Stobby knew or had reason to know that his dogs presented any unusual risk to guests." The court also affirmed dismissal of the negligence claim.

[A] duty to constantly control one's animal arises only if the animal's behavior creates a foreseeable risk of harm. Although Stobby's dogs had playfully jumped on other guests, no record evidence tended to establish that the dogs reasonably might knock someone down while running into or out of their owner's house, or reasonably might cause any other foreseeable injury.

The court also "decline[d] to find" that a "loose dog on [an] unguarded porch created either a duty to warn or to protect plaintiff from injury." "A dog running into or out of its master's home embodies neither an unavoidable danger nor an unreasonably high risk of severe injury." ❖

Barbara Goldman is the principal at Barbara Goldman PLLS in Southfield and a member of the Animal Law Section council.

Got a question?

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Register at
<http://www.michbar.org/annualmeeting.cfm>

Fourth Annual Legislative Luncheon is Held at State Bar Headquarters

By Bee Friedlander

As members of the State Bar's Animal Law Section, we are attorneys interested in the many and varied areas of animal law. We are knowledgeable in the legal and legislative issues related to animals that are important to many of your constituents. We are ready, willing, and able to offer our expertise, and believe that our members can be an important resource to legislators and staff.

For the fourth consecutive year, the section held a luncheon for legislative aides to the Michigan House and Senate members. Last November's Meet & Greet Lunch Reception for Legislative Staff, held at the State Bar, coincided with the legislature's fall recess.

The section invited aides of legislators serving on key committees such as the Senate Natural Resources and Environmental Affairs Committee; the Senate Agriculture Committee; and the House Tourism, Outdoor Recreation, and Natural Resources Committee. We also invited staff of those who have been leaders in pro-animal legislation.

Staff of Senators Basham, Garcia and Gleason; and of Representatives Terry Brown, Hammond, and Rick Jones attended.

As the excerpt from the invitation at the beginning of this article underscores, the lunch is an opportunity to network with the aides, who are an increasingly important source of institutional memory in the era of term limits for legislators, and to let them know about the resources of the Animal Law Section. Materials were distributed about the section and its Legislative Committee, and about our willingness to work with legislators in the drafting process, to endorse bills, and to provide expert testimony at hearings. Of note is the fact that several guests had attended all of the previous luncheons.

The section will host another luncheon this fall during the legislative recess. Section members will be notified about this year's lunch via the listserv. All members are invited to attend. If your own senator or representative may be interested in these issues, we encourage you to personally invite his or her staff.

Those interested in planning the 2008 lunch, please contact Bee Friedlander, beefriedlander@yahoo.com. 🐾

Bee Friedlander is Animal Law Section treasurer and managing director of the Animals and Society Institute in Ann Arbor.

Thomas M. Cooley Law School Student Animal Legal Defense Fund

By Kate Brindle

The Student Animal Legal Defense Fund at Thomas M. Cooley Law School enjoyed another year filled with advocacy work on behalf of animals. We started off the school year by co-hosting (along with the Women's Law Alliance) a presentation by Dr. Kenneth Shapiro in honor of Dr. Martin Luther King, Jr. Day. Dr. Shapiro's presentation dealt with the relationship between human violence and animal abuse. We received generous contributions from both the Animal Legal Defense Fund and the Animal Law Section of the State Bar of Michigan to make this event possible.

In February, we participated in the Humane Society's annual Humane Lobby Day. Our members met with their representatives and senators and urged them to support pro-animal bills and legal initiatives. In March, we hosted a Green Bake Sale (in honor of St. Patrick's Day). The theme of

the event was green—in more ways than one. We sold green cupcakes and cookies, raised awareness about our organization, and provided literature about how being green helps not only the environment and humans, but animals as well.

We hosted an information table on June 24, 2008, in the Cooley Center Lobby. We also hosted an end-of-the-term tutorial session (featuring tips on how to write better essay exams) on July 25, 2008. Our chapter also hopes to attend the Animals and Society Institute Fellowship Presentations at Michigan State University. We are currently recruiting new members, and we look forward to another exciting semester! 🍪

Kate Brindle is a 1L at Thomas M. Cooley Law School.

Bar Dues Waived for SBM Members on Full-Time Active Duty in the U.S. Armed Forces

Dues have been waived for up to four years for SBM members engaged in full-time active duty in the United States Armed Forces. The waiver, recommended by the State Bar of Michigan Representative Assembly, is intended to relieve the burden on lawyers whose professional careers have been disrupted by deployments into active military duty.

The American Bar Association has called for all bar associations to consider dues exemptions for military members. Michigan is among the first states to implement such an exemption. The waiver takes effect October 1, 2008 — the same date that dues are payable by SBM members.

Greg Ulrich, a member of the State Bar Board of Commissioners and sponsor of the resolution before the Represent-

tative Assembly, hailed the recent Michigan Supreme Court order regarding the waiver.

“The waiver recognizes sacrifices by Michigan lawyers serving in the military,” Ulrich said. “They are drawn away from their families and daily lives by their commitment to protect us all.”

Ulrich also noted other measures voluntarily undertaken by the legal community to respond to the needs of soldiers and veterans, especially the disabled, such as the University of Detroit Mercy Law School Veterans Law Clinic and Thomas M. Cooley Law School's Service to Soldiers program.

Treasurer's Report for 2007 Fiscal Year (FY)—Ended September 30, 2007

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

The expenses related to the general categories below have been consistent with the amounts budgeted for the activities during the year. For instance, we estimate an issue of the newsletter to cost about \$500, and the two issues published this year cost \$1,016, or an average of \$508. I have found no "surprise" expenses during the fiscal year.

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

- Section's dues and expenses for the 2007 FY
- Section's overall financial condition at the end of 2007 FY

Dues and expenses were as follows:

- Net income was \$3,855 in two categories:
 1. Income from dues was \$3,780 for the fiscal year, representing about 160 members and affiliate members. This is a decline in membership dues of 10 percent from the prior year. State Bar of Michigan staff have told me that most sections had about a 10 percent membership decline, probably as a result of economic conditions in the state.
 2. There were seminar revenues of \$75 as a result of late recognition of revenue from the prior fiscal year.
- Net expenses of \$2,866 were in four general categories:
 1. The two issues of the newsletter published in 2007 FY cost \$1,016, including printing and mailing as mentioned above.
 2. The annual meeting expense was \$223 for room expense and refreshments charged by the State Bar. This was a well-attended annual meeting, as it marked the presentation of the first Wanda Nash Award to a law student in Michigan. Wanda's family was in attendance, which made this an important meeting.
 3. We had award expenses of \$707 as a result of expenses from the prior year Brandy and Sadie Awards (not recognized until this fiscal year) and the first Wanda Nash Award.

4. We had other expenses of \$920, which were for listserv charges (\$540) from the State Bar of Michigan, section council meetings teleconference calls (\$108), sponsorship support of the Michigan Partnership for Animal Welfare conference (\$250), and miscellaneous printing charges (\$21). Note that the teleconference calls were made with very favorable rates arranged by the State Bar of seven cents per minute per caller—a very good rate compared to other telephone companies that charge 15 to 50 cents per minute per caller. The teleconference calls at such a low rate have made the council meetings very efficient and quicker by eliminating travel time. I would urge you all to use the listserv, as we are being charged a monthly flat rate for the SBM for its availability.

Our **overall financial condition** at the end of the 2007 FY was sound with a section balance of \$10,164—an improvement of \$989 over the end of the 2006 FY.

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

Let me summarize our financial condition as follows:

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

We are aided in accounting by the State Bar of Michigan finance department (as are all sections), which does an excellent job of providing timely and accurate financial information to us.

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

Please note that Bee Friedlander succeeded me as treasurer on October 1, 2007.

Respectfully submitted,

Donald Garlit, Treasurer 2005-2007

Treasurer's Interim Report for 2008 Fiscal Year (FY)—Through April 30, 2008

This summary will provide a 2008 FY interim financial report for the section through April 30, 2008. The Animal Law Section continues to be 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 are \$4,050, an increase of seven percent from the prior fiscal year, so membership has increased this year.

Seminar revenue was \$1,810, and related expenses were \$1,202. As a result, the seminar resulted in a "profit" of \$608. This was a pleasant outcome, as the seminar is considered to be an educational activity, not a profit-generating activity.

All other expenses were \$1,014, primarily for the listserv, communication, the legislative luncheon, and postage.

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

Respectfully submitted,

Bee Friedlander
June 2008

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Newsletter Editor

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donalddgarlit@yahoo.com



Visit our Website: <http://www.michbar.org/animal/>

Upcoming Event

Friday, September 19, 2008—1 p.m. to 3 p.m.

Annual Animal Law Section meeting at the State Bar of Michigan Annual Meeting at the Hyatt Regency in Dearborn. Award presentations will be made during this time.



Animal Legal Lifeline

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Allie Phillips spoke at the symposium in April. See symposium-related articles and photos starting on page 6.

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