DISSECTION SUIT MAY BE RESOLVED

Jennifer Graham's suit claiming a constitutional right to refrain from dissection on the basis of a deeply held belief in the sanctity of animal life took an unexpected turn in early August (see the Winter and Summer 1988 HSUS News and the interview on page 27 of this issue). By early July, the school board offered to allow her to study frog anatomy through means other than dissecting frogs; to retest her for purposes of recomputing her biology class grade; to substitute the recomputed grade for her lowered grade; and to strike from her transcripts the negative notation that she had refused to participate in the frog-dissection laboratory. What was preventing a complete settlement was the parties' inability to resolve the method by which Miss Graham would be retested on her knowledge of frog anatomy. The school board proposed using life-size photographs of a dissected frog with the various organs numbered, which she would identify. Miss Graham, throughout the course of the settlement negotiations, objected to this testing method because, even though she would not be personally dissecting a frog, the frog would still have been captured and killed for the purpose of becoming a dissection specimen, a circumstance which was offensive to her beliefs. (Miss Graham's moral objection goes to the whole practice of capturing or raising frogs for purposes of becoming dissection specimens. Therefore, her beliefs forbid her from even indirect participation through use of videotape depictions of dissection or other study materials which involve death or injury to animals.)

At the hearing on August 1, Judge Manuel Real proposed that the impasse be resolved by testing Miss Graham on a frog that had died of natural causes. On the assurance that the school board would provide a frog that died of natural causes, the court dismissed the case.

The court's proposal constituted an astute insight into the essential moral imperative behind Miss Graham's objection to participating in classroom dissection, namely, to shun being implicated, directly or indirectly, in the death of or injury to an animal. An animal that dies of natural causes dies in a manner that is morally neutral. However, to date, the court's proposal is proving difficult to implement, since the school board has not been able to provide a frog that complies with Judge Real's proposal. HSUS attorneys have asked the court to reopen the case to either compel the school board to use detailed three-dimensional models for testing purposes or to allow the case to proceed to trial.

AT STAKE: FREE DEBATE

A case worth watching is Hodgins Kennels, Inc., v. Durbin, currently before the appellate courts of the state of Michigan. Hodgins Kennels, Inc., is a federally licensed animal dealer that sells dogs and other animals to various research facilities. Hodgins sued local humane activists for defamation and interference with its business, claiming, among other things, that various statements made by the defendants during an extensive debate, carried on before local governing bodies and in the newspapers, over whether the practice of municipal pound seizure (the selling of shelter or pound animals for research purposes) should be continued, had injured its business. Specifically, Hodgins Kennels alleged that it lost an animal-collection contract as a result of statements made by the defendants. A jury awarded Hodgins $237,000 in damages.

The defendants appealed to the intermediate appellate court, and The HSUS, along with several other national and state animal-protection organizations, filed an amicus curiae brief in their support. Because the allegedly injurious statements occurred in the context of a public debate over the practice of pound seizure, The HSUS and the other groups involved are concerned that, if the verdict of the trial court is allowed to stand, public debate on other issues of importance to the animal-welfare movement may be severely inhibited by the threat of lawsuits.

The Michigan Court of Appeals reversed the trial court and remanded the case for a new trial because of a technical deficiency in a jury instruction. However, the opinion of the court of appeals dodged the issue of the extent of the protection afforded by the free speech and petition clauses of the First Amendment to persons who make possibly injurious statements during debate about matters of public interest or concern. Because of the importance of the free-speech issues involved in the case, and specifically because of the need for the debate of issues involving animal welfare to be vigorous and unfettered, the original defendants and humane groups have asked the Michigan Supreme Court to review the decision of the court of appeals. At press time, the Michigan Supreme Court had not yet decided to hear the case.

The HSUS and other amici curiae have had the benefit of superbly written briefs by Professor David S. Favre of the Detroit College of Law.

The Law Notes are compiled by HSUS General Counsel Murdaugh Stuart Madden and Associate Counsel Roger Kindler.