

Letters to the Editor

More on the sentient property debate

We read with great interest the AVMA convention coverage news article titled "Sentient property: a novel animal law proposal" in the September 15, 2004 *JAVMA* (pp 812–813). We have both comments and questions relative thereto.

Certainly, companion animals are more than mere personal property, and consequently, their owners (guardians, if you prefer) should be compensated for their injury or loss accordingly. Unfortunately, this is a new classification of property in the eyes of the law, which can only further the growth of the burgeoning field of veterinary malpractice. It is with guarded optimism that we support this proposal.

We do not understand the Teddy Test, which purports to have three elements that must be satisfied before a pet can be considered as sentient property. At the same time, sentient property has its own proposed definition. Doesn't the Teddy Test more accurately represent three elements of a cause of action for harm caused to a sentient being?

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After reading the *JAVMA* news article focusing on a proposed change in the legal status of animals in the September 15, 2004 issue (pp 812–813), several related concerns come to mind. One concern is the abandonment of traditional reasoning based on metaphysical realities. A new set of principles seems to guide the discussion on the basis of humanistic or relativistic philosophies.

An eagerness to embrace every new idea that surfaces seems to exist, regardless of its validity or

implications. Appeals for change are made on the basis of certain trends in recent years. It is implied that we should accept every new trend or else be considered nonprogressive.

The reality of the human-animal bond is nothing new. It has existed throughout human history in various expressions, whether through a farmer who spends the day with his horse plowing a field or a herdsman who sleeps under the open sky at night with his flocks and dog. Individuals (and societies) who greatly esteem animal life have always existed.

There has been no ontologic change in animals or people; therefore, the basic relationship of human to animal has not and will not change. There may be a change in degree but not in kind. These are immutable, metaphysical realities. The whole basis of science is built on predictable, unchangeable realities. Our relationship with animals is but a part of those realities.

So why are we proposing a new set of legal principles to guide us? Some court cases are being based on the most recent legal precedent, which may be only a few months old, completely ignoring centuries-old tradition. Who is really behind these changes and why? Is the rank-and-file pet owner being pushed

into this as the next entitlement lottery if they win their day in court on behalf of their pet's pain and suffering?

One of my primary obligations as a veterinarian is to protect animal health. Will these proposed changes help me achieve that end and at what cost? How will it benefit animals and society in general? Will enhancing animal rights undermine basic human rights?

As the threat of lawsuits grows, veterinarians will be forced into more defensive medicine, which will push the cost of our services beyond the reach of more and more owners. Additional funds to finance the emerging triad relationship of veterinary medicine-insurance-lawyer (with pet owner and pet in tow) will have to come from somewhere. As the system begins to strain, guess who will come to the rescue with a plethora of programs and attendant bureaucracy to administer it? Think it couldn't happen? Ask your physician counterparts what happened to them and how much they enjoy socialized medicine. For that matter, what's your own experience with going to the hospital? Do we want to go down that same trail? The end often begins in obscurity.

Animals have always had, and will continue to have, unique relationships with humanity. Let's keep

Instructions for Writing a Letter to the Editor

Readers are invited to submit letters to the editor. Letters may not exceed 500 words and 6 references. Not all letters are published; all letters accepted for publication are subject to editing. Those pertaining to anything published in the *JAVMA* should be received within one month of the date of publication. Submission via e-mail (JournalLetters@avma.org) or fax (847-925-9329) is encouraged; authors should give their full contact information including address, daytime telephone number, fax number, and e-mail address.

Letters containing defamatory, libelous, or malicious statements will not be published, nor will letters representing attacks on or attempts to demean veterinary societies, their committees or agencies. Viewpoints expressed in published letters are those of the letter writers and do not necessarily represent the opinions or policies of the AVMA.

it in its proper perspective for the sake of all concerned.

*John Schell, DVM
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Ms. Matlack responds:

Yes, Dr. Black, sentient property has its own definition.¹ Upon legal determination that a given animal is indeed “sentient property,” any one of the three elements in Teddy’s Test can be applied to adjudicate the matter. Note that footnote #6 in *Petco Animal Supplies Inc. v Schuster* (2004 WL 90390; Austin Court of Appeals, 2004) introduces the phrase sentient property.

Dr. Schell, I agree with maintaining perspective and that there has been no recent “ontological change in animals or people.” And yes, certainly, people have worked closely with animals throughout history.

That does not mean, however, that our relationship with companion animals has not changed. It has. It has grown deeper. I am glad I am part of a legal system that recognizes and integrates change. For example, I am glad that as a woman, I can now purchase and own real property. Have there been any “ontological changes” between men and women? I don’t think so, but I’ll leave that topic there. Or how about our relationship to the transportation industry? People still want to go from place A to place B. Yet Mothers Against Drunk Drivers found it almost impossible to convict drunk drivers under horse-and-buggy laws. The reason for “a new set of legal principles” (or more properly, modified old ones) is that the old ones no longer fit. A person whose Golden Retriever dies in an overheated airline hold will not accept that his dog was worth no more than his luggage!

Last, the legal principles proposed in my book aren’t new. For example, forms of the doctrine of substituted judgment have existed for centuries, as have property principles. Sentient property is an extension of these principles in a way that offers practicality and compromise.

Yes, we very much need to learn from our physician friends.

Most I’ve spoken with say that in hindsight, they should have been more proactive locally—suggesting caps on monetary damage awards and introducing legislation that addressed the situation before it got so out of hand. I am not only proposing that this be done, but I am also providing the legal strategy with which to do it.

Please do be proactive. Create, maintain, and retain the “proper perspective.”

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I. Matlack CB. We’ve Got Feelings Too! Available at: www.wevegotfeelingstoo.com. Accessed Oct 1, 2004.

A reminder to show empathy to grieving pet owners

This is a response to Ms. Marilyn Erickson (*JAVMA*, October 1, 2004, p 1026), a concerned pet owner who questioned the role veterinarians have to help people deal with their pet’s euthanasia. Hers was a wonderful letter and very well stated. However, I was embarrassed for our profession that Ms. Erickson found it necessary to write such a concern. I’ve been practicing since 1971 and currently am the hospital director of a busy emergency veterinary hospital that has been open 24 hours a day since 1980. I teach our staff that we wouldn’t be here if Mrs. Pet Owner didn’t bring in that sick or injured pet. We always consider it a priority to try to have empathy for pet owners and try to assuage their fears and anxieties. Emergencies are an emotional roller coaster for the pet owner and the attending veterinarian and support staff.

Ms. Erickson asked whether veterinarians should be grief counselors and the client advocate. Well, yes! I always considered that a part of our role as a caring professional. But then she asks whether the necessary skills are being taught in our veterinary schools to identify those times when a client might need additional professional help for grief counseling. That’s an interesting question. At our hospital, we provide our clients with a list of helpful books and local grief counseling groups. We, unfortunately, perform

a lot of euthanasias (the burden of emergency hospitals), and we’re all very good at hugs and sympathy. There are excellent staff training videos offered by the American Animal Hospital Association and other groups to help teach veterinary staff. I personally think our hospital does a good job in this area. But I felt that Ms. Erickson was politely implying that veterinarians, in the name of performing good medicine and getting that correct diagnosis, often forget about the person who loves and adores that little critter.

A few years ago, we invited a local psychologist to speak at one of our staff meetings as part of our efforts to improve our own grief counseling. The psychologist was stunned to hear the stories that we told about difficult cases and the emotional upheavals that we all experience. The psychologist never realized that pet owners go through the same stages of grief that anyone does who loses a member of their family. Each of our staff spoke up and told of favorite patients that they had cared for and then lost. It was one of the very best staff meetings we ever had.

I’m sorry that Ms. Erickson felt like she was “put aside” during her pet’s treatment. I would like to assure her that most of us are very concerned about her feelings, but we also can get bogged down in trying to come up with answers when the medical case is difficult. I hope lots of veterinarians take the time to read her letter. It’s a reminder to all of us of the importance of meeting the needs of the client as well as their pet.

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Comments on diagnosis in dentistry article

I applaud the authors of “What Is Your Diagnosis?” (*JAVMA*, October 1, 2004, pp 1037–1038) for submitting veterinary dentistry-related subject matter. However, there is a glaring missed diagnosis that will be a major problem for the patient until it is addressed.

In the Comments section, the authors cite a reference¹ that states,

“Complications (of vital pulpotomy therapy) can occur, and radiographic assessment is warranted if problems develop.” In fact, radiographic assessment is indicated at regular intervals following vital pulp therapy regardless of the presence of overt clinical problems.^{2,4} The reason for radiographic follow-up is underscored in the case presented.

The authors mention that the right mandibular canine tooth (No. 404) had received a “calcium filling from a previous vital pulpotomy.” However, they did not address the radiographic evidence of vital pulpotomy failure as evidenced by an inappropriately wide pulp canal, widening of the periodontal ligament space, open root apex, and periapical radiolucency. This dog needs to have immediate endodontic retreatment (apexification) or extraction.

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1. Bellows J. *The practice of veterinary dentistry: a team effort*. Ames, Iowa: Iowa State University Press, 1999;137–138, 158.

2. Bellows J. *Small animal dental equipment, materials and techniques—a primer*. Ames, Iowa: Blackwell Publishing, 2004;193–194.

3. Holmstrom SE, Frost P, Eisner ER. *Veterinary dental techniques for the small animal practitioner*. 2nd ed. Philadelphia: WB Saunders Co, 1998;262–263.

4. Wiggs RB, Lobprise HB. *Veterinary dentistry principles and practice*. Philadelphia: Lippincott-Raven, 1997;339.

I commend you for including veterinary dentistry in the “What Is Your Diagnosis?” feature (JAVMA, October 1, 2004, pp 1037–1038). I would like to offer some constructive comments on the case described.

The vital pulpotomy performed on the mandibular right canine tooth (No. 404) was poor. The tooth was not vital, and the apex was open at the time the authors obtained their radiographs. This can be diagnosed by the large pulp cavity with open apex and an apparent periapical radiolucency in the three-year-old dog. Even without knowing the dog's age, the pulp cavities of the other teeth should be relatively similar in size. Appropriate treatment options presented to the owner at that time should have been apexification for

eventual standard root canal therapy or exodontia.

Vital pulpotomies, in my opinion, are not easy, quick procedures; I was taught that there is a 25 percent failure rate. A published assessment¹ and retrospective study² in the *Journal of Veterinary Dentistry* showed 0 percent to 100 percent success rates for vital pulpotomies based on the case selected.

Vital pulpotomies need to be followed up with intraoral radiography at four- to six-month intervals for two years from the time of treatment to monitor the tooth's vitality. If the tooth is vital, its dentin walls will become thicker from dentinogenesis (normal dentin production) and the pulp cavity will become smaller as the patient ages. If this does not occur, the tooth has died and needs to have endodontic or exodontic treatment. An early diagnosis and intervention will prevent the patient from suffering needlessly. Animals are very stoic and rarely show clinical signs attributed to advanced periodontal or endodontic disease. Humans know these conditions are painful because we are not nearly as stoic and like to complain about oral pain.

The type of malocclusion (class II) observed in the dog of this report needs to be dealt with as soon as it is found, especially in puppies. Do not cut the baby teeth off! They need to be delicately extracted after intraoral radiographs have been obtained. At that time, the groundwork should be laid for probable additional dental procedures, such as any combination of orthodontics, endodontics, and exodontics as the adult dentition erupts.

If maxillary fourth premolars and molars are extracted, trauma to the globe is another major potential complication. In the *Journal of Veterinary Dentistry*, an article by Smith et al³ discusses ocular trauma associated with tooth extraction.

Once the sequestrum is removed, the fistula should clear up even without administration of antimicrobials, unless the preoperative bloodwork indicates a need.

These comments were only meant in an educational nature. Thank you again for helping to shed light on veterinary dentistry.

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1. Niemiec BA. Assessment of vital pulp therapy for nine complicated crown fractures and fifty-four crown reductions in dogs and cats. *J Vet Dent* 2001;18:122–125.

2. Smith MM, Smith EH, La Croix N, et al. Oral penetration associated with tooth extraction. *J Vet Dent* 2003;20:8–17.

3. Clarke DE. Vital pulp therapy for complicated crown fracture of permanent canine teeth in dogs: a three-year retrospective study. *J Vet Dent* 2001;18:117–121.

I would like to comment on the October 1, 2004 “What Is Your Diagnosis?” article in the JAVMA (pp 1037–1038).

The quality of radiographic positioning is poor in the images. Important structures (eg, tips of crowns, apices of roots, and periapical regions) are either not entirely exposed or have been cropped excessively.

In contrast to the authors, I am not able to identify a root fragment in Figure 2A because of the poor quality of the image. The authors mistakenly consider the right mandibular canine tooth to be intact. Although a thin dentinal bridge is seen in the pulp chamber, the radiograph also shows obvious signs of a failed endodontic procedure (wide pulp cavity and periapical radiolucency).

In vital pulp therapies, it is not calcium that is placed on the pulp but calcium hydroxide powder, followed by a calcium hydroxide cement and final restorative filling material(s). The authors state that a fistulogram was performed and was nondiagnostic, but neither was the diagnostic procedure described nor were any radiographic images provided. Fistulograms are typically not necessary to confirm the presence of a root fragment in veterinary dentistry.

The description of surgical removal of the root fragment is somewhat unclear and does not comply with techniques currently recommended. Although described

in older veterinary dental textbooks, the practice of blindly pulverizing (atomizing) root fragments using high-speed equipment is contrary to generally accepted principles of oral surgery. This technique can result in iatrogenic trauma, including necrosis and delayed healing of bone, injury to inferior alveolar and infraorbital neurovascular bundles, repulsion of root fragments into the nasal cavity and infraorbital and mandibular canals, transection of salivary gland ducts in sublingual tissues, submucosal and subcutaneous emphysema, and air embolism. Root fragments should be removed surgically by creation of a mucoperiosteal flap,

partial alveolectomy, elevation, and extraction.

It was mentioned that the entire root fragment had been removed; however, postoperative dental radiographs were not provided. The authors rely on 10- and 30-day (clinical) reexaminations, indicating healing of the draining tract. However, they do not consider that the postoperative prescription of amoxicillin-clavulanic acid for 30 days (in addition to the 14 days of preoperative antimicrobial therapy) could be the reason for temporary resolution of clinical signs. Antimicrobial therapy does not remove the actual cause of a fistula. This is particularly true for oral and facial fistulous tracts, as

the source could well be a tooth (or part of a tooth) with advanced periodontal and endodontic disease. Furthermore, postoperative antimicrobial therapy is usually not necessary if appropriate surgical treatment has been performed (eg, tooth extraction, curettage of the alveolar socket, and abscess debridement).

Long-term follow-up is not described. The radiographic appearance of the nonvital right mandibular canine tooth suggests that fistulation secondary to endodontic disease will develop in only a matter of time.

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Selected abstract for JAVMA readers from the American Journal of Veterinary Research

Effects of injury to the suspensory apparatus, exercise, and horseshoe characteristics on the risk of lateral condylar fracture and suspensory apparatus failure in forelimbs of Thoroughbred racehorses

Ashley E. Hill et al

Objective—To assess concurrently the effects of moderate ligamentous suspensory apparatus injury (MLSAI), racing-speed exercise, and horseshoe characteristics on risk of catastrophic suspensory apparatus failure (SAF) or metacarpal condylar fracture (CDY) in forelimbs of racehorses.

Sample population—Cadavers of 301 Thoroughbred racehorses (108 with SAF, 33 with CDY, and 160 control horses).

Procedure—A cross-sectional epidemiologic study was used to describe distributions and relationships between MLSAI, exercise, and horseshoe variables. Logistic regression was used to assess potential risk factors for developing SAF and CDY.

Results—Exercise variables were more highly associated with age than height of a steel bar affixed to the ground surface of the front of a horseshoe (ie, toe grab) or sex. Marginal associations were detected between MLSAI and age and height of toe grab. Higher risk for developing SAF was associated with MLSAI, use of a pad on a horseshoe, longer interval since last period of ≥ 60 days without a race or timed workout (ie, layup), 2 to 5 career races, and higher intensity of recent exercise. Higher risk for developing CDY was associated with MLSAI, male horses, age between 2 and 5 years, higher intensity of recent exercise, and longer interval since layup.

Conclusions and Clinical Relevance—Recognition of MLSAI and rehabilitation of affected horses should reduce incidence of SAF and CDY. Horses in long-term continuous training with recent high-intensity exercise are at greater risk for injury. Use of pads in horseshoes was associated with SAF, although the relationship may not be causal. (*Am J Vet Res* 2004;65:1508–1517).



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