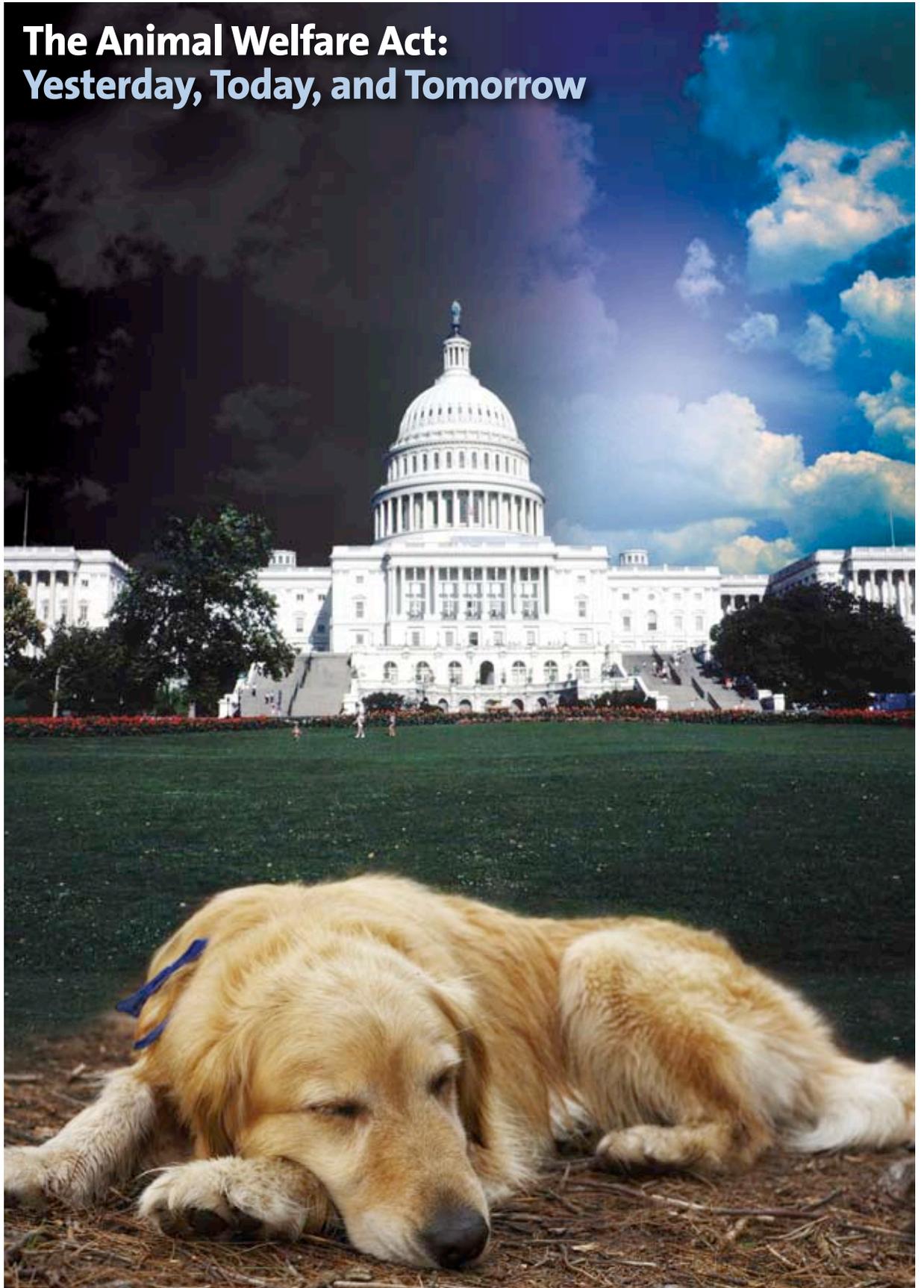


A PUBLICATION OF
THE AMERICAN
ANTI-VIVISECTION
SOCIETY

The Animal Welfare Act: Yesterday, Today, and Tomorrow





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Who Are We?

Founded in 1883, the American Anti-Vivisection Society (AAVS) is the oldest non-profit animal advocacy and educational organization in the United States dedicated to ending experimentation on animals in research, testing, and education. AAVS also opposes and works to end other forms of cruelty to animals. We work with students, grassroots groups, individuals, teachers, the media, other national organizations, government officials, members of the scientific community, and advocates in other countries to legally and effectively end the use of animals in science through education, advocacy, and the development of alternative methods to animal use.

AAVS has two main divisions, each involved in specific activities. Animalearn is the education program of AAVS, which focuses on ending vivisection and dissection in the classroom. From elementary through college levels, Animalearn helps countless individuals make their classrooms more humane. Animalearn operates the most aggressive dissection alternatives lending library in the country, The Science Bank; it provides alternatives to using animals, from basic dissection, through psychology experiments. Animalearn also participates in national teacher conferences and hosts workshops to help teachers learn ways of educating without harming other living creatures. Animalearn's National Humane Educators Network links interested parties with speakers across the country, bringing the message of humane education to thousands.

The Outreach division of AAVS educates the general public about animal issues through one of the top-rated literature collections in the animal advocacy movement and the informative AAVS website. Our quarterly publication, *AV Magazine*, and bi-monthly newsletter, *Activate For Animals*, provide comprehensive up-to-date information on the scientific and ethical dimensions of animal experiments and alternatives. Both publications encourage AAVS members and supporters to become actively involved in our campaigns. Outreach staff also travel to speaking engagements and conferences and place advertisements in national publications to spread the AAVS message across the country.

The Alternatives Research & Development Foundation (ARDF), an affiliate of AAVS, awards grants to scientists and educators working to develop non-animal methods of investigation. ARDF's unique program provides the necessary resources for the development of alternatives to the use of animals, and it advocates the use of alternatives through the internet and by participating in conferences and seminars. Through these endeavors, ARDF works to promote scientific solutions for today with humane visions for the future.

We ask you to become a member of AAVS and help us to end the use of animals in science through education, advocacy, and the development of alternative methods. It is only through the support of members and other individuals that we are able to continue our vital and successful programs.



American Anti-Vivisection Society

FIRST WORD



Is the AWA effectively protecting animals? It is a simple question, but one that is essential to address at the 40-year anniversary of the Animal Welfare Act (AWA). Upon reflection, there have been many successes, although much still needs to be done to ensure that humane care and treatment is provided to animals used by exhibitors, dealers, and research facilities.

A review of federal agency documents and media reports reveals that:

❶ Exhibited animals are still suffering. Incidences of severe mistreatment of animals at circuses and roadside zoos are all too prominent. The inability of zoos to provide adequate space and living conditions is also apparent due to the large number of elephants dying and suffering from life threatening foot and joint problems.

❷ Pet animals are still suffering. There are countless reports of dogs and puppies living in filthy and inhumane conditions at puppy mills throughout the country. Only wholesale dealers are covered under the AWA. As a result, numerous retail puppy mill dealers (including sales over the internet) are completely exempt from the law, allowing the puppy mill industry to flourish.

❸ Research animals are still suffering. Sadly, these animals are suffering the worst of all because over 95 percent of animals bred for use in research (birds, rats, and mice) are not covered by the AWA. When Congress excluded these animals from the Act in 2002, all protections for these animals were halted, including the requirement that researchers provide these animals with humane care and treatment during experimentation. Over a million animals used in research, such as dogs, cats, and primates, are covered by the AWA, but 80-100 million rats and mice specifically bred for use in research receive no protection under the law.

These are only a few examples of the animal welfare problems that are emerging. Clearly, amendments to the AWA are necessary to close loopholes to better protect animals. The 40th anniversary of the AWA is a good time to address animal welfare concerns with your federal Representative and Senators and the agency charged with enforcing the AWA, the United States Department of Agriculture. Only through hearing public opposition to the treatment of animals in zoos, puppy mills, and research facilities will there be change.

But let us not dwell solely on the negative. Although there are numerous animal welfare problems that require legislative or regulatory and enforcement changes, there are also parts of the law that are helping animals. These provisions must be preserved. For instance, requiring researchers to consider alternative methods to using animals in harmful/painful procedures is an important provision in forcing the research community to consider using non-animal alternatives. Through the AAVS affiliate, Alternatives Research & Development Foundation, \$1.5 million in grants have been awarded for the development of non-animal methods in research, testing, and education. Through the development of non-animal alternative methods, the use of animals in research will decrease—a goal that AAVS constantly strives to achieve.

AAVS understands that protecting animals is an ongoing battle. We have been doing it for 123 years. With the continued help and support of members and constituents like you, we can be a powerful voice for the animals and make the necessary regulatory and legislative changes to the law while protecting the core principles that the legislative founders of the AWA envisioned 40 years ago.

Tracie Letterman



By Nicole Perry, AAVS
Outreach Coordinator

A Dalmatian, a Camera, and Congress: The History of the Animal Welfare Act

Americans have long been concerned with the welfare of animals. In fact, the first U.S. laws established to protect animals date back to 1641 with the enactment of the Massachusetts “Body of Liberties.”¹ The Liberties were drafted by early American colonists and provided “That no man shall exercise any tyranny or cruelty toward any brut creatures which are usually kept for the use of man.” Over 200 years later, the first federal animal protection law, the 28-Hour Law of 1877, was enacted, requiring that livestock be rested and watered once every 28 hours during transport.² This important legislation was championed by AAVS founder Caroline Earle White who helped to convict many who violated it. In addition to this federal law, many states had anti-cruelty statutes, but none extended to the laboratory environment.

It was not until 1966 that the most fundamental standards for the use of animals in biomedical research were set with the advent of the Laboratory Animal Welfare Act, later known as simply the Animal Welfare Act (AWA). The AWA has since become the basis for creating a national animal protection law. In addition to regulating the use of animals in laboratory settings, the AWA has also, through amendments, extended its reach to cover animals used in other areas, such as exhibitors and dealers.

To this day, the AWA remains the only federal law designed to cover animals who are used by dealers, exhibitors, transporters, and researchers. Lamentably, since it formally excludes birds, rats, and mice bred for use in research, the law covers only a mere five percent of animals used in experiments.

On August 24, 1966, President Lyndon Johnson signed the Laboratory Animal Welfare Act into law with the promise of protecting animals used (and stolen for use) in research. Upon signing the Act, Johnson avowed, “Science and research do not compel us to tolerate the kind of inhumanity which has been involved in the business of supplying stolen animals to laboratories, or which is sometimes involved in the careless and callous handling of animals in some of our own laboratories. This bill will put an end to these abuses.”³ As history would later prove, the AWA did put an end to some abuses—but certainly not all of them.

Pepper’s Story

Purportedly, the disappearance of one

dalmatian started it all. Before Pepper vanished from her yard in 1965, the issue of stolen animals for research was not a well-known public concern. However, Pepper’s disappearance—and her tragic demise—sparked a national drama that led to the introduction of a bill that would later become the Laboratory Animal Welfare Act.

After frantically searching their neighborhood without success, Pepper’s family learned that she had been found and taken to a local humane society; but, unfortunately, her family could not retrieve her. Pepper had been sold to an animal dealer, a practice called pound seizure, and no one could tell her family exactly where she was or what would be her fate.

Amazingly, one of Pepper’s family members spotted her in a newspaper photograph of animals being unloaded from a dealer’s truck in New York. There, among 17 other dogs and two goats, was Pepper’s speckled face. Following this lead, her family drove from Pennsylvania to New York to confront the dealer, but was denied access to the property.

Shaken, but not deterred, the family contacted the Animal Welfare Institute, an advocacy group in Washington, DC, which used its powers to contact Representative Joseph Resnick (D-NY), the Congressman in the dealer’s district. Unfortunately, even Resnick’s personal attempts to intercede failed, and it finally took police pressure to discover that Pepper had been sold to a New York hospital where she was used in an experiment and died on the operating table. The family, Resnick, and the nation were devastated.

Angered by this injustice, Resnick decided to introduce a bill that would prevent such wrongs from ever happening again. His cause was noble, and his passion strong, but along the way, he was met with much opposition.

“Den of woes”⁴

Fortuitously, around the time that Resnick was seeking support for his bill, *Life* magazine ran a photo-essay titled “Concentration Camps For Lost and Stolen Pets,” documenting the horrors of class B animal dealerships, businesses that sell animals for use in scientific research. Being the most widely read weekly news magazine of that time, *Life* had the opportunity to educate a great number of people about the grotesque conditions in which these dogs and cats lived. And it did. The public was outraged. More letters

were written in response to the February 4, 1966 spread than any other article written in the history of *Life* magazine, including articles about the Vietnam War.

Stan Wyman, photographer of the shocking photo-essay, detailed the raid of Lester Brown’s farm in White Hall, Maryland. He described what he saw as a “den of woes”: dogs were chained to wooden crates, and the only food in sight was a pile of frozen meat; some animals were visibly malnourished, their ribs showing through their skin; and perhaps the saddest sight was a dead beagle who had frozen beneath a wooden crate. In addition to these descriptions, readers saw the eyes of real dogs, loving and innocent like the eyes of the dogs sitting next to them, or sunning in their backyards, or sleeping on their beds.

Wyman warned *Life* readers that “50 percent of all missing pets have been stolen by ‘dognappers,’ who in turn sell them to dealers.”⁵ In other words, many of the dogs in his pictures were probably people’s companion animals.

Soon after the issue hit the stands, there was a flood of public support for Resnick’s bill—and political support as well. Wyman’s article had been hand-delivered to every member of Congress.

“It is up to the Congress”⁶

With passion and fury after Pepper’s death, Representative Resnick penned a bill that strictly defined the terms “dealer” and “exhibitor.” The bill mandated that dealers be licensed and inspected by the U.S. Department of Agriculture (USDA), and required that all laboratories purchase only from licensed dealers. Additionally, Resnick called upon the Secretary of Agriculture to set humane standards for animal care and use.

Once Resnick’s bill began wading through the House of Representatives, a similar bill was introduced into the Senate by Senator Warren Magnuson (D-WA). A self-proclaimed “friend of the medical researcher,”⁷ Magnuson had earlier helped usher in legislation that created the Cancer Institute and the National Institutes of Health, both in Bethesda, Maryland. Upon the introduction of Resnick’s companion bill, he said, “I would like to emphasize that the issue before us today is not the merits or demerits of animal research. We are interested in curbing petnapping, catnapping, dognapping, and protecting animals destined for research laboratories, while they are in commerce. We are not

considering curbing medical research. I have always considered myself a friend of the medical researcher. Yet, we do not think we can allow the needs of research, great as they may be, to promote either the theft of a child’s pet or the growth of unscrupulous animal dealers.”⁸

From the beginning, both bills faced opposition, but the exposé in *Life* magazine helped build public support. Twenty other bills had been introduced on the subject, and their nuances were being considered. Finally, on September 2, 1965, Resnick’s bill had a chance to be heard in the House Agriculture Committee, chaired by Representative W.R. Poage (D-TX). Poage was the author of the Humane Slaughter Act, and championed Resnick’s bill when it came to his Committee. Christine Stevens, President of the Animal Welfare Institute (AWI), submitted this testimony in favor of the bill:

“The unaccountable reluctance of scientific groups to act with firmness to stop abuses means that it is up to Congress to supply the mandatory standards and inspection. Breeders, dealers, scientific institutions, and manufacturers of equipment for sale to laboratories all have a vested interest in animal experimentation, whether or not it produces results beneficial to humanity. It is beyond their powers to police themselves, for there are too many pressures preventing them from doing an honest and effective job. Therefore, we earnestly request the Congress to enact this Poage bill, H.R. 12488, which can, through inspection and licensing, promptly bring an end to the widespread abuses in the handling and housing of animals by those who sell and those who buy experimental animals and which will prevent theft of pets for sale to laboratories.”⁹

Unfortunately, after two hearings, the bill passed the House in a stripped-down version that covered only cats and dogs, did not require mandatory inspections of dealers, and did not extend to the laboratory environment at all.

On its way through the Senate, however, the bill had yet another chance to transform. Senator Mike Monroney (D-OK) wrote an amendment that restored coverage of laboratory animals and, despite pressure from the National Institutes of Health, the bill passed the Senate in a vote of 85 to 0. With just as much celerity, the bill was signed into law on August 24, 1966 by President Johnson,

marking it a monumental day in the lives of U.S. animals.

What is an “Animal”?

Animals confined to U.S. labs finally had a law that worked on their behalf. Essentially, the Laboratory Animal Welfare Act of 1966 intended to wipe out the practice of using stolen animals in research experiments. In doing this, it also set standards for humane treatment of other animals used by dealers and research facilities. The term “animal” was defined as “dogs, cats, monkeys (non-human primate mammals), guinea pigs, hamsters, and rabbits,”¹⁰ but it would not be until the next decade that this term was further elucidated.

In 1970, the term “animal” was expanded to include all warm-blooded animals except farmed animals.¹¹ The Act was further strengthened by requiring the use of pain-relievers, as long as they did not interfere with the experiment. Laboratories were also required to provide data on their animal use to the USDA, setting a precedent for accountability. Lastly, but most notably, the Act was renamed the Animal Welfare Act, and extended its reach outside the laboratory system to cover animals in circuses, zoos, and commercial breeding facilities.¹²

That year, it seemed the Act was making headway for the animals. But a bigger blow was yet to come. In 1972, the Secretary of Agriculture initiated regulations that specifically excluded birds, rats, and mice, from the definition of “animal,” despite strong opposition from the animal protection community. Lamentably, the nation was left with an Act that legally protected a mere five percent of animals used in research, thus undermining Congress’s original intention for the Act.

In 1976, the Act was further amended to bring governmental research institutions under the same strict regulations as private institutions. Additionally, the imposition of fines for violations was now the same for research facilities, exhibitors, and dealers. Previously, research facilities were subject to a cease and desist order that they would have to violate before a fine was imposed. The 1976 amendments also extended the scope of the AWA to include animals used in other industries besides research, exhibition, and dealing. Now it covered animals in transportation and those forced to fight, such as dogs and roosters.¹³

Nine years later, in 1985, Congress passed the Food Security Act, which contained an amendment entitled the “Improved Standards for Laboratory Animals Act.” This amendment directly affected the AWA by strengthening standards for laboratory animal care, and it was sponsored by Senator Robert Dole (R-KS) and Representative George Brown (D-CA). Requiring appropriate use of painkillers, the amendment intended “to ensure that animal pain and distress are minimized.”¹⁴ Animals were to receive proper pre-surgical and post-surgical care and humane euthanasia upon completion of the experiment. Additionally, all laboratory technicians who worked with animals were to receive special training in animal care and use. To ensure the psychological well-being of certain animals, the amendments necessitated that dogs receive regular exercise and nonhuman primates be housed in a stimulating environment. This powerful legislation also established new concepts in the regulation of research facilities. For instance, each research facility was to establish an Institutional Animal Care and Use Committee (IACUC), which would oversee animal care at the institution and examine animal use, assuring that alternatives were considered in experiments that cause pain or suffering. In addition, the Animal Welfare Information Center (AWIC) was established, which, according to former Animal and Plant Health Inspection Service Assistant Deputy Administrator, Richard L. Crawford, DVM, has become “a very valuable resource.”¹⁵ In a speech given at the 30th anniversary of the AWA, Crawford said that AWIC “has the possibility of doing much more, and hopefully it will continue to grow in the future and to expand its database and resources, particularly in the area of farm animals, alternatives, and unnecessary duplication of research.”¹⁶

In response to the shocking circumstances of pound seizure—the sale or release of cats and dogs from animal shelters to research, testing, or educational facilities that is required by law in some states—the AWA was amended in 1990 to define a minimum holding period of five days for animals held in shelters. The amendment also established more stringent record-keeping requirements for dealers who obtain animals from these sources.¹⁷

In 2002, Congress passed the Farm Bill that again redefined the term “animal,” and would later affect the AWA’s

definition of “animal” as well. Pushed by Senator Jesse Helms (R-NC), the new definition excludes “birds, mice of the genus *Mus*, and rats of the genus *Rattus*, bred for use in research, horses not used for use in research purposes,” and farmed animals. This language was formally adopted into the USDA’s regulations on June 4, 2004.¹⁸ Despite this huge blow to animals used for research, the Farm Bill’s amendments did provide protection for other animals by closing loopholes that had allowed interstate shipment and foreign export of animals used for fighting.

“The sacredness of life”¹⁹

The disappearance of Pepper and the publication of the horrific *Life* exposé undoubtedly brought the plight of research animals to the forefront of the public’s mind in the 1960s. And together, these events provided the momentum that was essential to the passage of the Laboratory Animal Welfare Act.

In 1966, the Laboratory Animal Welfare Act set the framework for a national animal protection law, and today, the AWA continues to build upon it. Perhaps one day, birds, rats, and mice bred for use in research will be included in the definition of “animal.” But as Representative Brown stated in his speech at the 30th anniversary of the AWA, changes in animal welfare laws merely reflect changing views in our society. Indeed, due to the efforts of animal advocates and humane educators, those views are changing, albeit slowly. Representative Brown affirmed, “Advocates of a humane ethic for animals are gaining momentum in this country. This movement gains its strength from the very basic philosophy regarding the sacredness of life. While recognizing the role that animals have traditionally played in society as food sources, companions, and research models, we have to always remember that animals are sensing, living beings capable of feeling fear and pain, and that they must be respected as such.”²⁰

As a whole, the AWA has indeed made provisions for many of these sentient beings. But regrettably, many more are left without any legal protection at all. **AV**

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¹⁰ Pub. L. No. 89-544, 80 Stat. 351 (1966).
¹¹ “The term ‘animal’ means any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal, as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet; but such term excludes horses not used for research purposes and other farm animals, such as but not limited to livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber.” Pub. L. No. 91-579, 84 Stat. 1560 (1970).
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From Bill to Law

Living in a democracy, our legislative process as laid out in the U.S. Constitution may seem like a daunting Congressional maze to some. But in reality, each bill introduced in Congress goes through exactly the same checks and balances.

A member of Congress introduces legislation and the bill is numbered according to where it originated. H.R. if from the House of Representatives or S. if from the Senate.

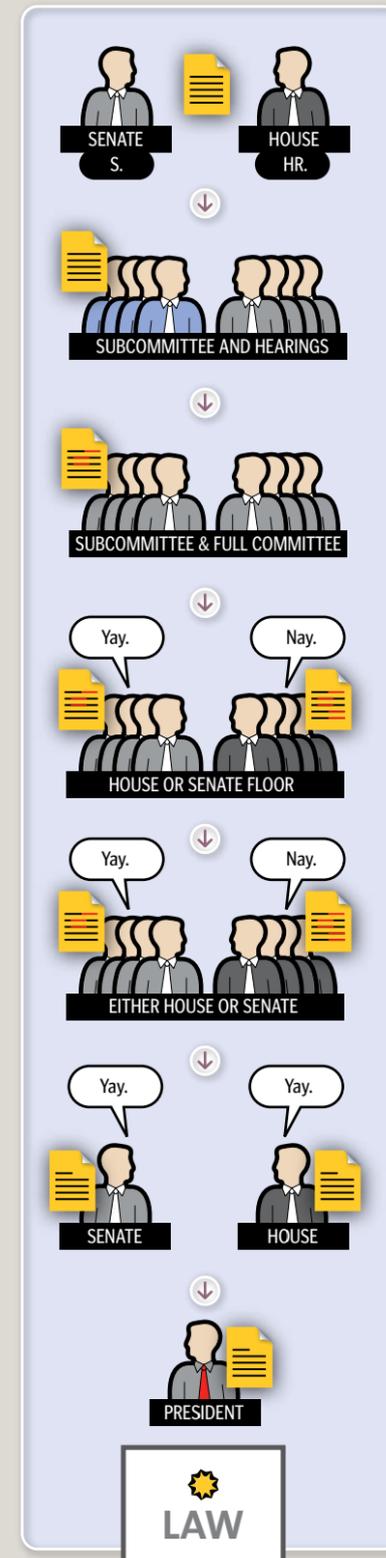
The legislation is then referred to a Committee that has jurisdiction over the issue addressed in the bill. Often the bill is assigned to a Subcommittee which holds a hearing, allowing public officials, experts, and NGO’s (non-governmental organizations) to share their testimony.

The Subcommittee holds a mark-up of the bill, where amendments and changes can be made before recommending it to the full Committee, or it decides to not report the bill and the bill dies. If approved, the full Committee reports the bill to its respective chamber (Senate or House of Representatives).

Once the bill reaches that House or Senate floor, the legislation is debated and then legislators vote for or against the legislation.

Once the House or Senate approves the bill, it is then referred to the other chamber where it is either approved, amended, rejected, or ignored.

Both the Senate and the House approve identical versions of the bill before it can be presented to the President to officially sign into law, or possibly reject through a veto. Once signed, the bill is assigned its Public Law number.



The Who, What, Where, When, Why, and How of the Animal Welfare Act

By Crystal Schaeffer, M.A. Ed.,
AAVS Outreach Director

For four decades, the Animal Welfare Act (AWA) has been protecting animals from inhumane treatment and neglect. Originally enacted in 1966 to protect only cats and dogs from theft and their arbitrary sale and use in experiments, the AWA has had its coverage expanded with amendments in 1970, 1976, 1985, 1990, and 2002. Today the AWA is federal legislation that outlines standards of care and treatment for certain warm-blooded animals who are used in experiments, bred for commercial sale, exhibited, and/or transported. The Animal Care (AC), a program of the USDA's Animal and Plant Health Inspection Service (APHIS), administers and enforces the AWA by licensing and registering facilities and conducting both announced and unannounced inspections and investigations.

The animals

The AWA affords a level of protection for a wide range of species, and defines "animal" as "any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal" used for research, teaching, testing, experimentation, or exhibition purposes, or as a pet.¹ However, although many species fall under the protection of the AWA, the few warm-blooded animals not covered number in the hundreds of millions, as outlined in the 1972 amendment. For example, farmed animals such as cows, pigs, and chickens who are raised for human consumption and who are used in research to 'improve' agriculture so that they grow faster and leaner in more cost-effective ways, are not covered by the AWA. Also excluded are horses not used in research, and 95 percent of animals used in research and testing, namely rats of the genus *Rattus*, mice of the genus *Mus*, and birds who are bred for use in research, who were specifically excluded in 2002.² Although

it is difficult to estimate because their numbers are not required to be reported to the USDA, it is believed that there are more than 80,000 rats and mice used in experimentation.³ Additionally, the AWA also does not offer standards of care and treatment to cold-blooded animals such as fish (whose use in research is growing in popularity), frogs and turtles (who are often used in dissection and pithing exercises), amphibians (frogs, salamanders, etc.), reptiles (turtles, lizards, snakes, etc.), and invertebrates like insects (fruit flies are commonly used in genetics labs), spiders (have been used in genetic engineering), and marine life (lobsters, crabs, clams, etc.).

Industry

All businesses and individuals who work with animals covered by the AWA must be licensed and/or registered with AC and meet AWA regulations. Such facilities include exhibitors like zoos, circuses, and animal trainers; breeders, known as class A dealers, and animal brokers, also called class B dealers (who commonly obtain animals through pound seizure and breeders). Businesses (airlines, trucking companies, etc.) that transport animals covered by the AWA must also be licensed. And all research, testing, and teaching facilities using animals covered by the Animal Welfare Act must be licensed and registered with the USDA. Such facilities include hospitals, colleges and universities, and pharmaceutical firms.

Businesses and individuals not covered by the AWA include retail pet shops (except if they sell exotic zoo animals), animal shelters who do not engage in pound seizure, hobby breeders, and companion animal guardians. Additionally, the AWA specifically prohibits cock and dog fights, bear or raccoon baiting, and similar staged animal fighting ventures.

Regulations

The Animal Welfare Act outlines the accepted minimal standards of care and treatment of certain animals used in research, bred for commercial

sale, transported, and/or exhibited to the public. AWA regulations offer specifications on housing (cage size, floor requirements, outdoor living, etc.), proper handling (training techniques, removing animals in and out of cages, etc.), sanitation (cage cleaning, proper removal of waste, etc.), nutrition (balanced, varied diets), water availability, protection from extreme weather and temperatures, and veterinary care (treatment of injury and disease, pain management, euthanasia, etc.). APHIS acknowledges that these regulations are minimum standards, and on its "The Animal Welfare Act" factsheet, APHIS states, "Although [f]ederal requirements establish acceptable standards, they are not ideal." It further advises, "Regulated businesses are encouraged to exceed the specified minimum standards."⁴

In an effort to create a traceable paper trail to help ensure that animals utilized by regulated businesses are acquired legally and not stolen or lost companions, the 1970 amendment was enacted, requiring companies to document descriptions of the animals and their acquisition and transaction. Animal brokers must hold animals they acquire for at least five days to give former guardians opportunity to claim lost companions. Additionally, research facilities must provide AC with a list of AWA regulated species and the numbers of each species used. AC makes this information available to the public in the form of charts on its website. An example of such a chart can be found on page 8.

The 1985 amendment mandates that research laboratories must provide dogs with exercise, and nonhuman primates activities to promote their psychological well-being. Scientists are required to give regulated animals anaesthesia and pain relief as needed, unless they can document why such action would impact the reliability of their research data. And unnecessary duplication of specific experiments using AWA-covered animals is forbidden. The 1985 amendment also requires laboratories utilizing AWA-regulated

animals to establish an Institutional Animal Care and Use Committee, which is "responsible for ensuring that the facility remains in compliance with the AWA and for providing documentation of all areas of compliance to APHIS."⁵

Enforcement

To ensure that registered facilities comply with the Animal Welfare Act, AC tries to conduct unannounced inspections at least once a year. If a facility is found to be operating outside the AWA, it is ordered to correct the problem within a given time frame. Deficiencies that remain upon a follow-up unannounced inspection are documented and penalties (fines, cease-and-desist orders, license suspensions, etc.) are handed down. Regarding AWA violations at laboratories, the USDA's brochure entitled "The Animal Welfare Act: An Overview" states that "The AWA does not allow AC to prevent the use of animals in research or experimentation..."⁶ In other words, unlike with zoos, circuses, or puppy mills, USDA cannot remove and/or confiscate animals who appear to be suffering if they are involved in an experiment.⁷

Conclusion

The Animal Welfare Act is legislation created to set minimal standards of care and treatment of certain warm-blooded animals used in research, bred for commercial sale, transported, and exhibited. The USDA is responsible for ensuring that registered facilities operate in compliance with the Act and does this in part through unannounced inspections. Although it is far from being ideal, the Animal Welfare Act remains our country's prime federal law aimed at protecting animals from inhumane treatment and harm. **AV**

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- ² Lamberg, Lynn. Aug. 18, 1999. "Researchers Urged to Tell Public How Animal Studies Benefit Human Health." 282 *JAMA* 619-621.
- ³ Carbone, Larry. 2004. *What Animals Want: Expertise and Advocacy in Laboratory Animal Welfare Policy*. New York: Oxford University Press. p. 26.
- ⁴ APHIS. January 2002. "The Animal Welfare Act Factsheet."
- ⁵ See supra note 4.
- ⁶ USDA. May 2006. "The Animal Welfare Act: An Overview."
- ⁷ Animal Welfare Act. 7U.S.C. §2146(a) (3).

THE TRANSFORMATION OF THE AWA

1966

President Lyndon B. Johnson signs the Laboratory Animal Welfare Act into law, with the following primary purposes: 1) To protect dog and cat owners from pet theft; 2) To prevent the use/sale of stolen dogs or cats in research; and 3) To establish humane standards for animals (dogs, cats, nonhuman primates, guinea pigs, hamsters, and rabbits) by animal dealers and research facilities.

1970

The Laboratory Animal Welfare Act is renamed the Animal Welfare Act (AWA), and is expanded to cover all warm-blooded animals as designated by the Secretary of Agriculture with only limited and specifically defined exceptions. It also expands to cover animals in circuses, zoos, and commercial breeding facilities.

1972

The Secretary of Agriculture promulgates regulations to specifically exclude birds, rats, mice, horses, and farmed animals from the definition of "animal."

1985

The passage of the Food Security Act contains an amendment that strengthens AWA standards for laboratory animal care including requiring the consideration

of alternatives to any painful/distressful procedure using an animal. It also creates Institutional Animal Care and Use Committees (IACUCs) at each institution that uses regulated animals. In addition, the amendments require exercise for dogs and psychologically stimulating environments for non-human primates.

1990

Congress amends the Act to define a minimum holding period of five days for animals held in shelters in a further effort to prevent theft of companion animals.

2002

The Farm Bill statutorily excludes birds, rats (*Rattus*), and mice (*Mus*) bred for use in research from the term "animal." However, it also closes loopholes to protect animals used for fighting.



Number of Animals Used in Research (1973-2004)

Courtesy of the U.S. Department of Agriculture

FY	Dogs	Cats	Primates	Guinea Pigs	Hamsters	Rabbits	Farm Animals	Other covered animals	Totals
1973	195,157	66,165	42,298	408,970	454,986	447,570	Not Reported	38,169	1,653,345
1974	199,204	74,259	51,253	430,439	430,766	425,585	"	81,021	1,692,527
1975	154,489	51,439	36,202	436,446	456,031	448,530	"	42,523	1,625,660
1976	210,330	70,468	50,115	486,310	503,590	527,551	"	73,736	1,922,100
1977	176,430	62,311	53,116	348,741	393,533	439,003	"	46,535	1,519,669
1978	197,010	65,929	57,009	419,341	414,394	475,162	"	58,356	1,687,201
1979	211,104	69,103	59,359	457,134	419,504	539,594	"	76,247	1,832,045
1980	188,783	68,482	56,024	422,390	405,826	471,297	"	49,102	1,661,904
1981	188,649	58,090	57,515	432,632	397,522	473,922	"	50,111	1,658,441
1982	161,396	49,923	46,388	459,246	337,790	453,506	"	69,043	1,577,292
1983	174,542	53,344	54,926	485,048	337,023	466,810	"	108,549	1,680,242
1984	201,936	56,910	55,338	561,184	437,123	529,101	"	232,541	2,074,133
1985	194,905	59,211	57,271	598,903	414,460	544,621	"	284,416	2,153,787
1986	176,141	54,125	48,540	462,699	370,655	521,773	"	144,470	1,778,403
1987	180,169	50,145	61,392	538,998	416,002	554,385	"	168,032	1,969,123
1988	140,471	42,271	51,641	431,457	331,945	459,254	"	178,249	1,635,288
1989	156,443	50,812	51,688	481,712	389,042	471,037	"	153,722	1,754,456
1990	109,992	33,700	47,177	352,627	311,068	399,264	66,702	257,569	1,578,099
1991	107,908	34,613	42,620	378,582	304,207	396,046	214,759	363,685	1,842,420
1992	124,161	38,592	55,105	375,063	396,585	431,432	210,936	529,308	2,134,182
1993	106,191	33,991	49,561	392,138	318,268	426,501	165,416	212,309	1,704,505
1994	101,090	32,610	55,113	360,184	298,934	393,751	180,667	202,300	1,624,649
1995	89,420	29,569	50,206	333,379	248,402	354,076	163,985	126,426	1,395,463
1996	82,420	26,035	52,327	299,011	246,415	338,574	154,344	146,579	1,345,739
1997	75,429	26,091	56,381	272,797	217,079	309,322	159,742	150,987	1,267,828
1998	76,071	24,712	57,377	261,305	206,243	287,523	157,620	142,963	1,213,814
1999	70,541	23,238	54,927	266,129	201,593	280,222	155,409	165,939	1,217,998
2000	69,516	25,560	57,518	266,873	174,146	258,754	159,711	166,429	1,286,412
2001	70,082	22,755	49,382	256,193	167,231	267,351	161,658	242,251	1,236,903
2002	68,253	24,222	52,279	245,576	180,000	243,838	143,061	180,351	1,137,580
2003	67,875	25,997	53,586	260,809	177,991	236,250	166,135	199,826	1,188,469
2004	64,932	23,640	54,998	244,104	175,721	261,573	105,678	171,312	1,101,958

Senator Bob Dole Speaks for Animals

Former Senator Bob Dole played an important role in the development of the Animal Welfare Act, and in a 2001 personal letter to the Director of the Alternatives Research & Development Foundation, an affiliate of AAVS, he expressed that Congress's original intent was for all warm-blooded animals to be covered by the Act. Below is Senator Dole's letter, which also appeared in *Roll Call*, the newspaper of Capitol Hill.



As someone deeply involved with the process of revising and expanding the provisions of the AWA, I assure you that the AWA was meant to include birds, mice, and rats.

Thank you for your letter of March 1st regarding the current status of laboratory animals under the Animal Welfare Act (AWA).

I support the use of animals in research but firmly believe that there is a responsibility incumbent upon researchers to provide basic protections to the animals they use. It is obvious that good animal care is essential to ensuring good quality research. Through good animal treatment and minimizing painful tests, biomedical research gains in both accuracy and humanity.

As someone deeply involved with the process of revising and expanding the provisions of the AWA, I assure you that the AWA was meant to include birds, mice, and rats. When Congress stated that the AWA applied to "all warm-blooded animals," we certainly did not intend to exclude 95 percent of the animals used in biomedical research laboratories. Although the National Institutes of Health and the Association for Assessment and Accreditation of Laboratory Animal Care International provide oversight for some of the birds, mice, and rats used for experimentation,

many research institutions fall outside their purview. With AWA regulations soon extended to these animals, I believe USDA, with its substantial experience in enforcement, is best suited to ensuring humane care for all laboratory animals. Moreover, neither NIH's policy nor voluntary accreditation includes legal consequences for failure to perform. The Animal Welfare Act does. That is the heart of the law.

I am aware of efforts by opponents of animal welfare to prevent coverage of birds, mice, and rats as detrimental to research. This notion is preposterous. A similar strategy was employed by opponents of my 1985 amendments to the Act. I am happy to observe that none of their predictions about the dire consequences for research ever materialized.

Indeed, those amendments have facilitated significant improvements in laboratory animal care and use, which in turn have benefited research. In fact, I understand that those members of the research community best informed about laboratory animals support the inclusion of birds, mice, and rats. From their work on the front lines, they recognize, as you and I do, that uniform protections not only are humane, but also ensure consistent experimental results and level the playing field in vital scientific

research. Those who oppose USDA's efforts to fulfill its court settlement with your organization, I believe, are overlooking the long-term benefits to crafting better science.

We owe much to laboratory animals—that was true in 1985 and is truer today. I would hope that the Bush Administration and Members of the present Congress, some of whom stood with me in 1985 in advancing my amendments, will recognize that all animals used in experimentation deserve the benefit of the modest requirements of the Animal Welfare Act. I would urge them to allow USDA to achieve this end by pursuing a full and fair rulemaking as provided in the settlement agreement.

I wish you the best of luck not only in defending the Animal Welfare Act, but also in your ongoing efforts to advance humane methods of biomedical research.

Let me add that I am writing to you as a volunteer. I am not being paid by any persons or group for stating my views.

BOB DOLE

Photo courtesy of Robert J. Dole Institute of Politics Archive, University of Kansas © Stephen R. Brown, 2004



By Nancy Blaney, Federal Policy Consultant, Doris Day Animal League

THE ANIMAL WELFARE ACT: CREATING A LEGACY THROUGH THE LAW

At 40, the Animal Welfare Act should be about due for a midlife crisis, were it not for the fact that its entire history is punctuated with crises. It is also true, though, that when you are ‘in the middle of it,’ that is, the day-to-day fight to make sure the law is being enforced while beating off the efforts of its opponents to weaken it, every day looks like a crisis. It is easy to lose sight of what has been accomplished. Through the highs and lows, this law has not only brought about improvements in how animals are treated, but it has also been a force for change in attitude toward animals among government officials as well as the general public. But this is not the time to rest on its laurels.

Not long ago, it was possible for licensees to ignore the Act with impunity. The U.S. Department of Agriculture (USDA) did not take its enforcement responsibility seriously. Funding was anemic, and inspections were a farce. Violations were allowed to persist indefinitely.

Over time, through concerted efforts on the part of the humane community, our growing expertise in working with Congress and the Executive Branch, and a change of leadership within USDA, the adversarial relationship began to improve. USDA and the humane community came together to boost funding for AWA enforcement, especially through expanding the ranks of inspectors. Violators were pursued more aggressively, though there has been some backsliding recently. USDA still allows public contact with wild animals, refusing to apply the law's clear prohibitions against this practice. This regularly results in harm to members of the public and harm to the animals.

Congress has amended the Act several times, but in its entire history, only one true oversight hearing has ever been held. And it was Congress that dealt one of the most devastating blows to the Act. After the courts sided with animal organizations

in a lawsuit to force USDA to apply the Act with respect to birds, rats, and mice, in 2002 Congress sided with then-Senator Jesses Helms (R, NC), amending the Act by declaring, in effect, that birds, rats, and mice are not animals.

Through the twin pressures of the Animal Welfare Act and an increasingly vocal cadre of animal activists and more enlightened thinking, zoos have gotten better. (Whether there should be zoos is outside the Act's scope.) Sadly, however, the same cannot be said about commercial dog breeders. The American Kennel Club continues to resist the changes needed to put puppy mills out of business.

The years since passage of the AWA have seen remarkable changes in the climate in which we must work: A federal court granted standing to plaintiffs in a case against Ringling Bros. and Barnum & Bailey Circus for its treatment of elephants

After the courts sided with animal organizations in a lawsuit to force USDA to apply the Act with respect to birds, rats, and mice, in 2002 Congress sided with then-Senator Jesses Helms (R, NC), amending the Act by declaring, in effect, that birds, rats, and mice are not animals.

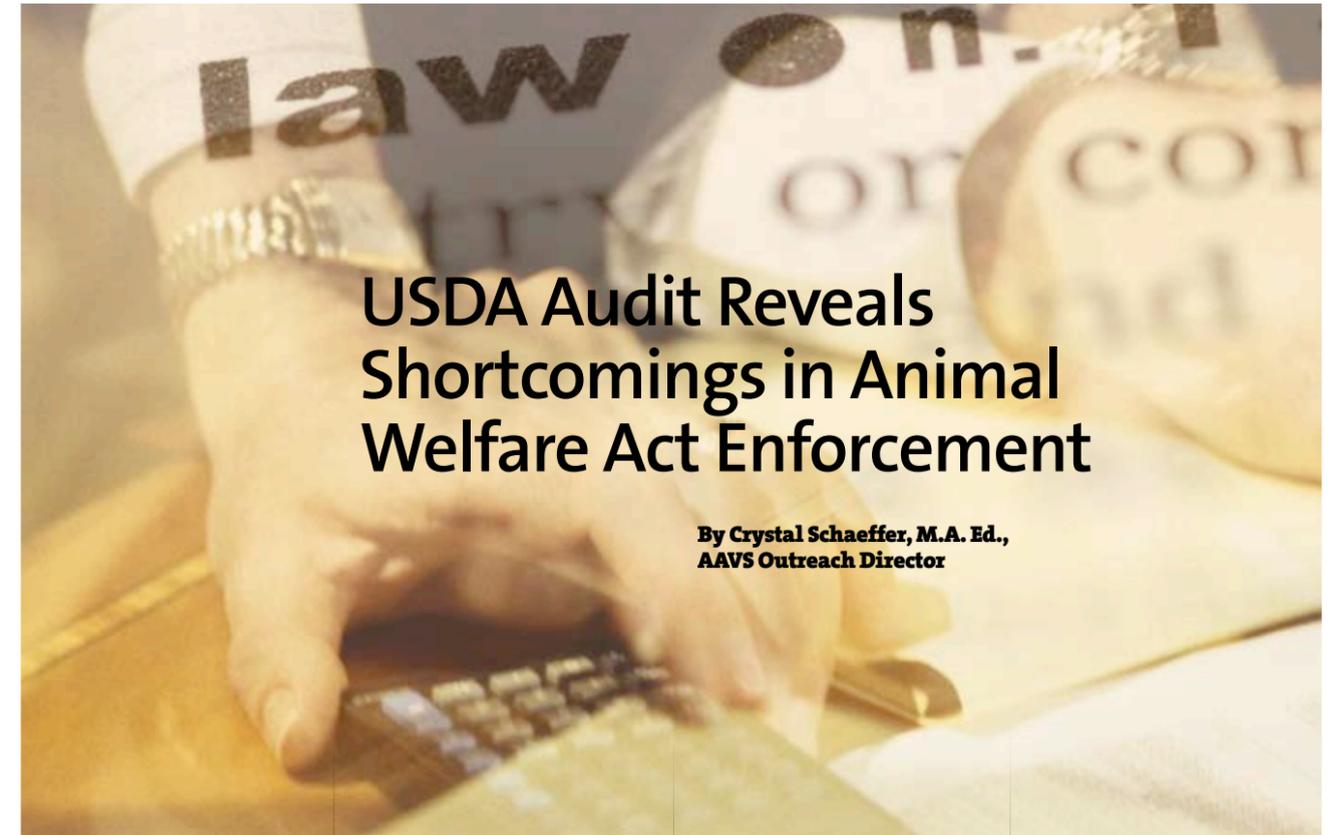
under the Endangered Species Act.¹ Zoos are now actually taking seriously the humane community's contention that it is not possible for them to provide a humane environment for some species. A former presidential assistant wrote a book that argues for treating animals with respect and dignity. While not all bills advancing animal welfare make it into law, they are treated more seriously than ever.

Even if all these new conversations do not go as far as we would like, that they are taking place at all, without the sarcasm that laced such discussions in the past, is also an important part of the legacy of the Animal Welfare Act. But that legacy is still a work in progress, which the breeders, researchers, and others would like to stop in its tracks. Our job is to ensure and improve upon that legacy.

Nancy Blaney is Federal Policy Consultant for the Doris Day Animal League, where she advocates for better animal protection through legislation and regulation, as well as better enforcement of existing laws. She has over 20 years of experience with animal welfare issues, as well as a background on Capitol Hill. She has served on the boards of various social and arts organizations, and was chairman of the board of directors for the Adult Health and Development Program at the University of Maryland. AV

References

¹ ASPCA v. Ringling Bros., 317 F.3d 334 (D.C. Cir. 2003)



USDA Audit Reveals Shortcomings in Animal Welfare Act Enforcement

By Crystal Schaeffer, M.A. Ed.,
AAVS Outreach Director

Although England first established its British Cruelty to Animals Act in 1876, it would take the United States nine decades before it would enact legislation of a similar weight. Spurred by overwhelming public outcry regarding Pepper, a dalmation who was stolen from her backyard and later killed in a biomedical experiment, and a *Life* magazine exposé unveiling the brutal reality of the trafficking of animals for experimentation, in 1966, Congress enacted the Laboratory Animal Welfare Act, legislation outlining minimal standards of care and treatment of cats and dogs who were destined for use in research. Later, the bill became known simply as the Animal Welfare Act (AWA), and in subsequent years, it was broadened to include more warm-blooded animals who were used in experimentation, entertainment, and exhibition. Through these

actions, Congress entrusted the U.S. Department of Agriculture (USDA) to be responsible for upholding the integrity of the Act.

In an effort to measure its effectiveness in doing so, in the fall of last year, the USDA conducted an audit of its Animal and Plant Health Inspection Service's (APHIS) Animal Care (AC) unit, which is charged with the responsibility of inspecting all facilities covered under the AWA.¹ In what can be considered a genuine evaluation, the audit reveals some disturbing findings that should alarm animal advocates, but also promising admissions and welcome improvements by APHIS.

Passive enforcement of the law

Although the Office of Inspector General (OIG) did state that it believes AC employees are dedicated to their work, it also expressed

concern for AC management in the Eastern Region due to passive enforcement of the AWA in that area. For example, the Eastern Region referred an average of 209 suspected violators to the Investigative and Enforcement Services (IES) in 2002-3 but only 82 in 2004. Of those referred to IES, AC Eastern management refused to take further action against 27 percent of suspected violators, while Western Region management declined to pursue four percent of possible violators in its territory.

Additionally, some Veterinary Medical Officers (VMOs) believe that because there is little, if no, consequence for violating the AWA, there are more than twice the number of repeat violators in the Eastern Region than in the Western Region. In reviewing the top 50 repeat violators, the auditors found that 88 percent

were located in the Eastern Region.

In terms of animal research, this fact is especially demoralizing, since, according to the Audit Report, "The AWA does not authorize 'the Secretary, during inspection, to interrupt the conduct of actual research or experimentation....' Therefore, it is more critical for AC to take enforcement actions against research facilities that are repeat violators."

Recommendations

In order for the AC to have a consistent philosophy and approach between regions, the OIG recommended that specific guidance be outlined and followed in every region, and APHIS agreed to create a flow chart that includes "enforcement action guidelines for inspection reports." The OIG also advised that all cases in which regional management declined to take enforcement

action against possible violators should be reviewed. APHIS has agreed to this, stating that the AC Deputy Administrator or Assistant Deputy Administrator and the IES Director or Assistant Director will review these cases, and if there is a discretion in what course of action should be taken, all involved parties will work together to determine an appropriate course of action.

Fine reassessment

The AWA authorizes APHIS to impose fines up to \$2,750 per violation. However, according to the Audit Report, APHIS gives an automatic 75 percent discount to almost all violators in an effort to reach agreement and avoid court costs, and sometimes additional concessions are awarded, or the fines are allowed to be used to make necessary facility upgrades to be in compliance with the AWA. Because of this, "violators now consider the monetary stipulation as a normal cost of conducting business rather than as a deterrent for violating the AWA," according to the OIG.

Recommendations

The OIG recommended eliminating the automatic 75 percent discount to repeat violators and direct violations of the AWA, and APHIS agreed to make this change and is determining new guidelines for assessing penalties. APHIS also agreed to calculate fines based on the number of animals affected by a violation instead of just by the number of violations. Additionally, because fines are calculated based on the level of violation and business assets only up to \$100,000, OIG also advised the agency to "seek legislative change to increase fines up to \$10,000 for research facilities." It is believed that such action will create more of a deterrent for research facilities that have billions of dollars in assets. However, APHIS claims that such action needs to be initiated by the Secretary of Agriculture. This attempt to defer to the Secretary was rejected by OIG who demanded that the agency draft the recommended legislation for the Secretary.

Monitoring of research facilities

The audit reports that 13 of the 16 facilities visited (all of which were previously cited for violating the AWA) misreported the number of animals used in their research. This finding is especially disturbing, since 15 of these laboratories conducted experiments that

involved pain or distress with no drug relief. Many VMOs interviewed stated that they took a "good faith" approach to their inspections, relying on facilities to provide accurate information regarding the number of animals used and the number of protocols conducted. It was also reported that the limited sampling technique that some VMOs used was inadequate in ensuring there were no problems within any one research study. Due to the small sampling, they may not discover if there was a failure to conduct the required search for alternatives, and/or verify that studies were not duplicative.

Recommendations

The OIG strongly recommended that the *Research Facility Inspection Guide* (RFIG) be revised so that VMOs are required to "verify the number of animals reported in the research facilities' annual reports." APHIS concurred and further stated that it would also make other revisions in an effort to help research facilities properly complete required reports. Additionally, it was agreed that the RFIG would also be changed to emphasize the necessity of adequate sampling protocols and reviewing the records of protocols in which animals were not present.

Failure of IACUCs

It was discovered that Institutional Animal Care and Use Committees (IACUCs), appointed by research facilities to monitor their laboratories to make certain they are operating in compliance with the AWA, are not effectively supervising animal care and use practices, reviewing protocols, or ensuring that searches for alternatives are researched and used where appropriate. During the past several years, APHIS has worked with IACUCs to help them improve and meet their designated responsibilities. Despite this, however, the Audit Report states, "VMOs believe there are still problems with the search for alternatives, veterinary care, review of painful procedures, and the researchers' use of animals," areas of utmost importance in an IACUC evaluation.

The Report also cites a dramatic increase in facilities committing AWA violations, noting that in 2002, 463 of 1,030 facilities were noncompliant in comparison to 2004 when 600 of 1,176 were noncompliant. Alarming, but not necessarily surprising, is the 29 percent failure rate of researchers who are required by the AWA to search for and use

non-animal alternatives when available. Additionally, the Audit Report states that "33 of the top 50 (66 percent) research facility violators in the nation were education institutions, suggesting that IACUCs at universities are less effective."

Recommendations

The OIG advised AC to conduct more frequent reviews of those facilities that are repeat violators, to which the agency claimed that such action is already part of its standard protocol. This comment was accepted, although the OIG stated that more frequent AC inspections "may not improve compliance given that the current IACUC reviews are ineffective." The OIG was more steadfast in recommending that AC "fully train [IACUC] members on protocol review, facility inspections, and the AWA." However, APHIS stated only that it would modify existing policy to indicate a change in interpretation of regulations. The OIG responded by saying that such action is not acceptable and that APHIS needs to clarify which regulation it is referring to and provide the language modification.

Conclusion

As demonstrated by the OIG's recommendations throughout this audit, AC should more stringently enforce animal welfare regulations already in place, reassess its fining procedure, revise the *Research Facility Inspection Guide*, and better train members of IACUCs, especially at educational facilities. The Audit Report clearly reveals short-comings to AWA enforcement but also provides many suggestions of how to rectify these problems. **AV**

References

¹ USDA. September 2005. Audit Report. *APHIS Animal Care Program Inspection and Enforcement Activities*. Report No. 333002-3-SF.



By Laura Ireland, Esq., Executive Director, National Center for Animal Law

PROTECTING ANIMALS THROUGH THE LAW

The day may come when the rest of the animal creation may acquire those rights which never could have been withheld from them but by the hand of tyranny...a full-grown horse or dog is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day, or a week or even a month old. But suppose the case were otherwise, what would it avail? The question is not, can they reason? Nor can they talk? But, can they suffer? Why should the law refuse its protection to any sensitive being? The time will come when humanity will extend its mantle over everything which breathes.

J E R E M Y B E N T H A M (1 7 4 8 - 1 8 3 2)

Unfortunately, even centuries after Jeremy Bentham's poignant questions to society, the law still refuses protection to many sensitive beings. However, significant progress has been made, and one need look only to the burgeoning field of animal law for hope.

While laws concerning our treatment of animals date back to colonial times, animal law as a separate discipline emerged less than 30 years ago. Today, it is one of the fastest growing fields of practice and study.

Attorneys play an important role in the animal rights movement. They prosecute people who abuse animals; represent people whose animals were lost, hurt, or killed; defend animal activists; draft and lobby for animal protection legislation in the halls of Congress; bring lawsuits to protect wildlife and their habitats; and help animal sanctuaries and shelters. Animal law attorneys help companion animals, wildlife, farmed animals, and animals used for research or entertainment. They are on the front lines, advancing legal protections for animals.

Just 10 years ago, there were only a handful of law schools offering animal law courses. Today, there are nearly 70 (over one-third of all law schools), with the number growing every year. Law schools are also developing advanced courses and animal law clinics where students can gain the skills needed to be effective advocates for animals while working on real cases. For example, students have helped persuade airlines to treat animals as more than simply baggage in hopes of preventing escapes and death. They have drafted model legislation to ban exotic animals as pets, encouraging people to leave them in the wild. In addition, they have assisted high school students who oppose dissecting frogs, pigs, or cats in their science classes, and protected consumers who want to purchase cruelty-free products.

Through animal law courses, students learn how to enforce the laws that currently exist, and how to work with legislators to enact better protections. They study federal statutes, including the Animal Welfare Act, Endangered Species Act, and Humane Slaughter Act. Students

also learn about state laws such as anti-cruelty statutes, veterinary malpractice, pet trusts, and custody disputes.

Lewis & Clark Law School is the epicenter for legal education for animal advocacy, providing an extensive animal law program built upon six courses. In 1993, Lewis & Clark students established the first animal law student group, which continues to be among the largest and most active, hosting a national animal law conference each fall. Students also publish the *Animal Law Review*, which includes articles written by professors, attorneys, legislators, and advocates on cutting-edge issues, paving the way for progress in the area. Today, over half of the law schools are home to student groups, and there are three animal law journals. Each year, the number of students going to school with the goal of becoming an animal law attorney grows.

The National Center for Animal Law works with students to help foster their goals by encouraging and developing practical training and resources for animal law students including: curriculum development; conferences, competitions, and training; financial support including scholarships; and resources for students pursuing careers in, and involving, animal law.

Since animal law is a relatively new field, there are few established career paths, but the opportunities are growing every day. The Center provides career counseling and resources for interested students, including an online database of jobs and internships. While there are attorneys who practice animal law full-time in small firms or for animal advocacy organizations, most incorporate animal law in a 'traditional' practice through *pro bono* efforts, writing, teaching, lobbying, or serving as board members for organizations. The network of attorneys in this field is also growing, with almost two dozen city, state, and national bar associations with animal law sections that publish newsletters and host conferences. With increased interest in the field of animal law and a broadening of society's expectations for how animals are treated, there will be a steady growth in opportunities for full-time careers in animal law.

While animal law is growing in the United States, we may also look to progress made around the world for inspiration. The Israeli Supreme Court banned the production and sale of *foie*

gras, a fatty liver from ducks resulting from an inhumane farming practice. A Brazilian court was the first to consider that a chimpanzee might be a "legal person." The Spanish Socialist Party introduced a bill in their Congress calling for great apes to be given the same moral and legal protection as human-beings. New Zealand has banned the use of primates for research.

Although we have made significant progress in animal law, there is still much work to be done. Each year, over eight billion animals are used and killed for food, clothing, entertainment, and research in the U.S. alone. The laws we have passed to provide animals with basic protections have eroded, and the resulting gaps allow most animals to be treated inhumanely without repercussion.

The animals need people to continue to care about them and advocate on their behalf. Today, students have an opportunity to pursue career paths that reflect their compassion for animals and desire to make a difference. Options range from working for an animal advocacy organization to becoming a veterinarian, vegan chef, humane educator, or animal rescuer. Then again, they may choose to follow in the footsteps of Bentham, helping to build a future for animals where the law embraces and protects all 'sensitive beings,' by becoming animal protection lawyers.

Laura Ireland Moore established the National Center for Animal Law after receiving her J.D. and Certificate in Environmental Law from Lewis & Clark Law School in Portland, Oregon. She is currently the Executive Director of the Center, Professor of the Animal Law Clinic, and an Advisor to the Animal Law Review.

To learn more about animal law or how to become an animal law attorney, please visit the National Center for Animal Law's website at www.lclark.edu/org/ncal, call (503) 768-6849, or e-mail ncal@lclark.edu.

A list of animal law student groups can be found at <http://www.lclark.edu/org/ncal/alawstudents.html>.

A list of courses can be found at <http://www.lclark.edu/org/ncal/courses.html>. AV

LAW SCHOOLS WITH ANIMAL LAW PROGRAMS

- Arizona State University College of Law
Tempe, AZ
- Benjamin N. Cardozo School of Law
New York, NY
- California Western School of Law
San Diego, CA
- Case Western Reserve
University Cleveland, OH
- Chapman University School of Law
Orange, CA
- Columbia Law School
New York, NY
- DePaul University College of Law
Chicago, IL
- Duke University School of Law
Durham, NC
- Emory University School of Law
Atlanta, GA
- Florida Coastal School of Law
Jacksonville, FL
- Florida State University College of Law
Tallahassee, FL
- George Washington
University Law School
Washington, DC
- Georgetown School of Law
Washington, DC
- Hamline University School of Law
Saint Paul, MN
- Harvard Law School
Cambridge, MA
- Hastings College of the Law
San Francisco, CA
- Indiana University School of Law
Indianapolis, IN
- The John Marshall Law School
Chicago, IL
- Lewis & Clark Law School
Portland, Oregon
- Loyola Law School
Los Angeles, CA
- Marquette University Law School
Milwaukee, WI
- Massachusetts School of Law
Andover, MA
- McGill University, Faculty of Law
Montreal, Canada

- Mercer University School of Law
Macon, GA
- Michigan State University —
Detroit College of Law
Detroit, MI
- New York University School of Law
New York, NY
- Northwestern University School of Law
Chicago, IL
- Pace Law School
White Plains, NY
- Pepperdine University School of Law
Malibu, CA
- Rutgers University School of Law
Newark, NJ
- Santa Clara University School of Law
Santa Clara, CA
- Seattle University School of Law
Seattle, WA
- Southern New England School of Law
North Dartmouth, MA
- St. Thomas University School of Law
Miami, FL
- Stanford Law School
Stanford, CA
- Suffolk University Law School
Boston, MA
- Texas Wesleyan University School of Law
Fort Worth, TX
- Tulane University Law School
New Orleans, LA
- UC Berkeley, Boalt Hall School of Law
Berkeley, CA
- UCLA School of Law
Los Angeles, CA
- University of Arizona James E. Rogers
College of Law
Tucson, AZ
- University of Arkansas at Little Rock
School of Law
Little Rock, AR
- University of Cincinnati College of Law
Cincinnati, OH
- University of Connecticut School of Law
Hartford, CT
- University of Denver School of Law
Denver, CO
- University of Florida, Levin College of
Law
Gainesville, FL
- University of Houston Law Center
Houston, TX
- University of Maryland School of Law
Baltimore, MD
- University of Michigan Law School
Ann Arbor, MI

- University of Missouri,
Kansas City Law School
Kansas City, MO
- University of New Mexico School of Law
Albuquerque, NM
- University of Pennsylvania Law School
Philadelphia, PA
- University of Pittsburgh School of Law
Pittsburgh, PA
- University of Quebec Law School
Montreal, Quebec, Canada
- University of San Diego School of Law
San Diego, CA
- University of San Francisco
San Francisco, CA
- University of Southern California
Los Angeles, CA
- University of Tennessee College of Law
Knoxville, TN
- University of Washington School of Law
Seattle, WA
- University of Wisconsin Law School
Madison, WI
- Valparaiso University School of Law
Valparaiso, IN
- Vermont Law School
South Royalton, VT
- Wake Forest University School of Law
Winston-Salem, NC
- Whittier Law School
Costa Mesa, CA
- Widener University School of Law
Wilmington, DE
- William Mitchell College of Law
Saint Paul, MN

(List courtesy of Lewis & Clark Law School.)

Personal Reflections on the 1985 Laboratory Animal Laws

By Bernard E. Rollin, Ph.D.,
University Distinguished Professor,
Colorado State University

Many people who advocate for an end to animal research should look to the progress that has been made in the past 20 years in improving the lives of research animals. As abolitionist Henry Spira often pointed out, there has been no social revolution in the history of the United States that has not been incremental; why would we expect issues of animal use to be any different?

As a member of the Colorado group who began to draft legislation for laboratory animals in 1976, defended the amendments before Congress in 1982 so that they were passed in 1985, and carried the concept to a variety of other countries, how do I view the effect of these amendments 30 years later? Very positively, given the situation then and now. In veterinary schools in the 1970s, for example, animals were used repeatedly to teach surgery up to 20 times and more. Atrocious and brutalizing laboratory exercises were rife in medical and veterinary schools, such as, for example, poisoning animals with strychnine or bleeding out dogs.

There was no use of or even knowledge of analgesia (pain control) then—in a literature search I did in 1982 I found only two papers on the subject, one of which said that there ought to be papers. This state of affairs reflected a pervasive ideology denying that animals could feel pain, and denying that ethics was relevant to science.

Researchers who denied consciousness in animals performed surgical brain procedures on primates using only paralytic drugs because they needed the animal “conscious!”

Despite the fact that animals probably suffered more from how they were kept than from what was done to them, housing for research animals was dictated solely by human convenience, which, for example, meant that social primates were caged singly in totally

austere conditions with no psychological stimulation or opportunity for social interaction or exercise.

In too many disease studies, illness was left to progress until it killed the animal, and tumor growth was allowed to proceed with no restrictions so that animals sometimes had tumors as large as the whole animal.

Most of these atrocities are gone now, as a function of the laws chartering Institutional Animal Care and

Use Committees empowered to enforce control of pain and distress. For example, the laws require accommodations for primates that enhance their psychological well-being. Although our draft legislation had requested



As abolitionist Henry Spira often pointed out, there has been no social revolution in the history of the United States that has not been incremental; why would we expect issues of animal use to be any different?

something similar for all species used in research, Congress did not approve it, but the National Institutes of Health has stressed the need for movement in that direction, and many research institutions have taken the mandate seriously.

Most importantly, the laws were the first

pieces of legislation in the U.S. restricting ‘normal’ human activities to the benefit of animals, granting some minimal rights such as having pain controlled to the animals. Historically, laws forbade only deliberate, sadistic, deviant cruelty, not “ministering to the necessities of humans.” Equally important, since ethical deliberation and discussion of pain and suffering are the normal work of Institutional Animal Care and Use Committees, scientific ideology has been seriously breached, and many committees, now thinking in moral terms, go well beyond the legal requirements in protecting animals. Not perfect, but a good start toward reducing the suffering and abuse of laboratory animals! **AV**

Bernard E. Rollin is a University Distinguished Professor who currently teaches at Colorado State University. As a leading scholar in animal rights and animal consciousness, Dr. Rollin has lectured over 1000 times worldwide and is the author of numerous articles and six books regarding animals and ethics and bioethics. His latest book, Science and Ethics, was published earlier this year.

MEDIAWATCH



In its quest to educate the public about the plight of animals in laboratories, the American Anti-Vivisection Society uses many different methods to market our programs and campaigns. One of our most prominent and diverse

approaches to reach the general public is through advertising in print and radio media as well as the internet.

Whether educating the general public about compassionate

shopping; reaching out to teachers, parents, and students about alternatives to dissection; or promoting alternative research methods, AAVS covers all the bases!

You'd never force your best friend to drink shampoo.



So why buy from a company that would?

Know which companies test and don't test on animals by requesting your free *Compassionate Shopping Guide*.

American Anti-Vivisection Society
www.aavs.org • aavs@aavs.org • (800)SAY-AAVS



This heart-melting ad appeared in several dog magazines, including *Hollywood Dog* and *The Bark*. Pointing out the absurdity of testing personal care products like shampoo on animals, AAVS received a large number of requests for our *Compassionate Shopping Guide*, which lists companies that do not test animals.

Me-Ouch!
Animal experiments hurt.

Over 100,000,000 animals suffer in research and testing laboratories. Learn how you can help by requesting a free information packet.

AAVS
American Anti-Vivisection Society

www.StopAnimalExperiments.org • aavs@aavs.org • (800)SAY-AAVS

In an effort to reach a wider range of people, this ad appeared in two different versions: one for the internet and the other for a bimonthly publication. Speaking the obvious, this kitty appears in *Best Friends* magazine, educating the public about the use of animals in research and supporting Best Friends Animal Sanctuary, a no-kill shelter for companion animals in need that publishes the magazine. A flash version of Me-Ouch! also appeared as part of the online version of *Animal Wellness* magazine.

Watch B. Hugh Mane Goes Shopping

"Witty and informative. Makes me want to shop cruelty-free!"
-Doger Egret
Philadelphia Suntenial Times



>>click here to watch the movie<<

In an effort to promote World Week for Animals in Laboratories this past April, AAVS produced *B. Hugh Mane Goes Shopping*, an informative and fun animation that promotes cruelty-free shopping. AAVS received a lot of positive feedback about this movie which appeared on computer screens across the country, and many people also requested our *Compassionate Shopping Guide* after viewing the animation. Please visit www.aavs.org to watch *B. Hugh Mane Goes Shopping!*

AAVS is also pleased to announce that Mr. B. Hugh Mane is currently starring in his own radio spot which is airing on Animal Radio, a syndicated radio program that has a listenership of over two million people. Find out when Animal Radio airs in your city by going to www.animalradio.com.

Lips taste better when they're cruelty-free.

Contact the American Anti-Vivisection Society today for your **FREE** Guide to Compassionate Shopping.

(800)SAY-AAVS
aavs@aavs.org
www.aavs.org

Sassy and stunning, this advertisement appeared in several progressive magazines including *BUST* and the *Philadelphia City Paper*. Wanting to find out for themselves if cruelty-free lips really do taste better, hundreds of people requested our handy *Compassionate Shopping Guide*.

MOREMEDIAWATCH



Nearly 100,000,000 animals are currently suffering in U.S. laboratories.

Let's end their suffering!



801 Old York Rd., #204, Jenkintown, PA 19046 • www.aavs.org • aavs@aavs.org

Often, AAVS has the opportunity to support other organizations that are also working to help animals exploited in research, while at the same time promoting our own important work. This ad appeared in a program booklet for an event hosted by Ryerss Farm for Aged Equines, a horse sanctuary that, with funding from AAVS, has given haven to mares and foals who were once used in Premarin production.

Designed to educate and create debate, this telling ad appeared in trains in Philadelphia as well as in publications such as *Fido Friendly* and *The Bark*. Advertisements such as these were an important tool in AAVS's Stop Animal Patents campaign, which resulted in the withdrawal of a patent on sickened beagles.

Concerned About Pet Cloning?

You should be.

It could be coming to **YOUR** practice.



As part of AAVS's No Pet Cloning campaign, this compelling ad appeared at the 2005 American Veterinary Medical Association conference in an effort to reach out to veterinarians about pet cloning and the many health problems from which cloned animals suffer.

WHICH WOULD YOU PATENT?



The University of Texas patented a beagle.

His immune system was weakened and his lungs were infected with a mold so that he could be used to test drugs. Now the University is making a profit by making other beagles sick.

Be Informed. Take Action. Make a Difference.

www.StopAnimalPatents.org



Humane **Visions** for the Future Scientific **Solutions** for Today

We provide grants to progressive researchers who develop alternative methods to *reduce* or *replace* animal use.

We promote sound public policy to advance alternative methods.

We have awarded over \$1,000,000 to scientists through our Alternatives Research Grant Program.

For more information on our 2004 Alternatives Research Grant Program, visit our website:
www.ardf-online.org

Alternatives Research & Development
FOUNDATION

Don't cut my life short. Say no to dissection!



An important part of AAVS's mission to end the use of animals in research includes the promotion of alternatives to such tests. To this end, our affiliate, the Alternatives Research & Development Foundation (ARDF), awards tens of thousands of dollars every year to researchers developing alternatives. This ad appeared in *Science* magazine as a way to promote ARDF's Alternatives Research Grant Program, and inspired a countless number of scientists to apply for funding.

This fly...err...eye-catching frog is appearing in *E* magazine and has caught the attention of hundreds of teachers, parents, and students who want to learn more about humane education and dissection alternatives. Ads like this are a great way to promote AAVS's education division, Animalearn, and its Science Bank, a free alternatives to dissection lending library.



Whose Rule Reigns? How the AWA Measures Up to European Laws

By Crystal Schaeffer, M.A. Ed.,
AAVS Outreach Director

While working to create and strengthen laws to protect animals, animal advocates in the U.S. cannot help but turn an open eye toward the European Union. Traditionally, Europe has been the global leader in establishing new standards in creating animal welfare laws. From protecting animals in laboratories to those farmed for human consumption and exploited for their fur, the European Union (EU) has demonstrated that animal welfare concerns can be incorporated into legitimate laws that benefit everyone in society, and in doing so has become the ruler to which we in the U.S. measure our own legislation, which sometimes falls far short in breadth, strength, and quality.

In the laboratory

Although the use of animals in product testing remains a point of strong debate in the U.S., in the EU there has been a unified effort among activists, government officials, and industry to phase out such testing. By maintaining open dialogues and forming cooperative relations, the European Union was able to enact a ban

on cosmetic testing that will take effect in 2009.¹ The ban will prohibit the sale of cosmetics that undergo any of 11 specific animal tests, with three more animal tests being outlawed in cosmetic testing by 2013.² The EU has also instituted a ban on the use of stray dogs and cats in cosmetic testing, and mandated that alternatives must be used instead of animals when available and allocable.³ It is important to note that a significant component of this ban is the role of the European Centre for the Validation of Alternative Methods (ECVAM), which has validated 20 alternatives,⁴ making the process of enacting a ban on cosmetic testing more palatable for industry insiders. In contrast, the Interagency Coordinating Committee for the Validation of Alternative Methods, the U.S. version of ECVAM, has validated only six alternatives,⁵ a fact that many believe has inhibited any strong effort to outlaw cosmetic animal testing in the U.S.

Another area in which Europe trumps the U.S. is in the use of primates in research. Although the U.S. enacted the Chimpanzee Health Improvement, Maintenance, and Projection Act, which established a retirement system for chimpanzees used in federal research, in 2000, the United Kingdom (UK),

The Netherlands, and Sweden have banned the use of all great apes (gorillas, chimpanzees, bonobos, orangutans) in research. The EU has also put restrictions on the use of wild-caught primates in research. Additionally, over 100 airlines are now refusing to transport primates across the globe for experimentation.⁶

Arguably, however, the most impactful difference between laws protecting animals in laboratories in the UK (and other countries such as Canada) and the U.S. is the fact that birds, rats of the genus *Rattus*, and mice of the genus *Mus* bred for research receive legal protection in Britain. In the U.S., this is not the case, leaving, according to author and veterinarian Larry Carbone, an estimated 80,000,000–100,000,000 animals⁷ without rights to minimal standards of care and treatment. And because birds, rats, and mice bred for research do not fall under the umbrella coverage of the Animal Welfare Act, an untold number of laboratories and education institutions that use only these animals are not inspected by the U.S. Department of Agriculture. As a consequence, the exact number of these animals used in research and testing remains unknown, their inhumane treatment cannot be punished,

and researchers are not required to investigate and use alternatives.

Animals on the Farm

The Animal Welfare Act does not protect animals raised for human consumption in the U.S. Instead, the Humane Slaughter Act was enacted to ensure that animals are killed in what is considered a humane manner. However, USDA does not include poultry or fish under the enforcement of the Humane Slaughter Act. In comparison, in the EU several practices common on typical factory farms are now beginning to be phased out. For example, a ban on the use of veal crates throughout the EU will take effect next year. Battery cages, small cages that often house up to four birds who are unable to spread their wings, will be outlawed in 2012, and a ban on gestation crates, cages with typically concrete floors and not much bigger than a mother sow and her piglets, will go into effect in 2013.⁸ Additionally, the first ever international standards have been outlined for the humane transport and slaughter of animals in the EU.

Fury over Fur, Hunting, and Trapping

There are no laws in the U.S. that protect animals who are trapped for their fur or raised on fur farms. In contrast, several EU member states (Austria, The Netherlands, Sweden, Switzerland, United Kingdom) have taken an ethical stand

against such practices and have either started to phase out, restrict, or ban fur farming altogether. However, regarding the issue of the trade in dog and cat fur, countries across the globe, including the U.S., Denmark, Belgium, France, Greece, and Italy, have united in enacting laws that prohibit the sale of dog and cat fur,⁹ most of which comes from China. Additionally, the EU Commission has announced its intention to ban the trade of dog and cat fur in all member states.

Other than state laws that establish hunting seasons, restrictions of hunting and trapping in federal wildlife monuments (Yellowstone National Park, for example), and legislation such as the Endangered Species Act or the Marine Mammal Protection Act, which specifically outline criteria to protect certain wildlife, there is no U.S. law that strictly prohibits traditional hunting or trapping. (Bear and raccoon baiting is outlawed through the Animal Welfare Act.) In the UK, hound hunting was banned a few years ago. And all EU member states have banned the use of leghold traps, with over 80 countries around the globe adopting similar legislation.¹⁰ In the U.S., however, members of Congress have grappled for years over legislation that would ban leghold traps to no avail.

Conclusion

There is no doubt that the European Union has been more progressive than

the U.S. in the area of animal protection. Advocates in the U.S. can learn much in terms of the strategies used by our EU friends, but because of our political and cultural differences it is still necessary to steer our own course. However, as animal advocates in the European Union have proven, if we maintain our integrity and remain resolute in our mission, changes will come that will improve the lives of animals in the U.S. The changes may be small and may manifest slowly, but the they surely will come. **AV**

References

- 1 Thew, Michelle. 2005 "Learning from World Experience." Taking Action for Animals: Washington, DC.
- 2 See supra number 1.
- 3 See supra number 1.
- 4 ECVAM. July 21, 2005. <http://ecvam.jrc.it/index.htm>.
- 5 ICVAM. July 21, 2006. <http://iccvam.niehs.nih.gov/about/overview.htm>.
- 6 See supra number 1.
- 7 Carbone, Larry. 2004. *What Animals Want: Expertise and Advocacy in Laboratory Animal Welfare Policy*. New York: Oxford University Press. p. 26.
- 8 See supra number 1.
- 9 See supra number 1.
- 10 See supra number 1.



AAVS Perspective On the Protection Of Laboratory Animals

By Tracie Letterman, Esq.,
AAVS Executive Director

Forty years ago, Congress enacted the Animal Welfare Act (AWA) for the primary purpose of preventing abuses to animals used in research facilities.¹ During the hearings, Congress heard shocking testimony about pet theft operations that supplied stolen pets to the growing medical research field and research facilities that were providing grossly inadequate care for animals used in laboratories. In recognition of the anniversary of the AWA, we need to ask the question, "How far have we come in the past 40 years in furthering the purposes of the Act, i.e., preventing laboratory animal abuse?"

Several amendments later, the Act has broadened protections for animals in some areas and decreased animal welfare coverage in

others. As the only federal statute designed to protect animals used in all types of research facilities, the strength and enforcement of this statute is critical for protecting laboratory animals. By persistently and tirelessly working with Congress and federal regulators, AAVS continues to be at the forefront of advocating for stronger protections for animals in laboratories under the AWA. There have been significant strides but, unfortunately, devastating setbacks.

As for the future of the Act, to truly fulfill the original intent of the AWA, Congressional amendments that specifically address broader coverage of the Act and for stronger citizen involvement are necessary in enforcement of the Act.

Without these amendments, there will continue to be significant gaps in the protection of laboratory animals.

Significant Milestones for Laboratory Animals Under the Animal Welfare Act

There have been many significant advances in the protection of animals used in research since the passage of the original 1966 Act. Legislatively, Congress amended the law to prevent the unnecessary use of animals by requiring research facilities to consider the use of non-animal alternatives and to eliminate unnecessary duplication of animal experiments.² There have also been considerable advances for laboratory animals in the courts

and within the agency charged with enforcing the AWA, the U.S. Department of Agriculture (USDA). Specifically, landmark events within each body are noteworthy.

Federal Courts

In the courts, one of the greatest victories for animals under the AWA occurred when animal activists achieved standing under the AWA. In order to bring a claim into a court, a plaintiff must have standing, meaning that a plaintiff must have a legally protectable and tangible interest at stake in the lawsuit.³ For over 30 years, the Act was essentially unenforceable because no one had standing to challenge USDA's interpretation of the law.

In a 1998 District of Columbia Circuit Court *en banc* case, *Animal Legal Defense Fund v. Glickman*,⁴ a U.S. Appeals Court broke this barrier by ruling for the first time that a plaintiff had standing under the AWA.⁵ In this case, a plaintiff challenged USDA's failure to finalize a proposed policy on the psychological enrichment of primates in zoos and laboratories. This court recognized that a plaintiff visiting a zoo to observe particular animals has an aesthetic interest in the observation of animals living under humane conditions no matter where the animals are located.

This case was followed by a lawsuit filed by AAVS's affiliate, the Alternatives Research & Development Foundation (ARDF), challenging USDA's failure to regulate birds, rats, and mice under the AWA. One of the plaintiffs was a college student who wanted to observe and study animals (rats) under humane conditions in the laboratory; however, instead, the plaintiff observed and interacted with animals who received inadequate housing, water, food, and veterinary care. Following the *Glickman* precedent, the court agreed that the plaintiffs in the ARDF case satisfied the standing requirements and for the first time, there is solid precedent supporting a plaintiff's argument for standing when observing inhumane living conditions for laboratory animals.⁶

The precedent set by these cases is significant because they paved the way for future plaintiffs to challenge illegal actions by USDA under the AWA. This landmark event will help to ensure that the goals of the AWA are fulfilled,

including the humane treatment of laboratory animals.

USDA

Another landmark event happened this year. On March 7, 2006, in response to a petition filed by AAVS, USDA officially announced that genetically engineered and cloned animals should not be denied AWA protections.⁷ By revising Policy #10, companies that are genetically engineering or cloning animals are now clearly not shielded from complying with the AWA. This policy revision is significant because an untold number of animals are genetically engineered to contain unnatural characteristics and are used in research, tests, and experiments. One example is Andi, a rhesus monkey whose tissues glow green under ultraviolet light. The number of animals used in cloning experiments is also quickly rising. Due to the severe health complications suffered by animal clones and the novel introduction of genes into genetically altered animals, it was imperative that USDA's humane care regulations govern these invasive, painful, and distressful procedures. Fortunately, USDA stepped forward to address these novel technologies and extended AWA protections to genetically engineered and some cloned animals.⁸

Significant Setbacks for Laboratory Animals Under the Animal Welfare Act

There have also been several crushing setbacks for the protection of laboratory animals. One of the largest was the 2002 Helms amendment to the AWA, excluding birds, rats, and mice from coverage under the Act.

This amendment occurred as a result of USDA's decision to settle the lawsuit with ARDF. ARDF sued USDA because the agency had interpreted the term "animal" to include all warm-blooded animals except birds, rats, and mice. After the court granted standing to the plaintiffs, USDA settled the case and was going to regulate birds, rats, and mice for the first time. The research community was upset over this settlement and attempted to intervene in the lawsuit but was denied by the court.

After settling the lawsuit, USDA began the process to regulate these animals when disaster struck. Prompted by the research community, then Senator Jesse Helms decided during a closed conference committee—without any

hearings or debates—to unilaterally change the law by excluding "birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research."⁹ This language was narrowly written; therefore, some of the uses of birds, rats, and mice still fall within USDA's regulatory authority, including the sale of birds as pets and the use of wild mice in research. USDA is currently conducting a rulemaking process to cover these animals.¹⁰

The devastating effect of the Helms amendment is that since the majority of animals used in research are mice and rats that are bred for use in research, more than 95 percent of animals used in research facilities are entitled to no humane care or treatment under the AWA.¹¹ The Congressional founders of the AWA wanted to eliminate abusive laboratory conditions for all warm-blooded animals, not just five percent of them. Through the unilateral act of one Senator, the AWA has been significantly crippled in its ability to protect all research animals.

Future Direction of the Animal Welfare Act in Protecting Research Animals

Now that the first 40 years of the AWA have passed, where will AWA coverage extend during the next 40 years? Animal advocates have numerous ideas. Focusing solely on the research animal issue, however, there are two primary areas that must be addressed in future AWA amendments.

First, to truly be an Act that protects animals used in research, the AWA must be amended to include birds, rats, and mice bred for use in research, and cold-blooded species, such as fish. As shown by the Canadian Council on Animal Care (CCAC), the number of fish used in research is on the rise, rivaling the number of mice used.¹² Because birds, rats, mice and cold-blooded species are not covered, researchers use these animals more than any other species covered by the AWA. These excluded species deserve AWA protection just as much as the species currently covered under the law.

In addition, because these animals are not covered under the AWA, there is no requirement that researchers consider non-animal alternatives. As a result, researchers are considering only alternatives for an astounding five percent of research animals. Clearly, this is not what Congress meant when they passed

Finally, even if Congress broadens the coverage of the AWA to include more species, the statute is toothless without adequate enforcement.



the 1985 amendments that included the alternatives provision. Senator Bob Dole explained that this legislation was necessary “to ensure the public that adequate safeguards are in place to prevent unnecessary abuses to animals, and that everything possible is being done to decrease the pain of animals during experimentation and testing.”¹³ Indeed, Congress’s intent to decrease animal pain and suffering through the use of alternatives is meaningless if less than five percent of the animals used in research are covered by the AWA. To provide real protection to laboratory animals and to actually decrease the numbers of animals being used in research, the Helms amendment needs to be repealed, and cold-blooded species need to be added to the definition of “animal” under the AWA.

Finally, even if Congress broadens the coverage of the AWA to include more species, the statute is toothless without adequate enforcement. Currently, there are only 112 inspectors to inspect 8,300 regulated entities, including over one million animals used in research facilities covered by the law.¹⁴ Clearly, the number of regulated entities and species covered far outweigh the number of USDA inspectors. In order to increase the effectiveness of this law, Congress

should add a citizen suit provision. The animal protection movement should learn from the environmental community’s success by looking at statutes such as the Endangered Species Act, Clean Water Act, and Clean Air Act. These statutes have allowed citizen groups to monitor noncompliance with the law and have taken the burden off government officials. Due to citizen suits, there have been countless actions to preserve endangered species and protect our water and air that would not have been possible if left only to the agencies’ limited resources.

This question still needs to be answered: How far have we come in the past 40 years in furthering the purposes of the Act? I believe that we have overcome some significant milestones. However, to provide meaningful effects and changes for laboratory animals, the AWA needs to be amended to include more species—the species that are predominately used by researchers—and allow citizens to enforce the Act.

Once Congress broadens the scope of animals covered under the Act and increases enforcement, the research community will be forced to abandon the routine use of animals by considering alternatives and eliminating unnecessary, duplicative experiments. Through

these actions, the use of animals will dramatically decrease, and the purpose of the AWA will finally be fulfilled. These actions will occur only when spurred by animal activists, such as AAVS. AAVS is dedicated to putting in the time and effort it will take to eliminate the use of animals in research. **AV**

References

¹ Pub. L. No. 89-544, 80 Stat. 359 (1966).
² 7 U.S.C. §§ 2143(a) (3) (b), 2131 (3); 9 C.F.R. § 2.31(d) (ii) (iii).
³ *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (explaining constitutional standing requirements); *Assoc. of Data Processing Serv. Orgs. v. Camp*, 397 U.S. 150, 153 (1970) (explaining the prudential standing requirements).
⁴ 154 F.3d 426 (D.C. Cir. 1998) (en banc).
⁵ A few lower court cases achieved standing but then were abruptly overturned. See e.g., *Animal Legal Defense Fund v. Espy*, 23 F.3d 496 (D.C. Cir. 1994) (overturning the district court’s decision granting standing to an animal organization and the individual plaintiffs).
⁶ *Alternatives Research & Devel. Found. v. Glickman*, 101 F. Supp. 2d 7 (D.D.C. 2000).
⁷ For more information about the specific coverage of cloned and genetically engineered animals under the AWA, see AAVS website at <http://www.nopetcloning.org/aavspetition.shtml>; USDA, *Aphis Animal Care Stakeholder Update on Revised Policies* (Mar. 7, 2006), available at <http://www.aphis.usda.gov/ac/>.
⁸ See *supra* note 7.
⁹ 7 U.S.C. § 2131(g).
¹⁰ See 69 Fed. Reg. 31537 (2004).
¹¹ Lynne Lamberg, *Researchers Urged to Tell Public How Animal Studies Benefit Human Health*, 282 *JAMA* 619-621 (Aug. 18, 1999); Larry Carbone, a laboratory veterinarian, estimates that between 80-100 million rats and mice are bred for use in research annually. Larry Carbone, *What Animals Want: Expertise and Advocacy in Laboratory Animal Welfare Policy*, 26. (2004)
¹² See Canadian Council on Animal Care, available at http://www.ccac.ca/en/CCAC_Programs/Guidelines_Policies/GDLINES/Guidelis.htm. Even though these species receive no humane care and treatment under the law, scientists argue that fish do feel pain. Dr. Lynne U. Sneddon, Dr. Victoria A. Braithwaite, and Dr. Michael J. Gentle, *Do Fish Have Nociceptors: Evidence for the Evolution of a Vertebrate Sensory System*, *The Royal Society Scientific Academy*, 7 (June 2003).
¹³ 131 Cong. Rec. 29,155 (1985).
¹⁴ USDA, *FY 2004 AWA Inspections*, 10, available at <http://www.aphis.usda.gov/ac/publications.html>.

PAWS Bill Threatens Integrity Of The AWA

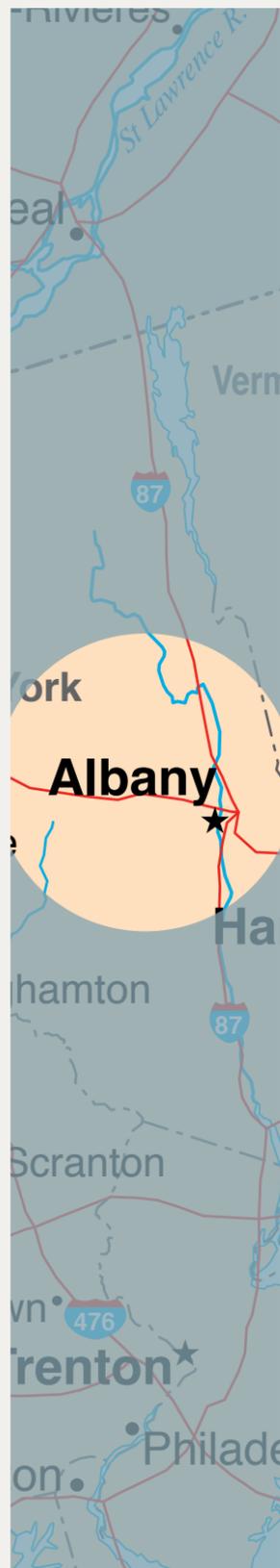
The Pet Animal Welfare Statute (PAWS) was introduced into the Senate earlier this year with the original intent of strengthening the U.S. Department of Agriculture’s (USDA) ability to regulate the pet industry by amending the Animal Welfare Act (AWA). The bill (S.1139) and its companion House bill (H.R.2699) were widely well received. However, new language, which significantly alters the original bill, has been added to a discussion draft and it is currently under consideration.

The discussion draft allows retail and wholesale animal dealers to be inspected by ‘third parties,’ replacing direct oversight by the USDA. While the USDA is a neutral agency, third-party inspectors may be aligned with the pet industry and quick to dismiss violations of the AWA. Additionally, dealers who opt into the third-party inspection program subsequently opt out of USDA inspection, and thus their

inspection reports will not be available through the Freedom of Information Act (FOIA). Only dealers that fail third-party inspections will have records available through FOIA. Without access to FOIA documents, animal advocates will be left unaware of what goes on behind the closed doors of animal dealers. This action sets a dangerous precedent of empowerment for other industry oversight bodies such as the Association for Assessment and Accreditation of Laboratory Animal Care, which operates within the biomedical community.

*Please write to your Senators and encourage them to support S.1139 in its original form. Also please contact your Representative and ask him/her to support the original PAWS companion bill, H.R.2669. To find your U.S. Senators, log onto www.senate.gov; and to find your U.S. Representative, log onto www.house.gov; or call (800) 688-9889 to get the names and addresses of your legislators. **AV***





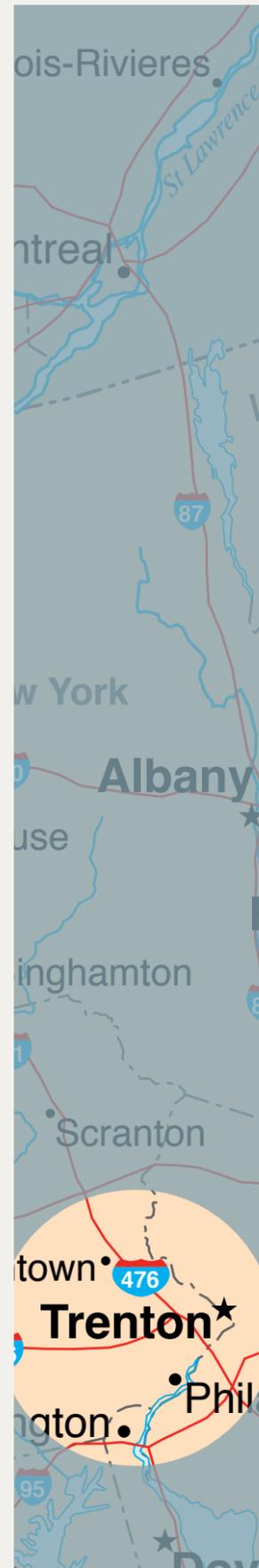
SUPPORT ALTERNATIVES BILLS IN NY AND NJ!

Groundbreaking legislation has been proposed in two eastern states that, if approved, would save countless animals from suffering behind locked laboratory doors. In 2005, the New York Assembly unanimously passed an alternatives bill (A.1163) that would prohibit animal testing on personal care and non-medical products if a federally recommended alternative exists. Now the companion bill (S.4808) is awaiting a vote in the New York Senate. A similar bill (A.909/S.1956) was introduced in New Jersey's Senate and Assembly.

Both bills stipulate that alternatives must be approved by the federal Inter-Agency Coordinating Committee for the Validation of Alternative Methods (ICCVAM) in order to meet the laws' requirements. Although no federal law requires the use of animal testing on non-medical products (such as lipstick and soap), many manufacturers continue to conduct painful and unnecessary tests on animals. If the bills are approved, a personal care or non-medical product company would be required to spare animal lives by utilizing the alternative in its testing and research. Undoubtedly, passage of these laws would be a big step toward ending animal tests forever for personal care and cosmetic items.

If you live in New York, please urge your Senator to support the alternatives bill (S.4808). You can find the name of your New York Senator at www.senate.state.ny.us or by calling (518) 455-2800. Additionally, you can find out how your Assemblyman voted on the alternatives bill at www.assembly.state.ny.us and thank your legislator if s/he voted to protect laboratory animals.

If you live in New Jersey, please contact your Assemblymen and Senator and urge them to support the alternatives bill (A.909/S.1956). You can find the names of your New Jersey legislators at www.njleg.state.nj.us or by calling (800) 792-8630. AV



PET SAFETY AND PROTECTION ACT PROHIBITS CLASS B DEALERS FROM SUPPLYING DOGS AND CATS FOR RESEARCH



The evolution of the Laboratory Animal Welfare Act of 1966 was largely motivated by the public's outrage over the use of stolen family pets in research projects. Yet, even today, dogs and cats may be snatched from their yards, obtained through 'free to good home' ads, or legally relinquished from shelters through a process called 'pound seizure.' Class B dealers, who collect dogs and cats from random sources such as these, then supply these animals to research facilities. Clearly, the chief intention of the Laboratory Animal Welfare Act (later known as the Animal Welfare Act, or AWA) has not been achieved because class B dealers continue to illegally provide researchers with former companion animals under the AWA.

A new bill entitled the Pet Safety and Protection Act (S.451) seeks to remedy this problem with proposed amendments to the AWA by prohibiting class B dealers from supplying dogs and cats for research. Unfortunately, the bill does not remove the current AWA provision allowing publicly owned pounds to supply dogs and cats to research facilities.

Although the problems with class B dealers are addressed in the Pet Safety and Protection Act, this bill continues to allow (but does not require) public pounds to supply research facilities with animals as long as they are in compliance with the AWA.

For more information about pound seizure, please visit www.banpoundseizure.org. AV

Don't Let Research Animals Suffer in Secret:

Help Strengthen the Freedom of Information Act!

The Freedom of Information Act (FOIA) is an important tool for those working to protect animals in laboratories. It was established to guarantee public access to certain government documents. For instance, through FOIA, AAVS has requested many inspection reports of laboratories that provide us insight into the care and use of animals at specific research institutions. However, government agencies frequently delay the release of information, or claim that certain documents are exempt from exposure, making it difficult to monitor the proper enforcement of animal welfare laws. This is a frustrating, upward battle that is often littered with 'red tape' and other complications. Furthermore, the delaying of public access to information may stall efforts on behalf of the animals.

This is why the OPEN Government Act (Openness Promotes Effectiveness in our National Government) needs your support. This bill would create an office to mediate disputes between government agencies and FOIA requesters, require federal agencies to meet deadlines for granting or denying FOIA requests, and establish a system for requesters to track the progress of their requests.

Please urge your Senators and Representative to co-sponsor these important bills (S.394/H.R.867), or thank them if they are already co-sponsors. To find your U.S. Senators, log onto www.senate.gov; and to find your U.S. Representative, log onto www.house.gov; or call (800) 688-9889 to get the names and addresses of your legislators. AV

Support Student Choice in Michigan!

A recent bill proposed in Michigan would give public school students the right to say no to dissection without compromising their grades. H.4254 states that if "a pupil expresses a moral objection to the dissection, the teacher shall offer an alternative activity to the dissection."

Many students object to dissection for a variety of reasons, and the value of alternative methods is beginning to be recognized by the educational community. Research shows that students who use alternatives learn as well, if not better, than their

peers who dissect. Additionally, the financial savings of CD-ROMS, models, charts, manikins, and other dissection alternatives that can be used over and over again are far greater than that of real animal specimens. There is also an important lesson taught when not using real animals: Students learn to respect living beings and begin to appreciate and understand the role of animals in nature. This is fundamental to biology, the study of life.

If you live in Michigan, please contact your Representative and ask that s/he co-sponsor the dissection-choice bill (H.4254). You can find the name of your Michigan Representative at <http://house.michigan.gov> or by calling (517) 373-0135. AV



One act of kindness can be your legacy, too.

In 1883, AAVS was founded by social visionary Caroline Earle White. Knowing that small acts of kindness can make a difference for animals, she tirelessly worked to improve the lives of those who were in need of loving homes, labored on city streets, and suffered in laboratories.

Make her legacy yours.

You can help ensure that Caroline Earle White's vision and the work of AAVS continues far into the future. For information on estate planning and becoming a member of the Caroline Earle White Society, please contact Heather Gaghan at hgaghan@aavs.org or (215)887-0816.



MEMBERS



AAVS Memorial Fund

The AAVS Memorial Fund is a unique way of paying tribute to kindred animals and animal lovers while making a gift in their name to help stop animal suffering. All AAVS memorial gifts are used for continuing our mission's work of ending the use of animals in biomedical research, product testing, and education.

Memorial donations of any amount are greatly appreciated. With a donation of \$50 or more, your memorial will also be acknowledged in a special recognition section of AAVS's Annual Report. At your request, we will notify the family member or other individual you have remembered as a memorial gift to AAVS.

Message to Our Members

Dear Friends,

I hope your summer has afforded you the opportunity for a little R&R and time to enjoy the simple beauty of nature. I had the opportunity to visit the island of St. Lucia for my sister's wedding and it was simply enchanting. The 19,000 acres of vibrant and lush landscapes reminded me of the beauty and importance of freedom for all living creatures. The island is full of native birds, and watching them made me appreciate even more the work AAVS is doing to help bring about the protection and eventual liberation of all animals.

Your continued support enables us the freedom to explore the many opportunities for our campaigns. Thank you for giving us wings to fly our message around the world, as it offers hope for all animals suffering needlessly, but especially for those in laboratories.

Regards,

Heather Gaghan
Director of Development
& Member Services

Tributes

In memory of Tippy and Killian. We miss you very much. We'll see you at the Rainbow Bridge.

Kathleen and Sean Patrick Yoshida
Asburn, VA

In memory of Buddy, my wonderful cat who passed away from cancer. He is always in my heart.

Mahmoud Kassraian
Las Vegas, NV

In memory of Eddie and Teddy. I know you both would want me to continue to rescue animals throughout my life, but none will ever replace you. I miss you everyday.

Roberta Elliott
Las Vegas, NV

In memory of Snowflake. We miss you and will always love you.

Kathryn Demeter
San Jose, CA

In memory of Jedburgh—one in a lifetime. Miss you always.

Kenneth and Linda Barnes
Northville, MI

Caroline Earle White Society

PLANNED GIVING

ENSURING YOUR VOICE CONTINUES TO BE HEARD FOR THE ANIMALS

Over the years, many of our members and supporters have made provisions to include AAVS in their wills, trusts, life insurance policies, and retirement accounts. Making a planned gift to AAVS is one of the most powerful ways you can help us to reach our goal of ending the use of animals in biomedical research, product testing, and education. To recognize the thoughtfulness and generosity of those who have chosen to provide for AAVS in their estate plans, we have created The Caroline EarleWhite Society, named in honor of our founder. If you are interested in becoming a member of The Caroline EarleWhite Society please contact Heather Gaghan, Director of Development & Member Services at (215)887-0816.

Please send me information on the benefits of supporting AAVS through planned giving.

I have provided for AAVS through my will, retirement plan, life insurance policy, and/or other planned gift.

NAME: _____

ADDRESS: _____

CITY: _____

STATE/ZIP: _____

PHONE: _____

E-MAIL: _____

Please return coupon to:
AAVS
Attn: Heather Gaghan
801 Old York Road, #204
Jenkintown, PA 19046



AGENCIES LAG IN ADOPTION OF ALTERNATIVES

One of the primary purposes of the Animal Welfare Act (AWA) is to encourage the development of alternative methods. The AWA states that “methods of testing that do not use animals are being and continue to be developed which are faster, less expensive, and more accurate than traditional animal experiments for some purposes and further opportunities exist for the development of these methods of testing.”

to “promote the development, validation, and adoption of non-animal methods,” it monitors ICCVAM and sends representatives to its meetings in which alternative methods are evaluated, data is reviewed, and recommendations are formulated.

As recently as May 2006, ARDF president Sue Leary attended the ICCVAM Peer Review Panel to evaluate *in vitro* test methods for estimating starting doses for acute oral systemic toxicity. This somewhat dry title represents examination

highlighted, including its reliance on questionable animal test results as the ‘gold standard.’ It raises serious questions regarding the agency’s ability to carry off the job it has been assigned within any reasonable time frame.

In June, ARDF and AAVS co-signed petitions drafted by People for the Ethical Treatment of Animals and supported by other animal protection organizations that propose new non-animal testing strategies directly to the EPA. Perhaps a single agency can respond more efficiently than the coordinating body, but both levels seem to require constant vigilance by informed advocates in order to advance the case for alternatives. **AV.**

This statutory requirement requires researchers to consider alternatives before using animals in painful experiments and is the first step toward reducing animal suffering in research.

In a later section, Congress directs the U.S. Department of Agriculture (USDA) to promulgate regulations for research facilities, including requirements “that the principal investigator considers alternatives to any procedure likely to produce pain to or distress in an experimental animal....” This statutory requirement requires researchers to consider alternatives before using animals in painful experiments and is the first step toward reducing animal suffering in research.

However, the AWA is not the only law concerned with alternatives. One important federal law is the ICCVAM Authorization Act of 2000, which established the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) as a permanent entity. The Committee is composed of representatives from 15 federal regulatory and research agencies involved in risk assessment. Key aspects of its mission include facilitating acceptance of validated methods and increasing efficiency in the review process.

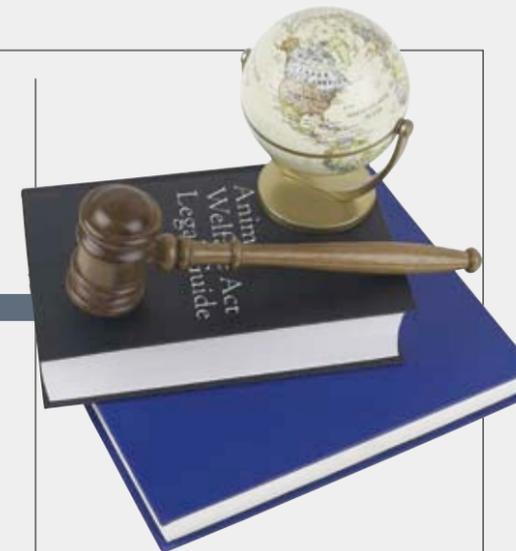
Because of ARDF’s core mission

of an aspect of the controversial LD50 test, which literally poisons animals to death. The puzzling issue for animal advocates about this evaluation was that a Guidance Document, usually considered the final step in the process that agencies use to let industry know what they will find acceptable, had already been issued on the same subject in 2001. Yet it appears that the topic is being reopened and revisited. This is troubling considering the resources can arguably be better utilized to advance other alternative tests that might replace animal use altogether.

Furthermore, according to ICCVAM’s interpretation of the scope of work, the range of test chemicals was restricted. As a consequence, the results were skewed against the *in vitro* methods. The recommendations of the Peer Review Panel (which consisted of some highly qualified and respected individuals in the field) have not yet been made public. But it appears that the recommendations are unlikely to move regulatory testing further on the path away from animal use. Throughout this process, the pitfalls of the ICCVAM process were

Animal Law Resource Page

If you are interested in learning more about the Animal Welfare Act (AWA), animal law, or helping animals through effective legal action, the resources on this page will help you get started.



WEBSITES

Animal Welfare Act and Regulations

www.nal.usda.gov/awic/legislat/usdalegl.htm

Use this website to view the full text of the AWA and its subsequent amendments.

Animal Care Publications

www.aphis.usda.gov/ac/publications.html

Find AWA inspection reports, the numbers of animals used in research, summaries of facility violations, and other documents published by USDA’s Animal Care unit on this website.

Animal Welfare Information Center

www.nal.usda.gov/awic/

This website provides information on laboratory animals, farm animals, circuses, zoos, wildlife, and companion animals covered by the AWA.

The Library of Congress

<http://thomas.loc.gov>

This website provides legislative information such as bill text, status, and sponsors, with a simple search engine called THOMAS.

Federal Register

www.gpo.gov/su_docs/aces/fr-cont.html

For daily information on proposed regulations, comment periods, and hearings, check this website.

Humane Scorecard

www.hsus.org/ace/20641

A project of the Humane Society of the United States, the Humane Scorecard lists members of Congress and their votes on animal protection bills.

Animal Legal and Historical Center

www.animallaw.info

Use this website by Michigan State University College of Law to search animal welfare laws by state, country, or species.

Animal Law Review

www.lclark.edu/org/animalaw/

A publication of Lewis and Clark Law School students, the *Animal Law Review* contains a variety of articles relating to all aspects of animal law.

Journal of Animal Law and Ethics

www.law.upenn.edu/groups/jale/

Find information about the University of Pennsylvania’s *Journal of Animal Law and Ethics* on this website.

BOOKS

Lethal Laws: Animal Testing, Human Health, and Environmental Policy

by Alix Fano

A scientific indictment of animal tests, this book exposes how U.S. environmental policy mandates the killing of thousands of animals and generates flawed scientific results. (Available through AAVS.)

Rattling the Cage: Towards Legal Rights for Animals

by Steven Wise

Focusing on chimpanzees and bonobos, this book illuminates the injustice of denying basic rights to animals. (Available through AAVS.)

Drawing the Line: Science and the Case for Animal Rights

by Steven Wise

The sequel to *Rattling the Cage*, this book cites scientific evidence for extending rights to animals. (Available through AAVS.)

Animals, Property, and the Law

by Gary Francione

Written by a lawyer, this book explores the notion of animals as ‘property’ under U.S. law.

What Animals Want: Expertise and Advocacy in Laboratory Animal Welfare Policy

by Larry Carbone, DVM

Written by a laboratory veterinarian, this book presents a scholarly history of animal welfare policy in the laboratory environment.

PERIODICALS

“Compassion in Action: Legal and Effective Tools to Help Animals,” *AV Magazine*, Fall 2003.

“Behind Closed Doors: Federal Fallacies,” *AV Magazine*, Winter 2001.

“Political Animals: Using Your Vote and Voice,” *AV Magazine*, Summer 2000.

LITERATURE

Laws, Animals, and Research: Laws and regulations relating to animals used in research, testing, and education

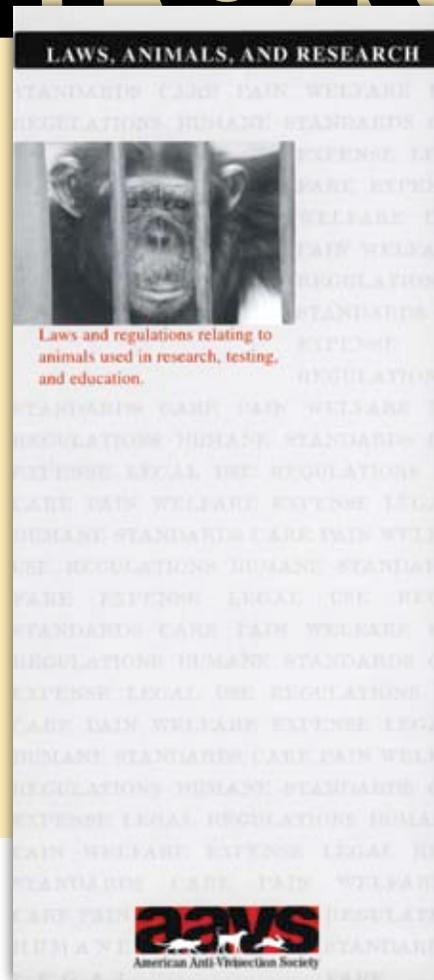
Available from AAVS, this brochure provides an introduction to the governmental agencies that oversee laboratory animal use.

Dissection and Students’ Rights

This brochure is a wonderful resource for students of all ages who want to say no to dissection and is available from AAVS.

BE INFORMED!

Every animal activist should know the laws and regulations surrounding animal research.



Request your free *Laws, Animals, and Research* brochure today!
Call (800)SAY-AAVS.

The American Anti-Vivisection Society
801 Old York Rd., #204
Jenkintown, PA 19046-1685
A Non-Profit Educational Organization
Dedicated to the Abolition of Vivisection
