

INTRODUCTION

A CALL TO ACTION: CONCRETE PROPOSALS FOR REDUCING WIDESPREAD ANIMAL SUFFERING IN THE UNITED STATES

By
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*[A]lthough the world is full of suffering,
it is full also of the overcoming of it.*¹

—Helen Keller, blind & deaf educator

While philosophical and legal debates abound about animals' status as property, standing in court, and rights and welfare, I would like to note the pragmatic legal work being done every day to address and prevent animal cruelty as well as suggest a roadmap of future goals for those interested in working on preventing criminal animal cruelty.²

In the ten years that have passed since I began doing animal protection work on a full-time daily basis for the Animal Legal Defense Fund (ALDF), I have seen a lot of progress: Twenty-six³ states passed

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¹ Hellen Keller, *The World I Live In* 130 (New York Review of Books 2003).

² Referring to cruelty prohibited by state anti-cruelty laws, as opposed to institutionalized but legal cruelty, such as that occurring on factory farms or in research laboratories.

³ Alabama (2000), Alaska (2008), Arizona (1999), Arkansas (2009), Colorado (2002), Georgia (2000), Hawaii (2007), Illinois (1999), Iowa (2000), Kansas (2006), Kentucky (2003), Maine (1999), Maryland (2001), Minnesota (2001), Nebraska (2002), Nevada (1999), New Jersey (2001), New Mexico (1999), New York (1999), Ohio (2003), South Carolina (2000), Tennessee (2002), Utah (2008), Virginia (1999), West Virginia (2003), and Wyoming (2003).

laws making some form of animal cruelty a felony, bringing the total number of felony states to forty-six;⁴ even long-time holdout Arkansas passed a felony law that will go into effect later this year.⁵ Animal fighting is now illegal in all fifty states, and a federal law covers interstate fighting enterprises.⁶ Some jurisdictions have recognized the benefits of forming animal cruelty task forces to bring together government and animal-related agencies and resources in a concerted effort to address cruelty crimes,⁷ and the trend may be spreading. In the wake of Hurricane Katrina in 2005, animal lawyers⁸ have successfully pushed for a role as part of national and local disaster response teams to ensure that animals are not left behind to endure abandonment and neglect in the face of natural or manmade disasters. These advances have occurred in a blazingly short amount of time when compared to the development of other legal practice areas, such as property or constitutional law. Is there time to rest on our laurels and take a breath? Of course not. What work lies ahead then for the next ten years? How far ahead should we move the goal line, and toward what goals?

The difficulty with the majority of animal protection work is that it is devoted to dealing with the consequences of cruelty after it has occurred: drafting and passing stronger laws so there are meaningful consequences for animal cruelty, training investigators and prosecutors how to investigate and prosecute the crimes after the beating, stabbing, beheading, or microwaving of an animal, and ensuring that the cases are vigorously prosecuted and appropriately sentenced. These steps send a message to the community that animal crimes do matter, but they don't prevent cruelty, except in terms of being indirect deterrents.

However, there is at least one category of cruelty in which ongoing cruelty can be interrupted: animal hoarding. The dark phenomenon known as animal hoarding is slowly coming into the light in terms of a greater awareness by law enforcement, the media, and the public of the impact it has on animals and on local resources. The work done by the Hoarding of Animals Research Consortium, summarized in their

⁴ Only four states remain without a felony anti-cruelty law: Idaho, Mississippi, North Dakota, and South Dakota.

⁵ On February 4, 2009, the governor of Arkansas signed into law Arkansas Act 33 of 2009, which will become effective ninety days after the current legislature adjourns, estimated to be July 2009.

⁶ Animal Fighting Venture Prohibition, 7 U.S.C. § 2156 (1999).

⁷ *E.g.* Animal Cruelty Taskforce of S. Ariz., <http://www.act-az.org> (last accessed Apr. 11, 2009); the Vt. Animal Cruelty Task Force, <http://www.vactf.org/> (last accessed Apr. 11, 2009); and The L.A. Animal Servs. Animal Cruelty Task Force, http://www.laanimalservices.com/about_actf.htm (last accessed Apr. 11, 2009).

⁸ *See* American Bar Association, *Animal Law Committee*, www.abanet.org/tips/animal/home.html (last updated Mar. 2, 2009) (last accessed Apr. 11, 2009) (The ABA-TIPS Animal Disaster Relief Network resolution maintaining that adequate disaster relief requires federal and state governments to ensure legislative action and the operation of criminal and civil justice systems.).

report released in 2006,⁹ no doubt contributed to this increased awareness. Logically then, practical efforts to address animal hoarders should dictate the direction of the next set of goals for those interested in protecting the largest number of animals from criminal cruelty.

With the near-completion of a nationwide network of felony animal protection laws, the next march must be toward a national network of pre-conviction forfeiture and bond laws in animal cruelty investigations. This would immediately shift the burden of the costs of caring for animals from the county or humane society that seizes the animals squarely onto the shoulders of the defendant, where it belongs.

ALDF has drafted a model law designed to address defendants' Constitutional due process rights while requiring the defendant to either fork over an amount that will cover the cost of feeding and housing the animals during the case¹⁰ or get them out of the defendant's legal custody so they may be immediately adopted.¹¹ My colleague Stephan Otto, ALDF director of legislative affairs, has spent years study-

⁹ *Animal Hoarding: Structuring Interdisciplinary Responses to Help People, Animals, and Communities at Risk* (Gary J. Patronek, Lynn Loar & Jane Nathanson eds., 2006).

¹⁰ Usually this is an amount comparable to what the defendant would be paying to care for the animals anyway, if they were still in his or her own custody.

¹¹ The ALDF *Model Animal Protection Laws: Costs-Of-Care Bonds* 13:

1. The guardian of an animal that has been impounded pending outcome of a criminal action charging a violation of the [animal protection statutes] may prevent disposition of the animal by an animal shelter, humane society or other animal care agency that has temporary custody of the animal, by posting a bond with the court in an amount the court determines is sufficient to provide for the animal's minimum care for at least thirty days, including the day on which the animal was taken into custody. Such bond shall be filed with the court within ten days after the animal is impounded. If a bond is not so posted, the animal shall be deemed abandoned and the custodial animal care agency shall determine final disposition of the animal in accordance with reasonable practices for the humane treatment of animals. At the end of the time for which expenses are covered by the bond, if the guardian desires to prevent disposition of the animal by the custodial animal care agency, the guardian shall post a new bond with the court within ten days following the prior bond's expiration. If a new bond is not so posted, the animal shall be deemed abandoned and the custodial animal care agency shall determine final disposition of the animal in accordance with reasonable practices for the humane treatment of animals. However, nothing in this subsection shall prohibit the immediate disposition of the animal by euthanasia if, in the opinion of a licensed veterinarian, the animal is experiencing intractable extreme pain or suffering. The guardian shall be liable for all costs of providing minimum care, or disposal of the animal.

2. If a bond has been posted in accordance with subsection (1) of this section, the custodial animal care agency may draw from the bond the actual reasonable costs incurred by the agency in providing minimum care to the impounded animal from the date of initial impoundment to the date of final disposition of the animal in the criminal action.

(available at http://www.aldf.org/downloads/ALDF_Model_Laws_v13_4.pdf) (last accessed Apr. 11, 2009).

ing the animal protection laws of all fifty states and the U.S. territories and drafted ALDF's model laws.¹² He cites California,¹³ Colorado,¹⁴ and Idaho¹⁵ as having pre-conviction forfeiture laws that serve as good examples because they provide swift due process and cost-shifting to defendants.

Throughout the past few years I have worked on cases involving as few as a single animal and as many as 300 dogs in one case and 500 dogs and cats in another case. In these cases, the animals were suffering the cumulative effects of living in putrid filth—ammonia burns in their respiratory systems or scalded testicles from the breakdown of ever-present urine; near-blindness from being kept in a dark wooden box or room for their entire life; or untreated broken bones, skin lesions, and dangling eyeballs caused by fighting for food or who-knows-what. In most cases these animals cannot be left on the defendant's property (otherwise known as an on-site seizure) while the case proceeds through the legal system. This is for myriad reasons, the obvious one being that the grounds are not habitable by human nor beast, but also because it is nearly impossible to secure these properties sufficiently to prevent ongoing interference by the defendants, especially if they live on the same premises.

Cases involving large animals represent even more of a challenge. I reviewed cases in which herds of horses individually lost hundreds of pounds and chewed on wooden fence posts for nourishment. Where are they to be held upon seizure? Police agencies are often reluctant to seize large animals, or hundreds of smaller ones, due to a lack of money and shelter space to hold significant numbers of sickly animals until the neglect cases get to trial. In each of these instances, a pre-conviction forfeiture statutory scheme would have worked to remove the police agencies' reluctance.

Imagine the following scenario, which comes across my desk regularly: We have finally persuaded local law enforcement to investigate a hoarding situation only to find out that they cannot remove the animals solely because there is no room at the nearest animal shelter. Many rural areas do not even have their own animal shelter. Even if they do, the shelters are so substandard that they are no better than a hoarder's home. Consider Kentucky: At the urging of Kentucky activists, state lawmakers passed the Humane Shelter Law requiring every county or region to have a humane shelter by July 2007.¹⁶ In August 2008, ALDF sued Estill and Robertson counties separately in Kentucky for failing to comply with Kentucky's Humane Shelter Law.¹⁷

¹² Stephan K. Otto, *Model Animal Protection Laws Collection*, available for download at <http://www.aldf.org/article.php?id=262> (last accessed Apr. 11, 2009).

¹³ Cal. Penal Code Ann. § 597.1 (West 2008).

¹⁴ Colo. Rev. Stat. Ann. § 18-9-202.5 (West 2008).

¹⁵ Idaho Code Ann. § 25-3520B (West 2008).

¹⁶ Ky. Rev. Stat. Ann. § 258.195 (Lexis 2005).

¹⁷ *Kasey v. County of Estill*, No. 08-CI-00239 (Ky. 23 Cir. Aug. 20, 2008); *Penrod v. County of Robertson*, No. 08-CI-00025 (Ky. 18 Cir. Aug. 20, 2008).

Robertson County just settled with ALDF, agreeing to get its shelters built this year.¹⁸

In these times of nearly unprecedented recent financial hardship, it may seem hopeless to expect that there will be money to build more animal shelters or bring existing ones up to minimum humane standards. However, we must continue working toward that goal because the economy will recover one day, and the necessary funds will be available. We must also keep the public aware of the need for the shelters so that private businesses and nonprofit foundations will provide grants when local government budgets are constrained. In the meantime, we need to assist cities and counties in responding creatively to this situation, such as by establishing temporary holding areas for large-scale seizures in places like fairgrounds or empty surplus public or private warehouses or barns. Local authorities should consider offering tax incentives to farmers and warehouse owners who allow their spaces to be used to shelter animals taken in large-scale seizures.

Another creative response to this crisis would be to set aside a portion of money within county budgets and private and public grant programs to fund the training of new animal cruelty investigators. While I am encouraged by the increasing number of prosecutors who avail themselves of ALDF's free legal services and presentations on animal cruelty prosecutions, the biggest complaint I hear from them concerns the poor quality of the investigations they are receiving, leaving them with little to take to court to prove animal cruelty was committed. Many animal control personnel spend their entire careers collecting strays and scooping dead animals off the road before working an animal hoarding case. Imagine how overwhelming and bewildering such a task must be for them. Police departments, trained in the basics of a criminal investigation, seem to lack understanding of the basic fundamentals of investigating an animal cruelty case. ALDF offers free trainings for law enforcement and humane society officers, while the Law Enforcement Training Institute's National Cruelty Investigations School offers training for a fee. We must make states and counties understand the urgent need for financial assistance to train cruelty investigators and police.

Finding government subsidy or financial assistance for such programs will continue to be a battle so long as abused animals' needs compete with human-centered programs and priorities. One way to get around this battle is to allow individuals and organizations devoted to animal welfare, and willing to put their resources behind that devotion, to bring cruelty cases to courts themselves in the way that North Carolina has done.¹⁹

¹⁸ Animal Leg. Def. Fund, *ALDF Takes Kentucky Counties to Task for Failing to Protect Homeless Dogs and Cats*, <http://www.aldf.org/article.php?id=675> (last accessed Apr. 11, 2009).

¹⁹ N.C. Gen. Stat. Ann. §§ 19A-1–19A-4 (Lexis 2007).

This law, which I refer to as “19A,” provides that any individual or organization who finds animals to be suffering from animal cruelty may have citizen standing to enforce the state’s anti-cruelty laws in a civil action to remove the animals to safety and bring an injunction against the abusers.²⁰ We already know the 19A law is both legally valid and practical because ALDF successfully tested the law in the North Carolina courts in *ALDF v. Woodley*.²¹ Duke University Professor of Law William A. Reppy extensively analyzed the benefits and drawbacks of the law in his excellent 2005 article that followed the *Woodley* trial.²² We need to introduce and pass laws similar to 19A as soon as possible in the other forty-nine states.

Finally, we must continue to insist that the federal government establish a national system to track animal abusers. Such a move is years overdue. Having the ability to track animal abuse nationally will allow lawmakers and law enforcement officers to identify the problem areas of their jurisdictions and respond to them better, will assist with determining policy decisions and funding levels needed to fight these crimes, and will make animal cruelty offenses harder to minimize or ignore. Tracking these crimes also would allow the public and law enforcement to monitor the physical movements of animal abusers, especially hoarders who often pick up and move when they are discovered and exiled by local communities. Prosecutors could then recommend more meaningful sentences by considering prior animal abuse offenses that may have occurred in another state. Both houses of Congress considered bills to accomplish this last year, but the bills both died in each house’s Judiciary Committee.²³ These bills would not have any added costs because state courts are already required to keep similar statistics on a wide range of criminal categories, including car theft.²⁴ A coordinated national “do not adopt” list would also go a long way toward preventing cruelty by keeping shelter and rescue animals from being adopted by abusers.

Animal protection work can be terrifically daunting: Constantly dealing with horrific images and details involving the very worst things that people do to animals, overwhelming in the sheer volume of work yet to be done, and discouraging as people and our legal system seemingly take forever to make the smallest of changes in the way we think about and treat animals. What keeps me going is the certainty

²⁰ *Id.* § 19A-4(a).

²¹ *Animal Leg. Def. Fund v. Woodley*, 640 S.E.2d 777 (N.C. App. 2007), *appeal denied*, 652 S.E.2d 254 (N.C. 2007).

²² William A. Reppy, Jr., *Citizen Standing to Enforce Anti-Cruelty Laws by Obtaining Injunctions: The North Carolina Experience*, 11 *Animal Law* 39 (2005).

²³ Sen. 2439, 110th Cong. (Dec. 10, 2007) (would have required the National Incident Based Reporting System, the Uniform Crime Reporting Program, and the Law Enforcement National Data Exchange Program to list cruelty to animals as a separate offense category); H.R. 6597, 110th Cong. (July 24, 2008) (would have required the U.S. Attorney General to change existing Justice Department databases so that crimes of animal cruelty could be collected and made publicly available).

²⁴ 13 U.S.C. § 6 (West 2009).

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that small victories are better than no victories, having a slate of tangible goals such as these to keep us all moving forward, and knowing that I am not alone—I am joined by countless others who also have made their lives full of the overcoming of animal suffering.

