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ANIMAL RIGHTS

THE ANIMAL WELFARE ACT: STILL A CRUELTY TO ANIMALS

*Lauren Stiller Rikleen**

I. INTRODUCTION

The dog's name is Lucky. He is a lemon colored English pointer with a fine head and subtle signs of good, expensive breeding. But when a woman from the Animal Rescue Institute came across Lucky at a Sulphur, Okla. fair three weeks ago, this is what she saw—a pathetic, emaciated horror, cowering, hopeless and up for auction. The woman bought him for \$3 plus a dollar for the chain.¹

This quote introduced a *Life* magazine article that brought national attention to the practice of animal stealing for purposes of resale to medical research laboratories. So-called dog “dealers” would cash in on the laboratories’ demand for two million dogs a year with a “no questions asked” policy for anyone who came forward willing to sell a dog cheaply. Especially prized were the well-trained and therefore easy to handle family pets. The Humane Society of the United States estimated that fifty percent of all missing pets were stolen by “dognappers” who then sold them to dealers.²

Some dealers keep big inventories of dogs in unspeakably filthy compounds that seem scarcely less appalling than the concentration camps of World War II. Many do not sell directly to labs but simply dispose of their packs at auction where the going rate is 30 cents a pound. Puppies, often drenched in their own vomit, sell for 10 cents apiece.³

* Winner, Animal Rights Essay Contest.

¹ Wayman & Stan, *Concentration Camps for Dogs*, *LIFE*, February 4, 1966, at 22.

² *Id.*

³ *Id.*

This essay will provide a detailed look at these and similar abuses and the federal legislation that was enacted to prevent them. An explanation of the Animal Welfare Act (AWA),⁴ a compendium of three different pieces of legislation, will be followed by an analysis of how these substantive provisions have been enforced by the administering agency, the United States Department of Agriculture (USDA). The focus of this analysis will be the USDA's failure to effectively implement and enforce these provisions.

II. LEGISLATIVE HISTORY AND SUBSTANTIVE PROVISIONS

A. *Laboratory Animal Welfare Act*

Prior to publication of the *Life* article, Congress had pending eight bills which sought to abolish the conditions described in the article.⁵ The primary sources of support for these bills were the animal welfare organizations who were trying to bring the issue into public focus. The *Life* article achieved that goal. A collection of photographs supplied by the Animal Welfare Institute to *Life* magazine set in motion the article which generated more mail to *Life* than any other article in the history of the magazine, and further generated more mail to Congress on the pending bills than on the issues of civil rights or Vietnam.⁶

During the hearings on the proposed bills not only were the shocking abuses in the pet stealing operations described but the inhumane treatment in the care and housing of the animals after they arrived at medical research laboratories was also revealed.⁷ Public outcry helped to bring about the passage in 1966 of the Laboratory Animal Welfare Act (LAWA).⁸ The Act seeks to protect the owners of dogs and cats from the theft of such animals, as well as to prevent the use or sale of stolen dogs or cats for purposes of research or experimentation. Further, it establishes humane standards for the treatment of dogs, cats and certain other animals by animal dealers and medical research facilities.⁹ In an attempt to discourage trade in interstate stolen domestic pets, the Act requires the licensing of

⁴ 7 U.S.C. § 2131 *et seq.* (1976).

⁵ *Concentration Camps for Dogs*, *supra* note 1, at 22.

⁶ E. LEAVITT, *ANIMALS AND THEIR LEGAL RIGHTS* 49 (1968).

⁷ S. REP. NO. 1281, 89th Cong., 2nd Sess., *reprinted in* [1966] U.S. CODE CONG. & AD. NEWS 2635, 2636.

⁸ Pub. L. No. 89-544, 80 Stat. 350 (1966). For the reader's convenience, hereinafter all citations to the Laboratory Animal Welfare Act and Amendments thereto will be to the most recent compilation of the U.S. Code.

⁹ S. REP. NO. 1281, 89th Cong., 2nd Sess., *reprinted in* [1966] U.S. CODE CONG. & AD. NEWS 2635, 2635.

animal dealers,¹⁰ and underscores its licensing requirements by making it unlawful for a research facility to purchase animals from an unlicensed dealer.¹¹ The Department of Labor was given the power to administer and enforce the Act.¹²

The twenty-four sections of the Act are in effect a broad grant of authority to the Secretary of Agriculture to promulgate regulations to effectuate the dictates of the Act. Included in the grant of authority is the power to: (1) require research facilities and dealers to make and retain records of their purchase and sale of dogs and cats;¹³ (2) prescribe a humane manner of identifying animals transported, bought or sold in interstate commerce;¹⁴ (3) promulgate regulations requiring animals to be humanely treated during auction sales;¹⁵ (4) promulgate regulations to insure the humane handling and care of animals by dealers and research facilities (except during actual research or experimentation; this is an important exception which will be discussed later);¹⁶ (5) promulgate regulations which will allow inspectors to confiscate or destroy in a humane manner animals found suffering because of violations of the Act;¹⁷ (6) make inspections for purposes of determining whether dealers are complying with the Act;¹⁸ and (7) promulgate regulations requiring dealers and research facilities to permit inspections by certain law enforcement agencies in search of lost animals.¹⁹

Dealers who violate the Act are liable for criminal penalties as well as either the suspension or revocation of their license. A section which was later repealed²⁰ provided that in case of violations by a research facility, the Secretary could apply to the district court for a cease and desist order. Finally, in order to assure comprehensive and the enforceable regulations the Secretary of Agriculture is directed to consult and cooperate with other federal departments and agencies.²¹

¹⁰ 7 U.S.C. § 2133 (1976).

¹¹ 7 U.S.C. § 2134 (1976).

¹² 7 U.S.C. § 2131 *et seq.* (1976).

¹³ 7 U.S.C. § 2140 (1976).

¹⁴ 7 U.S.C. § 2141 (1976).

¹⁵ 7 U.S.C. § 2142 (1976).

¹⁶ 7 U.S.C. § 2143(a) (1976).

¹⁷ 7 U.S.C. § 2146(a) (1976).

¹⁸ *Id.*

¹⁹ 7 U.S.C. § 2147 (1976).

²⁰ 7 U.S.C. § 2149 (1976); Pub. L. No. 94-279, § 13, 94 Stat. 417, 420.

²¹ CONF. REP. NO. 1848, 89th Cong., 2nd Sess., *reprinted in* [1966] U.S. CODE CONG. & AD. NEWS 2635, 2650.

B. The Animal Welfare Act of 1970

Congress passed the Animal Welfare Act of 1970 (AWA)²² to strengthen the administration of the 1966 Act as well as to expand its protection to include more species of animals and to regulate more people who handle animals. This was an important step beyond LAWA because it established by law that animals are entitled to certain basic necessities. As the Act states:

[A]nimals should be accorded the basic creature comforts of adequate housing, ample food and water, reasonable handling, decent sanitation, sufficient ventilation, shelter from extremes of weather and temperature, and adequate veterinary care including the appropriate use of pain-killing drugs.²³

The major contribution of the 1970 Act was this acknowledgement that animals are entitled to certain basic necessities.²⁴

The Act further broadened the Secretary's enforcement powers by expanding both the statutory concept of commerce²⁵ and the discovery procedures.²⁶ It also introduced penalties against persons interfering with or injuring government inspectors.²⁷ Further, the 1970 provision specifically included exhibitors within the licensing provisions of the statute.²⁸ The term exhibitor is defined as one who exhibits to the public, for compensation, animals which were purchased in commerce. The definition specifically includes carnivals, circuses, and zoos.²⁹

The Act continued the reluctance demonstrated in the 1966 Act to interfere with the use of animals during actual medical research:

[T]he bill recognizes the responsibility and specifically preserves the necessary domain of the medical community. The bill in no manner authorizes the disruption or interference with scientific research or experimentation. Under this bill the research scientist still holds the key to the laboratory door.³⁰

²² Pub. L. No. 91-579, 84 Stat. 1560.

²³ H. REP. NO. 91-1651, 91st Cong., 2nd Sess. 2, reprinted in [1970] U.S. CODE CONG. & AD. NEWS 5103, 5104.

²⁴ 7 U.S.C. § 2143(a) (1976).

²⁵ 7 U.S.C. § 2132(b) (1976).

²⁶ 7 U.S.C. § 2146(b) (1976).

²⁷ 7 U.S.C. § 2146(a) (1976).

²⁸ 7 U.S.C. § 2133 (1976).

²⁹ 7 U.S.C. § 2132(h) (1976).

³⁰ H. REP. NO. 91-1651, 91st Cong., 2nd Sess. 2, reprinted in [1970] U.S. CODE CONG. & AD. NEWS 5103, 5104.

C. The 1976 Amendments

The 1976 Amendments focused on abuses suffered by animals during the actual transportation process. Humane societies and public interest and consumer groups continued to bring to public attention the suffering frequently undergone by animals shipped on interstate carriers. The abuses included inadequate supplies of air, food and water, unreasonably long periods of confinement, dangerous temperature extremes and soiled surroundings. These conditions frequently resulted in the death of the animal.³¹ To deal with these problems, the 1976 Amendments brought carriers and intermediate handlers within the class of persons regulated under the statute³² and over whom the Secretary has investigatory authority.³³ Moreover, the Amendments set forth certain requirements which an intermediate handler or carrier must meet before transporting a dog, cat or other designated animal.³⁴

The Amendments also changed and clarified other aspects of the earlier Acts. The definition of the term "animal" was again amended, this time to clarify the fact that all dogs, including dogs for hunting, security or breeding purposes, fall within the protection of the Act.³⁵ Certain penalty provisions were changed to impose uniform civil penalty provisions on all persons regulated under the statute and to eliminate the requirement that the Secretary issue a cease and desist order before seeking imposition of a civil penalty.³⁶

A major addition to the Act was a completely new section which provided criminal sanctions for sponsoring, participating in, transporting, or using the mails to promote animal fighting ventures.³⁷ This section of the Act was specifically aimed at the "sport" of dog fighting which pits specially bred, drugged and/or abused dogs against each other in a vicious, mutilating fight to the death. Often, these fighting dogs train by mauling helpless, live animals. While this section defines animal as any bird, dog, or other mammal (other than man),³⁸ bird (cock) fights are not illegal if the state where the fight occurs has not enacted provisions that prohibit such ventures.³⁹

³¹ PROBLEMS IN AIR SHIPMENT OF DOMESTIC ANIMALS, H. REP. No. 93-746, 93d Cong., 1st Sess. (1973)(unpublished report of the House Committee on Government Operations).

³² 7 U.S.C. § 2136 (1976).

³³ 7 U.S.C. § 2146(a) (1976).

³⁴ 7 U.S.C. § 2143 (1976).

³⁵ 7 U.S.C. § 2132(g) (1976).

³⁶ 7 U.S.C. § 2149(b) (1976).

³⁷ 7 U.S.C. § 2156 (1976).

³⁸ 7 U.S.C. § 2156(g)(1) (1976).

³⁹ 7 U.S.C. § 2156(d) (1976).

D. *Constitutionality of the AWA*

*Haviland v. Butz*⁴⁰ is the only constitutional challenge of the AWA and the Secretary's powers under the Act. Haviland, an owner-operator of a professional animal show, sought a district court judgment declaring that he was not subject to the Act's regulations. The Court of Appeals for the District of Columbia affirmed the granting of summary judgment in favor of the Secretary of Agriculture.

The court dismissed Haviland's assertion that the Secretary unconstitutionally assumed legislative powers by promulgating regulations that required animal acts to be licensed. The court noted that the AWA's legislative history showed an intent that the types of exhibitors listed in the Act was partial and illustrative, and further, that the Secretary's interpretive regulation was reasonable and within his power. The court also found that Haviland's animal show did affect commerce as provided by the Act: "[T]raveling from state to state to render performances and sometimes even utilizing the facilities of interstate communication to reach its audience is subject to regulation by Congress in the exercise of its commerce power."⁴¹ Finally, the court rejected Haviland's contention that the Act's definition of "exhibit"⁴² was a classification resulting in invidious discrimination, and applied the long-established principle of constitutional law which allows reform to take place one step at a time, without the requirement that every aspect of a problem be attacked at once.⁴³ The court concluded, "[A]s the evolution of the Animal Welfare Act manifests, Congress has chosen a cautious approach to regulation in this area, increasing governmental intervention as the national interest seemed to warrant."⁴⁴

III. THE ROLE OF THE UNITED STATES DEPARTMENT OF AGRICULTURE

The AWA is a comprehensive piece of legislation which, in twelve years, should have curbed abusive practices. Yet, the Act has been virtually ineffective, the primary cause of which can be traced directly to the United States Department of Agriculture (USDA). To understand the nature of this failure, it is necessary to examine the

⁴⁰ 543 F.2d 169 (D.C. Cir. 1976).

⁴¹ *Id.* at 175.

⁴² 7 U.S.C. § 2132(h) (1976). Such definition includes carnivals, circuses, and zoos, while excluding, *inter alia*, retail pet stores, livestock shows and rodeos.

⁴³ *Williamson v. Lee Optical*, 348 U.S. 483, 489 (1955).

⁴⁴ 543 F.2d 169, 177 (D.C. Cir. 1976).

USDA's own attitude in regard to their role as administering agency, the degree of expertise within the Department to cope with the legislation, and the intricate bureaucracy which the USDA has organized to administer the Act.

A. USDA's Opposition to Designation as Enforcement Agency

In 1966 the Secretary of the Department of Agriculture expressed the Department's reluctance to accept its appointment as the enforcer of the proposed LAWA:⁴⁵

In respect to animals, the function of this department relates basically to livestock and poultry. Accordingly, there is a question as to whether it would not be desirable that a law such as that in question be administered by a Federal agency more directly concerned and having greater expertise with respect to the subject than this Department.⁴⁶

Further, in that same letter, the Department revealed its lack of support for certain major provisions of the measure as they related to the regulation of research facilities: "[T]he application of this bill should be limited to the care and handling of dogs and cats by dealers. The care and use of such animals within research facilities pose more difficult problems"⁴⁷

Apparently, in 1970, the Department still was displeased with its appointment as enforcer, for it sought to be removed from that role. As the Department of Agriculture wrote, "This Department agrees with the objective of the bill However, we believe that the Department of Health, Education and Welfare is the appropriate Agency to administer such an activity."⁴⁸ The letter further expressed disagreement with the proposal that the Federal government regulate the humane care and handling of animals by exhibitors and pet dealers, and proffered that state and local agencies should have that responsibility.⁴⁹

Ten years after the passage of the LAWA, the House Report on the proposed 1976 Amendments stressed the importance of the Amendments in broadening and strengthening the authority of the Secretary of Agriculture to establish and enforce humane standards

⁴⁵ Letter from Secretary of Agriculture, USDA as contained in S. REP. NO. 1281, 89th Cong., 2nd Sess., reprinted in [1966] U.S. CODE CONG. & AD. NEWS 2635, 2642.

⁴⁶ *Id.* at 2643.

⁴⁷ *Id.*

⁴⁸ Letter from Office of the Secretary, USDA as contained in H. REP. NO. 91-1651, 91st Cong., 2nd Sess. 3, reprinted in [1970] U.S. CODE CONG. & AD. NEWS 5103, 5105-06.

⁴⁹ *Id.*, at 5106.

for the treatment of animals under the AWA.⁵⁰ However, the Chairman of the House Committee on Agriculture received a letter from the Department of Agriculture opposing enactment of these Amendments.⁵¹ In essence, the letter summarized the contents of the proposed Amendments, and, without offering any insights into their reasons for opposition, merely suggested that "there are available alternative measures which can achieve many of the objectives of the bill. These alternatives should be fully explored and tested before any additional legislative action is taken."⁵² The letter did not detail the alternatives.

B. Administration of the AWA

Unsuccessful in its efforts to be removed from its responsibilities under the AWA, the Department of Agriculture organized a detailed, complex system for implementation of the Act. AWA is administered by the Animal and Plant Health Inspection Service (APHIS) of the USDA. The activities of animal dealers, research facilities, exhibitors and all other persons subject to the Act are regulated by APHIS Veterinary Services. The Veterinary Services has a field force operating from eighteen area and forty district offices throughout the United States. This field force is composed of veterinarians, investigators and animal health technicians. Field enforcement of animal welfare is coordinated by the Animal Care Staff in the national office located in Hyattsville, Maryland.⁵³

An APHIS official in Massachusetts described in an interview the actual mechanics of APHIS enforcement of the Act.⁵⁴ Area 1, comprised of the six New England states, is divided into two Districts, with Massachusetts in District 1. The area has a Veterinarian in Charge, with veterinarians also assigned to each of the two districts. One announced routine inspection is scheduled per quarter. However, the APHIS official noted that it is not unusual to stray from this inspection schedule, so that the inspections may actually be performed much less often. Veterinarians inspect research facilities and larger zoos, and animal health technicians inspect dealers and

⁵⁰ H. REP. No. 94-801, 94th Cong., 2nd Sess. 6, *reprinted in* [1976] U.S. CODE CONG. & AD. NEWS 758, 758.

⁵¹ Letter from Office of the Secretary, USDA, *as contained in* H. REP. No. 94-801, 94th Cong., 2nd Sess. 14, *reprinted in* [1976] U.S. CODE CONG. & AD. NEWS 758, 766.

⁵² *Id.*, at 767.

⁵³ UNITED STATES DEPARTMENT OF AGRICULTURE, ANIMAL WELFARE ENFORCEMENT [1976] 1 (March 1977) [hereinafter cited as ANIMAL WELFARE ENFORCEMENT [1976]].

⁵⁴ Interview with Dr. A. Crawford, APHIS Veterinarian in Charge of District 1 (February 3, 1978).

smaller exhibitors. If a deficiency⁵⁵ is found during this initial inspection, a full report is compiled which specifies the problem, and the offender is given notice that a return inspection will occur within approximately thirty days.⁵⁶ If, on the return inspection, the deficiency is corrected, another inspection report is completed in full, and the matter is considered closed.

If the deficiency is still apparent on this return inspection, alternative courses of action may be pursued. For example, if correction of the deficiency would require a large financial expenditure, more time is usually given.⁵⁷ If the deficiency is not corrected, and the facility is making no attempt to improve the situation, the problem is referred to a compliance officer.⁵⁸ If the compliance officer determines that a violation has occurred, he prepares information in the form of a case which is then submitted, via the Area Veterinarian in Charge, to the Animal Care Staff of the Regional Director in Maryland. All subsequent action on the violation must be initiated and processed through this office.

C. *Enforcement Procedures and Statistics*

The AWA requires the Secretary of Agriculture to submit a detailed and comprehensive annual report to the President of the Senate and the Speaker of the House of Representatives.⁵⁹ The 1976 report stated that there were 4,851 licensed dealers, 1,136 licensed or registered animal exhibitors, and 1,034 registered research facilities.⁶⁰ The information contained in this report, and all the available enforcement information for the first ten years of the Act, reveal a dismal pattern of inadequate enforcement and minimal prosecution.

Penalties available to licensees and registrants who violate AWA's provisions are: (1) official warning notices; (2) administrative penalties; and (3) criminal fines.⁶¹ Yet, between passage of the 1966 Act and June 1, 1976, the government had issued letters of

⁵⁵ The regulations enumerate the specific standards of compliance under the Animal Welfare Act. Animals and Animal Products, 9 C.F.R. §§ 1.1 *et seq.* (1977).

⁵⁶ If the deficiency is severe enough to be a form of animal cruelty, the inspector may not have to wait the 30 days.

⁵⁷ The Doctor specifically stated that where an investigation reveals that compliance requires a large expenditure, "[W]e try to be reasonable unless it's quite inhumane."

⁵⁸ Area 1 has an Area Compliance Officer in charge of both districts.

⁵⁹ 7 U.S.C. § 2155 (1976).

⁶⁰ ANIMAL WELFARE ENFORCEMENT [1976], *supra* note 53, at 19 (Table 1 of Appendix).

⁶¹ ANIMAL AND PLANT HEALTH INSPECTION SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE, PROSECUTIONS FOR ANIMAL WELFARE VIOLATIONS [1966-1976] 2 (August 1976) [hereinafter cited as PROSECUTIONS].

warning to only 109 persons suspected of alleged violations. In this same ten year period, only two cases were criminally prosecuted.⁶²

Available administrative penalties may be divided into three classes: (1) summary suspension; (2) administrative proceedings; and (3) cease and desist orders. Summary suspension is an immediate administrative action used to protect animals in severe distress. Under the Act, a business' license may be suspended without a hearing and result in the closing of the business for up to twenty-one days.⁶³ A longer suspension requires a hearing. As of June 1976, only one summary suspension had been imposed in the ten years of the AWA. Administrative proceedings commence with the filing of a formal complaint. A consent agreement can be negotiated by the government and the person charged, and then reviewed and imposed by a hearing examiner or an administrative law judge. Absent a consent agreement, an administrative law judge will, after a hearing, render a decision which is subject to appeal to a USDA judicial officer and, then, to the United States Court of Appeals. Possible penalties consist of the imposition of a cease and desist order and license suspension or revocation.⁶⁴

As of June 1, 1976, the government had filed only seventy-one complaints for AWA violations in the Act's ten year history.⁶⁵ Analysis of fifty-five of the complaints⁶⁶ indicates that, for those complaints which charged cruel conditions as opposed to mere failure to obtain a license, there was a longer time between the date of discovery and the final resolution.⁶⁷ For example, it was not until fifteen months after discovery that charges were filed against a dealership for housing dogs in poorly constructed, poorly lit, cramped, and uncomfortable quarters, and for shipping animals in stacks of undersized crates that lacked floors. More than another year and a half elapsed, and then the dealer's license was suspended for only two weeks and a cease and desist order was issued. Three years after the imposition of this cease and desist order, APHIS found further violations of the order and initiated civil action. No date for a hear-

⁶² *Id.*, at 2.

⁶³ 7 U.S.C. § 2149(a) (1976).

⁶⁴ PROSECUTIONS, *supra* note 61, at 2.

⁶⁵ *Id.*

⁶⁶ *Id.*, at 2-12.

⁶⁷ In general, out of 47 cases which listed enough information to allow computation, an average of one year and one month elapsed between the date of discovery of the violation and the date charges were filed. The average time between discovery and the effective date of resolution was one year and nine months. In 11 of these 47 cases, it took two and one half years or longer before the case was resolved.

ing had been set at the time APHIS had compiled its ten year prosecution information. Finally, the dealer's license was revoked after he was found guilty of other AWA abuses. A total of eight years and ten months elapsed between the discovery of the first cruelty violation and the revocation of this license.⁶⁸

In another example, a dealer who had already been the subject of a two-week license suspension and a cease and desist order was charged again for violations which included a two-month accumulation of manure piled close to dog coops, with near flooded conditions caused by heavy rains compounding the sanitation problem. Four years after this abuse was discovered, an administrative law judge imposed another cease and desist order and license suspension.⁶⁹

Out of the seventy-one administrative proceedings filed in the ten year period, only six resulted in an involuntary license revocation.⁷⁰ However, even the revocation of a license is not necessarily permanent. One year after the revocation takes effect, the violator may apply for a new license.⁷¹

The 1976 enforcement statistics do not indicate any improvement over the slow pace of the first ten years. Out of the more than 7,000 licensees and registrants under the auspices of APHIS,⁷² only 573 apparent violations were investigated in 1976, of which only 139 were received for action. Although 100 pending and new cases were closed during that year, APHIS acknowledged a higher 1976 caseload because of investigations of late or defective 1975 reports from research facilities on their use of laboratory animals.⁷³ Administrative proceedings in 1976 resulted in the closing of only twenty-seven cases by imposition of cease and desist orders, and license suspensions or revocations. Twenty-two cases were closed without action, and three were dismissed without prejudice.⁷⁴ Overall, the number of animal welfare inspections decreased in 1976 by nearly 3,000.⁷⁵ Recurring compliance inspections and unannounced calls made at sites where regulated animals are kept to monitor compliance averaged less than 1.5 calls per site, a level of inspection which even the

⁶⁸ PROSECUTIONS, *supra* note 61 at Administrative Case Nos. 2 and 24.

⁶⁹ *Id.* at Administrative Case Nos. 22 and 47.

⁷⁰ *Id.* at Administrative Case Nos. 5, 7, 8, 24, 28 and 49.

⁷¹ *Id.* at 2.

⁷² ANIMAL WELFARE ENFORCEMENT [1976], *supra* note 53, at 19 (Table 1 of Appendix).

⁷³ *Id.* at 12.

⁷⁴ *Id.*

⁷⁵ *Id.* at 9.

USDA admitted was too low for effective enforcement of the Animal Welfare Act.⁷⁶

1. The Specific Failure of the Animal Fighting Provisions

The major enforcement failure of the Animal Welfare Act can be found in the lack of attention given the provisions prohibiting animal fighting ventures.⁷⁷ Here, again, the Department of Agriculture expressed negative feelings about the provision at the outset. In its letter to the Chairman of the House Committee on Agriculture opposing enactment of the 1976 Amendments, the Department stated: "[W]e do not have the kind of trained manpower and other resources necessary to prohibit animal fights or arrest the involved persons [T]his is a proper responsibility of state and local law enforcement agencies" ⁷⁸ Even though the animal fighting prohibitions were enacted over these objections, the section has not been enforced. This lack of enforcement was acknowledged by an Area 1 official who stated that APHIS does not investigate this part of the Act due to the danger involved.⁷⁹ This danger was emphasized by an APHIS compliance officer⁸⁰ who traced it to the fact that APHIS employees are unarmed and lack arrest powers. Both officials acknowledged a general lack of guidance, with the national office never having directed that the areas enforce these provisions.⁸¹ In fact, prior to 1978, no funds had ever been budgeted for enforcing this aspect of the Act.⁸² Thus, a provision which allegedly endeavored to stop the thousands of dog fights sponsored annually in which wagering often reaches \$100,000 per fight⁸³ had been rendered useless. Perhaps, with the funds which were specifically included in the 1978 Agriculture Appropriations Bill for implementation of the 1976 Animal Welfare Amendments, these provisions will be enforced.⁸⁴

⁷⁶ *Id.* at 10.

⁷⁷ 7 U.S.C. § 2156 (1976).

⁷⁸ Letter from Office of the Secretary, USDA, *supra* note 51, at 766-67.

⁷⁹ Interview with Dr. A. Crawford, *supra* note 54. During this interview, Dr. Crawford acknowledged Massachusetts' reputation as one of the three biggest states for dog fighting ventures, but denied any personal knowledge of any fights or other dog fighting activity.

⁸⁰ Interview with Wilfred Lamb, APHIS Compliance Officer for Area 1 (February 3, 1978).

⁸¹ I would like to express appreciation to these officials in their efforts to present me with an objective statement of the facts. Their attitude at all times was of both a loyalty to the Department and an eagerness to comply with their duty to make such information accessible to the public.

⁸² ANIMAL WELFARE ENFORCEMENT [1976], *supra* note 53, at 16.

⁸³ VETERINARY SERVICES, ANIMAL & PLANT HEALTH INSPECTION SERVICE, U.S. DEPARTMENT OF AGRICULTURE, APHIS FACTS ABOUT ILLEGAL ANIMAL FIGHTING VENTURES 2 (December, 1976).

⁸⁴ THE HUMANE SOCIETY NEWS, Fall 1977, at 22.

D. Excessive Bureaucracy and Disinterest

Bare enforcement statistics reveal the USDA's failure in its enforcement responsibilities under AWA; the problem lies deep in the attitudes and priorities of the agency. The USDA's attitude toward its role under the Act must be changed if the Act is ever to have force. The USDA's disinterest has extended far beyond that expressed in the original debates on the legislation, clearly resulting in detriment to those who should be protected by the Act. In 1976, only one fourth of the field officers were specifically trained in animal welfare.⁸⁵ This is totally inadequate because most APHIS inspectors prior to the AWA had worked only with livestock and poultry. Consequently, they never developed any expertise in dealing with the animals covered under the AWA.⁸⁶

Experts at the Humane Society of the United States⁸⁷ noted that this lack of expertise is a particularly acute problem in APHIS inspection of laboratories. They stated that, because the inspectors are not familiar with non-livestock animals, and are even less familiar with the laboratory setting, they often overlook glaring violations. This problem is further complicated by the Act's extremely detailed and complex regulations.⁸⁸ Full comprehension of these regulations requires specialists who understand their intricacies and can apply them in an inspection. Inspections to enforce the regulations emphasize aspects of animal care which include proper veterinary care, food, water, sanitation, bedding and protection from weather extremes.⁸⁹

However, even if APHIS provided fully-trained animal welfare specialists, the unwieldy bureaucratic AWA maze presents another major obstacle to the smooth functioning of the Act. An attorney for the Humane Society, commenting on the cumbersome internal procedures,⁹⁰ stated that eight bureaucratic steps exist between the field agent and the decision-maker on the national level just to handle an emergency. Violations which require utilization of APHIS procedures are never handled on a local level. All prosecutions must be processed through the national office.

⁸⁵ ANIMAL WELFARE ENFORCEMENT [1976], *supra* note 53, at 9.

⁸⁶ Dr. Crawford noted that most of these inspectors resented the changes in their routine brought about by AWA.

⁸⁷ Interviews in early January, 1978 with Susan Pressman and Phyllis Wright of the Humane Society of the United States focused on this lack of competency in APHIS inspections.

⁸⁸ Animals & Animal Products, 9 C.F.R. §§ 1.1 *et seq.* (1977).

⁸⁹ ANIMAL WELFARE ENFORCEMENT, [1976], *supra* note 53, at 7.

⁹⁰ Interview with Roger A. Kindler, Esq. (January 20, 1978).

Much of the time that actually is allotted to AWA enforcement is wasted due to the vast amount of paperwork required. Intricate, detailed inspection reports must be filed after every inspection even if the inspection shows the dealer or facility in total compliance with the Act. Finally, the lack of commitment to and interest in the Act is demonstrated by AWA being last on a list of seven priorities for APHIS.⁹¹ APHIS specifically requires that the ordering of the priorities is to have a direct relationship to work schedules,⁹² so the priorities clearly affect both the time and manpower devoted to the Act.

E. Retention of the USDA as Administering Agency

Provisions of the AWA regarding research laboratories involve particularly complex issues. For example, it is difficult to determine whether AWA enforcement would improve if the Act were administered by another agency. Unlike the Department of Health, Education and Welfare, which frequently oversees complexities involving medical research institutions, the USDA has never needed to develop expertise in this area.

Early debates on the original Laboratory Animal Welfare Act reveal that one reason why the enforcement authority did not go to HEW was because that would be tantamount to self-regulation by medical researchers.⁹³ Opponents of this view stressed that such "self-regulation" for hospitals and universities exists under HEW, and further, such self-regulation exists in the Act itself in that certain sections specifically grant to the medical researchers the authority to implement standards established by the Department.⁹⁴

However, such arguments are academic since the only AWA provision which really does go "beyond the laboratory door" merely requires that the research facility justify its use, or lack thereof, of anesthetics, analgesics and tranquilizers on animals within professionally acceptable standards.⁹⁵ Not only does such a policy "prevent a moral evaluation of experimental techniques by any parties but the scientists themselves,"⁹⁶ but it also raises the issue of whether the Act can rely on existing USDA expertise or whether it needs expertise in new areas. Since the AWA does not regulate

⁹¹ Interagency Memorandum from the APHIS Northern Regional Director, listing priorities which were set by the APHIS Administrator in Washington, D.C. (August 12, 1977).

⁹² *Id.*

⁹³ S. REP. No. 1281, 89th Cong., 2d Sess., reprinted in [1966] U.S. CODE CONG. & AD. NEWS 2635, 2648.

⁹⁴ *Id.*

⁹⁵ 7 U.S.C. § 2143(a) (1976).

⁹⁶ Comment, *Toward Legal Rights for Animals*, 4 ENV. AFF. 205 (1975).

actual research conditions, but only the conditions existing prior to and immediately after animal experimentation, any agency sufficiently funded and properly trained could administer the Act.

Further, the AWA does not apply only to research facilities. Proper evaluation of the USDA as administrator of the Act necessitates an understanding of the extensive scope of activities covered by the AWA. For example, a detailed criticism of the AWA as it affects zoos questioned the suitability of the USDA as enforcer, particularly in regard to its lack of expertise in dealing with wild species which are unfamiliar to APHIS employees.⁹⁷ Nonetheless, this inexperience could be compensated for with some concern, initiative and financial commitment:

Inspections carried out by the Department have often been either ineffective or nonexistent. This inadequacy is not only due to lack of motivation within the Department to establish a strict enforcement policy, but is also the result of insufficient funding to implement the necessary procedures.⁹⁸

IV. PROGNOSIS AND SUGGESTIONS

The failure of the Animal Welfare Act, while primarily due to the problems of its administration by the USDA, would probably not be remedied merely by changing enforcement agencies unless the new agency was particularly interested and able to allocate the necessary manpower, training and funds needed to make the Act viable. If the USDA were willing to provide these requirements, then the agency would be able to comprehensively enforce the Act. After twelve years the Department must have learned enough so that any change requiring another agency to start anew, with the concomitant ignorance that such a reassignment involves, would be imprudent.

This conclusion is supported by statements by USDA officials⁹⁹ who explained that APHIS was planning a number of administrative changes that would provide more manpower and expertise for AWA enforcement. Associate Professor Charles E. Friend has analyzed the ineffective enforcement of the few existing animal cruelty laws as due to several factors, including "lack of funds and personnel for the agencies charged with enforcement, and the indifference toward animal cruelty shared by the public at large, law enforce-

⁹⁷ Comment, *Federal Regulation of Zoos*, 5 ENV. AFF. 381 (1976).

⁹⁸ *Id.* at 395.

⁹⁹ Interviews with Dr. A. Crawford and Wilfred Lamb, *supra* notes 54, and 80.

ment officials, and public prosecutors.”¹⁰⁰ Friend notes that the agencies’ financial problems are further complicated by the vast sums of revenue collected from the licensing procedures that are unavailable to the agencies charged with the responsibility for animal welfare.¹⁰¹ The USDA itself states that, although dealers pay between \$5 and \$500 and exhibitors pay between \$5 and \$100 for their licenses, these funds are deposited in the United States Treasury as miscellaneous receipts with no portion made available to USDA.¹⁰² This money could provide needed additional revenue for the continual training of personnel necessary to make the Act viable.

The Massachusetts Society for the Prevention of Cruelty to Animals (MSPCA), the enforcement vehicle for the animal cruelty laws in Massachusetts, offers an interesting organizational model that APHIS should examine.¹⁰³ The officers are commissioned as special state police officers, specially trained by both the MSPCA and the police academy, with powers to arrest and prosecute state animal cruelty violations. Their inspection reports are consistent with the results of their findings. If the site inspected is in compliance, the only information required is the name, address and date of inspection; in-depth reports are not completed as a matter of course as in APHIS inspections, thereby helping to eliminate some of the red-tape and to free up time so that more inspections may be made.

The MSPCA also utilizes another important technique absent from APHIS procedures. This technique of selective enforcement focuses efforts on particularly flagrant violators in order to show that the agency “means business.” This is an effective technique, especially when resources are scarce, because it puts other potential violators on notice that the agency is actively pursuing its goals. Since AWA enforcement has been so feeble, APHIS would benefit from these “selective enforcement” techniques in that they would give some impetus for potential violators to comply with the law.

Federal agencies should work more closely with state agencies such as the MSPCA for practical and expedient enforcement of the Act. For example, until local APHIS branches can institute actions

¹⁰⁰ C. Friend, *Animal Cruelty Laws: The Case for Reform*, 8 U. RICHMOND L. REV. 201, 216 (1974).

¹⁰¹ *Id.* at 222.

¹⁰² ANIMAL WELFARE ENFORCEMENT [1976], *supra* note 53, at 2.

¹⁰³ All MSPCA information was provided by Capt. Donald Lambert, head of the law enforcement division of the MSPCA, during interviews on January 24, 1978 and February 23, 1978.

directly in the proper district court rather than having to go through the national office, state enforcement officials should be encouraged to prosecute those AWA violations which are also violations of state law. Although this stopgap measure would dilute the effectiveness of the federal legislation in favor of state prosecution, it would provide a faster and more efficient way of stopping the violator than does the present system. Naturally, this measure would not be necessary if the Act could be enforced properly on the federal level. Nevertheless, all agencies charged with responsibility for animal cruelty violations should be encouraged to work together to stop abuses quickly and effectively.

V. CONCLUSION

In order to make the Animal Welfare Act work for the first time in its twelve year history, the bureaucratic maze must be untangled, animal welfare specialists must be trained and utilized by APHIS and such specialists must be given an increase in enforcement authority. In addition, a reexamination of APHIS priorities must place this important piece of legislation in the position of prominence which it deserves. The Animal Welfare Act is an important and comprehensive piece of legislation. It should be given the opportunity of providing those animals so desperately in need the protection which the Act offers but has not yet been able to deliver.