

## FRUSTRATIONS WITH PROSECUTORS—II

In the Winter 1990 *HSUS News*, we discussed the role of prosecutorial discretion in the American criminal justice system and described the various valid factors that inform a prosecutor's thinking in deciding whether or not to pursue a complaint of animal cruelty. We also emphasized the importance of developing a good working relationship with a local prosecutor prior to a case breaking.

If you are certain of the strength of your case, have already attempted to meet the prosecutor's objections, and are still running into a flat refusal to pursue the case, for suspect reasons, on the part of the prosecutor, explore the following ways to circumvent or overcome prosecutorial discretion:

(1) Research the law of your state to determine if a private person or organization may obtain a civil injunction, a court order directing a defendant to cease acts of cruelty. North Carolina law, for example, provides for such a remedy, which may be pursued independently of a criminal prosecution. In order for a civil injunction action to succeed, it must usually be based on a specific statute providing for such remedy, not on the general adjudicative powers of the court.

(2) A small number of states, including Ohio, allow humane societies to prosecute cruelty cases directly or to hire private attorneys to act as prosecutors. Pennsylvania has a more general procedural statute empowering a court to appoint a private prosecutor when a district attorney neglects or refuses to act upon a criminal charge regularly returned. You will

need to find and rely upon a statute authorizing such private prosecutions.

(3) Determine whether your state's attorney general can file criminal charges—which would, in effect, overrule a local prosecutor—or whether the local prosecutor has the final say. If the prosecutorial chain of command begins with the attorney general or the attorney general has independent prosecutorial authority, you may wish to approach the attorney general's office directly in the absence of cooperation from local authorities. This should be done sparingly, knowing that the prosecutor will resent your having gone over his/her head. Always keep in mind that there will be other cases on the horizon for which you will need the cooperation of the local prosecutor.

(4) In some states, the governor has the power to appoint

special prosecutors when it appears that the local machinery of criminal justice has become ineffective.

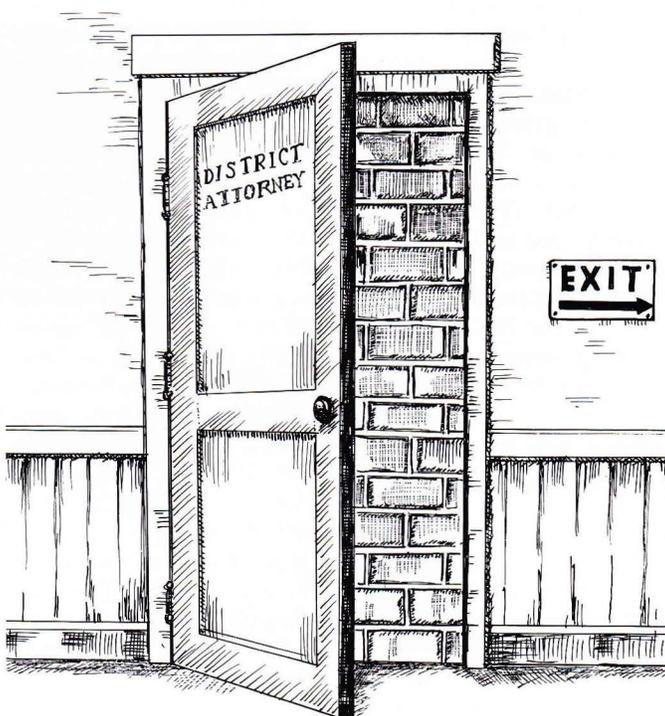
(5) Prosecutors are frequently susceptible to public opinion, expressed in terms of letters and telephone calls or through media attention, particularly in jurisdictions where the prosecutors are elected rather than appointed. The underlying theme of a public-relations campaign should not be merely to put pressure on a prosecutor, but rather to remind him/her that the public takes offenses against animals seriously and expects the laws protecting them to be enforced and that the cruelty case at hand is worthy of reconsideration.

(6) Check to see if your state has a prosecutors' council or other administrative body that seeks to promote uniformity of decision-making among public

prosecutors. Such an agency would probably not be able to compel a local prosecutor to change his/her mind but might be influential.

(7) Seeking an order from a court to force a prosecutor to pursue a case (a writ of mandamus) is often the first approach activists think of but is also the least likely to succeed. The doctrine of separation of powers bars a court from interfering with prosecutorial discretion, which is an executive function. A prosecutor's decision not to pursue a case is inherently discretionary, which makes such a decision largely immune to a private action for a writ of mandamus. On the other hand, the courts have been known to step in when a prosecutor's decision not to prosecute can be shown to have been based on a "corrupt motive" or invalid factors, such as political considerations, money, and personal relationships with the would-be defendants, which should not enter into prosecutorial decision-making. Such instances are comparatively rare and the proof would have to be crystal clear. In addition, a provable blanket policy by a prosecutor not to entertain *any* animal-cruelty cases might also prove fertile grounds for judicial review. Again, such instances are rare.

The availability and usefulness of these options will vary from state to state. As with many other aspects of animal protection, there is no substitute for a thorough working knowledge of your state and local laws. ■



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