PROBLEMS OF ENFORCEMENT

BY ANN SMALL EY

Passed in its original form in 1966, the Animal Welfare Act has evolved into the nation's most comprehensive legislation protecting animals. On paper, the Animal Welfare Act safeguards many species used in laboratories, puppy mills, circuses, and other potentially abusive situations. But ask any HSUS investigator, regional director, or wildlife expert about enforcement of the Act, and you are likely to hear a long litany of complaints, frustrations, and indictments against the USDA (U.S. Department of Agriculture) and APHIS (Animal and Plant Health Inspection Service), the agency within the USDA responsible for enforcement of the Act. Delays, apathy, and incompetence are all laid at the USDA's door.

Upon closer look, however, much of the criticism directed at the USDA's performance is misplaced. While, in some cases, USDA personnel do behave incomprehensibly, in others, USDA procedure is "by the book"—only "the book," the Act itself, proves insufficient in some way. Sometimes, a case is well prepared only to be slowed by legal processes which, because of our system of justice, may consume substantial amounts of time.

In Part I, which appeared in the Winter issue of the News, we examined the content of the Act, its history, and its intent. In Part II, we present three case histories that illustrate a few of the problems that arise with enforcement of the AWA.

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The Case of the Kansas Puppy Mill

Abuses in commercial mass-production kennels (puppy mills) have long been of concern to The HSUS. The HSUS has extensively investigated puppy mills and discovered that dogs at many of these mills endure filthy surroundings, inadequate shelter, insufficient food and water, overcrowding, disease, excessive breeding, lack of veterinary care, and general neglect.

In 1970, the HSUS, in conjunction with other animal-welfare groups, was instrumental in amending the Laboratory Animal Welfare Act of 1966 to require commercial breeders wholesaling dogs to the pet industry to be licensed, inspected, and regulated by the USDA. Subsequently, the USDA promulgated minimum requirements of care at commercial breeding facilities, including standards on housing, shelter from extremes of weather and temperature, sanitation, ventilation, water, food, handling, veterinary care, and transportation.

It was hoped that this legislation, by requiring wholesale dealers to meet humane standards of care for their dogs, would soon
eliminate substandard puppy-mill operations. But the mere existence of a law does not guarantee its successful enforcement. In the case of midwestern puppy mills, some USDA personnel had been accused of acting in conflict with enforcing the humane standards required by law—have acted in inexcusable—and, to humane advocates, intensely frustrating—ways, as the following example shows.

On July 18, 1988, the Winfield City (Kansas) Police Department, Ms. Cynthia Newton, president of the Humane Society, and Dr. John Johnson, a local veterinarian, responding to a complaint in operation for thirty-five years. The veterinarian Dr. Coco Sutton visited Dr. Newton to Dr. R.L. Rissler, the director of the USDA.) Dr. Sutton and Mr. Taylor asserted that the kennel was well managed, the conditions discovered when they inspected the kennel included: dried fecal matter in food bowls; overcrowding throughout the kennel; water bowls coated with thick green slime; dogs with grossly matted fur and hair; animals suffering from sarcoptic mange, whipworms, hookworms, tapeworms, ear mites, and severe flea infestation. Food obtained from dumpsters; dead bodies in garbage cans; and dogs in far cruel conditions. The case history follows.

On August 11, 1988, from Dr. Johnson to Dr. Rissler.) Dr. Sutton and Mr. Taylor asserted that the kennel was well run, and the facilities produced there were of the highest quality. The USDA personnel also questioned Dr. Johnson's findings at the kennel.

On October 14, 1988, Ms. Newton wrote to Dr. Rissler, describing the case and asking why the USDA had apparently gone out of its way to intervene in an ongoing cruelty case. She never received a response, although she had told HSUS Investigator Bob Baker that, on a follow-up call to the USDA, she was assured that Dr. Rissler had received the letter.

As of press time, the county prosecutor still has not filed charges, which is understandable, since, from a prosecutor's point of view, a favorable federal inspection alone would probably establish the "reasonable doubt" at a trial which would thwart a verdict of guilty. (Indeed, the county attorney himself has confirmed to Bob Baker that the "clean bill of health" given the kennel by the USDA has been a definite factor in not taking further steps to prosecute the case.)

Postscript—On November 18, 1988, Janet Payeur, a USDA animal-care specialist for the central region, had sent a directive to all the inspectors in the region following findings by Kansas regional animal-care specialists. In it, she states, "Kansas was criticized in that some inspectors never find deficiencies. This office, the regional office, and the Animal Care Staff in Haysville cannot believe that there are no deficiencies in these sections... Station and national policy is that we will cite all deficiencies."

Apart from the controversy over the conditions at the kennels (Ms. Newton has asserted that the USDA could not meet Animal Welfare Act standards "without the total rebuilding or restructuring of the operation..."), the most puzzling question about this case is why USDA personnel went to the trouble of visiting both the assistant county attorney and Dr. Johnson. Surely, visits were hardly a necessary or ordinary part of licensing procedures under the Animal Welfare Act. The inspectors' actions appear to amount to an extraordinary effort on the part of federal personnel to advocate the interests of a licensee before local authorities in pending procedures under state cruelty laws.

Bob Baker, who has extensively investigated conditions at midwestern puppy mills, including those in Kansas, has written, "Many USDA officials have adopted a strategy of 'going public' toward the USDA (because the USDA was given the task of enforcing the AWA) and even direct their humiliations toward humane societies who, they feel are responsible for the AWA. This hostility is exacerbated when humane societies attempt to rectify inadequate conditions at... puppy mills... USDA inspectors often report that they find all standards being completely disregarded, in spite of deficiencies of USDA regulations despite horrendous conditions."

Whatever Mr. Taylor's and Dr. Sutton's motives, and whether or not their actions were the sole or main reason the case had not been pursued, in this case, the exertions of USDA officials were in apparent conflict with those of a humane society, a police department, and an independent kansan. Obviously, until animal-welfare efforts unite involved parties in a concerted effort to ensure humane care for animals, even with the existence of the Animal Welfare Act, little can be accomplished.

The Case of the Oregon Buncher

Under the Animal Welfare Act, dealers are people who buy and/or sell animals—"Alaskan Bunchers"—dealers who buy animals for pounds for resale to research laboratories—make up part of this category. Dealers must be licensed and registered and must meet the humane standards for care set by the Act for the animals under their supervision. The following case history concerns one of the largest federally licensed dealers/bunchers on the West Coast, James W. Hickey of S & S Farms.

At first glance, the case appears to illustrate one of the most common complaints about the USDA's enforcement of the AWA—that it is slow. But a closer analysis suggests that the USDA may not be entirely to blame for delays in obtaining judgments on AWA violators.

In February 1984, the USDA Office of General Counsel (OGC) issued a letter of warning to Mr. Hickey for failing to properly identify dogs he had purchased and failing to provide lighting and ventilation in his kennels.

"Once a case gets into the handwriting process it's [any control of time involved] really out of our hands," says Mr. Walsh, according to Walsh, an agency that could speed a case at all is...
APHIS, which can prioritize its cases for the OGC and see that a complaint is sent to the OGC as soon as possible after APHIS receives it from a regional office. "We did receive a lot of mail on the Hickey case," recalls Mr. Walsh. "It really should have gone to APHIS, the agency responsible [for enforcement of the AWA]. The OGC simply provides legal services for APHIS to do its job." HSUS West Coast Regional Director Char Dremon points out, however, that The HSUS had contacted APHIS regarding the progress of this case, only to be referred to the OGC.

The AWA is a law. But, in protecting animals, it cannot abrogate the protections that other laws give citizens in this country, including the right to a hearing, the right to due process, and the right to appeal. The Case of The Wonder Zoo

Exhibitors—those who have animals on display to the public or conduct performances involving animals—are also covered by the Animal Welfare Act and must comply with the standards of the Act and its regulations pertaining to animal care.

Small traveling circuses and menageries are, more often than not, pits of indescribable cruelty to animals. The Animal Welfare Act provides a good beginning to achieving humane and ethical care for captive animals, but it must be backed up by rigorous enforcement. To The Wonder Zoo.

In the following case history of a traveling circus that stops them comes quickly enough. To The Wonder Zoo, as soon as possible after the situation, the HSUS, the regional office, contacted Dr. Edward Basden, zoo administrator of the Sarasota Zoo. He told her her call was the first he had heard of the situation.

On April 23, 1988, the Gainsville Sun reported, in addition to the above, that complaints about animals being beaten and opened wounds on animals had been made when The Wonder Zoo opened in Venice (Florida) a few weeks earlier.

On April 27, 1988, a citizen reported to the Southeast Regional Office that The Wonder Zoo had an elephant with its front legs chained together and that a zoo employee had told her the elephant had a broken, swollen leg. The citizen reported that the animals at the zoo were covered with feces.

Ms. Mitchell again talked with Dr. Basden. He told her he had sent someone out to inspect the zoo but that he hadn't yet read the report. On May 19, 1988, the Southeast Regional Office reported to HSUS headquarters that the sick baby elephant had been euthanized due to salmonella poisoning and that the zoo waited too long to get proper care and treatment for it. The News and Courier/The Evening Post in Charleston, South Carolina, reported that The Wonder Zoo had left the parking lot of a local shopping center hours after its license had appeared in municipal court charging it with six counts of animal neglect.

On June 1, 1988, HSUS Associate Director of Wildlife and Environment Dr. Susan Lieberman spoke by telephone with Dr. William Stewart of the USDAO, who said that the Wonder Zoo had been inspected in Florence, South Carolina, and sanitation and cleaning deficiencies had been found and the elephants appeared thin. Dr. Stewart stated that the operators of the zoo told the USDAO inspector that the elephants were mountain elephants from India, which normally are quite thin. Dr. Stewart told Dr. Lieberman that the zoo would be reinspected in Fayetteville, North Carolina, by a more qualified inspector.

On June 22, 1988, nearly fifty animals of The Wonder Zoo were found packed into two truck trailers parked in a shopping center parking lot in Fairfax County, Virginia, during a heat wave in which temperatures reached 102 degrees. The temperature in the trailers was more than 110 degrees. Fairfax County firefighers were called in to hose down a baby elephant, a zebra, ponies, goats, ostriches, and other animals. Fair for County officials impounded the animals, stating they were not receiving adequate food, water, or fresh air. The animals were taken to a animal-farm park located in the county.

On June 23, 1988, a third truckload of animals, including an elephant, a rhinoceros, a hyena, and a tiger, was found abandoned in Prince George's County, Maryland. The animals were taken into protective custody by county officials. The USDA suspended Richard Garden's license for twenty-one days maximum allowed by the AWA pending an inquiry into whether he should be charged with violation of the Animal Welfare Act.

On July 8, 1988, Richard Garden donated the animals that had been seized in Fairfax County to the Animal Protection Association of America, without admitting any negligence in their care. Fairfax County dropped charges pending against him.

In February 1989, Mr. Garden agreed to sign over ownership of the animals that had been seized by Prince George's County officials to the county in exchange for the county's dropping the charges it had pending against him.

Mr. Garden's USDA license was reinstated after twenty-one-day period pending inquiry into whether he should be charged with violation of the Animal Welfare Act.

The Wonder Zoo was unlimited, although it is known he supplied at least one laboratory with animals. Most of the fifty dogs on the premises when this photo was taken were suffering from malnutrition. For them, the AWA was not much protection.

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