

PROBLEMS AFTER CRUELTY TRIALS

Some of the more exasperating aspects of prosecutions of defendants charged with cruelty or neglect can occur after the trial—the stage of the proceeding when a sentence is imposed and the court decides upon the disposition of the animals involved. In the worst-case scenario, even if a conviction is obtained, a judge feels constrained by a statute limiting punishment to fine or imprisonment and actually orders the return of the animal to the convicted defendant, a disposition that usually makes little sense from the point of view of the animal's welfare. In other cases, similar perceived constraints often prevent the judge from prohibiting future ownership of animals by the defendant or thwart more creative sentencing, such as allowing the defendant to keep animals but under the official supervision of a local humane society, which would have the right to enter and inspect the defendant's premises at will. The cost of keeping the animal prior to and during the trial can also be problematic. Frequently, the local society or authorities must maintain the defendant's animal at considerable cost for several weeks—or even several months—pending trial. At the conclusion of the trial, in the absence of a statute allowing the court to levy such costs directly upon the defendant, the animals often become a kind of financial football—mere collateral which are sold or auctioned off, to an unknown fate, in order to satisfy such costs.

While these problems vary in severity from state to state, depending upon the post-trial



Animals involved in cruelty cases, such as these dogs seized by humane agents in rural New York in 1987, often pose a problem to courts faced with their disposition after trial.

procedural statute under which a given state's courts operate, the number of disturbing incidents reported to the HSUS general counsel's office suggests a need for a model post-trial procedural statute centered upon the welfare of the animals involved. Under no circumstances should an animal be returned to a defendant actually convicted of cruelty or neglect. The post-trial procedural statute should provide for forfeiture of not only the animals that were the actual victims of cruelty or neglect, but also, arguably, all animals kept by a convicted defendant. Such animals should be placed with a local humane society for adoption, other placement, or, when circumstances warrant, euthanasia. If the defendant is allowed to keep animals other than the ones involved in the prosecution, the court should be empowered to order that the defendant's keeping of such animals be subject to the supervision of a local humane soci-

ety or other knowledgeable authority.

The costs of maintaining the animal during the prosecution should be levied directly against the defendant's income and assets other than the animals involved, and procedures should ensure that the animals do not become mere collateral or end up in the hands of dealers during an auction or other forced sale to satisfy the case costs.

Ideally, even an acquittal should not end the court's intervention on behalf of an animal. An acquittal may simply mean that the state has not met its burden of presenting enough evidence to prove each element of the offense beyond a reasonable doubt. There may still have been substantial evidence of abuse or neglect even when the defendant is found not guilty of the charges against him or her. Consequently, a progressive statute should provide for a post-acquittal custody hearing in

which the court would determine, in light of the best interests of the animal, whether the defendant is a fit person to have custody of the animal. In so determining, the court should take into account a variety of evidence, including testimony not admissible in a criminal trial, and should have the power, if the animal is returned to the defendant, to impose conditions or to order supervision or monitoring by humane officials.

Such provisions would amount to a minor revolution in the interaction of criminal procedure and animal-welfare law in that the proceedings would focus less on the punishment of the defendant and more on the overall, long-term welfare of the animals involved. In providing for a post-acquittal custody hearing and not making the ultimate fate of the animal automatically depend upon the outcome of the criminal trial, a progressive statute would signal a shift away from regarding animals merely as property or evidence and more toward a concept of animals as, in the words of the Court of Appeals of Georgia, "the special watch and ward" of the state, similar to the status minor children currently have in law.

The general counsel's office would welcome receiving reports from local societies or humane activists who have experienced similar or different problems after trials of cruelty cases, so that we may be able to take such information into account in completing the drafting of the model statute. ■

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