

ANIMAL CRUELTY LEGISLATION: THE PASADO LAW AND ITS LEGACY

By
STEVE ANN CHAMBERS*

People often misunderstand the term "animal rights." Its use is sometimes interpreted as perjorative, but when attorneys talk about animal rights, we use it as a term of art. Legal rights are what we as lawyers are trained to pursue on behalf of aggrieved or injured parties. As lawyers, we see many egregious injuries suffered by animals who have no voice or place in our system of law. We think this is fundamentally unjust, and it is this flaw in the law that fuels the Animal Legal Defense Fund's (ALDF)¹ mission to expand the law to include the interests of animals.

I would like to address anticruelty legislation and relate my own experience in working to strengthen the anticruelty statute in Washington state. I mentioned a moment ago that animals do not have legal rights. This is true. Nonetheless, laws have been enacted over the years designed to protect animals from certain abuses. There are two main examples of these laws: 1) state anticruelty laws, and 2) the federal Animal Welfare Act.² The problem, however, especially with regard to the Animal Welfare Act, is the failure of the government to enforce these laws. The right or the duty to enforce them is bestowed exclusively upon the government. If the government fails in its duty to enforce, neither the animal nor a person in her stead can sue to enforce the law because of a lack of "standing." In other words, the party complaining that the law is not being enforced (a human) is not the party suffering the injury. The animal being subjected to cruelty is the party suffering the injury, but since animals are not legally recognized under our system of law, they also fail to pass the requisite standing test. Thus, the law often goes unenforced, and animals go unprotected. This goes back to the flaw in the law we are trying to correct by expanding it to include the interests of animals.

In the meantime, we are working within the existing system to do whatever we can to protect animals. ALDF has developed a program called "Zero Tolerance for Cruelty" which uses a two-pronged approach designed to eradicate cruelty through: 1) the strengthening of existing anticruelty laws, and 2) an aggressive enforcement campaign. We are at-

* President, Animal Legal Defense Fund.

¹ The Animal Legal Defense Fund is a national non-profit organization and network of attorneys. It addresses issues involving animals through litigation, lobbying, and public education.

² Animal Welfare Act of 1970, 7 U.S.C. §§ 2131-2159 (1994).

tempting to update the anticruelty laws in all states. There are now fifteen states in this country in which it is a felony to intentionally, cruelly harm an animal.³ That is a vast improvement over a couple of years ago, so progress is definitely being made.

The second prong of the Zero Tolerance Campaign is aimed to assist dedicated prosecutors, like my esteemed colleague, Joshua Marquis of Clatsop County, Oregon, by offering ALDF's network of volunteer attorneys to help in the prosecution of cruelty cases. Nationwide, we have more than seven hundred attorneys on call, ready to do what they can to assist a prosecutor who may otherwise be too overworked to aggressively pursue an anticruelty case. We also hold seminars to educate judges, prosecutors, and law enforcement officials regarding the connection between cruelty directed toward animals and its escalation to violence against humans. The simple understanding of that fact often motivates prosecutors and judges to recognize these cases for what they are—indicator crimes—and to stop them before they advance any further.

To give you an example from my own state of Washington, we began drafting a revision to our anticruelty statute in 1992. We had made significant progress when a tragic incident occurred: the brutal murder of a pet donkey, named Pasado, in a local petting zoo.⁴ This particular instance of animal abuse outraged the citizenry and propelled forward the legislative work we had already started. It gave us the platform for our reform effort as well as the interest of state legislators. Eventually, in the 1994 session, we were able to pass the "Pasado Law," as it is sometimes called, which makes it a Class C felony to intentionally inflict substantial pain, cause physical injury, kill an animal with undue suffering, or force a minor to inflict unnecessary pain, injury or death upon an animal.⁵

Since the law has been in force, ALDF has volunteered services and assisted in a number of cases, usually resulting in conviction. The program has been very warmly received by prosecutors. We have assisted with brief writing, investigation of cases, locating appropriate expert witnesses, and generally doing whatever we can to assist the prosecutor in aggressively pursuing the case. Prosecutors have come to rely on this service, and it has been rewarding to be part of something very positive within the system that directly helps animals. Finally, we have been giving presentations at state prosecuting attorney conferences. We present experts who have studied the connections between violence towards ani-

³ See, e.g. MO. REV. STAT. § 578.012 (1995) (penalties for animal abuse); CAL. PENAL CODE § 597 (1995) (cruelty to animals); OR. REV. STAT. § 167.322 (1995) (aggravated animal abuse). The other states that have felony animal cruelty statutes are: Delaware, Florida, Louisiana, Maine, Michigan, Montana, New Hampshire, Oklahoma, Pennsylvania, Rhode Island, Washington and Wisconsin.

⁴ Kay Kusumoto, *Donkey's Death Blamed on Vandals*, SEATTLE TIMES, Apr. 17, 1992, at A1; see also *State v. Gans*, 886 P.2d 578 (1994).

⁵ 5 WASH. REV. CODE § 16.52.205 (1995).

mals and violence towards humans, and the published data to substantiate those links.⁶

The overall result of these efforts has been fairly amazing. Before the "Pasado Law," I personally received three or four calls a week about horrendous cases of animal abuse. People would plead with me to do something about it, and I would tell the callers that this is a criminal matter and they should contact the police and the prosecutor's office. Often they would call me back and report that the prosecutors were not going to get involved; after all, it was only an animal. However, now that there is a strong law in place, law enforcement officials have begun taking these cases seriously, often arresting and referring a person for prosecution. Prosecutors are now aware of the new law and the extra help offered by ALDF, so they have been prosecuting more cases.

One unexpected benefit of the "Pasado Law" is the media coverage that has been generated by the prosecution of animal abusers. Getting the issue before the public has served to educate people, maybe even the offenders, that cruelty is not tolerated in our jurisdiction. So, the one good thing to come out of the senseless and brutal death of Pasado was Washington's new law that has already done so much to eradicate cruelty against animals.

Our work is far from done, though, as we still have a number of states with antiquated anticruelty laws that need revising. We are working to remedy that on a state-by-state basis. I encourage anyone who has the ability to try to reform the law within your own state, if needed. ALDF has model legislation available to the public, and we will advise you as much as possible about the legislative process in your own state.

One of the best examples of the success of this program is the experience of District Attorney Joshua Marquis. I do not think Mr. Marquis had ever heard of the ALDF until the *Kittles* case,⁷ but he received our packet of information and the offer to help, and he took advantage of it. The rest is history. Mr. Marquis' work serves as a model, encouraging other prosecutors to aggressively enforce anticruelty laws. I ask anyone who has the opportunity to please do what you can to update existing anticruelty statutes, to enforce the laws that do exist, and to support the effort to expand the law to include the interests of animals. That is the most efficient way to help the largest number of animals and to make this a more civilized and just society for ourselves, as well as the animals with whom we share this planet.

⁶ See, e.g., Frank Ascione, *Children Who Are Cruel to Animals: A Review of Research and Implications for Developmental Psychopathology*, 6:4 *ANTHROZOOS* 226-246 (1993).

⁷ State v. Kittles, No. 93-6346 (Clatsop County (Oregon) Dist. Ct. 1995).

