



The Human-Animal Bond In Action: Animals Assisting Children in Therapy and Court

By Allie Phillips

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Upcoming Event

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

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

Like most pet owners, I have experienced how therapeutic a pet's unconditional love can be during times of stress. It has not surprised me, therefore, to see many organizations, counselors and health care professionals formally recognize that animals can help people with emotional and physical injuries recover faster.

The American Humane Association has long acknowledged the power of the human-animal bond, and currently trains and provides registered therapy animals to help people in need — especially children who have been maltreated or have witnessed trauma. To further support and advance this work, American Humane is launching a national initiative in August 2009 called the Therapy Animals Supporting Kids (TASK)[™] Program.

As co-creator of the TASK Program, along with American Humane Director of Animal-Assisted Interventions Diana McQuarrie, I hope to provide guidance to child welfare professionals, attorneys and prosecutors, child protection workers, social workers, police officers, and any other professionals who work with maltreated children. It is widely accepted that therapy animals can benefit individuals who have suffered physical or emotional trauma. The TASK Program takes this concept one step further and encourages child welfare professionals to incorporate therapy animals into sessions with children who have been abused or neglected, or have witnessed violence. When children have suffered trauma, it is often difficult for them to speak of their experiences. Incorporating a therapy animal into the process can help a child open up and promote the healing process.

My partnership with Ms. McQuarrie includes authoring *American Humane's TASK Program Manual*, a publication that merges two important areas of expertise: first, the practical issues involving setting up an animal-assisted therapy program and safely working with therapy animals; and second, the legal implications of effectively incorporating therapy animals in work with children that often entails a difficult court process.

The *TASK Manual* identifies six situations for incorporating therapy animals into work helping traumatized children, and thoroughly details the benefits, drawbacks, and potential legal ramifications involved with each type of situation. The six situations are: Greeting children (at a children's advocacy center or other agency location), the forensic interview or evaluation, the medical examination, individual or group therapy, court preparation and courtroom testimony. The manual features children's advocacy centers and prosecutors offices that currently incorporate therapy animals to assist children. It also contains sample forms that can be downloaded through the TASK webpage.

The *TASK Manual* was peer-reviewed by nationally recognized leaders in child protection and animal-assisted therapy, as well as agencies that have effectively incorporated therapy animals to benefit child victims and witnesses. The manual has received endorsements from the National Children's Advocacy Center in Huntsville, Alabama; the National Child Protection Training Center in Winona, Minnesota; the State's Attorney

Chair's Corner

By Rose Stern



Dear Colleagues:

As 2009 and my role as Chairperson for the Section come to a close, I reflect on 2009 and look to upcoming challenges in 2010. 2009 was a busy year, and the Section worked on litigation and legislation regarding issues of animal cruelty and abandonment, humane euthanasia of pet animals, and animals used in research.

In looking to 2010, in my opinion, the biggest issue before us is the inhumane treatment of animals used by agribusiness. I want to be clear that I am not talking about animals raised on family farms. In fact, some of our members own family farms and are deeply concerned about the welfare and care of their animals. In contrast, agribusiness, also referred to as “factory farming” or “corporate farming,” is putting family farms across the United States out of business. As the number of animals slaughtered each year drastically increases (from 5 billion/annum in 1980 to 10 billion/annum in 2008), the number of farming operations has decreased sharply from approximately 6 million farms to 2 million farms over the same time period.

Unlike the traditional American family farm, where the animals were typically afforded basic care including fresh air, sunshine, unaltered feed, medical care, and the natural freedom of movement of their limbs, agribusiness standards disregard basic humane standards in the attempt to decrease the cost of production of animals ready for slaughter. Many have dubbed this phenomenon as the “dollar menu syndrome.” The basic philosophy is to manage the farm like an assembly line. Animals are fattened for slaughter in confined spaces in assembly line fashion. They are kept in overcrowded and enclosed structures, never seeing natural light throughout their entire lives. Massive volumes of concentrated manure run through floor grates and into retention ponds. A related problem is the impact to the environment (primarily drinking water) and human health associated with disposal of this run-off and the concentrated stores of chemical growth agents.

Unsanitary, crowded conditions require the industry to administer antibiotics to animals so that they do not die of disease prior to slaughter. Hormones and other agrichemicals are administered in an attempt to fatten animals for slaughter in less time, thereby decreasing overall cost of production. As animal advocates, it is important for each of us to educate ourselves and others about modern agribusiness practices

including the inhumane use of battery cages, growing crates, debeaking, and farrowing crates. Video footage of agribusiness operations is readily available on YouTube.com. PBS has aired several programs on this topic, including the impact of agribusiness on the environment. Information is also available in law journals, and on the web, including government websites. In addition to the disconcerting issue of the inhumane treatment of these animals, another big question is what is the *long-term* health risk to humans who ingest them and the second-hand hormones, antibiotics, agrichemicals, potential disease, and the animal's own chemical and biological response to constant stress throughout its life?

In my opinion, the first step toward a solution is education of the public and our legislators regarding the inhumane conditions of modern farm animals and the associated negative impact that agribusiness has on our local economy, the environment, and human health. I hope that each of you will educate those around you and contribute as you are able. 🐦

Rose Stern, Section Chair

Editor's Note

This newsletter contains short articles as well as brief informational coverage of several topics. I wrote in an earlier note that I would be publishing occasional smaller informational issues and this is the first one.

The next newsletter should arrive in November with a major article as well as a summary of the Annual Meeting.

This is the second newsletter of 2009. My goal has always been to publish three newsletters a year. My goal and reality have differed over the years. However, the first issue of the year was considered a double issue so our goal may already be met.

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

Donald Garlit
Newsletter Editor
donaldgarlit@yahoo.com

The Human-Animal Bond . . .

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for the 15th Judicial District in Palm Beach, Florida; and the director of the Mississippi Children's Advocacy Center in Jackson, Mississippi.



Source: Florida 15th Judicial Circuit (Palm Beach County) State Attorney's Office

Jake, Chloe, Florida 15th Judicial Circuit (Palm Beach County) State Attorney Michael McAuliffe, and Morgan

One story featured in the manual comes from the Palm Beach County State Attorney's Office. The office has three registered therapy dogs (Jake, Chloe and Morgan) who help children through the court process. In one situation, Chloe assisted a child who was so fearful of the process she did not want to testify. Once the child realized that Chloe could accompany her, the child relaxed and was able to testify. According to Lorene Taylor, "She was able to tell the adults what happened. It was not easy. Sometimes she gripped the leash until her fingers turned blue. Sometimes she would only whisper to the dog about what she had seen. They all pretended not to watch while she cried into the fur on the dog's back. But she was able to tell what she knew."

As a former prosecuting attorney, I know firsthand how difficult it can be for a child to climb up to the witness stand and testify about the trauma he or she experienced or saw. Animals, especially trained therapy animals, have an innate ability to comfort and calm children and help them through the court process, often resulting in less trauma and better outcomes for everyone involved.

For more information about the TASK Program, please visit www.americanhumane.org/task, where you can download a complimentary copy of *American Humane's TASK Program Manual*. 🐾

Council member Allie Phillips is Director of Public Policy for American Humane. Her articles have appeared in the newsletter before and have often focused on the interaction of animals and children.

Professor Favre on Recently Introduced Farm Animal Care Regulations (Based on Industry Standards) Legislation in Michigan

Editor's Note: *This is the text of a letter dated July 13, 2009 sent by David Favre, MSU College of Law Professor and Section Member, to State Representative Mike Simpson, Chair of the House Agriculture Committee, and State Senator Gerald VanWoerkom, Chair of the Senate Agriculture and Bioeconomy Committee. Professor Favre expresses his opinion regarding the recently proposed bills regarding farmed animal care regulations. The Section Council has also taken a position against this legislation. This letter was written before the Agriculture Committee passed the bill out of Committee with some amendments including the removal of preemption.*

Dear Sirs,

I would like to express my opposition to HB 5127/SB 654 and HB 5128/SB 655. I speak as a professor of law with over 25 years experience in animal welfare law and owner of a farm that raises sheep, chickens and turkeys. I speak for myself and not for Michigan State University or the Law College where I am employed.

The provisions of these bills represent an extraordinary attempt of a private industry to protect itself from public scrutiny in order to maximize profit without concern for the public's strong interest in protecting the welfare of animals raised in industrial agriculture. Without close examination of the legal or policy issues, the Michigan legislature is apparently willing to adopt industrial standards never meant to be a state regulation. It is a perversion of the democratic, legislative and administrative law principles under which we generally operate.

It is most unusual that a state legislature simply adopt industrial standards. What would the present state of our environment be if Congress had adopted industrial environmental practice as the national law back in the 1970s? The role of the legislature is to balance the multiple values and interests of the citizens of the state. While industrial agriculture certainly should be part of that discussion, they should not be allowed to capture the entirety of the process. Indeed this would appear to be an attempt by industry to preempt an open discussion of critical issues of public policy; this is frankly undemocratic. There are a number of specific points within these bills that should be highlighted.

Continued on the next page

Professor Favre . . .

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Even though these are industrial guidelines and in theory most of each industry would already be in compliance with their own standards, the law allows more than a decade, until 2020, for any individual farm to come into compliance; more than ten years in which they may do whatever harm they want to the animals under their control. No law or regulation will stop them. It is not clear what the Department of Agriculture is supposed to do for the next decade as there will not be any enforceable standards, except perhaps to exercise their authority to exempt certain farms from any standards at all.

If the commercial standards of HR 5127 are applied to all Michigan farms, hundreds if not thousands will have to shut down.

A brief examination of the referred to industrial documents raises a number of questions. Are the glossy pictures and puffing language of the industry now state regulations? While much of the Turkey document is written in a way that does resemble regulatory standards, others are much less so. The Cattle Standards are a series of guidelines which might be useful for the drafting of regulation, but do not constitute regulations themselves. The Pork document apparently deals only with animal disease and biosecurity. There is nothing about animal welfare. Does that mean that pork producers can do anything they want against the welfare of the animals, as there are neither industrial nor state limitations on all those issues dealing with confinement? In the Chicken guideline the following statement is found “chicks should be vaccinated against common poultry diseases.” “Should” is not a good word for regulations, what does it mean? What is the list of diseases they are talking about? When should they do this: all the time, or only in the presence of disease? A regulation would not be constructed in this manner. There are hundreds of sentences in the five documents that raise similar questions.

The bill, HR 5127, which imposes the industrial standards, does not clarify which farms are covered by this bill. What threshold of number of animals would be required before the expensive inspection and certification process is imposed? HR 5128 inserts the definition of farm by reference to the Michigan Right to Farm Act. I am not sure if this definition would apply to HR 5127. It is either sloppy drafting or an insidious attack on the small farms of Michigan. The Right to Farm Act has a broad definition of farms as its purpose is to protect traditional

farm activities from nuisance litigation. Therefore any farm, of any size, receives protection. If the commercial standards of HR 5127 are applied to all Michigan farms, hundreds if not thousands will have to shut down. For example, the Turkey Guideline CP8 – Poultry Delivery, contemplate an extensive building project. While these are appropriate for large commercial flocks, it is inappropriate for a farm with 20 free range heritage turkeys. This forced adoption of industrial standards could be characterized as an attempt of industrial agriculture to shut down the small farmers seeking to be self sufficient for themselves and their neighbors and force them to buy corporate meat. There are no thresholds in the bills for protecting small producers from the full brunt of the regulatory system. Should a person with 15-20 turkeys be expected to build a \$50,000 climate control facility?

Another aspect of these bills that deserves consideration is the fact that it creates a presumption that compliance with industrial standards adopted as state regulations does not constitute cruelty to animals. The only reason for placing such a provision in the bill is the concern that present animal industrial practices do indeed constitute criminal cruelty to animals. This is one of the critical points that needs to be part of a public debate about how we treat agricultural animals. Does the lifelong confinement of egg producing chickens in wire mesh cell constitute the unacceptable suffering? Is keeping baby veal calves in environmental isolation for the entirety of their brief lives acceptable, given today’s social concern for animal welfare?

At the end of HR 5127 the Director of the Department is given the authority to update, substitute or amend the regulations. A number of points should be made. It does not appear that the effective date of the regulations can be changed by the Director, so all farmers are free for a decade. Second and more important, the proposed law gives no policy guidance whatsoever to the Director as to what the goals of the regulations should be. How should the need for profit be balanced against the welfare of the animals? This is an abrogation a chief responsibility of the legislature: to give policy direction before the adoption of regulations.

Editor’s Note: *The following paragraph from the letter is not applicable as the bill which passed from Committee removed preemption.* [Additionally, to make the wall of protection even higher for industrial agriculture, the law precludes any local law on the topic. This unremitting preemption is a slap in the face for local governments that seek to deal with local problems. While some standards may be best done on a statewide level, it is hard to believe that every possible issue should be decided by the standards of the industry themselves.]

Over the past five or so years, many states have considered these issues. Colorado recently passed legislation providing more protection for some farm animals. Maine just passed a law that would outlaw the practice of veal crates and confinement for sows during gestation (1.7 MRSA § 4020). Last fall California voters also adopted a proposition prohibiting the same practices plus outlawing the existing small cages for egg laying chickens. Industry is apparently in fear of the same happening in Michigan. These bills seek to insulate themselves from public debate.

The people of Michigan, like voters in other parts of the United States, if given the opportunity, will undoubtedly

express considerably more concern for the well being of animals in agriculture than is represented by the industrial standards. HR 5127 and HR 5128 are so flawed that they do not represent a good platform from which to develop state law. Therefore I request that these bills be killed in committee. If additional public hearings are held on these bills I request the opportunity to present my views in public.

Thank you for your time on this critically important issue for hundred of thousands of animals, as well as, the people of the state of Michigan. 🐾

Section Honors Three Legislators with 2008 Brandi Awards

By Donald Garlit

State Representatives Steve Bieda (D-Warren), Pam Byrnes (D-Lyndon Township), and John Espinoza (D-Croswell) received the 2008 Brandi Awards for outstanding contributions to animal law in the 2007-08 legislative session. Reps. Byrnes and Espinoza introduced three measures in Lansing revising and strengthening the state's animal neglect and cruelty statutes including consecutive sentences and enhanced penalties for acts involving multiple animals. Gov. Jennifer Granholm signed two of the bills into law (PA 152 of 2007 and PA 339 of 2008). Rep. Bieda introduced bills that would have allowed animals to be included in personal protection orders, and would have called for enhanced penalties for animal cruelty committed in instances of domestic violence.

The Section hosted the Brandi Award ceremony to honor the recipients for their dedication and outstanding contributions to legislation for the humane treatment of animals. The ceremony was open to the press and the public and held in October 2008. The awards were presented by Anna Rose Stern, Section Chair.

Each of the recipients talked about a personal experience which had influenced his or her actions for animals. Rep. Espinoza mentioned the influence of an older constituent in developing his concern for helping animals by legislation; Rep Bieda mentioned his own dog (who was unable to attend the ceremony due to a behavior "issue"); and Rep. Byrnes reflected on her interest in animals as a child.

The first Brandi Award was awarded in 1997 to the late Honorable Kaye Tertzag, Wayne County Circuit Court. Judge Tertzag ruled in a case involving the death of a dog, Brandi, to allow the jury to consider non-economic damages in the death of a companion animal and wrote eloquently of the importance of companion animals. 🐾



(Above) State Rep. Steve Bieda receives 2008 Brandi Award from Section Chair Rose Stern



(Left) State Rep. John Espinoza receives 2008 Brandi Award from Section Chair Rose Stern



State Rep. Pam Byrnes receives 2008 Brandi Award from Section Chair Rose Stern



Treasurer's Summary Report for 2009 Fiscal Year (FY) – Through June 2009

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

The following will provide highlights of the financial status of the Section through June 30, 2009 (9 months of the FY):

- Membership dues are down by about 4% this year. This is a reflection of the state of the Michigan economy.
- Expenses have been reasonable and have averaged about \$160 per month. They are primarily for meeting expenses related to the Brandi Awards ceremony in October, the Legislative Aides lunch in November, the May Newsletter, and the listserv. We continue to have the monthly listserv charge so please use the listserv as a means of contacting other Section members.
- It appears that the March Symposium was a break-even event although not all invoices had been paid at the end of June.
- The Section fund balance was \$14,240 at the end of June – an improvement of about \$2,900 from the beginning of the fiscal year on October 1, 2008
- Major expenses such as those for the August Newsletter, the upcoming Annual Meeting, and the Wanda Nash Award presentation at the University of Michigan Law School (earlier in the Fiscal Year) will be recognized in post-June financial results. 🙌

Respectfully submitted,

Bee Friedlander, Treasurer
August, 2009

Nominating Committee Report

The Nominating Committee recommends to the Section the following nominees:

Chair: Anna Marie Scott (was Chair-Elect)

Chair-Elect: Mary Chartier

Secretary: Jennifer Pierce (Secretary since 2008)

Treasurer: Donald Garlit (was Council Member)

Term Expiring 2012: Pam Amato (Council Member), Richard Angelo, Bee Friedlander (was Treasurer), and Margo Miller

Ex Officio: Anna Rose Stern (Immediate Past Chair)

Per the Animal Law Section Bylaws, other nominations may be made from the floor.

The Nominating Committee on behalf on the Section Council wishes to thank those members for their prior work who are now term limited and unable to be nominated: Allie Phillips, Kieran Marion, and David Wallace.

Submitted by the Nominating Committee,

Donald R. Garlit

Anna Marie Scott

News and Notes

By Donald Garlit

Vermont Supreme Court aligns itself with majority of jurisdictions in holding that a plaintiff cannot recover noneconomic damages for the loss of a pet.

Goodby v. Vetpharm, Inc.

Vermont

--- A.2d ---, 2009 WL 1262406 (Vt.)

Summary: This Vermont case answered whether noneconomic damages are available when a companion animal dies due to negligent acts of veterinarians and a pharmaceutical company, and also whether a claim for negligent infliction of emotional distress (NIED) is allowed for the death of a pet. The Vermont Supreme Court answered both questions in the negative. Plaintiffs' cats died after taking hypertension pills produced by defendant pharmaceutical company Vetpharm, which contained a toxic level of the medication (20 times the labeled dose). After the cats were brought into defendant-veterinarians' office, plaintiffs contend that defendant veterinarians negligently or wantonly failed to diagnose the toxicity in the cats, and improperly treated the cats as a result. While the plaintiffs and amici urged the court to adopt a special exception to recover noneconomic damages for the loss of their personal property (to wit, the cats), the court found that to be a role more suited to the state legislature. With regard to the NIED claim, the court held that plaintiffs were never in the "zone of danger" necessary to establish a claim. The emotional injuries alleged by plaintiffs were insufficient because they could not show that they faced a reasonable fear of physical injury due to the negligent administration of medication to their cats.

Source of Information and Summary: The Animal Legal & Historical Webcenter of the Michigan State University College of Law. The above and the Court's opinion is located at the website at: <http://www.animallaw.info/cases/causvt2009wl1262406.htm>

The Animal Law Section in the *Michigan Bar Journal*

State Bar of Michigan Executive Director Janet Welch has a monthly column in the *Michigan Bar Journal*. Her August 2008 column discussed changes in the law including the growth of specialization. In 1958, there were only six sections in the State Bar, today there are 39. She wrote that one is an "animal rights section" intending to mean the Animal Law Section. She is right as the Animal Law Section is a great example of legal specialization.

Barbara Goldman is Chair of Appellate Practice Section

Long-time Section Council member and former Chair Barbara Goldman stepped down from the Council last year. She began a term as chair of the Appellate Practice section. 🐾

Animal Law Section Council 2008-2009

Chairperson

Anna Rose Stern, Lansing

Chairperson-Elect

Anna Marie Scott, Eaton Rapids

Secretary

Jennifer Pierce, Mt. Clemens

Treasurer

Beatrice M. Friedlander, Canton

Term Expires 2009

Pamela Amato, Okemos

Donald R. Garlit, Canton

Alice Anna Phillips, Alexandria, VA

David J. Wallace, Alexandria, VA

Term Expires 2010

Brandon M. Scott, Eaton Rapids

Amy C. Slameka, Detroit

Sharon Noll Smith, Bloomfield Hills

Suzanne Culliton Stephan, Ann Arbor

Term Expires 2011

MaryAnn Kolzowski,

Bloomfield Hills

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Kieran Patrick Marion, Chicago

Law Student

Ronald C. Desnoyers, East Lansing

Anastasia Niedrich, Ann Arbor

Commissioner Liaison

Julie I. Fershtman, Farmington Hills

Newsletter Editor

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



Animal Legal Lifeline
Toll-free Number for Referrals:
(866) 211-6257

Upcoming Events

September 18, 2009

Annual Animal Law Section Meeting from 1:30 to 4 p.m. at the State Bar of Michigan Annual Meeting at the Hyatt Regency in Dearborn.

October 16-18, 2009

"Animal Law: The Links" Conference at the Lewis & Clark Law School, Portland, Oregon
http://www.lclark.edu/law/student_groups/student_animal_legal_defense_fund/animal_law_conference/

April 9, 2010

"The Impact and Opportunities for Animals in the Current Political and Economic Climate" sponsored by the Animal Law Section of the Maryland State Bar Association in conjunction with the University of Baltimore School of Law and the University of Pennsylvania School of Law

April 9-11, 2010

"The Future of Animal Law" Conference at the University of Chicago

