

## The HSUS, USDA & The AWA-1970

The HSUS made no major effort to have zoos and aquariums included under the Animal Welfare Act of 1970, but it has more than made up for this initial lack of involvement by its participation in the formulation of the regulations and by making the general public aware of the existence and intent of the Act. Additionally, at the request of officials of the Department of Agriculture, Sue Pressman has given instructions to USDA's field inspectors on several occasions since 1971 to enable them to interpret the Act's inexact provisions for the benefit of the animals rather than the convenience of their owners. Sue has repeatedly insisted that the USDA has the authority to interpret the minimum standards within a certain flexible range and should "flex up" instead of down. Exhibits which are barely above the minimum have less distance to fall and minor mishaps can result in suffering for the animals.

The claim that "Zoos [are] in Peril of Padlocking by U.S.", as a headline declared in the Pittsburgh Post in 1972, expressed the hope of many people including animal welfare advocates, members of Congress, and segments of the general public and the zoo profession. When Dr. C.O. Finch, the Senior Staff Veterinarian for USDA's Animal and Plant Health Inspection Services (APHIS) stated that "we would prefer not to padlock zoos . . . but there may be no choice if we want to relieve the suffering of neglected and maltreated animals," he was expressing a commonly held aspiration which USDA has never fulfilled (Bernstein, 1972).

Late in 1971 before the AWA minimum standards had been established, USDA requested that The HSUS investigate Scalf's Menagerie in Tennessee. Upon discovering filthy, overcrowded cages with some animals actually sealed inside them, The HSUS demanded, and got, immediate improvements. Unfortunately for many zoo animals, the

## The HSUS, USDA & The AWA-1970

USDA did not pattern its approach on The HSUS's example, and the Department's willingness to cooperate gave no indication of the trouble that The HSUS would have with USDA over the next nine years.

USDA has never been charged with the task of judging a zoo from the standpoint of its overall philosophy, adequacy of professional staff, or education and conservation efforts. The HSUS, on the other hand, has consistently maintained that without these larger considerations, adequately sized cages, frequent cleaning, and potable water, while immediately important for the individual animal, do not justify the continued existence of a zoo or aquarium. In a letter to a member of a local humane society, Sue expressed The HSUS philosophy:

We do not feel that any park or zoo is justified by simply caging or containing wild or domestic animals in a safe, clean situation. Wild animals don't need that kind of help. They need understanding which in turn leads to preservation of not only their species but [of] their environment (HSUS Files).

She expressed the philosophy even more fully in the November 1971 HSUS News:

Mrs. Pressman warns that zoos will not be accomplishing long-range improvements purely by making checklist corrections of present inadequacies. If a zoo is buried under a layer of archaic administrative structure, political problems, and public demand for specific types of animals, piling anything good or bad on top of it will only make matters worse. . . . The first step should be a thorough evaluation of the concept of the zoo in question. Is it doing anything to help the children and adults of the community understand how animals live in their natural environment? If it isn't, forget the cage-by-cage improvements . . . it would be better to tear the zoo down and start a new one from scratch.

Unfortunately, some zoos have used the USDA license or registration under the Animal Welfare Act to justify their continued stagnation. A typical example of

## The HSUS, USDA & The AWA-1970

this kind of response came from the Manager of the Beaver Park Zoo in Cedar Rapids, Iowa. HSUS Regional Director Ann Gonnerman and representatives of the local humane society had investigated the zoo and found old-fashioned, unsafe, overcrowded exhibits; a general lack of knowledge on the part of the zoo's staff; and inadequate planning for future exhibits. Zoo visitors were not prevented from throwing litter into the cages--many of which were not even labelled with simple signs--or from prodding and harassing the animals. When Sue wrote to the zoo's manager that he was offering the public "nothing more than a collection of imprisoned animals," his reply was: "We must be doing something right . . . we are inspected by the U.S.D.A. and their reports are excellent" (HSUS: Iowa Zoos File).

Whether the USDA inspector actually indicates that a zoo is "excellent," or whether his finding that it is "in compliance" is interpreted as "excellent" by the zoo's staff, the municipality, or the local news media is not always easy to determine. But the fact remains that such qualifying language repeatedly finds its way into public reports of USDA's inspections of zoos. Because the AWA regulations do not address the questions of institutional philosophy and responsibility to the community, USDA inspectors should be strictly prohibited from giving the impression that their reports can be used to assess the overall quality of a zoo.

In 1975, a local paper in Lafayette, Indiana proclaimed "Ag Inspector Rates Zoo OK," even though the inspector cited a number of inadequacies in the zoo. He had pointed out that the drainage was "very inadequate," the interior of a main building needed repair to make it possible to clean it properly, and the fence around the buffalo compound was dangerously weak. The interpretation that he

## The HSUS, USDA & The AWA-1970

found the zoo "OK" may have come from the local journalist who compared these findings with those of Sue Pressman. She found the same problems and others besides. She stated the zoo needed a full-time director, a reduction in the total number of animals to reduce overcrowding, and the complete draining of the duckpond to correct obviously unsanitary conditions. She told the part-time director that: "[The zoo is] a non-functioning menagerie that is one of the most wasteful I've seen--wasteful of [both] public space and tax money."

The municipality took umbrage publicly at her charges, but it also began to take action. A local newspaper article in 1976 stated: "The zoo improvements are partly the result of criticism leveled at the zoo last March by Sue Pressman" (HSUS: Columbian Park Zoo File).

In 1978, the Kansas City Star proclaimed that "USDA Cites Minor Violations at Zoo." The inspector had, in fact, reported violations of the AWA which were potentially dangerous to both the animals and the public, as well as being detrimental to the health of certain animals. It is not clear to what extent the inspector was responsible for his findings being interpreted as "minor violations," but this kind of interpretation has often detracted from the efforts of The HSUS, local humane societies, zoo societies, zoo staff members, and the general public to convince municipal officials that their zoos have serious deficiencies which need immediate attention.

On several occasions it has been necessary for the Society to request that a second inspector or team of inspectors examine a zoo. The second inspection, from The HSUS's perspective, has not always proved to be of more help than the first.

## The HSUS, USDA & The AWA-1970

In the case of the Manhattan, Kansas Zoo, the second inspection did help. The first inspector found the zoo to be in compliance with the AWA, but HSUS's Midwest Regional Director Ann Gonnerman found several violations of the minimum standards. Gonnerman also declared that the inspector had pointed out some of these violations to the zoo's director but had not indicated them on the official inspection form. This zoo was also criticized by the local humane society and its membership in the AAZPA was suspended; but it was Gonnerman's criticism which resulted in a second inspection by the USDA.

On this inspection, Dr. Keith Sherman, one of USDA's more effective Animal Welfare Act inspectors, found numerous violations of the Act's provisions and gave the zoo a period of months to make the necessary changes. Dr. Sherman's report was so well-prepared that Gonnerman incorporated it into her presentation before the City Commission--an apparently unique occurrence in The HSUS's relationship with the USDA. Local sources credited Ann with convincing the Parks Commission to take action to improve the zoo (HSUS: Sunset Zoo File).

When a second inspection of the zoo of Arkansas (formerly called the Little Rock Zoo) was requested by The HSUS, it proved to be less helpful than in the Kansas Zoo case. The visit by a second team of USDA inspectors confirmed the findings of the first that there were only a few--far fewer than Sue Pressman found--violations of the Animal Welfare Act. Fortunately, on this occasion, municipal officials listened to The HSUS rather than USDA. This zoo had many of the problems that The HSUS has found to be associated with municipally operated zoos: The Zoo Director resigned in frustration over the interference of the Parks Department; the knowledgeable individuals on the zoo staff and in the Zoo Society were being

## The HSUS, USDA & The AWA-1970

ignored by the municipality; some of the exhibits were seriously overcrowded; and the zoo's veterinarian was too reluctant to perform euthanasia on aging or ill animals. Those individuals who knew what needed to be done to improve the zoo were powerless to take the necessary action. In this case, The HSUS was able to break the impasse through Sue Pressman's public criticisms. Undoubtedly, one reason for The HSUS success in this case was that dedicated zoo society members and an enlightened City Director were able to reinforce Sue's criticisms and monitor the city's progress in making the needed improvements.

If The HSUS found informed, cooperative citizens and officials in Little Rock, it found just the opposite in Dayton, Ohio. The live animal exhibit in the Dayton Museum of Natural History had been a source of complaints to The HSUS for some years. Great Lakes Regional Director Sandy Rowland wrote to the Director of the Museum after an inspection and urged him to give more consideration to the philosophy the Museum was projecting with its exhibit. Sandy felt that nothing positive could be conveyed by the overcrowded, sterile "stamp collection type display." She and Sue Pressman were also particularly concerned about a fox and coyote which were kept chained to a wall and constantly subjected to the stress of being surrounded by large, noisy groups of visiting children. They were also disturbed by the generally unsanitary conditions of some of the exhibits and the lack of potable water for some of the animals. The Director's response was hostile and he professed not to understand what Rowland meant by her suggestion that the museum examine its philosophy.

The USDA inspector reinforced HSUS's suggestion that the fox and coyote be unchained and moved to more suitable quarters. The Director flatly refused to do so

The HSUS, USDA & The AWA-1970

unless forced by law, and the USDA inspector claimed he had no power to effect the requested change. He stated to the Dayton Journal Herald on 10 July 1979 that the Animal Welfare Act's provision for animals to be allowed to make "normal postural and social adjustments" meant only that they should be able to "sit, stand, and turn around." Sue Pressman disagrees vehemently with this interpretation and considers it to be one of the major stumbling blocks to the adequate enforcement of the Animal Welfare Act's provisions (HSUS: Dayton Museum File).

Some USDA inspectors have interpreted the vaguely worded provisions more strictly and have even threatened some zoos with closure if they failed to comply within a given period of time. The Audubon Park Zoo in New Orleans was one zoo so threatened. USDA's Dr. C.O. Finch had said of it in 1972 that it was "probably the worst [U.S.] zoo," and declared that it was "one of those places we're going to have to spend a lot of time on" (Bernstein, 1972). The USDA gave the zoo a time schedule for needed changes and the schedule was met.

The only zoo to be formally charged by USDA with violating the AWA is the Children's Zoo in Akron, Ohio. This zoo has also received considerable attention from The HSUS--including the threat of legal action, in addition to having its membership suspended by the AAZPA. In 1979 the zoo's Director stated he felt the USDA's forceful approach had had a very salutary effect upon the zoo. Sue feels it still has a long way to go, however; and its membership in the AAZPA has not yet been reinstated.

The unevenness of USDA's enforcement is also reflected in the experiences of The HSUS's other regional directors and investigators. Jack Inman, HSUS Regional

## The HSUS, USDA & The AWA-1970

Director in the New England area, reports that USDA's staff people are "very receptive to [The HSUS's] efforts, and have specifically asked for . . . assistance in correcting bad situations." The HSUS West Coast Regional office has had a similarly good rapport with USDA. Eric Sakach, Investigator for the West Coast Regional Office, indicates that "The WCRO enjoys a sound rapport with USDA/APHIS in this region and their personnel have been extremely cooperative in assisting in problematic areas" (Personal Communication).

The Southeast Region, by contrast, has repeatedly had problems with USDA in that area. Investigator Bernie Weller declares that "veterinarian inspectors [are] issuing compliance reports on many non-compliance exhibits." Even more serious is the fact that "cases have been tried and lost because compliance reports from USDA stated the place was in compliance and/or the place had a USDA license." Weller attributes many of the problems to the inspectors' lack of knowledge or their unwillingness "to offend" or get "involved." Weller has found USDA to be far more of a hindrance than a help in attempts to prevent cruelty to captive wildlife (Personal Communication).

Whatever unevenness exists in the enforcement of the AWA at the level of the inspectors working in the field, the blame must be placed upon those at the top of the USDA hierarchy. The adequacy of enforcement appears to depend upon the conscience, knowledge and enthusiasm of the individual inspector. It should not.

### USDA's Changing Approach to The Animal Welfare Act

Dale Schwindaman, the Senior Staff Veterinarian in charge of animal care for USDA/APHIS, freely acknowledges that USDA's enforcement of the AWA has been very uneven.



## The HSUS, USDA & The AWA-1970

Schwindaman, whom some have accused of being too cooperative with animal welfare organizations, attributes the unevenness, in part, to an unsatisfactory beginning in 1971 (Personal Communication). When USDA inspectors began to judge exhibits for captive wild animals they did not have the training necessary to make the subjective judgements required to interpret the regulations. Nevertheless, they were directed by the Senior Staff Veterinarian in charge at the time to license or register the majority of the known exhibitors before the end of the fiscal year in 1972.

As a result, exhibitors were registered who should have been licensed and both licenses and registrations were issued to exhibitors before they were forced to comply with the regulations. In spite of the opinion of USDA's legal counsellors that any individual who "bought, sold and transported animals for purposes of exhibition" was subject to be licensed under the Act, those exhibitors who purchased animals for the sole purpose of replacing ones that died and sold only the offspring of animals in their collections were permitted to be registered. In 1972, some 700 exhibitors were registered and approximately 300 were licensed, compared with 215 registered and 1,050 licensed today.

The distinction between the two classes of exhibitors is important because there are greater legal sanctions which can be brought against licensed exhibitors found in violation of the Act's provisions. They are subject, in addition to suspension or revocation of their license, to civil penalties, a jail sentence, or a cease and desist order. Registrants are subject to cease and desist orders only. Before 1976, cease and desist orders had to come from the Department of Justice; now they can be issued by the USDA General Counsel. In addition, reg-

The HSUS, USDA, & The AWA-1970

istered exhibitors pay no annual fee, while licensed exhibitors pay an annual fee based upon the number of animals in their collection.

Peggy Morrison, who monitors the Animal Welfare Act for The HSUS, requested a current definition for both licensed and registered exhibitors in November 1979 and received the following reply from the Freedom of Information Coordinator for USDA/APHIS:

Section 2(h) of the Animal Welfare Act . . . defines an exhibitor as ' . . . any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary [of Agriculture], and such terms includes [sic] carnivals, circuses, and zoos exhibiting such animals whether operated for profit or not. . . . In general, anyone who purchases or sells such animals, transports them over public roads, or exhibits them to the public, must license as an exhibitor. A registered exhibitor then is a person who has not obtained the animals in commerce (donation, etc.), does not routinely transport them over public roads, and does not exhibit them to the general public (HSUS Files).

In describing the initial response of exhibitors to licensing or registration by USDA, Dr. Schwindaman divides them into three classes corresponding roughly to The HSUS's 1-2-3 rating system. The few major zoos at the top were sympathetic to the purposes of the Act. They had knowledgeable and concerned staffs, many exhibits which exceeded the minimum standards, and were easily able, generally, to comply with the regulations. A second, rather sizable group of zoos met some of the requirements but not others and their staff members made their feelings known that they considered the Animal Welfare Act to be an imposition upon them. The third and largest group, even less cooperative than the second, did not meet the minimum standards, but were licensed or registered anyway--before they were

## The HSUS, USDA, & The AWA-1970

forced to comply in many cases--according to the directive previously described.

In response to the question whether the USDA has ever closed any zoos, Dr. Schwindaman replied that a recent check of the records revealed that 176 exhibitors have, since 1972, given up their businesses voluntarily. He feels that in most instances no new operations sprang up to replace them. The larger number of exhibitors listed by USDA in 1980 reflects, Dr. Schwindaman believes, a number which have existed for a long time before being "found" by USDA, rather than a growth trend. Sue Pressman estimates that there are probably an additional 500 or more small operations (of one or two animals) which USDA inspectors have not yet found.

Dr. Schwindaman also feels that the changes in senior staff veterinarians over the years have created an enforcement "nightmare" because there was no one on the staff consistently to insure the uniform interpretation of standards or regular training of inspectors. Field people who did get "fired up" by training sessions would find their enthusiasm waning upon returning to their regions to be confronted with myriad other responsibilities in addition to the AWA. The upper echelon of USDA had no one person in charge over the years who worked at sustaining the level of enthusiasm generated by the training sessions.

Since 1978, Dr. Schwindaman says, the USDA has changed its approach to the AWA. The Department is trying to put people in responsible positions who have a genuine commitment to the enforcement of the Act. It has also decided to insure that the regional staff people receive the training necessary to ensure adequate enforcement. Previously, the emphasis had been upon the training of field inspectors only.

The HSUS, USDA, & The AWA-1970

Also, another layer has been added to the hierarchy of the USDA staff with the addition of "Animal Care Specialists" to assist Veterinary Medical Officers (VMO's) with the AWA exclusively.

Dr. Schwindaman feels that the time has come when "compliance" must insure that exhibitors are "well above" the minimum line so that they cannot easily fall below it. This appears to be Dr. Schwindaman's version of the concern with "flexing upward" that Sue Pressman has been stressing to USDA for so long. Dr. Schwindaman is also confident that the minimum standards can be raised by improving the attitude of the inspectors.

In spite of the shortcomings in the Act's enforcement over the years, Dr. Schwindaman believes that it has been of "tremendous value" in improving zoos. Without it, The HSUS could not have accomplished as much as it has with respect to zoos. He also feels the AAZPA could not have gotten its Accreditation Program underway without the AWA--and, he adds, The HSUS's Zoo Reform Program.

In fact, Dr. Schwindaman gives The HSUS considerable credit for USDA's new commitment to the enforcement of the Animal Welfare Act. The HSUS alerted people to the existence of the AWA and urged them to express their complaints about sub-standard operations and inadequate enforcement directly to USDA. Unlike others who have spoken disparagingly about The HSUS's "media-oriented" approach to zoos, Dr. Schwindaman believes the negative statements The HSUS has made publicly about USDA have resulted in the Act's enforcement being given a much higher priority by the Department's upper echelon. USDA/APHIS was in no position to tell the public of the problems it was having, and The HSUS filled a vital need by describing the

## The HSUS, USDA, & The AWA-1970

trouble with the "system."

Regarding the efforts of other national animal welfare organizations, Dr. Schwindaman says that American Humane is communicating with USDA again after a period when very little was heard from them. Overall, he feels they have always been more oriented toward education than advocacy, and have never been involved with zoos in the same way as The HSUS. The Animal Welfare Institute has been in constant touch with USDA and has generally been very helpful. The Fund for Animals and other "wildlife-oriented organizations" have only been in touch with USDA regarding specific cases. Friends of Animals and the Society for Animal Rights, which Dr. Schwindaman has some difficulty in keeping separate, have been exclusively critical and of no help to USDA at all, he feels.

### Problems Still Remain

Despite USDA's new attitude toward the enforcement of the AWA--the results of which remain to be seen--there are some very basic problems with the Act itself. One problem is the absence of a definition for "roadside zoos," in spite of the fact USDA lists the term as a classification on its 18-8 form, in use since 1975. The applicant may check this term if he feels it applies to his operation, but the Department has no definition to aid him in making that determination. This makes the 18-8 form of little use in determining how many zoos exist which The HSUS would consider as "roadside," and exactly where they can be found. The "how" and "where" would have to be ascertained before Congress could be persuaded to legislate class 3 zoos--"roadside" or municipal--out of existence.

Peggy Morrison believes that if the USDA inspectors were more informed and kept better records it would be possible to determine just which of the 1,050 licensed

## The HSUS, USDA & The AWA-1970

and 215 registered exhibitors would actually fit The HSUS definition of the term. Presently, in order to estimate the number of "roadside zoos"--assuming The HSUS could come up with a definition for them--one would have to examine each of USDA's 18-8 forms for the location, name of the establishment, and size of its collection. Only by this means, Peggy feels, could the Society even arrive at a "guesstimate" of the scope of this particular problem. While USDA is willing to permit its forms to be examined, it is not willing to perform the task.

As long as USDA is prohibited from making any judgement regarding the benefit the public derives from a zoo, amateur operations which make no pretense of serving the purposes of education, conservation, or research will continue to function with what is still seen by many people as government approval.

### The Zoo Profession's View of the AWA

Some members of the zoo profession are convinced that the AWA has put many, or even most, "roadside zoos" out of business; others are equally convinced that it has not. Robert Wagner (personal communication) concurs with the second viewpoint, but contends that some USDA people have "bragged" that a lot of roadside zoos have been put out of business. Wagner further states that the AAZPA Accreditation Program was designed with emphasis upon uniformity of standards, because AAZPA has been concerned with the unevenness of USDA enforcement. He considers the vagueness of the regulations to be a major stumbling block in effectively enforcing the Act, and contends that no major improvement in the law will be forthcoming until a definition of a "minimum zoo" can be written (i.e., what is the least a zoo can have in terms of exhibits, etc., and still be call a zoo?).

## The HSUS, USDA, & The AWA-1970

Dr. Philip Ogilvie and Dr. Wayne King concur with Wagner's opinion that the Animal Welfare Act has had no appreciable effect upon roadside zoos. Ogilvie's opinion is that USDA's effect upon zoos generally has been minimal. King agrees and goes so far as to contend that some state laws have been more effective in bringing improvements. King feels The HSUS should sue the Department of Agriculture to make it enforce the Act. He feels this action could well result in the closure of roadside zoos. Both he and William Conway (personal communication) feel The HSUS and the AAZPA should join forces in this endeavor (not necessarily a joint suit, but certainly a joint effort). Conway feels that government regulation is essential for the elimination of roadside zoos.

While some zoo people have had problems with overzealous USDA inspectors whose suggestions for improvement have been unnecessarily stringent (Wagner and Graham, personal communication), USDA has been less of a problem to zoos than USDA, because they "fill in their own paper" (Reed, personal communication). Earl Baysinger of the Department of the Interior agrees. He does not feel there are any laws actually causing zoos to improve and contends that USDA has always been regarded by many people as "client oriented." He feels that "bureaucrats function only under duress" generally, and there is always a need for apolitical public interest groups such as The HSUS to "oversee the regulators" when the interest subsides which led to the passage of the regulations in the first place (personal communication).