

## FRUSTRATIONS WITH PROSECUTORS—I

The HSUS general counsel's office is frequently contacted by local societies and activists who have presented information about animal cruelty to a local prosecutor only to have that official refuse to pursue the case. The power to enforce the criminal laws selectively—to pursue some cases and decline to pursue others—is known as "prosecutorial discretion." At both the state and federal level—whether the official is a district attorney, United States Attorney, state's attorney, or commonwealth attorney—the prosecuting attorney is vested with practically unlimited powers to act selectively against offenders and offenses. Prosecutorial discretion is a prominent feature of the criminal justice system in the United States and needs to be understood by humane activists.

While the historical origins of prosecutorial discretion are obscure, there are many sound reasons why prosecutors should not be required to pursue every criminal complaint. First, especially in urban areas, prosecuting attorneys do not have the staff or resources to prosecute every instance of criminal behavior. Typically, felonies and other serious crimes have priority, which too often means that offenses such as animal cruelty, usually misdemeanors, are given short shrift. Second, in taking criminal cases to trial, prosecutors must be prepared to sustain a high burden of proof: every element of an offense must be proved beyond a reasonable doubt. Cases where the evidence is weak—due to a lack of witnesses or incomplete physical evidence or because the case boils down to one person's

word against another—may be justifiably perceived by the prosecutor as not worth pursuing. In determining whether to pursue a case, the conscientious prosecutor will be aware of the presumption of innocence and attentive to the amount of evidence needed to overcome that presumption at trial. In addition, a prosecutor is usually attuned to the particular political and legal culture of the locale, and may take such local cultural perceptions into account. For example, people in urban areas may consider livestock starvation to be a more heinous crime than people in depressed agricultural areas, who may view neglect of livestock more in terms of an unfortunate economic circumstance rather than as an act of moral culpability. Indigenous events such as rattlesnake roundups, mule races, pigeon shoots, and coonhound trials using live raccoons as bait frequently have strong support in local custom and tradition, and are not perceived by peo-

ple in the vicinity as cruel and unnecessary. These local perceptions may be important, particularly when a prosecutor needs to persuade a jury of local citizens to get a conviction. In addition, the language of the general cruelty laws may be too broad or too vague to support a conclusion that the legislature intended to outlaw such events. Finally, prosecutorial discretion can serve as a useful buffer between the passions of the public and would-be criminal defendants. Citizens sometimes file criminal complaints out of malice, revenge, or bad faith. In such cases, the prosecutor's power to decline to act serves as a filter or screen to protect innocent people and to prevent the legal machinery of the state from becoming a mere instrument of vigilantism.

The General Counsel's office offers the following suggestions in dealing with local prosecutors. First, know who your local prosecutor is—both the

chief prosecuting attorney or the head of the office and that official's assistants most likely to be assigned animal cruelty cases and other misdemeanors. Try to develop a good relationship with the prosecutor in advance of a case breaking; this can frequently best be done by meeting with him or her informally, perhaps discussing the applicable cruelty statutes and his or her general attitude toward enforcing them. These preliminary contacts should pay dividends later when you need the prosecutor's undivided attention in pursuing a case. Develop a sound working knowledge of the cruelty statutes and of basic criminal procedure in your state, obtain evidence carefully, and prepare your case for presentation to the prosecutor thoroughly. If the prosecuting attorney expresses little interest in pursuing a case further, do not automatically assume bad faith on his or her part. Rather, find out precisely what is wrong with a case from the prosecutor's point of view (keeping in mind the several reasons why a prosecuting attorney might decline to seek an indictment or file a charging document) and attempt to cure the problems.

In spite of the considerations discussed above, there will be instances when you are certain of the strength of your case but are running into a prosecutor's outright refusal to pursue the case, for suspect reasons. In the summer 1990 issue of the *HSUS News*, the "Law Notes" will include a number of possible approaches to bypass or overcome prosecutorial discretion. ■

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