

## ANIMAL LAW AND ANIMAL RIGHTS ON THE MOVE IN SWEDEN

By  
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*This essay will refrain from the classical approach of highlighting the philosophers and their views on animals and nature. It will instead delve into the court system of Sweden, and the laws and policies affecting animals in that country.*<sup>1</sup> The purpose of the essay is to highlight the developments, strengths, and weaknesses of Swedish animal law, in the hopes of giving guidance and inspiration to other societies in their quest for effective investigation, enforcement, prosecution, and punishment of animal crimes.

### I. THE COURT SYSTEM OF SWEDEN

Sweden has a three-tier hierarchy of general courts, and the district courts have recently been reduced from approximately one hundred to eighty-two.<sup>2</sup> The largest is the district court of Stockholm, and it is served by a great number of judges.<sup>3</sup> Assisting the judges is a panel of lay assessors, who take part in the main hearings, or trials. In criminal cases, the bench generally consists of one legally trained judge as chairman and three or five lay assessors, depending on the severity of the alleged crime.<sup>4</sup>

The participation of lay assessors has medieval traditions in Sweden and has always constituted a significant element of democracy in Swedish public life. The lay assessors as a system should not be confused with the Anglo-American and Continental Jury. The lay assessors are not only concerned with verdicts but also deliberate with the

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<sup>1</sup> The laws affecting animals are quite similar within the whole of Scandinavia. This includes Sweden, Norway, Finland, Denmark, and Iceland.

<sup>2</sup> F(1982:996) om rikets indelning i domsagor. Omtryckt F(1995:496). Andringar: SFS.

<sup>3</sup> As of January 2002, there were approximately 51 judges serving in civil suits and approximately 37 serving in criminal suits.

<sup>4</sup> Rättegångsbalken (RB) 1 kap. 3b § st. 1 och 3. [The Code of Judicial Procedure, ch. 1, § 3b, ¶¶ 1, 3].

judge on points of law, such as the sanctions to be imposed in criminal cases.<sup>5</sup>

Approximately twelve percent of all district court cases go on to the Courts of Appeal.<sup>6</sup> Sweden has six Courts of Appeal, of which the oldest and largest is the Svea Court of Appeal in Stockholm.<sup>7</sup> Appeals against judgments of district courts can be carried to a Court of Appeal, where as a rule they are decided by three, and in some cases four, legally trained judges or by three legally trained judges and two lay assessors.<sup>8</sup> In lesser criminal cases, where only fines have been imposed, and in civil small claims, a special permission of review is required to have a case tried by a Court of Appeal.<sup>9</sup> As fines typically are imposed in criminal cases where animals have been victimized, verdicts issued by the Courts of Appeal are less common. There is a Supreme Court in Stockholm, and the possibility to have an appeal heard in this Court is subject to special permission.<sup>10</sup> On the whole, only cases that are of precedential interest are tried before the Supreme Court.

## II. THE DEVELOPMENT OF SWEDISH LAWS AFFECTING ANIMALS

Although this essay deals primarily with Swedish laws, their development, and their impact on animals, the analysis is valid far beyond the mentioned scope. When outlining Swedish laws that affect animals, it is useful to imagine a staircase with a number of steps. In societies where there is yet no law protecting animals, the first step should be directed towards the manufacturing of a penal statute that prevents behaviors which the majority would agree upon as undesirable. The next step would be directing efforts toward an Animal Welfare Law that would set a minimum standard of care. Such a law should serve more than a mere educational purpose, and thus should be equipped with adequate and appropriate sanctions. Exemptions that could significantly weaken an otherwise strong law—by either excluding whole classes of animals from its application or allowing husbandry practices detrimental to the welfare of the affected animals—should not be allowed.

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<sup>5</sup> RB 29 kap. Om omrostning 1-6 §§ [The Code of Judicial Procedure, ch. 29, On Voting, §§ 1-6].

<sup>6</sup> BRA-rapport 2001:14 Cases and Court matters in the General Courts, Tabell 1.1 and 1.11. In the year 2000, approximately 60,900 verdicts were issued in criminal cases, and approximately 7,700 (12%) went on to the Courts of Appeal.

<sup>7</sup> The Svea Court was established in 1614.

<sup>8</sup> RB 2 kap. 4 § [The Code of Judicial Procedure, ch. 2, § 4].

<sup>9</sup> RB 49 kap. 13 § första st. and 49 kap. 12 § [The Code of Judicial Procedure, ch. 49, § 13, ¶ 1; ch. 49, § 12].

<sup>10</sup> RB 54 kap. 10 § [The Code of Judicial Procedure, ch. 54, § 10].

### A. *Still on the Ground*

At the bottom of our metaphorical staircase, there are no laws at all concerning the welfare of animals. All states once started at this point, and there are still many nations around the world that either feel no need to protect animals, or have simply been unable to enact even the most basic of laws protecting them.<sup>11</sup>

Since animals are considered objects, property and assets to humans, they are legally non-persons. Many societies have penalty verdicts for perpetrators who have severely beaten, cut, or otherwise injured an animal—most often a beast of burden—belonging to another.<sup>12</sup> Less informed individuals might claim that their society's penal law recognizes animal abuse as a crime but, still standing on the floor, if you scratch the veneer from the surface, it is evident that such a penalty statute merely punishes destruction of property. Thus, these statutes leave the owner of an animal free to destroy his animal property at will, since such an act will have infringed upon no other human's right.

### B. *On the First Step: From the Prevention of Cruelty Towards Modern Criminal Law*

#### 1. *Anti-Cruelty Statute*

Moving up to the first step of the staircase, one finds virgin signs of a law that at least considers animals as worthy of protection, aside from property considerations. In Sweden, this step was reached in 1857 with the enactment of the Criminal Law, and contrary to most contemporary European penal statutes, from the onset the statute applied to cruel abuse of captive animals regardless of property aspects.<sup>13</sup> Not until 1907 were game animals living in the wilderness included.<sup>14</sup>

On this first step, laws are mostly concerned about preventing certain behaviors that are deemed "cruel." Some individuals regard cruelty to animals as an undesirable human trait because if left unchecked, such cruelty could easily transgress on to humans.<sup>15</sup> This

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<sup>11</sup> *E.g.* Iran, Lebanon, Iraq, Somalia, and Ethiopia.

<sup>12</sup> For example, before enacting its first crime statute to protect animals *per se* in 1998, The Philippines had the type of penal statute discussed above.

<sup>13</sup> SFS 1857:61 ("cruel treatment of one's own or another's cattle").

<sup>14</sup> SFS 1907:44 ("cruel treatment of animals").

<sup>15</sup> Essentially there are three behavioral indicators that often are referred to as a "Homicidal Triad"—namely enuresis, fire setting and cruelty to animals. There are limited studies suggesting this triad is a predictor of violent crimes toward humans. *See e.g.* Daniel Hellman & Nathan Blackman, *Enuresis, Fire Setting and Cruelty to Animals: A Triad Predictive of Adult Crime*, 122 *Am. J. Psychiatry* 1431–35 (June 1966). There are quite a number of sources hinting at the connection between violence toward animals and assaultive behavior toward humans. *See e.g.* Carter Luke et al., *Cruelty to Animals and Other Crimes: A Study by the MSPCA and Northeastern University* (1997); Alan R. Felthous & Stephen R. Keller, *Violence Against Animals and People: Is Aggres-*

notion is recognized in terms of whether animal abuse in childhood is a precursor to violence towards humans in the future. Though the notion is gaining fairly wide acceptance in the United States, Sweden has been slow to address the idea.

The Swedish anti-cruelty statute has undergone many changes over the years and it is not at all a bad statute. As a remnant from the past, the statute is still categorized among offenses towards the public order, thus hinting at its origin as a statute of decency.<sup>16</sup> Although the crime is still labeled “cruelty to animals,” under the Criminal Law, the statute has been released from its old legacy of cruelty and is now construed in a way that makes it widely applicable to additional ways of abusing animals. Broad language and the use of general terms such as “maltreatment, neglect and overworking” prohibit diverse actions without reliance on a general term such as “cruelty.”<sup>17</sup> This is significant because when drawing up indictments, more specific language is required than that provided in the Criminal Statute—that is, the prosecuting attorney has to describe the accusations in terms of specific behaviors.

The statutory maximum of imprisonment under the Criminal Statute is two years, but no Swedish court has gone further than to render an eight-month sentence upon conviction.<sup>18</sup> Generally, individuals convicted under the criminal statute are fined.<sup>19</sup> The elements of the crime are intent, gross negligence, or non-justified acts or omissions causing suffering to an animal.<sup>20</sup> Activities as well as neglect (i.e. acts of omission) can be conducted by intent or gross negligence. There are three degrees of intent: 1) malicious or direct; 2) indirect; and 3) eventual (in Latin, “*dolus eventualis*”).<sup>21</sup>

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*sion Against Living Creatures Generalized?*, 14:1 Bull. Am. Acad. Psychiatry L. (1986); *Cruelty to Animals and Interpersonal Violence: Readings in Research and Application* (Randall Lockwood & Frank R. Ascione eds., Purdue U. Press 1998).

<sup>16</sup> Because cruelty towards animals was considered a disturbing vice in the minds of many people, it was thought that society was obliged to act according to high moral standards. Thus, the people could trust society to intervene, and act appropriately when cruel acts towards animals were perpetrated. See generally David Favre & Vivien Tsang, *The Development of Anti-cruelty Laws During the 1800s*, 1993 Det. C. L. Rev. 1 (1993).

<sup>17</sup> The Penal Code, Chapter 16, Section 13 sets out that any person who intentionally or by gross negligence unjustifiably causes any animal to suffer through abusive behavior, neglectful caring, overworking or any other such way, is punishable for *animal abuse*. Penalties range from fines up to a maximum of two years imprisonment.

<sup>18</sup> Svea hovratt, avd 10, 1981/DB 123 (case involving sexual abuse, resulting in breakage of the spinal cord on a female sheep and a fractured femur and spinal cord on a ram, as well as sexual abuse of sows).

<sup>19</sup> Official statistics show that out of 33 verdicts in 1997, 25 resulted in fines; out of 32 verdicts in 1998, 22 resulted in fines; and in 1999, 17 out of 30 resulted in fines.

<sup>20</sup> Brottsbalken (BrB) 16 kap. 13 § [The Penal Code, ch. 16, § 13].

<sup>21</sup> Nils Jareborg, *Brotten Forsta haftet*, Norstedts 38–39 (1979); Prop. 1972: 122 ¶¶ 9, 21–22, 33, 35–36.

## 2. *The Criterion of Suffering*

“Suffering” is a necessary prerequisite for any conviction under the statute.<sup>22</sup> Suffering is not restricted to inflicted injuries, wounds, and untreated sickness; it also covers psychological pain such as anguish, fear, and stress—giving the statute quite a wide scope.<sup>23</sup> For example, making a horse panic and rush at its highest speed for a mile while a vehicle was driven closely behind with a roaring engine rendered a penalty conviction under the statute.<sup>24</sup> In accordance with the statement of a veterinarian, the horse suffered stress and fear from the unlawful and unjustified chase.<sup>25</sup>

Since not each and every act that causes an animal to suffer is an illegal act, these statutes also deal with the issue of how and where and by what means to draw the line between legal, acceptable ways of causing suffering and illegal, non-acceptable ways that should be covered by the anti-cruelty statute. The prosecuting attorney carries the burden of proof, and to satisfy the requirement of the statute, suffering is the most important element to prove. To prove suffering, law enforcement relies primarily on veterinarians to give expert testimony as to that matter.<sup>26</sup>

Still on this lowest step of the metaphorical staircase, there is the issue of which animals should be protected under the statute. Under the Swedish law, all animals are included under the statute.<sup>27</sup> In fact, even verdicts issued in the early 1900s recognized fish such as eel and pike as victims under the anti-cruelty statute.<sup>28</sup> While there is no doubt that the Swedish statute applies to vertebrates, how far down the zoological system one can travel and assume animals to be covered by the statute is not a question of definition; rather the matter has been explicitly left to the rulings of the courts. Also to be remembered is that the suffering criterion is not in itself the determining factor, as there are a lot of activities, although on good grounds believed to inflict suffering, that are nevertheless deemed legitimate behaviors under the statute.<sup>29</sup>

In sum, basic criminal anti-cruelty statutes of this kind focus on what individuals cannot do—that is, they prohibit certain behaviors. The manner in which such prohibitions are enforced varies from state

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<sup>22</sup> See Svea hovratt, avd 10, 1981/DB 123.

<sup>23</sup> Prop. 1987/88: 93 ¶ 50.

<sup>24</sup> Lidkopings tingsratts dom 1987/DB 448.

<sup>25</sup> It should be stressed that the horse was not physically injured. The act was a retaliatory one from a rejected former boyfriend of the horse owner. See *id.*

<sup>26</sup> See *infra* Section II(E)(3).

<sup>27</sup> BrB 16 kap. 13 § “any animal.”

<sup>28</sup> Helena Striwing, *Djurplageri*, Norstedts 156 (1987); *Handboken*, Pallas 50–51 (1920).

<sup>29</sup> *E.g.* the use of animals for scientific purposes, the legitimate slaughtering of animals, killing wild animals for food or sport (hunting and fishing), fur production, and transportation. While there are regulations regarding all of those activities, suffering is nonetheless inevitably connected to the activities in one way or the other.

to state. Common Law nations such as Great Britain and the United States appear to favor enumeration of illegal behaviors. Prohibitions common to most U.S. states include: fighting, poisoning, maiming, hard use (or overworking) of an animal, soring of horses, shooting of homing pigeons, sexual abuse of animals, burning of stables or barns occupied by livestock, or the leaving of injured animals lying on roads.<sup>30</sup> Nations influenced by continental law, such as Sweden, prefer the use of abstract concepts, thus leaving it to the courts to decide the outer frames for implementation.

### C. *On the Second Step: Animal Welfare Laws*

Since not every instance of animal suffering triggers liability, it is necessary to have a suitable device to distinguish between acts and omissions that cannot be justified from those that can. In Sweden, like all Scandinavian countries (Norway, Finland, Denmark, and Iceland), there is an animal welfare law that sets the actual standards for acceptable animal care. In Sweden, the law is named "The Animal Protection Act" (APA).<sup>31</sup> The APA is Sweden's most recent animal welfare law, and it dates from 1988 and its predecessor from 1945.<sup>32</sup> The scope of the APA in Sweden is not primarily educational; it is an important instrument that sets a standard of care and treatment for animals. The law has the power of penalty statutes that render the APA a complement to the Criminal Law.

The APA extends protection to pets and farm animals, as well as wild animals kept in captivity (such as deer within game preserves and salmon in water basins).<sup>33</sup> It provides standards pertaining to food and water supply, proper shelter and supervision, and necessary treatment upon injury or illness.<sup>34</sup> For example, if an illness or injury warrants veterinary care, any delay on behalf of the owner or the guardian to assure the animal adequate veterinary treatment is punishable under the penalty statute.<sup>35</sup> The offense is construed as optional, meaning that the incriminating behavior can either be categorized as failure to provide adequate veterinary care or failure to put the animal

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<sup>30</sup> See e.g. Mich. Comp. Laws § 750.50(2)(a)–(f) (2000) (prohibiting abandonment of a sick or injured animal, cruelly working or beating an animal, failure to provide adequate care, allowing an animal to suffer unnecessarily); Calif. Pen. Code § 697(b) (West 2000) (prohibiting overworking, torture, torment, deprivation of necessary sustenance and drink, cruel beatings, mutilation); N.Y. Agric. & Mkts. Laws § 353 (Consol. 2000) (prohibiting overworking, deprivation of necessary food and drink, mutilation, maiming, and cruelly beating).

<sup>31</sup> Djurskyddslagen, SFS 1988: 534 [APA 1988: 534].

<sup>32</sup> Note that many European nations enacted animal welfare laws in the 1930s and 1940s.

<sup>33</sup> Djurskyddslagen (DL) 1 § [APA 1988, § 1: "This Act applies to the care and treatment of domestic animals. It also applies to other animals if they are kept in captivity or are used for scientific purposes."].

<sup>34</sup> The APA also requires licensing of enterprises such as dog breeding, horse riding schools, and fur production. See APA §§ 3, 9, 16.

<sup>35</sup> DL 9 § och 36 § första st. p 1 [APA §§ 9, 36(1) ¶ 1].

to death—the reluctance of the responsible party to act in either way has exposed the animal to suffering that cannot be justified.

Although Sweden does not recognize the concept of “downed animals” in the same way as the United States, the aforementioned requirement of the APA serves to prevent animals from becoming downed. Moreover, there are regulations prohibiting an animal too weak to stand or walk from being transported alive to a slaughterhouse.<sup>36</sup> Downed animals that have neither been given veterinary care when still preventable nor humanely put to death provide a classic way to seek a conviction for “cruelty to animals” under the Criminal Law. Such convictions are made possible when injured or ill animals are detected on the premises of the owner after the authorities receive an anonymous report, or upon regular inspection by the animal welfare inspectors.<sup>37</sup> Each year, there are many verdicts of this kind, thus demonstrating how the APA supplies the Criminal Law with a minimum standard of expected and required behavior.<sup>38</sup>

#### *D. On the Third Step: Appropriate Sanctions*

Supervisory authorities in Sweden have a wide range of remedies and sanctions at their disposal. Those are the local Environment and Health Protection Committees in each municipality, and at the next level, the twenty-one County Administrative Boards in each county. The local supervisory authorities are entitled to issue orders and prohibitions within wide frames, and their decisions may result in the penalty of a fine.<sup>39</sup> If a fine has been imposed and the perpetrator fails to comply with a finable decision, he is not liable under the APA for the action to which such a fine applies. Instead, those cases are handled by another type of court, called County Administrative Courts, which hand down a verdict on the obligation to pay the fine or not—fully or partially depending on the circumstances.

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<sup>36</sup> Statens Jordbruksverks foreskrifter (SJVFS 2000:133, L 5, om transport av levande djur, 3 kap. 3 §, 4 §, 4 kap. 22 §).

<sup>37</sup> The inspectors work on behalf of the local Environment and Health Protection Committee within each of Sweden’s 288 municipalities. The National Board of Agriculture has given recommendations to the Committees regarding how often different facilities should be inspected. Critics point out that efficiency and skill level differ among the municipalities.

<sup>38</sup> Note, however, that the temptation to ignore giving veterinary care to animals in need is especially prevalent when the animals are less valuable than standard cattle—examples are sheep, pigs, and male calves. Those cases, when observed, are prosecuted as either animal abuse under The Penal Code Chapter 16, Section 13, or as a violation of The Animal Protection Act 1988, Section 9 and 36, first paragraph. Within the first category, where the yearly amount of verdicts is around 40, I would estimate on the basis of my own collection that ten to twelve cases involve such lesser valued animals. Among the total yearly number of cases prosecuted under the 1998 Animal Protection Act, approximately thirty (one-third) involve such animals. Furthermore, be aware that in each verdict the actual number of abused animals can be considerable.

<sup>39</sup> APA §§ 26, 37.

Swedish authorities are entitled to seize an animal kept in a sub-standard manner if the animal is suffering and there are grounds to believe that the owner or guardian will not take the proper steps pertaining to the animal's care and treatment.<sup>40</sup> The decision of whether to confiscate an animal is made by either the police authorities, the inspectors, or their superiors. The County Administrative Board should then be notified without delay, and the board must decide whether the decision to seize the animal should remain in force.

The most important power of the authorities is the power to ban an individual from having charge of an animal. This is often done in conjunction with the seizure of the animal. Not only can the animal at issue be forfeited, but the ban could also be directed to the prohibition of any future care or possession of animals for that individual.<sup>41</sup> The County Administrative Board (at the regional level) decides matters of prohibition, and the APA requires it unless circumstances indicate that there will not be any recidivism.<sup>42</sup> The grounds for prohibition are the following: 1) neglect to comply with a decision issued by a supervisory authority which is of material importance;<sup>43</sup> 2) serious neglect pertaining to the supervision and care of an animal; or 3) maltreatment of an animal.<sup>44</sup>

A ban on animal ownership or possession may be permanent, or it may be binding for shorter intervals. The law also contains a provision requiring the offender to reimburse the cost of caring for any animal seized.<sup>45</sup> However, mostly the costs are mounting and the animals of less economic value make the provision practically void. Most often, the previous owners are in such positions that they do not have properties that can be seized to cover surplus costs. In addition, this ban does not apply to individuals who were not in possession of an animal, but nonetheless had opportunity to harm or kill an animal.<sup>46</sup> For example, if an individual stabs a horse to death, he retains the right to involve himself in the care and/or possession of a horse—or for that matter, any animal—in the future. If, on the other hand, such an individual had maltreated a horse in his care, a ban would have been issued. This is an inconsistency that must be addressed in the future.

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<sup>40</sup> DL 32 § [APA § 32].

<sup>41</sup> DL 29 § [APA § 29].

<sup>42</sup> *Id.*

<sup>43</sup> The first ground allows the authorities to give the person at fault a certain time span within which he or she must comply with any orders handed down by the supervisory authorities. Failure to comply with such orders can result in the confiscation of his or her animal[s]. Some animal owners attempt to elude the authorities by maintaining that they have sold their animals.

<sup>44</sup> DL 29 § [APA § 29].

<sup>45</sup> DL 35 § [APA § 35].

<sup>46</sup> This conclusion follows from the actual frame within which the APA applies, however, precedent has not yet solved the issue. One can argue the legitimacy of issuing a ban, but the issue is far from evident.



*E. On the Fourth Step: Effective Enforcement and Implementation*

There must be supervision and regular inspections of premises where animals are kept.<sup>47</sup> As soon as animal abuse or maltreatment is reported, an inspector must investigate without delay.<sup>48</sup> If the inspector is not allowed to enter the home or animal shelter in question, the police authorities are obliged and entitled to give necessary assistance so the supervision can be exercised.<sup>49</sup> If a suspicious incident is reported to the police authorities, the reporting functions as a starting point for the decision of whether or not to initiate a primary investigation.

*1. The Benefit of Teamwork*

Proper training and education are required to enforce and implement animal welfare laws, and to effectively utilize all legal sanctions and make decisions that will not be overruled, reversed or otherwise set aside on appeal. The official inspectors of animal welfare in Sweden have joined into an association focused on serving and supporting the professional needs of its members.<sup>50</sup> Since experience varies among members, they can assist each other as valuable resources when special problems arise. For example, an inspector who has supervision experience in urban areas may not be equipped to deal with a cruelty issue involving cattle or other livestock. The inspector can access guidance by more experienced inspectors in this kind of husbandry, thus considerably facilitating his or her work.

Effective implementation is the result of skillful cooperation by all authorities involved in handling cases of animal abuse and maltreatment. Key participants include inspectors, police investigators, prosecutors, veterinarians and supervisory board members—be they on a local or regional level—such as members of the County Administrative Boards. Working in a team lessens the need to shift blame and fosters the development of critical thinking skills, since individuals are exposed to many ideas outside their own range of expertise. Each party becomes concerned with the ultimate consequences of his or her work in the greater scheme of animal protection.

During the past five years, I have been working part-time as a contracted lawyer within educational projects administered by three different County Administrative Boards. The boards are not specifically animal welfare boards. They handle a lot of different issues and they are also appellate level for orders and directions issued by the local environment and health committees of the municipalities within

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<sup>47</sup> DL 24 § [APA § 24]; Statens Jordbruksverks allmänna råd (2000:4) i anslutning till djurskyddslagen (1988:534) om tillsyn m.m.

<sup>48</sup> *Id.*

<sup>49</sup> DL 24 § sista st [APA § 24, last ¶].

<sup>50</sup> Djurskyddsinspektörernas Riksforening, DIRF. You may access this organization at <[www.welcome.to/djurskydd](http://www.welcome.to/djurskydd)> or email [dirf@telia.com](mailto:dirf@telia.com).

the actual county. When the first project was started, inspectors of animal welfare emphasized that there was rarely someone within reach with whom issues of how to interpret the law and evaluate strategies in handling cases could be discussed. The project recognized this point as valid and contracted me to offer legal guidance to the inspectors and remain a continuous resource during the contracted period of eighteen months.<sup>51</sup> The projects represent a new approach in Sweden: giving inspectors and law enforcement professionals access to legal interpretation and advice, thereby facilitating their choice of more prolific solutions to different investigative matters.

## 2. *Involving Law Enforcement*

During the last year I have started a new line of work in conjunction with a police officer who is experienced and qualified through previous work with husbandry. We frequently give talks and lectures in various parts of Sweden on how to handle animal abuse and how to conduct a professional and intelligent investigation that results in the successful prosecution of the case.

An efficient and effective investigation includes the appropriate understanding of crime scene processing by securing evidence and observing factors that provide clues to the dynamics of the incidents or the true range and permanency of previous neglect. This also requires autopsies to be conducted in order to establish the true nature of the neglect (e.g. starvation resulting from a caretaker not providing the animal with a sufficient food supply). When under pressure, some suspects deceptively assert that the animal was properly fed but from some sudden unknown illness became incapable of utilizing the nourishment. Fortunately, autopsies can refute such statements.

An important part of the investigation is the performance of a skillful interrogation. Since I have been working with animal welfare issues for two decades, I have a private collection of more than one thousand verdicts—both guilty and not guilty—on animal abuse based on the Criminal Statute and the APA. We use those documents as guidelines in our teachings as a way to avoid repeating mistakes and to anticipate possible objections from suspects. When investigators become aware of potential loopholes and objections, their processing of the crime scene, as well as their capacity to put the right questions to the suspects during interrogation, improves. The advantage is obvious—caprice will not triumph at an animal abuse hearing.

My co-working police investigator and I have a specific approach to the study and practice of crime investigation and accordingly to the way we perform the teaching. I have not seen our teaching manner outlined and articulated anywhere. We use a conceptual method, starting out from the actual indictment. We first ask: what does the indict-

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<sup>51</sup> Although none of the inspectors I started working with were authorized to devote more than 20–40% of their full-time work to animal welfare issues and to achieving public compliance with the law, it is my opinion that their efficiency increased.

ment allege? Perhaps it is failure to provide animals with sufficient food and/or water or shelter, the illegitimate usage of restraints, keeping severely sick or injured animals alive without veterinary care, or numerous other scenarios. Assume for purposes of illustration that the allegation is that of a “lack of water.”

This allegation can be difficult to prove, and our teaching method first addresses the following issues: 1) what the law says; 2) how to prove a lack of water; 3) what to look for in the way of evidence; and 4) how to preserve evidence. We would direct the investigators and the veterinarians to cooperate when studying the behaviors of the animals and choosing the appropriate animals within the herd for closer examinations. Such animals are mostly the weaker, less aggressive animals lagging behind—the ones who cannot sustain fighting for precedence where the water supplies are found. The actual animals can be targeted by video and photos, which is helpful because they are often marginalized when compared to the core of the herd. Those animals should be separated for examination and their identity ascertained. Veterinarians know what to look for to ascertain dehydration and what kind of examination to perform.

When this is done accordingly and the findings in the crime scene have been documented and collected correctly, we approach what will take place in front of the court by acting the roles of the witness, the prosecutor and the defendant’s counsel in front of our audience. Hereby, we can vividly show how to handle frequent questions that arise, first giving the less optimal answer, next asking the audience to evaluate the answer given, and finally giving the “top optimal” answer to the question at hand. We believe such an approach prevents unexpected objections at the trial. The key concept in our teaching is “anticipating objections” to the extent that you can secure evidence and put the specific questions to the suspect while investigating the crime. If this is done correctly there will be very little space for lies or other problems at trial.

To avoid certain objections by defendant’s counsel, part of the skillful investigation should involve interrogation and involvement of the suspect relating to his or her role in the offense. For example, the suspect should be asked not only to give answers to particular questions but also to show, for example, how his or her water supply works and in what manner animals are served enough water. The importance of this thorough use of the suspect can easily be seen in the following example. If the issue at hand is an allegation of not providing food of a nourishing quality to animals, it is important to ask the suspect to direct the investigators to pick samples of the actual food given to the animals to be sent for analysis. If one failed to involve the suspect and ask for his or her assistance on this point, that failure could be used by the suspect, who during the proceedings will object and tell the court that the food sample sent for analysis (when of low quality) is not at all representative of the food given the animals since the actual sample was by malicious intent or mistakenly collected by the investi-

gators from a bin or a place where discarded food was kept awaiting destruction. That objection can be anticipated as well as made void by the involvement of the suspect at this point in the investigation.

In recent years, the police authorities have faced old problems magnified due to new husbandry forms.<sup>52</sup> Police authorities are in charge of not only seizing the animals but also caring for them in accordance with the law and paying the costs after they have been confiscated. When this burden is put upon a small police unit that suddenly becomes responsible for the care of 350 cows, hiring appropriate stables, giving the cattle proper veterinary care, and selling the animals to new owners, there is obvious consternation. As already mentioned, the actual provision of claiming costs for seized animals seldom suffices in this context. Accordingly, police authorities are very concerned about such burdens.

An improvement in conditions for animals in Sweden can be achieved in part by expanding service solutions. In my experience, law enforcement is not inclined to turn to the regular animal welfare organizations for assistance, presumably because of a desire to avoid entanglement in an undercurrent of over-emotionality, and because of a fear of losing their own discretion in animal matters. Any thoughts on expanding service solutions to law enforcement must take into account that there are strong concerns about costs and priority issues within the society of law enforcement. The willingness within the legal community to join and contribute to any unit serving its needs must be built on the principle of reciprocity: competence and efficiency increasing at a reasonable rate, making the handling and solving of animal abuse cases less time consuming. Fortunately, I have already seen that principle work in Sweden.

Teamwork aspects are becoming increasingly important. The nature and scope of resources differ sharply between the investigation and prosecution of human crimes versus animal crimes. Crime investigators are most skilled at solving crimes where the victims are humans. In such a case, technicians are usually involved, and if a high profile case surfaces, not only are forensic technicians assigned to the case but also the full resources of the department are deployed. In contrast, in cases where animals have been abused, dramatically fewer resources are available. Thus teamwork, as well as education, is of paramount importance in effectively handling animal crimes.

### 3. *The Role of the Veterinarian*

The judgment of a veterinarian is required in criminal cases where the prosecuting attorney has the burden of proof for each element of the crime. Among these elements, suffering has to be established. Although exceptional cases of suffering may be undisputable, the prosecutor is better served if he anticipates that defense counsel

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<sup>52</sup> Seizing animals today requires extensive resources because the tendency has clearly moved away from small entities towards the holding of big herds of cattle.

will challenge this issue. The precise role of the veterinarian in court depends on his or her prior contact with the animal[s]. If the veterinarian has been involved more or less “hands-on” with the actual animal[s], he or she will appear in court as a witness with the capacity to make specialized observations. If there was no previous contact with the animal[s], the veterinarian may appear in court as an expert witness. Courts may also appoint expert witnesses to assist when necessary.

Veterinarians are used to issuing certificates in the interest of insurance agencies and accordingly they are inclined to word their conclusions such as “prognosis is pessima” or “not favourable.” This is insufficient for criminal cases, if the veterinarian is asked to confirm “suffering” of an animal. The expressions are too distant and aloof to admit any conclusions on the issue of suffering. Consequently, a most important issue to be addressed is how to handle the criterion of suffering and the role of the veterinarian when issuing certificates and when giving evidence in the courtroom.

Furthermore, veterinarians in general, like medical pathologists, are primarily trained to identify disease, not crime. They generally look for pathogens, not for evidence of abuse or neglect. They therefore need more training in the criminal aspects of medicine and how to serve the legal society on request. Although such training has been no big part of the formal education of veterinarians in Sweden, I am quite convinced that this will change in the future.

While giving evidence in the court, the statements of the veterinarian will be given under an affirmation to “speak the whole truth and not conceal, add or change anything.”<sup>53</sup> Some veterinarians find this situation less than favorable because they interpret this duty to tell the truth to be inconsistent with ascertaining that suffering has been experienced and felt by the actual animal under conditions given.<sup>54</sup> There is yet no single instrument or equipment that is accepted as an objective device for measuring the act of suffering. Fortunately, giving evidence of suffering does not implicate the necessity of such an instrument—nothing more is required of the veterinarian than his or her assertion of suffering in reference to his or her personal and/or professional experience. This opinion can be challenged, however, by the opinion of another veterinarian who states that as far as he or she is concerned, no suffering has taken place.

Veterinarians are very important when it comes to implementation and enforcement of the APA. In addition to testifying for purposes of proving the elements of a crime, veterinarians give evidence of animal suffering to facilitate animal seizure and forfeiture. Veterinarians are also entitled to order animals to be euthanized when an animal

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<sup>53</sup> “I [name] promise and assure upon my faith and honour that I shall speak the whole truth and will not conceal, add or change anything.” RB 36 kap 11§ [The Code of Judicial Procedure, ch. 36, § 11].

<sup>54</sup> A number of veterinarians have expressed this view to the author.

is so badly wounded or sick that this is the only purposeful option. Euthanasia can be done regardless of the owner's consent if the circumstances indicate that it would prove too timely to search for the legitimate owner.<sup>55</sup> Furthermore, veterinarians must transfer knowledge from the scientific realm to Swedish citizens because public opinion is vital to the enactment of stronger animal welfare laws. When individuals can no longer be excused by ignorance, they are more receptive to proposals of improvement in the animal welfare context. Because legal change is neither quick nor easy, changing attitudes becomes very important. Finally, in the enforcement context, there is a mandatory requirement for veterinarians who are not private practitioners to report incidents of animal abuse and substandard conditions to the local supervisory board unless the perpetrator makes any changes urged by the veterinarian.<sup>56</sup> The future is likely to see this requirement extended so that it is applicable to all veterinarians.

### III. CONCLUSION

Implicit in the mission of bringing justice to neglected, abused and painfully killed animals is the notion that agencies, organizations, and branches of government must work together to achieve the greater good for animals. Fortunately, such cooperation is occurring in Sweden, although saying so does not mean that nothing could be changed for the better. The above presents an overview of Swedish law and policy as it concerns animals, as well as an outline of the approach that I have found most effective when dealing with these issues.

When looking back in history and the prevailing treatment of animals during the past, we find that the "good old days" were not actually too good. While our forefathers had the excuse of ignorance to animal suffering, we do not. News today is easily accessible through modern media and the scientific society is revealing more each day about animals' ability to suffer. If we, as societies, are willing to acknowledge and act upon those matters important to animals, then in the end we will come out as more human. Hopefully humankind will make good progress, changing the world into a better place for animals, and there will not be a long delay before we can look back and summarize the more shadowy side of our history with the unforgettable words by the author Lesley P. Hartley, "The Past is a foreign country. People do things differently there."

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<sup>55</sup> Any policeman has the same right to euthanasia; and at its extreme, also any layperson, as per DL 30 § [APA § 30].

<sup>56</sup> F (1971:810) med allmän veterinärinstruktion, 9 § p. 4 andra st.